

**TAXATION OF E-COMMERCE  
IN THE CONTEXT OF GOODS AND SERVICES TAX  
IN INDIA**

**A THESIS SUBMITTED FOR THE DEGREE OF  
DOCTOR OF PHILOSOPHY**

**IN  
ECONOMICS**

**BY  
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**December 2015**

# CERTIFICATE



This is to certify that the work embodied in this thesis entitled **“TAXATION OF E-COMMERCE IN THE CONTEXT OF GOODS AND SERVICES TAX IN INDIA”** has been carried out by **SATYA NARAYAN MOHANTY**, for the award of the degree of **DOCTOR OF PHILOSOPHY** under my supervision and the same has not been submitted elsewhere for a degree.

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# DECLARATION



I hereby declare that the work embodied in this thesis entitled **“TAXATION OF E-COMMERCE IN THE CONTEXT OF GOODS AND SERVICES TAX IN INDIA”** has been carried out by me under the supervision of **Professor J.V.M. SARMA**, School of Economics, University of Hyderabad, and has not been submitted in part or in full to any other University or Institution.

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## **ABBREVIATIONS**

BEPS	-	Base Erosion and Profit Shifting
EU	-	European Union
GST	-	Goods and Service Tax
OECD	-	The Organization for Economic Cooperation and Development
RST	-	Retail Sales Tax
VAT	-	Value Added Tax

## Chapter-1

### Introduction

1. E-Commerce is one or “any form of business transaction in which the parties interact electronically rather than by physical exchange or direct physical contact”. A wide range of “on-line business activities for products and services”<sup>1</sup> are captured within its meaning. The “New Economy” created by Internet has brought in its truck, new ways of doing business and new ways of governance and new forms of social interaction.

1.1 What is E-commerce?

1.2 E-commerce has been defined as “Any transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer or delivery of property, goods, services or information, whether or not for consideration, and includes the provision of Internet access,” (Internet Taxation Freedom Act, 1998, U.S.) However, according to Office of Tax Policy at the U.S. Department of Treasury, “e-commerce is any transaction that occurs with the facilitation of electronic *tools and techniques*”. According to High Powered Committee on e-commerce in India “E-commerce as generally defined *covers transactions involving offer and acceptance on networks*. Mode of delivery and payment may be in digitized form or in traditional manner.”

**Classification of E-Commerce:** E-commerce can be classified into following:

- a. “Business to Business (B2B)”
- b. “Business to Commerce (B2C)”
- c. “Business to Government (B2G)”

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<sup>1</sup> Author’s Thesis “E-commerce and its Impact on Taxation”. A thesis submitted to the National Defence College, New Delhi in 2003.

e. Consumer to Consumer (C2C)

Depending on whether the Government is the buyer or a seller in the transaction in question, Government is subsumed under either consumer or business. Then the typology collapses into three categories only viz., B2B, B2C and B2G. Bulletin Boards specializing in sales or auction are example of consumer to consumer e-commerce.

Three broad elements into which almost all types of e-commerce can fit are:

1. Use of Internet to advertise and sell tangible products.
2. Use of electronic media to provide services.
3. Conversion of information into a digital format and delivery of a digital product.

### 1.3 The characteristics of e-commerce

E-commerce is characterized by anonymity, global in scope and essentially disintermediated business process. All these make it potentially virtual in another country. Business is carried out by hosting services in a third country server. It is borderless and can have unlimited penetration into foreign markets. Intermediaries are no longer required for conducting business in contrast to traditional business. The buyer and seller do not have face to face contact and may not know each other.

Now the way the commerce is conducted is revolutionized but come with fiscal and other legal difficulties, which were not the attributes of traditional legal order. E-commerce is unsurprisingly dubbed as “the most consequential tax issue of the new millennium”. Government raises resources by taxation to discharge their stewardship role. But many are evangelical in their objection to e-commerce taxation while others support the taxation of e-commerce.

E-commerce means “include ‘click & buy’ methods using computers as well as ‘m-commerce’ which make use of various mobile devices or smart phones”<sup>2</sup>. This

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<sup>2</sup> WWD.Senate.State.mi.us

term takes into account not just the “act of purchasing goods and/or availing services through an online platform but also all other activities which are associated with any transaction”<sup>3</sup> such as:

- Delivery,
- Payment facilitation,
- Supply chain and service management

E-commerce has defied the traditional structure of businesses trading with consumers bringing to the fore various business models which has empowered consumers.<sup>4</sup>

1.4 The powerful capabilities of the Internet has enabled and supported the development of electronic commerce (e-commerce) as a means of conducting transactions. Both the staggering amount of sales generated by e-commerce and its potential rate of growth and future direction have engaged policy makers’ attention to the danger of E-commerce which is both unbounded and borderless. E-commerce transactions that take place over the Internet do not pay heed to state lines. “It is often the case that the Internet service provider, the purchaser, and the seller all are located in different states. *The cross-border nature of e-commerce and the complexities associated with levying tax on interstate commerce* mirror the states’ and nation’s difficulty in collecting taxes on the majority of goods bought through a mail-order catalog”<sup>5</sup> as experienced in the U.S. Understanding with regard to applicability current tax laws on e-commerce is limited and evolving.

Since the capabilities of the Internet are constantly evolving, “consensus about taxation of the Internet” will involve humongous “efforts at negotiation and compromise from policy-makers in government and in the business community”. A fair and equitable tax system will require understanding of the following:-

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<sup>3</sup> Ibid

<sup>4</sup> Nishith Desai Associates, “Legal, Tax & Regulatory Analysis”. July 2015

<sup>5</sup> [www..Senate.State.mi.us](http://www..Senate.State.mi.us)

- Existing tax laws meant for tangibles how will it contend with intangibles and services?
- How do the tax laws adopt to tangible goods or intangible services?
- Is it possible to design a tax system for E-commerce without imposing multiple taxes or discriminatory taxes and in what best way can it be designed.

1.5 The issue is not only whether e-commerce is to be taxed or not, but how it is to be taxed. Tax neutrality being the sine qua non of an equitable taxation system, advantage given to e-commerce as a tax free mode will be to the disadvantage of brick and mortar commerce and resultantly much of the traditional commerce will shift to the e-mode resulting in loss of revenue to the state and local governments.

Conversely, taxing e-commerce will mean additional compliance cost put on the seller. A strong argument is put on the ground of growth of this technology. It is argued that it should not impede to stymie the productive capacity of the technology which in turn will affect the efficiency and economic growth.

1.6 **Digital Market** notably includes the following:

- Content Producers (Media, Publishing, Entertainment)
- Travel Services
- Insurance
- Investment & Retail Banking
- Digital products which comprise even smaller percentage of on-line sales.

Change of technology is rapidly blurring the distinction between transactions of B2B and the same of B2C. Mobile technology is swiftly creating a network effect in Asia and Africa.<sup>6</sup>

### **1.7 Growth of E-Commerce**

Worldwide E-commerce in B2B has reached \$1.5 trillion by 2014. U.S. being the world's largest market followed by China. It is growing at the rate of 20% per year. There are close to a billion users of internet now. India has 300 million internet users by 2015. B2C E-commerce revenue though modest still stands at \$ 20 billion in India and growing @ 35% a year. Mobile Application Market is growing rapidly. E-commerce companies are in turn launching mobile websites and innovative mobile applications. Increase in mobile users which is currently at 173 million is likely to lead in creating a tipping point beyond which sales are likely to climb up and linear projection is likely to be disrupted by Smartphone Technology. In addition, Information Technology Enabled Services-Business Process Outsourcing (ITES-BPO) market is \$ 150 billion now.

### **1.8 Internet Penetration in India:**

The number of Internet users in India has reached to 300 million in 2015. E-commerce transactions in India were expected to grow from US \$ 20 billion in 2015-16 to US \$ 100 billion by 2020 and \$ 200 billion by 2030. The B2B segment is expected to account for 70 percent of the total e-commerce in India (currently more than 150 billion). The growth of e-commerce in India has been impressive so far and is growing at the rate of 35%. In the B2C segment, currently travel is accounting for 70%, e-tailing (e-retailing) 17%, financial services 6% and classified 5%. E-tailing is the fastest growing segment logging 40% growth CAGR. Apparel, mobile, consumer electronics claim the biggest share. Better infrastructure, logistics, broadband and internet ready smart phones decisions are key growth drivers. Innovative payment mechanism and mobile applications will drive the growth. Key positions right now are the following:

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<sup>6</sup> HPC Report submitted to Ministry of Finance, 2002.

- Innovation in Mobile technology and payment options are adding to the convenience.
- Omni-channels/multi-channels models.
- Consumer Analytics analyzing Consumer Shopping behavior is enabling cross selling and up-selling.
- Consolidation is taking place between existing players.
- Pure play businesses are expecting to be one-stop shop.
- Better logistics, Cash on Delivery (COD), shorter delivery timelines, Zero delivery prices and reverse logistics are improving the landscape.
- Consumers from Tier II/III cities are rapidly emerging
- Lower prices, convenience and access to wide range of products have been the USP of E-commerce.

Current phase of E-commerce is marked by rise of e-commerce from 2011 onwards. E-tailing segment is continuing to rise because of the following:

- a) Multi category/segments;
- b) Emergence of vertical focused categories;
- c) Bricks and mortar stores enlisting the on-line stores; and
- d) Entry of global majors like Amazon and proposed entry of E-commerce giant, Alibaba.

Mobile medium contributed 11% of e-commerce in 2014. It is likely to go up to 25% by 2017. On line consumers are now 65 million with 12 million 'Trust' order per month.

## 1.9 Economic Impact of E-Commerce

1.9.1 Rapid expansion of online transactions had jettisoned taxability issue to the forefront of national and international policy. Most of the technical and legal issues of



consumption taxation for E-commerce have been raised in the context of catalog and mail order sales and of broader taxation of services. However, the potential magnitude of overall transactions has taken the issue to its extreme. Clearly defined policies on their tax treatment is of paramount importance as exemption from consumption tax such as Sales Tax/GST/VAT may have egregious consequences for fiscal policy.

1.9.2 *Failure to impose the consumption tax on on-line purchases can cause significant revenue losses for the state governments that collect substantial percentage combined tax revenue from the Sales Tax/VAT. Resultant competitive advantage given to online retailers over their bricks-and-mortar counterparts in the process is important to take note of. This “distorts decisions on how businesses produce and what and how consumers buy”. Since the better off are not likely to access internet and transact compared to the poor, vertical inequities in tax liabilities arise. Arguments against requiring online retailers to collect the sales tax is premised on the significant complexity and costs of compliance burden. But internet technology makes it possible to affordably collect appropriate consumption tax, if tax structures and rules are simplified.*

1.9.3 States with the intent of taxing consumption which essentially means the consumer is the intended taxpayer. Nations and states follow different legal structures to impose consumption tax. For all in-state transaction, the taxing jurisdiction is the state where consumption is intended or presumed. The seller collects tax from the buyer who is in the ultimate taxpayer.

1.9.4 It is also argued by some economists that “all purchases by business are inputs in producing the firms’ products”<sup>7</sup> and should be tax exempt. On the other hand, consumption is done by individuals on whom the tax burden and responsibility should fall. But “purchases by businesses other than commodities that are intended to be resold or to become component parts of manufactured products are frequently taxed. As per

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<sup>7</sup> Author’s Thesis “E-commerce and Its Impact on Taxation” submitted to National Defence College, 2003.

some studies somewhere between 33 and 40 percent of the sales tax base is comprised of business purchases (see Ring, 1999).” The sales tax on transactions solely within a single state is in most circumstances collected and administered by the seller. When a vendor is “physically located in a state must collect the sales tax on its sales to in-state consumers. However, only remote (out of state) vendors with a physical presence or nexus (discussed later) can be required to collect the sales tax (technically the use tax)”.<sup>8</sup> The logic has been used by remote company with no physical presence in a state where the buyer over the internet resides not to collect tax, through some vendors may collect such tax voluntarily.

1.9.5 This collection mechanism as a compliance procedure has been a reasonable method of collecting a consumption tax. “*Electronic commerce have the economic effect of making every shopper a border resident living next to a jurisdiction with a zero sales tax rate*”.<sup>9</sup> As Goolsbee (2000) put it, “....the key issue that the Internet poses for tax policy is not so much its potential to create a world *without* borders but rather to create a world of *only* borders – a world in which everyone is as responsive to local taxation as people who live on geographic borders.”

#### 1.10 **Digital Economics**<sup>10</sup>

Information economics is the study of the behavior of information goods in a market economy.<sup>11</sup>

#### **Information Good:**

Any “goods or services that can be rendered into a digital format, including all digital e-commerce goods or services (e.g., network security software, a digital music

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<sup>8</sup> Ibid

<sup>9</sup> Alan Goolsbee

<sup>10</sup> Arthur Cockfield

<sup>11</sup> See generally CARL SHAPIRO & HAL R. VARIAN, INFORMATION RULES (1999). Information goods includes traditional goods that can potentially be digitized. This paper focuses on information goods that are bought, sold or exchanged via the Internet.

file or the online version of the Wall Street Journal)”<sup>12</sup> are considered to be information goods. The process of digitization can convert traditional goods and services to information goods. They can produce income too.<sup>13</sup>

Despite the absence of human intermediary, commercial web sites in a server can produce income by taking “orders, processes payment and distributes a digital good to consumers”.

#### 1.11 **Behaviour of Information Goods**

- (i) **Easily Manipulated:** An information good can be easily manipulated as it can be “modified, edited, transformed, altered or copied without great difficulty. The ability to manipulate many information goods is related to recent developments in information technologies that enable this manipulation. Bits and bytes can be rearranged with the push of a computer button.”<sup>14</sup> The distinction between the sale of a good or the provision of a service can be blurred “due to the ease with which information goods can be changed to suit a particular commercial purpose”.<sup>15</sup> Further, information goods “can be modified to perform services previously provided through the provision of tangible goods,”<sup>16</sup> which complicates matters when, for example, sales tax systems exclude services from the definition of the tax base.

- (ii) **Behavior within a Networked Environment**

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<sup>12</sup> Additional examples of information goods would include all forms of software, telecommunications services, information services, business databases, home banking and financial transactions.

<sup>13</sup> Digital economics has attracted attention in area such as intellectual property law though sparsely used in taxation. See, e.g. Eric Schlachter, The Intellectual Property Renaissance in Cyberspace: Why Copyright Law could be Unimportant on the Internet, 12, BERKELEY TECH.L.J.15

<sup>14</sup> See Carl Shapiro and Hal R. Varian, Information Rules (1999)

<sup>15</sup> Ibid

<sup>16</sup> Ibid

The two principles which rule the networked environment such as the Internet are the following;<sup>17</sup>

1. At the time of production, the *cost of producing an information good can be quite high* requiring deployment of significant resources. Second,
2. The reproduction cost of an information good after being created once is low and its marginal costs that approach zero.

While initial production of a song by a Professional musician may entail significant fixed costs. After the initial production, the song can be rendered into a compressed digital file such as an MP3 file whose marginal cost is almost zero. In the process no additional costs be incurred by the firm to reproduce and distribute the song to world-wide consumers provided they have access to internet. The remote sales facilitated by Internet does not require the commercial intermediaries (e.g. foreign branches) that were required for cross-border sales earlier.

A software's initial production may entail "significant human and capital resources, but once the software has been coded, the resulting computer code can be transmitted via the Internet to a server located in another country to perform its automated functions. The net result will be value addition to supply chain without the additional inputs of capital and labour".<sup>18</sup>

#### Sale of non-digital goods through internet

#### Problems:

#### 1.12 Arguments in the debate on e-commerce taxation.

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<sup>17</sup> A "network of networks" that internet is uses a common communications protocols (TCP/IP) that permits information to be broken down into packets and exchanged among computers connected to the network.

<sup>18</sup> Arthur Cockfield: The fact that the distribution network for information goods is non-rivalrous, global and borderless in nature has additional implications for tax policy.

The focus here is on the economic effects of taxation or tax exemption on the sale of digital and non-digital products. On internet the terms “digital products” and “services” are transactions which are not manifest outside the computer. They can be termed as intangible products with a physical analogue and without for taxation purposes.

a) **Intangible products that have a physical analogue.** Books, movies, software programs, web pages, song lyrics, television programs, newspaper columns, and so on. Often, these goods have physical counterparts can be digitized and become ‘information goods’ and which (with physical analogue) are liable to taxes in the physical world. Growth in this category may result in a loss of tax revenue typically secured by the sale of information goods in their traditional form, as producers realize the potential of zero marginal costs of distributing digitized goods. Prevailing arguments is that taxing these goods needs to be consistent with its physical counterparts for equity reasons, and protection of government revenues.

b) **Other tangible products.** A second category of digital products is analogous to, but often quite different from, a service. Taxation of these types of digital products confounds revenue authorities accustomed to tax statutes that treat “goods” and “products” differently. These intangible products, which defy the line between a service and product, include things such as on-line gambling, travel services, pornography, stock brokerage, and banking. The Internet provides an enhancement over the traditional delivery of these transactions, making them more convenient, since they happen online and usually in real time. This means that content and payment is delivered directly through the Internet, in a new way of selling. In addition to these traditional types of transactions, the Internet has made possible some entirely new forms of transactions, such as access to the Internet or search engines such as Yahoo! or Alta Vista.com. These products are already developed and is being taxed.

1.13 The explosive growth of the IT industry is a pointer to the potential of the digital products market. In addition to IT, the following five industries listed in para 7 ante

represent significant potential for the growth of digital products in the retail market. Each industry can take advantage of enormous cost savings associated with the transaction of goods and services via the Internet, in some cases reducing marginal costs over 100 fold.

#### **Tangible goods sold on internet:**

They are already a big item in the E-Commerce. Though they are taxed as goods, the marketplace or warehouses are being taxed as services.

#### **1.14 Analysis of Arguments “For” and “Against” Taxation**

The argument centre on whether taxation is a feasible and desirable policy in general, given that the current applicable sales tax structure falls short in enforcing compliance from consumers and companies. The arguments centre on answers to essentially two questions:

- a) *Should the government completely absolve this growing sector from taxation?*
- b) *What are the economic implications of taxing (through various mechanisms) Internet transactions?*

#### **1.15 Arguments “For” Taxing Digital Products**

**Argument 1: The general purpose of taxation applies to this sector.** The purpose of taxation by governments is two-fold: *a) to raise resources by way of revenue for provisions of public goods and b) to mitigate the effects of externalities.*<sup>19</sup> Both of these purposes are equally relevant and applicable to the move of business to a digitized era in general and to the trade of intangibles and tangibles products in particular.

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<sup>19</sup> See Glossary

- *Taxes can price externalities.* It is generally believed that “negative externalities can be internalized by the companies as they equate production to the marginal social cost of their activity. For example, the process of manufacturing many products results in pollution.” Taxing these products raises their price, thus capturing the cost of the negative externality that otherwise the company would have no incentive to incorporate. In the Internet, it is possible to say that the growth in the sale of digital products has created a negative externality, since it encourages pirating (i.e. in the software or music industries), which discourages R&D in technology, music, literature, etc. The government could discourage these activities by taxing Internet access, making the trade of these products more costly.<sup>20</sup>
- *Tax money should be raised to provide public goods<sup>21</sup>:* The money raised by way of taxation of e-commerce could be used for R&D, maintain network benefits of standardized protocols and to invest in increase in education which can be in the feedback loop of internet technology development.
- *Tax revenue should be raised to provide public services.* The challenge of providing public services by the Government *in general* will remain important as more of society moves online.

**Argument 2: Tax exemptions have negative equity implications.** Any reduction in costs through a tax subsidy for digital products could create important distortions for the economy. One of these distortions involves equity concerns, as producers move increasingly to internet sales to escape taxes and a fixed nexus.

- *Exempting internet sales is a regressive tax policy.* Not taxing internet sales (intangible as well as other tangible products sold through the Internet) will turn the brick-and-mortar tax into a regressive tax. “The people who cannot afford Internet access are the very ones who do not need the additional burden of paying a tax that the well-to-do can easily avoid....” People concentrated in

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<sup>20</sup> See Glossary

<sup>21</sup> See Glossary

lower income brackets of the economy suffer disproportionately from this tax subsidy for goods sold in digital form to the better off as they lack access to internet which the better off have in ample measure.

- *Taxes could be used to lower barriers of entry for small players in the Internet.*  
In the winner takes all world of interact, there is very little space for second best. When Amazon, Expedia and Google prevail, leaving little diversity and choice for consumers. To maintain competition on the Internet, enforcement of anti-trust law and taxation of bigger players will be necessary.

**Argument 3: Taxing internet sales will have little impact on the growth of this sector.** Particularly in the case of internet sales, growth of sales in this market is fueled by the efficiency of having near-zero distribution costs. The cost effectiveness of transactions that occur in real time (both payment and delivery) and convenience and access to wide range of products are main drivers of this growth. Contrary to what many argue, tax subsidies are not the main driver.

#### 1.16 **Arguments “Against” Taxation**

**Argument 1: Any system of taxation is inefficient and causes deadweight loss.** *Unless they are designed to address externalities, taxes are economically inefficient. The objectives of “least deadweight loss (loss of consumer and producer surplus)”,<sup>22</sup> and to “minimization distortions to the economy (creating non-market incentives that lead to inefficient outcomes)” should not be lost sight of while imposing taxes.* If the imposition of tax decreases consumption of that product, consumer purchases are distorted which will eventually fail to earn revenue. Most efficient taxes are those which are levied on inelastic goods.<sup>23</sup> Tax on digital goods could reduce consumption and fail to generate desired revenue flows as digital products are elastic goods and tax will mean an effective increase in price of goods.

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<sup>22</sup> See Glossary

<sup>23</sup> See Glossary



Related to these issues, there are other problems with setting effective taxes:

- *It will be difficult to set the appropriate level of a tax on goods that do not create externalities.* Digital products represent a new category “whose elasticity of demand or growth potential is still unknown”. Other tangible goods which move through e-commerce, their elasticity is not easy to assess.
- *Taxes on consumption necessarily divert money away from investment,* switching hands from private investors (represented in this case by consumers) to the public sector.
- *Taxes create a disincentive for the internet sale of where marginal cost is almost zero.* For tangible goods the prices go up and it becomes a disincentive. Many argue that in the case of digital goods, the marginal cost of producing and delivering an intangible product is so low (nearly zero), that the resulting competitive price with a tax will approximate zero, resulting in negligible income for business. In case of tangible goods, net of tax the price will be so low that there won't be any incentive to sell and the growth of the sector will be impaired.

**Argument 2: Tax exemption is an incentive for sector growth.** This issue is particularly important in the case of E-commerce, which are in an incipient stage and will benefit from tax incentives. Several points can be made in favor of this argument:

- *Encourage efficiency in business.* These electronic links (such as “secure intranets, extranets, and electronic data interchange) reduce the transaction costs and efficiency of transactions, and thus should be encouraged by the government”.

*Network effects develop quicker without taxation.* A tax subsidy will encourage the formation of a broad network of which later everybody will benefit. Thus, it is “economically efficient to help this network develop”.

- *Encourage small businesses with good ideas.* The low capital costs involved in setting up an Internet business are even more significant when dealing with startups who benefit out of non-investment on elaborate and expensive distribution system. Subsidizing start ups may increase competitiveness in the sector by creating incentives for entrepreneurs.

### 1.17 **Comparison and Evaluation of the Different Tax Mechanisms**

When debating whether sales through E-commerce should be taxed, it is important to look at the potential taxing schemes available and the economic implications of using one scheme or another in the e-commerce environment. The debate on Internet taxation focuses the most attention on the viability of consumption taxes (in the US, the sales tax and internationally, the VAT). Discussion here is on the economic implications of consumption taxes, as well as some of the potential implications of consumption taxes, as well as some of the potential effects of implementing a corporate or an income tax.

<b>EFFECTS OF DIFFERENT TAXING SCHEMES</b>		
<i>Type of Tax</i>	<i>Good</i>	<i>Bad</i>
Consumption	➤ Ethical and economically efficient	➤ Hard to enforce ➤ Require party ID
Corporate	➤ Less intrusive	➤ Easy evasion
	➤ More compliance	➤ Encourage dislocation
Income	➤ Easy to enforce	➤ Double Taxation

### 1.18 **Consumption taxes**

Many tax advocates argue that taxes on consumption are the best way of taxing e-commerce, rather than taxing at the corporate or income level. From an economic

standpoint, taxing income distorts savings in the economy, which is crucial for growth and investment. Ethically many argue that it makes sense to tax what individuals take out of the economy (through consumption) rather than the wealth they generate.

When attempting to make collection easier, regulators want taxes to be based on where the consumer lives, not on the location of e-commerce producers. Finding “nexus” for each party becomes particularly problematic when there are no physical products being shipped, as is the case with digital products or the shipments are decoupled from transaction on internet. Sales tax necessitates party identification for enforcement, which has proven difficult to monitor and audit.

However, other consumption taxes which, if modified, might be effective in taxing both intangible and tangible e-commerce. Once such scheme involves the VAT system or GST, under which tax rates are uniform across the nation and are structured to provide incentives for both consumers and producers to comply with tax collection.

*Taxing online cash is easier but distorts business.* While taxing online cash is easy in terms of compliance, *it can have multiplying effects on certain businesses. Businesses that purchase its intermediate goods through the Internet using online cash, may end up paying taxes at every transaction. The pyramiding of costs will encourage businesses to integrate vertically, influencing inefficient behavior from companies.* Although this could be mitigated through exemptions of certain intermediary goods, the result may be a complicated tax law with numerous loopholes.

**1.19 Potential Tax Loss:** If e-commerce related products and services are not taxed not only there would be tax loss but tax neutrality will be reneged. Given the exponential rise and spread e-commerce the loss is expected to take a quantum leap. (See Appendix 3)

**1.20** U.S. is spearheading the approach to keep ‘electronic transmissions’ customs duty free for all time to come though it did not receive unanimous support in the G-8

meeting. The second W.T.O. Ministerial Conference at Geneva which followed G-8 meeting in May, 1998 while authorizing “comprehensive work programme to examine all trade related issues relating to Global e-commerce”, it declared that WTO members would “continue the current practice of not imposing customs duty on electronic transmissions”. Currently sales by E-commerce are free of customs duty internationally.

1.21 High Powered Committee of Ministry of Finance, India in 2003 declared that the present tax law is good enough to handle the challenges posed by E-commerce for income tax and corporate tax.

1.22 This thesis will entirely deal with the Problems, Challenges and the solution for levying and collecting Consumption Tax for E-commerce. Currently B2B digital sale is taxed as services. Tangibles are being charged VAT within the limitation of Indian VAT system which is origin based.

1.23 **Aim, Scope and Hypothesis**

a) **Aim of study:**

- To study the size and evolution of e-commerce market.
- To assess whether e-commerce should be taxed or not?
- What kinds of consumption taxes are most suitable?
- What needs to be done to enable capturing this tax capacity?
- Understanding the cross-country experience
- Modelling a tax framework in the context of GST in India

b) **Objective:**

E-commerce without tax will erode the tax base of the states and the federal Government apart from creating economic distortion. This is axiomatically taken from the other researches and studies rather than testing as a hypothesis.

What is the framework necessary to capture the tax without jeopardizing the growth of this sector as far as VAT/GST are concerned has been studied and examined. The framework required for capturing tax on E-commerce without the risk of non-taxation and double taxation will be structured.

**c) Scope of study:**

To study and analyze taxation on E-commerce in the context of GST. Of particular relevance is the impact on consumption taxes such as RST/VAT/GST. The study will not cover the aspects of income tax and import taxes, transfer pricing and royalty which though are legitimate will not form part of the study because of limited terms of reference. However, some reference and analysis of income taxes will be inevitable. This will be a conceptual study rather than empirical study in view of the paucity of data on the issue of e-commerce on one hand and evolving nature of GST design in India currently.

**Chapter Plan:**

1. Introduction: Pans out the landscape. Points out to objective of the study and states the objective.
2. Study of Five E-commerce Firms and their Business and Revenue Models: Covers five large companies dealing with 5 different fields in E-commerce showing their area coverage, product variation, business and revenue model and their financial health. Essentially the problematic nature of E-commerce is brought to the fore.
3. Review of Literature: This goes into debate of taxation, evidence of erosion of tax base, models followed for arriving at tax loss projections, limitations of law, how to tax and how to share tax.

4. Methodology: The approach used is qualitative and comparative research in the background of paucity of data.
5. Cross country analysis of VAT/GST for E-Commerce taxation and the weaknesses in their design and implementation. Comparison of different tax regimes.
6. Study and normative modeling of E-commerce taxation in the context of GST in India.
7. Conclusions : Summary & Recommendations.

## CHAPTER-II

### **Study of Five E-Commerce Firms and their Business & Revenue Models :**

2.0 OECD have arrived at “diverse revenue models of E-commerce”. There are multiple ways in which businesses turn value into volume.

“The most common revenue models include the following:

- i. “Advertising-based revenues : One version of this model offers free or discounted digital content to users in exchange for requiring viewing of paid-for advertisements. Other models rely on providing advertising through mobile device based on location or other factors. A third type concerns social media websites or platforms who typically build up a large online user community before monetizing their captive audience through advertising opportunities”.<sup>1</sup>
- ii. “Digital content purchases or rentals : Users pay per item of download – for instance, e-books, videos, apps. games and music would fall into this category”.<sup>2</sup>
- iii. “Selling of goods (Including virtual items) : This category which overlaps to a degree with (1), would include online retailers of tangible goods but could also cover online gaming, where users are offered a free or discounted introductory product but are also offered purchasable access to additional content or virtual items to enhance the experience”.<sup>3</sup>
- iv. “Subscription-based revenues : Examples include annual payments for “premium delivery” with online retailers, monthly payments for digital content including news, music, video-streaming, etc. It could also include regular payments for software services and maintenance such as anti-virus software, data storage,

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<sup>1</sup> OECD Addressing the Tax Challenges of Digital Economy, OECD .... OECD/G20 BEPS Project 2014.

<sup>2</sup> Ibid

<sup>3</sup> Ibid

customer “help” services for operating systems, and payment for access to the Internet itself”.<sup>4</sup>

v. “Selling of services : This category overlaps with (iv) but would include traditional services which can be delivered online such as legal services (e.g. e-conveyance), financial services (e.g. brokerage), consultancy services, travel agency etc. It would also include a large range of B2B services linked to enterprises who provide core Internet access and act as Internet intermediaries (web hosting, domain, registration, payment processing platform access, etc.)”<sup>5</sup>

vi. “Licensing content and technology : Again, this category overlaps with (iv) and (v) but might typically include access to specialist online content (e.g. publications and journals), algorithms, software, cloud based operating systems etc. or specialist technology such as artificial intelligence systems”.<sup>6</sup>

vii. “Selling of user data and customized market research : Examples include internet service providers (ISPs), data brokers, data analytics firms, telemetrics and data gained from non-personal sources”.<sup>7</sup>

viii. “Hidden” fees and loss leaders : There may be instances in integrated business where profits or losses may be attributable to online operations but because of the nature of the business, cross-subsidy with physical operations occurs and it is difficult to separate and identify what should be designed as ‘on-line revenue’. An example might in clued online banking which is offered “free” but is subsidized through other banking operations and fees.”<sup>8</sup>

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<sup>4</sup> Ibid

<sup>5</sup> Ibid

<sup>6</sup> Ibid

<sup>7</sup> Ibid

<sup>8</sup> Ibid



## **2.10 Tax Application on e-Commerce Business Models**

E-commerce businesses as a rule fall under ‘inventory based model’ or ‘market place model’ or a hybrid model called ‘facilitation’ or fulfillment model.

### **2.11 Inventory Based Model**

In case of inventory-based model, the company engages in commerce directly. The VAT/CST is levied on the sales of goods and is collected by the state where the seller and the buyers are present and by the exporting state, in case of inter-state sales. In such a situation, where the seller is registered in one state, has warehouse at some other state and sells goods to a person in a third state, the VAT/CST will be charged and collected by the state where the warehouse is situated and from where the goods are being supplied.

E-commerce companies are trying to set up their warehouses in those states where there are lower taxes on products. However, some states are losing on revenue because of lower taxes on products that are being supplied to other states. The destination State also loses out revenue if the fulfillment centre is not in that State.

### **2.12 Market Place Model**

In case of market place model, e-Commerce companies facilitate the provision of e-Commerce transactions by acting as a platform, in return for a commission from the sellers of the goods and services. Service tax is levied on the commission earned. Similarly, the e-Commerce companies who are not into trading of goods and rather provide online services have to pay the service tax on the fees received against the services provided by them. For instance, downloading of software, music and travel related services or matrimonial services come under the ambit of e-Commerce subject to service tax.

The service tax is charged and collected by the Central Government and the place of provision is not a concern as long as it is in India because service tax currently

is under the purview of Government of India. However, export of services is exempt from the taxes.

### **2.13 Hybrid or Facilitator Model**

Fulfillment model is a variant of market place model. Apart from acting as a facilitator, e-Commerce companies also provide services as warehousing, delivery and packing. However, in this type of trades, the companies being a facilitator also have to pay service tax on its commission income and the seller has to pay VAT/CST on the sales of goods. But in a scenario, when the seller and warehouse are located in two different states, additional VAT is being demanded by the state in which the warehouse of the e-Commerce company is situated leading to either loss to the state where the warehouse is situated or double taxation on the e-Commerce company.

### **2.20 Amazon**

An on-line catalogue company that is Amazon follows market place model of e-commerce. Amazon.com started in mid 1990s. “Amazon.com started as an online bookstore, but soon diversified. It started “selling DVDs, VHSs, CDs, video and MP3Downloads/Streaming, Software, Video Games, Electronics, Apparel, Furniture, Food, Toys, and Jewellery. The company also produces consumer electronics notably, Kindle, Fire Tablets, Fire TV and Phone and is a major provider of cloud computing services.”<sup>9</sup>

2.21 Amazon has more supply options and choices; and resultantly the company has more control over its suppliers, as the company has a large number of suppliers, manufacturers, distributors and publishers in its network. Amazon has more power and influence on costs of the suppliers and influence on improving the features of the products. This largely stems from the fact that a good part of supplier’s production/offer are being bought up by the former. The company is well informed about the suppliers market because of its domain strength in marketing, market

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<sup>9</sup> Sandeep Krishnamurthy, A comparative Analysis of EBay and Amazon. 2004

research and development. Therefore, Amazon has more power as well as negotiating space with the suppliers.

2.22 From the customer's point of view Amazon offers *one of the biggest concentration of goods and services* where customers can buy at a reasonable price almost everything. Backend effort of the company in negotiating for a lower price or to enrich product features tend to strengthen it in the asymmetrical relationship with the customer. "Amazon's strategy is focused on customer service innovation which is designed to improve the convenience of online shopping experience. The company invests heavily on the best technology in order to keep on climbing on the ladder of success within e-commerce industry".<sup>10</sup> Its ability in gaining new customers and retaining them has been enhanced by its "responsive service, unparalleled selection, discounted prices, and finally, the possibility for the customer to comment on books, read press reviews and comments by other book buyers."

Amazon has separate retail websites for different countries including one for India.

### **2.23 Strategy: Customization of mass production**

"Amazon's business model is predicated on the Internet as a platform to offer a range of products and services, facilitated by a strong brand recognition, a large and growing customer base, innovative technology, and extensive distribution capabilities. Amazon principally sells physical products and it uses its information services as a means to attract and retain customers".<sup>11</sup>

2.24 This has created a personalized "on-line shopping experience based on the detailed knowledge of customer tastes and habits provided by their data. Amazon has built browsing and searching capabilities into its site, and provides product information, reviews, recommendations, its 1-Click technology and personalization on a broad selection of products".<sup>12</sup>

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<sup>10</sup> Ibid

<sup>11</sup> Nigam P. Nayak M, Vyas P, E-commerce challenges : A case study of Flipkart vs. Amazon; Indian Journal of Applied Research. Vol. 5 Issue 2, 2015

<sup>12</sup> Ibid

2.25 “Amazon was one of the first sites to customize pages for each registered customer, using *collaborative filtering*. Comparisons are made about previous purchases and preferences, and are compared with the preferences of other people who bought similar books. However, it is not yet clear how Amazon’s recommendations have affected customer-buying habits”.<sup>13</sup> A discounting policy of up to 40%, fuelled its initial growth coupled with the low likelihood of a recent title being unavailable.

2.26 Amazon has Kindle, a product of advanced technology and innovation. This e-book reader is specially designed by the company to enable its customers buy e-books from Amazon and buy it on the Kindle.

2.27 When its sales volume rapidly increased sales volume has been offset by operating expenses which also increased significantly from 1998 on. It is estimated that Amazon has spent \$36.20 for each new account acquired. The company increased its physical warehouse and distribution centres to accommodate the increase in orders. Amazon has significantly increased its investment in computer equipment, software and construction from some \$ 29.8 million in 1998 to some \$ 317 million in 1999.

Table 1 – Comparison of select financial indicators of Amazon.com and Barnes & Noble (millions of US\$) This will show the rapid increase in sale, but the cost of sales being higher than Barnes & Nobles. Important differentiator are the component of marketing and sale and technology and content development. This is the initial story.

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<sup>13</sup> WALKER, LESLIE, Looking Beyond Books; Amazon’s Bezos Sees Personalisation as key to Cyber-Stores’ Future, Washington Post, 8 Nov., 1998.

**“Table - 1  
AMAZON.COM, INC.**

	For Fiscal Year Ended							
	Amazon.Com				Barnes & Noble			
	1999	1998	1997	1996	1999	1998	1997	1996
Total Sales	1629.4	610.0	147.8	15.7	3486.0	3005.6	2996.8	22448.1
<b>Expenses as Percentage of Net Sales</b>								
Cost of Sales	82.3	81.3	80.5	78.03	71.2	71.3	72.2	72.9
Selling and Administrative					18.7	19.2	19.3	18.6
Marketing and Sales	25.2	21.81	27.39	38.68				
General and Administration	4.3	2.59	4.74	8.96				
Rental Expense								9.2
Technology and Content	9.7	7.67	9.42	15.25				
Depreciation and Amortisation					3.2	2.9	2.8	2.5

Source : Amazon.com”

“Amazon.com had launched their Amazon India marketplace in 2013. In July 2013, Amazon had announced to invest \$2 Billion (Rs.12,000 crores) in India to expand business”.

“Net sales of Amazon had increased by 22 percent to reach figure of \$74.45 Billion worldwide compared with figure of \$61.09 Billion of the year 2012. Operating income had increased 10 percent to \$745 Million, compared with \$676 Million of the year 2012. Net income for the year was \$274 Million, an improvement over the net loss of \$39 Million of the year 2012”.

**Table-II**  
**“Consolidated Statements of Operations (in millions,**  
**except per share data) (unaudited)**

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2015	2014	2015	2014
Net product sales	\$ 17,104	\$ 15,251	\$ 34,187	\$ 30,956
Net service sales	6,081	4,089	11,714	8,125
Total net sales	23,185	19,340	45,901	39,081
Operating expenses (1):				
Cost of sales	15,160	13,399	30,555	27,453
Fulfillment	2,876	2,382	5,634	4,699
Marketing	1,150	943	2,233	1,813
Technology and content	3,020	2,226	5,774	4,217
General and administrative	467	377	894	704
Other operating expense (income), net	48	28	92	63
Total operating expenses	22,721	19,355	45,182	38,949
Income (loss) from operations	464	(15	) 719	132
Interest income	12	11	23	21
Interest expense	(114	) (45	) (228	) (87
Other income (expense), net	—	22	(131	) 27
Total non-operating income (expense)	(102	) (12	) (336	) (39
Income (loss) before income taxes	362	(27	) 383	93
Provision for income taxes	(266	) (94	) (337	) (167
Equity-method investment activity, net of tax	(4	) (5	) (11	) 56
Net income (loss)	\$ 92	\$ (126	) \$ 35	\$ (18
Basic earnings per share	\$ 0.20	\$ (0.27	) \$ 0.07	\$ (0.04
Diluted earnings per share	\$ 0.19	\$ (0.27	) \$ 0.07	\$ (0.04
Weighted average shares used in computation of earnings per share:				
Basic	467	461	466	460
Diluted	476	461	475	460
(1) Includes stock-based compensation as follows:				
Fulfillment	\$ 132	\$ 104	\$ 222	\$ 184
Marketing	50	32	84	59
Technology and content	319	206	552	375
General and administrative	62	49	111	93
Stockholders' equity				
Preferred stock			\$ 1501701	\$ 318790
Additional paid in capital			5763	4564
Accumulated other comprehensive (loss) Income			(991)	(157)
Accumulated deficit			(348544	(93728

Read more at Reuters<http://www.reuters.com/article/2015/07/23/wa-amazoncom-idUSnBw236558a+100+BSW20150723#Gyr4t41S5geTecxg.99>”

**Table-III**  
**“AMAZON.COM, INC.**  
**Consolidated Statements of Comprehensive Income (Loss)**  
**(in millions) (unaudited)**

	Three Months Ended June 30		Three Months Ended June,30	
	2015	2014	2015	2014
Net income (loss)	\$ 92	\$ (126)	\$ 35	\$ (18)
Other comprehensive income (loss):				
Foreign currency translation adjustments, net of tax of \$1, \$0, \$0, and \$1	128	11	(114)	39
Net change in unrealized gains on available-for-sale securities:				
Unrealized gains, net of tax of \$(8), \$0, \$(8), and \$(1)	6	3	7	4
Reclassification adjustment for losses included in “Other income (expense), net,” net of tax of \$0, \$0, \$(1), and \$0	1	(1)	1	(1)
Net unrealized gains on available-for-sale securities	7	2	8	3
Total other comprehensive income (loss)	135	13	(106)	42
Comprehensive income (loss)	\$ 227	\$ (113)	\$ (71)	\$ 24

**Source : Amazon.com”**

**Table-IV**  
**“AMAZON.COM, INC.**  
**Consolidated Balance Sheets**  
**(in millions, except per share data)**

	June 30,2015 (unaudited)	December 31, 2014
<b>ASSETS</b>		
Current assets		
Cash and cash equivalents	\$10269	\$14557
Marketable securities	3732	2859
Inventories	7470	8299
Accounts receivable, net and other	4920	5612
Total current assets	26391	31327
Property and equipment, net	19479	16967
Goodwill	3523	3319
Other assets	3047	2892
Total assets	\$52440	\$54505
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities		
Accounts payable	\$12391	\$16459
Accrued expenses and other	8959	9807
Unearned revenue	2562	1823
Total current liabilities	23912	28089
Long-term debt	8250	8265
Other long-term liabilities	8510	7410
Commitments and contingencies		
Stockholders		
Stockholders' equity		
Preferred stock, \$0.01 par value:		
Authorized shares		
Issued and outstanding shares — none	--	--
Common stock\$0.01 par value:		
Authorized shares — 5,000		
Issued shares — 491 and 488		
Outstanding shares — 468 and 465	5	5
Treasury stock, at cost	(1837)	(1837)
Additional paid-in capital	12233	11135
Accumulated other comprehensive loss	(617)	(511)
Retained earnings	1984	1949
Total stockholders' equity	11768	10741
Total liabilities and stockholders' equity	\$52440	\$54505

**Source : Amazon.com”**



**Table IV A**  
**“Annual Financials for Amazon.com Inc.**

<b>Fiscal year is January-December. All values USD millions.</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Sales /Revenue	34.2B	48.08B	61.09B	74.45B	88.99B
Cost of Goods Sold (COGS) incl. D&A	26.56B	37.29B	46.8B	54.63B	63.88B
COGS excluding D&A	25.9B	36.21B	44.65B	51.38B	59.14B
Depreciation & Amortization Expense	657M	1.08B	2.16B	3.25B	4.75B
Depreciation	552M	934M	1.65B	2.46B	3.62B
Amortization of Intangibles	105M	149M	506M	793M	1.13B
Gross Income	7.64B	10.79B	14.29B	19.82B	25.11B

	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
SG& A Expense	6.13B	9.77B	13.96B	18.96B	25.37B
Research & Development	1.73B	2.91B	4.24B	6.11B	8.72B
Other SG&A	4.4B	6.86B	9.72B	12.85B	16.65B
Other Operating Expense	106M	154M	(506M)	0	0
Unusual Expenses	0	0	-	0	0
EBIT after Unusual Expense	0	0	-	0	0
Non Operating Income/Expense	79M	76M	(239M)	(250M)	320M
Non-Operating Interest Income	51M	61M	40M	38M	39M
Equity in Affiliates (Pretax)	-	0	-	-	-
Interest Expense	39M	65M	92M	141M	210M
Gross Interest Expense	39M	65M	92M	141M	210M
Interest Capitalized	-	-	-	-	-
Pretax Income	1.5B	934M	544M	506M	(111M)
Income Tax	352M	291M	428M	161M	167M
Income Tax – Current Domestic	311M	103M	562M	144M	279M
Income Tax – Current Foreign	37M	52M	131M	173M	204M
Income Tax- Deferred Domestic	1M	157M	(156M)	(133M)	(136M)
Income Tax – Deferred Foreign	3M	(21M)	(109M)	(23M)	(180M)
Income Tax Credits	-	0	-	-	-
Equity in Affiliates	7M	(12M)	(155M)	(71M)	37M
Other After Tax Income (Expense)	0	0	0	0	0
Consolidated Net Income	1.15B	631M	(39M)	274M	(241M)
Minority Interest Expense	0	0	0	0	0
Net Income	1.15B	631M	(39M)	274M	(241M)
Extraordinaries & Discontinued Operations	0	0	0	0	0
Extra Items & Gain/Loss Sale Of Assets	0	0	0	0	0
Cumulative Effect – Accounting Chg	0	0	0	0	0
Discontinued Operations	0	0	0	0	0
Net Income After Extraordinaries	1.15B	631M	(39M)	274M	(241M)
Preferred Dividends	0	0	0	0	0
Net Income Available to Common	1.15B	631M	(39M)	274M	(241M)
EPS (Basic)	2.58	1.39	(0.09)	0.60	(0.52)
Basic Shares Outstanding	447M	453M	453M	457M	462M
EPS (Diluted)	2.53	1.37	(0.09)	0.59	(0.52)
Diluted Shares Outstanding	456M	461M	453M	465M	462M
EBITDA	2.06B	1.95B	2.99B	4.11B	4.49B

Source : Amazon.com”

The company's expansion of employees base, warehousing facility also mirrors a traditional retail store's cost structure.

## **2.28 Internal Analysis**

Amazon has developed its own state-of-the-art software technology, its main competitive advantage. With its help the company has been enabled to implement an efficient customer relationship management by tracking customer buying behavior and allowed them to make recommendations on similar products. Occurrence of up-or cross-buying, has contributed to the company's profitability.

2.29 Amazon has got the advantage of obtaining supplies at a negotiated low price. Third party contracts cover timely delivery of products through the company has some of its own warehouse. Amazon does the distribution and shipping of the products through Third Party logistic providers like DHL which brings down the overhead cost of Amazon.com. This provides a huge cost advantage to Amazon.

Amazon has also created a large networks of under its *Associates* programme. Organizations can enter into agreements with Amazon and for the sales they have helped generate, they receive a percentage from Amazon. Jupiter Communications estimate that this programme alone contributed that 11% of the consumer transactions in 1998, was expected to grow to 25% of the GMV.

## **2.30 EBAY.COM**

eBay.com is an online auction platform. Buyers and sellers are linked to this platform are in millions. E-bay as a platform does not keep any inventory and is not responsible for shipment. The company only moves information. This business model is amenable to web and easily scalable.

The fully automated auction service helps buyers and sellers. Both high-end articles, ("such as fine art, collector automobiles, and jewelry"), and practical items ("such as clothing, consumer electronics, and housewares") are traded on E-bay's

platform. There are currently more than 8,000 categories of items available for bidding on eBay, up from 10 when eBay was first launched.

### 2.31 Business Model

Fees and commissions arising from trading online and offline services give the bulk revenue to company. Listing fee, success fee and flat fees and direct advertisement contribute to the earning of e.bay. E-bay takes advantage of network effect. A comparison with retail companies such as JCPenney (-2%) and Lands End (2.4%) shows that the multisided business model helped it increasing its margins which is much better.

### 2.32 Strategic Analysis - Business Strategies

E-bay has been consistently expanding in geography as well as scope. Its international operation is an important part of its business. It has been expanded to several countries by mergers and acquisitions. Notable acquisitions are; ibazar, half.com. Launching of e-Bay motors for bulky items in regional markets and acquisition of Butterfields which is a full service auctioneer have been part of its constant attempt at expanding the scope.

### 2.33 Strategic Analysis – Technology

The transaction processing system as well as user interface are developed on proprietary software. The automated system handles user registration, confirms bids by notification and informs successful bids. Sellers are informed about the successful transaction and the available inventory. This software and technological platform is very powerful and is a differentiator.

Table - V

**“SELECTED FINANCIAL DATA**

The following selected consolidated financial data should be read in conjunction with the consolidated financial statements and notes thereto and “Management’s Discussion and Analysis of Financial Condition and Results of Operations: appearing elsewhere in this Annual Report on Form 10-K. The consolidated statement of income data and the consolidated balance sheet data for the years ended, and as of, December 31, 2014, 2013, 2012, 2011 and 2010 are derived from out audited consolidated financial statements.

“Year Ended December 31, (In millions, except per share amounts)

	2014	2013	2012	2011 <sup>(2)</sup>	2010
<b>Consolidated Statement of Income Data: <sup>(1)</sup></b>					
Net Revenues	\$ 17,902	\$ 16,047	\$ 14,072	\$ 11,652	\$ 9,156
Gross Profit	12,170	11,011	9,856	8,191	6,592
Income from operations	3,514	3,371	2,888	2,373	2,054
Income before income taxes	3,531	3,466	3,084	3,910	2,098
Net income	46	2,856	2,609	3,229	1,801
<b>Net income per share:</b>					
Basic	\$ 0.04	\$ 2.20	\$ 2.02	\$ 2.50	\$ 1.38
<b>Diluted</b>	<b>\$ 0.04</b>	<b>\$ 2.18</b>	<b>\$ 1.99</b>	<b>\$ 2.46</b>	<b>\$ 1.36</b>
<b>Weighted average shares:</b>					
Basic	1,251	1,295	1,292	1,293	1,306
Diluted	1,262	1,313	1,313	1,313	1,327

Source : Ebay.com

As of December 31, (In Millions)

	2014	2013	2012	2011	2010
<b>Consolidated Balance Sheet Data <sup>(1)</sup></b>					
Cash and Cash equivalents	\$ 6,328	\$ 4,494	\$ 6,817	\$ 4,691	\$ 5,577
Short-term investments	3,770	4,531	2,591	1,238	1,045
Lon-term investments	5,777	4,971	3,044	2,453	2,492
Working Capital <sup>(3)</sup>	9,000	10,644	10,474	5,927	6,548
Total assets	45,132	41,488	37,074	27,320	22,004
Short-term debt	850	6	413	565	300
Long-term debt	6,777	4,117	4,106	1,525	1,494
Total stockholders’ equity	19,906	23,647	20,865	17,930	15,302

Source : Ebay.com”

- (1) “Includes the impact of acquisitions and dispositions. For a summary of recent significant acquisitions and dispositions, please see “Note 3 – Business Combinations and Divestitures” to the consolidated financial statements included in this report”.
- (2) “The consolidated statement of income data for the year ended December 31,2011 includes a loss of divested business of \$256.5 million and a gain on the sale of our remaining 30% equity interest in Skype of approximately \$1.7 billion”.
- (3) Working capital is calculated as the difference between total current assets and total current liabilities.”

Net revenues of the company are significantly and progressively increasing. From 2010 net revenue has increased from \$ 9156 million to almost double to \$ 17,902 million in 2014. Gross profit has shown a steady rate of increase from \$ 6592 million to \$ 12170 million in 2014. However, net income is showing a declining trend while long term debt is increasing from \$ 1494 in 2010 to \$ 6777 of 2014. Meanwhile e-bay has acquired 30% equity interest in Skype at approximately \$ 1.7 billion. A divested business in 2011

resulted in loss of \$ 256.6 million in 2011. Assets in the meantime have grown from \$ 22,004 million to \$ 45,132 million while equity is showing a declining trend. Working capital remains at a robust figure of \$ 9000 million. Current liabilities remain under check with short-term debt remaining at \$ 850 million which is a relatively low figure.”

#### **2.40 EXPEDIA**

The U.S.A. based company Expedia. Inc. extensive brand portfolio. They include “global online travel brands including Expedia.com, Hotels.com, Hotwire.com, trivago, Egencia (formerly Expedia Corporate Travel), Venere.com, Expedia Local Expert, Classic Vacations, Expedia Cruise Ship Centres, Travelocity and Orbitz.” Expedia, Inc.’s companies operate more than 100 branded points of sale in more than 60 countries. “Expedia also powers travel bookings for over 10,000 partners such as airlines and hotels, consumer brands, and high traffic website through Expedia Affiliate Network, 80% of which is powered by their API.” It is listed in Nasdaq. The company claims to deliver to the consumers in leisure as well as business travel.

#### **2.41 Worldwide Supplier Portfolio**

Global websites of Expedia featured more than 290,000 bookable properties.

Expedia Lodging Partner Services signed agreements that include provisions allowing for distribution under the Expedia Traveler Preference (ETP) program with leading global hospitality company, Hyatt, as well as Rotana Hotel Management Company, a hospitality leader in the Middle Eastern region. By 31.3.2014, more than 51,000 hotels globally have signed on to participate in the Expedia Lodging Partner programme since launch. The company has distribution agreements “with several international carriers, including Japan's leading airline, All Nippon Airways (ANA); Jordan’s national carrier, Royal Jordanian Airlines which serves a 60-city global network; LIAT Ltd, a leading Caribbean airline serving the region for more than 50 years; and Africa’s first, pan-continental, low-cost airline, fastjet.”

2.43 Expedia, Inc. shares a global strategic partnership with Sixt. This has given access to “rental fleet at more than 2,000 stations across more than 100 countries.” Cruise products of Expedia provides largest gross bookings in the world.

#### **2.44 New Distribution Channels**

Hotwire’s first-ever mobile exclusive promotion performed strongly throughout the first quarter of 2014 having a significant impact on app downloads pushing Hotwire’s mobile share of room nights to more than 30%.

“Expedia, Inc. brands collectively achieved over 125 million cumulative mobile app downloads since launch,” driven primarily by eLong, Hotels.com and Brand Expedia.

Since 2014, Expedia has acquired Wotif.com at a price of \$ US 610 million. Wotif.com is an Australian reservation service. In 2015, Travelocity was acquired for \$ 2890 million and Orbitz for \$ 1.2 billion with regulatory approval.

In a significant development, Travelscape, a subsidiary of Expedia Inc. (based in Las Vegas), was ordered to pay back \$ 6.3 million in sales taxes to South Carolina. The court determined “that the company has a presence in the state sufficient to be required to collect sales tax.” And “frequent sales trips made by its employees and the fact that the company furnished hotel rooms in the state establish its presence for tax purposes”, despite not having physical facilities in South Carolina.

Table VI

## “TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY

\$ 8,888,377   \$ 7,739,481

Metric	Quarter Ended 3.31.14	Quarter Ended 3.31.13	Y / Y Growth
Room night growth	24%	28%	(373 bps)
Gross bookings	12,624.5	9,781.1	29%
Revenue	1,200.4	1,012.4	19%
Adjusted EBITDA*	106.8	105.1	2%
Operating loss	(3.0)	(105.6)	NM
Adjusted net income *	21.5	35.3	(39%)
Net loss attributable to Expedia, Inc.	(14.3)	(104.2)	NM
Adjusted EPS *	\$0.16	\$0.25	(36%)
Diluted loss per share	(\$0.11)	(\$0.77)	NM
Free cash flow *	896.7	793.9	13%

Source : Expedia.com”

**TABLE- VII**  
**“EXPEDIA, INC.**  
**“CONSOLIDATED STATEMENTS OF OPERATIONS**  
(In thousands, except for per share data)(Unaudited)

	<b>Three months ended March 31,</b>	
	<b>2014</b>	<b>2013</b>
<b>Revenue</b>	\$ 1,200,371	\$ 1,012,367
Costs and expenses:		
Cost of revenue <sup>(1) (2)</sup>	294,619	250,581
Selling and marketing <sup>(1) (2)</sup>	624,699	496,155
Technology and content <sup>(1) (2)</sup>	162,975	138,283
General and administrative <sup>(1) (2)</sup>	99,045	92,376
Amortization of intangible assets	18,492	12,570
Acquisition-related and other <sup>(1)</sup>	-	66,472
Legal reserves, occupancy tax and other	3,539	61,558
<b>Operating loss</b>	<b>(2,998)</b>	<b>(105,628)</b>
Other income (expense):		
Interest income	5,798	5,917
Interest expense	(21,804)	(21,748)
Other, net	(481)	2,188
Total other expense, net	(16,487)	(13,643)
Loss before income taxes	(19,485)	(119,271)
Provision for income taxes	(319)	11,903
Net loss	(19,804)	(107,368)
Net loss attributable to noncontrolling interests	5,500	3,142
<b>Net loss attributable to Expedia, Inc.</b>	<b>\$ (14,304)</b>	<b>\$ (104,226)</b>
<b>available to common stockholders:</b>		
Basic	\$ (0.11)	\$ (0.77)
Diluted	(0.11)	(0.77)
<b>Shares used in computing earnings (loss) per share:</b>		
Basic	130,559	135,641
Diluted	130,559	135,641
Dividends declared per common share	\$ 0.15	\$ 0.13
(1) Includes stock-based compensation as follows:		
Cost of revenue	\$ 1,202	\$ 1,061
Selling and marketing	5,335	4,265
Technology and content	5,558	5,395
General and administrative	12,726	7,714
Acquisition-related and other	-	56,643
(2) Includes depreciation as follows:		
Cost of revenue	\$ 8,264	\$ 8,583
Selling and marketing	1,758	1,502
Technology and content	50,140	37,062
General and administration		1,719
	1,972	



**Table -VIII**

**“EXPEDIA, INC. CONSOLIDATED BALANCE SHEETS** (In thousands, except per share data)

	<b>March 31, 2014 (Unaudited)</b>	<b>December 31, 2013</b>
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 1,484,066	\$ 1,021,033
Restricted cash and cash equivalents	28,715	26,042
Short-term investments	687,399	325,510
Accounts receivable, net of allowance of \$11,064 and \$11,555	818,818	614,735
Deferred income taxes	64,442	66,130
Income taxes receivable	110,010	64,296
Prepaid expenses and other current assets	121,504	101,541
Total current assets	3,314,954	2,219,287
Property and equipment, net	490,580	480,702
Long-term investments and other assets	252,882	250,626
Deferred income taxes	16,241	14,151
Intangible assets, net	1,109,264	1,111,041
Goodwill	3,704,456	3,663,674
<b>TOTAL ASSETS</b>	<b>\$ 8,888,377</b>	<b>\$ 7,739,481</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable, merchant	\$ 1,055,645	\$ 1,044,259
Accounts payable, other	366,054	261,288
Deferred merchant bookings	2,414,895	1,350,319
Deferred revenue	56,847	39,746
Income taxes payable	45,571	61,874
Accrued expenses and other current liabilities	510,243	536,895
Total current liabilities	4,449,255	3,294,381
Long-term debt	1,249,430	1,249,412
Deferred income taxes	440,215	433,532
Other long-term liabilities	152,389	138,300
Commitments and contingencies		
Redeemable noncontrolling interests	491,154	364,871
Stockholders' equity:		
Common stock \$.0001 par value	19	19
Authorized shares: 1,600,000		
Shares issued: 194,340 and 192,562		
Shares outstanding: 116,974 and 116,886		
Class B common stock \$.0001 par value	1	1
Authorized shares: 400,000		
Shares issued and outstanding: 12,800 and 12,800		
Additional paid-in capital	5,777,911	5,802,140
Treasury stock - Common stock, at cost	(3,587,540)	(3,465,675)
Shares: 77,366 and 75,676		
Retained earnings (deficit)	(223,522)	(209,218)
Accumulated other comprehensive income (loss)	28,292	18,197
Total Expedia, Inc. stockholders' equity	1,995,161	2,145,464
Noncontrolling interest	110,773	113,521
Total stockholders' equity	2,105,934	2,258,985
<b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY</b>	<b>\$ 8,888,377</b>	<b>\$ 7,739,481</b>

**Source : Expedia.com”**

**Table -IX**  
**“EXPEDIA, INC.**

**CONSOLIDATED STATEMENTS OF CASH FLOWS**

(In thousands)

(Unaudited)

	<b>Three months ended</b>	
	<b>March 31,</b>	
	<b>2014</b>	<b>2013</b>
<b>Operating activities:</b>		
Net loss	\$ (19,804)	\$ (107,368)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Depreciation of property and equipment, including internal-use software and website development	62,134	48,866
Amortization of stock-based compensation	24,821	75,078
Amortization of intangible assets	18,492	12,570
Deferred income taxes	5,793	4,741
Foreign exchange (gain) loss on cash, cash equivalents and short-term investments, net	(4,354)	41,845
Realized gain on foreign currency forwards	(1,358)	(5,808)
Other	(5,927)	2,669
Changes in operating assets and liabilities, net of effects from acquisitions:		
Accounts receivable	(196,870)	(150,834)
Prepaid expenses and other current assets	(23,709)	(28,227)
Accounts payable, merchant	31,681	173,020
Accounts payable, other, accrued expenses and other current liabilities	74,718	68,303
Taxes payable/receivable, net	(57,095)	(41,260)
Deferred merchant bookings	1,045,677	778,409
Deferred revenue	17,239	9,085
<b>Net cash provided by operating activities</b>	<b>971,438</b>	<b>881,089</b>
<b>Investing activities:</b>		
Capital expenditures, including internal-use software and website development	(74,749)	(87,156)
Purchases of investments	(495,377)	(598,127)
Sales and maturities of investments	135,669	245,244
Acquisitions, net of cash acquired	-	(540,489)
Net settlement of foreign currency forwards	1,358	5,808
Other, net	(504)	-
<b>Net cash used in investing activities</b>	<b>(433,603)</b>	<b>(974,720)</b>
<b>Financing activities:</b>		
Purchases of treasury stock	(121,865)	(117,672)
Proceeds from issuance of treasury stock	-	25,273
Payment of dividends to stockholders	(19,602)	(17,983)
Proceeds from exercise of equity awards and employee stock purchase plan	37,694	20,410
Excess tax benefit on equity awards	21,783	19,379
Other, net	3,786	(7,758)
<b>Net cash used in financing activities</b>	<b>(78,204)</b>	<b>(78,351)</b>
Effect of exchange rate changes on cash and cash equivalents	3,402	(38,381)
<b>Net increase (decrease) in cash and cash equivalents</b>	<b>463,033</b>	<b>(210,363)</b>
Cash and cash equivalents at beginning of period	1,021,033	1,293,161
<b>Cash and cash equivalents at end of period</b>	<b>\$ 1,484,066</b>	<b>\$ 1,082,798</b>
Cash paid for interest	\$ 41,809	\$ 41,468
Income tax payments, net	29,682	2,552

Source : Expedia.com”

**Table -X**  
**“ Expedia, Inc.**  
**Trended Metrics (All figures in millions)**

- The following metrics are intended as a supplement to the financial statements found in this release and in our filings with the SEC. In the event of discrepancies between amounts in these tables and our historical financial statements, readers should rely on our filings with the SEC and financial statements in our most recent earnings release.
- We intend to periodically review and refine the definition, methodology and appropriateness of each of our supplemental metrics. As a result, metrics are subject to removal and/or change, and such changes could be material.
- These metrics do not include adjustments for one-time items, acquisitions, foreign exchange or other adjustments. Some numbers may not add due to rounding.

	2012				2013				2014	Y / Y
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	
Gross Bookings by Segment										
Leisure	\$ 7,666	\$ 8,019	\$ 8,120	\$ 6,571	\$ 8,664	\$ 8,933	\$ 9,312	\$ 8,000	\$ 11,315	31%
Egencia	755	938	936	955	1,117	1,188	1,125	1,104	1,310	17%
Total	\$ 8,421	\$ 8,957	\$ 9,056	\$ 7,526	\$ 9,781	\$ 10,121	\$ 10,437	\$ 9,104	\$ 12,624	29%
Gross Bookings by Geography										
Domestic	\$ 5,116	\$ 5,486	\$ 5,155	\$ 4,201	\$ 5,484	\$ 5,848	\$ 5,828	\$ 4,982	\$ 7,427	35%
International	3,305	3,471	3,902	3,324	4,297	4,273	4,609	4,122	5,197	21%
Total	\$ 8,421	\$ 8,957	\$ 9,056	\$ 7,526	\$ 9,781	\$ 10,121	\$ 10,437	\$ 9,104	\$ 12,624	29%
Gross Bookings by Agency/Merchant										
Agency	\$ 4,621	\$ 4,867	\$ 4,706	\$ 4,165	\$ 5,270	\$ 5,466	\$ 5,701	\$ 5,248	\$ 7,326	39%
Merchant	3,799	4,090	4,350	3,361	4,511	4,655	4,736	3,856	5,299	17%
Total	\$ 8,421	\$ 8,957	\$ 9,056	\$ 7,526	\$ 9,781	\$ 10,121	\$ 10,437	\$ 9,104	\$ 12,624	29%
Revenue by Segment										
Leisure	\$ 764	\$ 964	\$ 1,121	\$ 890	\$ 924	\$ 1,110	\$ 1,316	\$ 1,056	\$ 1,100	19%
Egencia	53	76	78	85	89	95	85	96	100	13%
Total	\$ 816	\$ 1,040	\$ 1,199	\$ 975	\$ 1,012	\$ 1,205	\$ 1,402	\$ 1,152	\$ 1,200	19%
Revenue by Geography										
Domestic	\$ 483	\$ 591	\$ 642	\$ 511	\$ 558	\$ 664	\$ 742	\$ 583	\$ 642	15%
International	334	449	557	464	454	541	660	569	559	23%
Total	\$ 816	\$ 1,040	\$ 1,199	\$ 975	\$ 1,012	\$ 1,205	\$ 1,402	\$ 1,152	\$ 1,200	19%
Revenue by Agency/Merchant/Advertising										
Agency	\$ 182	\$ 220	\$ 235	\$ 212	\$ 234	\$ 270	\$ 330	\$ 293	\$ 329	41%
Merchant	603	787	930	730	733	855	963	774	772	5%
Advertising & Media Revenue	31	32	35	33	46	80	109	84	99	116%
Total	\$ 816	\$ 1,040	\$ 1,199	\$ 975	\$ 1,012	\$ 1,205	\$ 1,402	\$ 1,152	\$ 1,200	19%
Adjusted EBITDA										
Leisure	\$ 171	\$ 283	\$ 357	\$ 262	\$ 178	\$ 265	\$ 419	\$ 315	\$ 181	2%
Unallocated Overhead Costs	(79)	(78)	(76)	(90)	(85)	(91)	(91)	(91)	(91)	7%
Subtotal	\$ 92	\$ 205	\$ 281	\$ 172	\$ 93	\$ 174	\$ 328	\$ 224	\$ 90	-3%
Egencia	10	18	12	13	12	18	11	18	16	35%
Total	\$ 102	\$ 223	\$ 294	\$ 185	\$ 105	\$ 192	\$ 340	\$ 242	\$ 107	2%
Worldwide Hotel (Merchant & Agency)										
Room Nights	22.7	30.1	36.7	29.7	29.0	35.9	44.1	37.1	35.9	24%
Room Night Growth	24%	22%	27%	33%	28%	19%	20%	25%	24%	24%
ADR Growth	0%	-1%	-3%	-3%	0%	0%	0%	0%	0%	0%
Revenue per Night Growth	-5%	-5%	-6%	-6%	-3%	-6%	-7%	-9%	-10%	-10%
Revenue Growth	18%	16%	20%	25%	24%	12%	11%	13%	12%	12%
Worldwide Air (Merchant & Agency)										
Tickets Sold Growth	5%	3%	11%	12%	9%	7%	7%	13%	30%	30%
Airfare Growth	7%	5%	1%	2%	0%	0%	3%	1%	1%	1%
Revenue per Ticket Growth	-20%	-11%	-19%	-2%	5%	1%	9%	3%	-2%	-2%
Revenue Growth	-17%	-8%	-10%	10%	14%	8%	16%	17%	28%	28%

Source :Expedia.com”

“Notes: The metrics above exclude results from the joint venture between Brand Expedia and AirAsia beginning July 1, 2011”.

“The metrics above include VIA Travel following our acquisition on April 27, 2012 and trivago GmbH following our acquisition of a controlling interest on March 8, 2013. VIA Travel and trivago GmbH are recorded within the Egencia and Leisure segments, respectively”.

“Advertising & Media Revenue includes revenue from trivago GmbH. All trivago GmbH revenue is classified as international”.

“Beginning in Q1 2014, Expedia moved to a new Enterprise Accounting System of Record, which caused immaterial changes to some of the metrics above due to remapping.”

- “Expedia.com®, the world’s largest full service online travel agency, with localized sites in 31 Countries.” “Hotels.com®, the hotel specialist with sites in more than 60 countries.”
- “Hotwire®, a leading discount travel site that offers opaque deals in 12 countries throughout North America, Europe and Asia”
- “Egencia®, the world's fifth largest corporate travel management company”
- “eLong™, the second largest online travel company in China”
- “Venere.com™, the online hotel reservation specialist in Europe”
- “trivago®, a leading online hotel metasearch company with sites in 45 countries”
- “Expedia Local Expert®, a provider of online and in-market concierge services, activities” and experiences in hundreds of destinations worldwide
- “Classic Vacations®, a top luxury travel specialist”
- “Expedia® CruiseShipCenters®, one of North America’s leading retail cruise vacation experts”
- “CarRentals.com™, the premier car rental booking company on the web.”

## **2.50 Flipkart**

Flipkart is perhaps the largest online retailer in India with 3000 sellers, 15000 employees and with a reach to nearly 200 cities. It is presently doing 5 million shipments per month. “The company has introduced Flipkart Apps. Cash on Delivery and 30 days’ replacement guarantee and EMI options have been the company’s innovation. Flipkart is an e-Commerce company founded in the year 2007, by Mr. Sachin Bansal and Binny Bansal both alumni of the Indian Institute of Technology, Delhi. They had been working for Amazon.com previously. It operates exclusively in India, where it is headquartered in Bangalore, Karnataka. It is registered in Singapore, and owned by a Singapore-based holding company. Flipkart has launched its own product range under the name “DigiFlip”, Flipkart also recently launched its own range of personal healthcare and home appliances under the brand “Citron”. During its initial years, Flipkart focused only

on books, and soon as it expanded, it started offering other products like electronic goods, air conditioners, air coolers, stationery supplies and life style products and e-books”<sup>14</sup>.

2.51 “Legally, Flipkart is not an Indian company since it is registered in Singapore and majority of its shareholders are foreigners. Because foreign companies are not allowed to do multi-brand e-retailing in India, Flipkart sells goods in India through a company called WS Retail. Other third-party sellers or companies can also sell goods through the Flipkart platform. Flipkart allows payment methods such as cash on delivery (COD), credit or debit card transactions, net banking, e-gift voucher and card swipe on delivery”.<sup>15</sup> The observations about the company are the following;

The organizational structure of business is very complex. An intricate net work of nine companies carry out the operation.

“Flipkart Marketplace Pvt. Ltd, Flipkart Logistics Pvt. Ltd and Flipkart Payments Pvt. Ltd. are registered in Singapore. They are 100% subsidiaries of Flipkart. These three entities hold stocks in five Indian companies. Among them are Flipkart India Pvt. Ltd, (the wholesale cash-and-carry entity); Flipkart Internet Pvt. Ltd, (which owns Flipkart.com and provides technology platform to e-commerce companies)”.<sup>16</sup>

“The ownership of FPL Singapore largely rests with Tiger Global, Accel Partners, Naspers and the Bansals. Tiger Global, the US-based hedge fund that holds close to 30% in the parent company, has two seats on the board. This show just how important Flipkart has become to Tiger Global Management. According to Sources, Tiger Global has invested more than \$700 million in Flipkart so far. That is significantly higher than what the firm invested in the likes of Facebook and Alibaba, making Flipkart one of Tiger Global’s biggest bets ever”.

“The mergers and acquisitions done by the company include Myntra. After the merger, all Myntra shareholders except co-founders Mukesh Bansal and Ashutosh Lawania got stock in Flipkart Singapore. Both Myntra co-founders received cash from Flipkart for their stakes. Neither Bansal and Lawania own any stake in Flipkart. How much Bansal and Lawania received from Flipkart is not easy to verify. Mukesh Bansal now sits on the board of Flipkart India and continues to hold some stake in Myntra Holdings. He was also promoted to the role of Flipkart’s marketing chief. For the year ended 31 March 2014, the losses of all Flipkart India entities amounted to Rs.719.5 crore on revenue

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<sup>14</sup> Nigam P. Nayak M, Vyas P, E-commerce challenges: A case study of Flipkart vs. Amazon; Indian Journal of Applied Research. Vol. 5 Issue 2, 2015

<sup>15</sup> Nigam P, Nayak k, Vyas P, E-commerce Challenges : A case study of Flipkart vs. Amazon

<sup>16</sup> [www.myonlineca.in/startup-blog/Flipkart](http://www.myonlineca.in/startup-blog/Flipkart)

of Rs.3,035.8 crore. Flipkart Marketplace Singapore alone posted a loss of Rs.3.55 crore on zero revenue for the year ended 31 March 2014”.

WS Retail which handles 75% Flipkart’s business was earlier owned by co-founders of Flipkart till 2012. The Bansals sold a large stake in WS Retail to former On Mobile Global Ltd chief operating officer Rajeev Kuchhal, This apparently was done to side step the investigation of regulatory agencies. This interlocking arrangement enables layering of operation.

2.52 Though the company started as inventory led model making large investments in warehouse as well as logistics, now it follows a hybrid models of both marketplace and inventory led. The company has lately started hosting retailers in a single platform. Major players like Amazon and e-Bay follow the marketplace model where foreign investment is permitted in FDI is not permitted in the Inventory Led Model.

#### **“War is on for Indian Market Share**

Parameters of comparisons	Flipkart	Amazon
Sales	\$ 4 Billion in 2015	Sales reached to figure of \$1 Billion in 2014 [Oct-Dec] and expects to get 30 per cent market share
Sellers	Expects to increase seller base to 50 K in 12 months	It has grown merchant base to 8500.
Warehouses	6 warehouses, & it will grow this to 50 in the next three years	It will increase its warehouses count to 10 in the 2015 from 07.
Focus	The focus is now on Fashion and Lifestyle Business Base Model	The focus is on Electronics and Books
Exclusive Partnership	It had Sold 1 Million Motorola products in 5 months. It is now selling Xiaomi Phones	

**Source:** www.businessstandard.com”

Presence of increasing number of Vendors on the site is critical to gaining privacy in the market (network effect). Future plan of the company includes scaling up business size with target of 10000 to 12000 sellers on its platform in the near future and to a few lakhs in 4 to 5 years. 50 percent of the organized lifestyle market in India is now with Flipkart with the acquisition of Myntra. Future target is to have 70% of this market and to provide

mobile shopping experience. 40% of its sale is currently from mobiles. Having launched Digiflip for its own digital accessories and Flippd which in its apparel brand, Flipkart is considering having its own logistics and new IT functionalities with regard to data analytics and ability to recommend complementary purchases to buyers.

## **2.60 Uber's business model analysis**

Riders and Drivers of vehicles are connected in a reliable innovative way in Uber's business model for ride sharing and hire with the help of an app. The company is valued at \$ 18.2 billion USD and has received \$ 1.5 billion funding from investors.

### **2.61 Value proposition**

“An application that facilitates the on-demand nature of the transportation service and the transaction between drivers and passengers is Uber's value proposition for both sides. For passengers, Uber provides a convenient, fast and reliable way to travel within the city. The application makes it easy for passengers to request a ride, track how long the wait will take and be able to pay without cash. The company also aims to make its UberX service cheaper than taxi, so that private rides are accessible to more people. After a series of fare cuts, UberX became 20 percent cheaper than New York traditional yellow taxi in July 2014.<sup>17</sup>

“With Uber application and system, drivers feel safer knowing who is in their car and not having to carry cash. In addition, while working with Uber, drivers are given a smartphone with the built-in application”. From the passenger side urban young professionals are the target group.

### **2.62 Capabilities**

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<sup>17</sup> “Uber cuts the price of an Uber X by 20% in New York City, making it cheaper than a taxi”, available at <http://www.businessinsider.com/uberx-is-now-20-cheaper-in-new-york-city-2014-7>, accessed 2 August 2014. (Put the name of the paper)

While the smartphone application provides the main technical capability for enabling easy and safe transactions between both sides of the market, the company with the help of quality control delivers consistent high quality customer experience and service. Uber is a disrupter in the taxi industry which is strictly regulated as it has managed to overcome legal hurdles connected with the field.

### **2.63 Infrastructure management**

“Uber matching mechanism is simple; the application uses GPS to match passengers with their closest drivers. There is no search function in the platform. However in order to improve matching satisfaction for two sides of the market, Uber implements a few mechanisms for both sides. For passengers to get a ride that meets their budget, quality and style preferences, besides having a strict quality control policy in place, Uber also offers passengers three vehicle options, from luxury vehicles such as limo and towncars to budget friendly non-commercial vehicles. On the other side, drivers can decide whether they want to pick up a passenger, based on his or her previous review score”.<sup>18</sup>

“All communication between drivers and passengers is carried out through Uber application. Passengers signal their pickup location by pinning the location in the Uber application or entering manually their address. Passengers can also contact directly their driver when he or she is on the way to pickup location by phone or SMS from the application”.<sup>19</sup>

The special application and credit card facilitate the transaction between passengers and drivers. “Uber provides passengers with a fare estimate tool, an estimate of how long it will take for the vehicle to arrive and the driver’s name and review score”.

### **2.64 Resources**

Uber’s main resources include its smartphone applications to make the connections and transactions between passengers and drivers possible, human resources, including community management and support, engineers to maintain and develop its applications

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<sup>18</sup> Giang Thu Nguyen, Exploring Collaborative Consumption Business Model. Aalto University, 2014

<sup>19</sup> Ibid supra at 15



and driver operations. The brand Uber also has become widely known in many cities around the world, and is associated mainly with its luxury towncar service, which creates a premium feel for the brand. In addition, Uber is one of the most valuable venture-backed startups in the world, being evaluated at \$18.2 billion USD in June 2014<sup>20</sup>. Besides financing, Uber also receives support, guidance and access to more networking opportunities and partnerships through the help of its venture investors.

## **2.65 Customer relationship**

### ***Information strategy***

Uber is a data-driven company and has dedicated one data science team to collect data about its users, including location and temporal data to continuously improve its service and deliver high quality customer experience. The platform uses data about how users move around in different neighborhoods of a city and behavior of users in each neighborhood in different time spots to predict demand, which is used to come up with mechanisms to shorten waiting times<sup>21</sup>.

Data also plays a central role in Uber's pricing strategy as it allows Uber to adopt a flexible pricing scheme, depending on the demand for a ride at any given time. Uber's surge pricing means that when the demand is high, for example on New Year's Eve, Uber rates increase to get more cars on the road to ensure availability during busy times and the rates go down when enough cars are on the road<sup>22</sup>. The passenger is notified by the application when surge pricing is in effect.

## **2.66 Distribution channels**

Uber acquires passengers mainly through word-of-mouth. In order to facilitate this channel, the company builds a reward system in which passengers can refer Uber to their

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<sup>20</sup> "At \$18.2 billion, Uber worth more than Hertz, United Continental", available at <http://www.forbes.com/sites/ellenhuet/2014/06/at-18-2-billion-uber-is-worth-more-than-hertz-united-airlines/>, accessed on 4 August, 2014.

<sup>21</sup> Bad Vovtek, data scientist at Uber's talk, available at <http://www.psfk.com/2013/12/bradley-voytek-uber-data-science.html>, accessed on 4 August, 2014.

<sup>22</sup> "What is surge pricing and how does it work?", available at <http://support.uber.com/hc/en-us/articles/201836656-what-is-surge-pricing-and-how-does-it-work->, accessed on 4 August, 2014.

friends and earn Uber points, which can be used in future rides. Uber makes the referral more attractive by giving out discount codes to friends of passengers. The share feature is included in the application so that the passenger is prompted with the feature after each ride. Besides, passengers who have referred at least 15 customers are enlisted to the Uber Evangelist program and are entitled to various privileges such as free gifts and invitations to special Uber events.

In addition, Uber also uses partnerships with brands for customer adoption. In its partnership with Google, Google Maps users are presented with the option to use Uber cars when searching for directions and transportation options in Google Maps application. Uber also increases customer awareness through free-ride events, in which people can try out Uber service. Uber's goal is to turn early adopters and trial riders into customers by offering excellent customer experience and competitive prices.

In order to get drivers into its system, Uber has employed a wide variety of channels, such as advertisements on Craigslist, recruiting events and centers and promotions on street corners. The company even approaches drivers from competitors directly and offering cash bonuses to switch to Uber<sup>23</sup>.

### ***2.67 Trust, safety and loyalty***

As trust and safety is central issue for both sides of Uber marketplace, the company implemented various measures, from the ride's track-ability via its applications, several rounds of background checks on drivers, review systems for both sides, a \$1 million USD driver liability insurance for every ride and a system of cashless payments.

Background check comprises a big part of Uber's operation. A multi-component background check process, including three levels of screening – county, multi-state and federal, is carried out on every driver on the platform to ensure that all drivers meet its defined criteria, such as free of violent crimes, fatal accidents, history of reckless driving or sexual offenses.

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<sup>23</sup> "How Uber and Lyft are trying to kill each other", available at <http://www.forbes.com/sites/ellenhuet/2014/05/30/how-uber-and-lyft-are-trying-to-kill-each-other/>, accessed on 5 August, 2014.

The review system helps Uber keep its quality in control by deactivating drivers from the system if his or her review score is lower than a certain point. Drivers also have the option to rate riders after each ride, even though this option is not visible to passengers or made public, which allows drivers to choose whether to pick up a passenger if his or her score is low.

## **2.68 Financial aspects**

Uber makes money by keeping 20 percent of each ride's fare and the rest goes to the drivers. However to fuel its growth, when launching a new service or in a new city, the company tends to lower its take-in percentage. In selected cities, Uber keeps only 5 percent from the fares of its UberX service, as an incentive to get more drivers to sign up<sup>24</sup>.

Besides costs to develop and maintain its applications, the cost structure of Uber also includes insurance, employee costs and costs to acquire passengers such as offering free rides and credits in its reward program. As of July 2014, Uber employed more than 900 employees in different locations for various functions, mainly including data analysis, community management and support, driver recruiting, background checks and training, marketing and PR<sup>25</sup>. In addition, as the company is disrupting a strictly regulated industry, it faces various regulatory hurdles, thus a part of Uber's costs go to legal and lobbying efforts to defend its service against taxi organizations and local governments in each launch city<sup>26</sup>

2.69 This unaudited revenue and expense breakdown for 2013 and 2014 shows that, though Uber's net revenue has grown substantially, the company had operational loss of

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<sup>24</sup> "Uber will start charging more for some rides because it was losing money", available at [Http://www.businessinsider.com/uberx-reinstate-20-commission-2014-4](http://www.businessinsider.com/uberx-reinstate-20-commission-2014-4), accessed on 5 August, 2014.

<sup>25</sup> "A disruptive cab ride to riches: the Uber payoff", available at <http://www.forbes.com/sites/aswathdamodaran/2014/06/10/a-disruptive-cab-ride-to-riches-the-uber-payoff/>, accessed on 5 August, 2014.

<sup>26</sup> "Lessons from Uber: why innovation and regulation don't mix", available at <http://www.forbes.com/sites/larrydownes/2013/02/06/lessons-from-uber-why-innovation-and-regulation-don't-mix/>, accessed on 5 August, 2014.

more than \$56 million in 2013. By the first half of 2014 alone, that number had leapt to more than \$ 51 million.

**Table –XI**  
**“Profit & Loss Account of UBER**

CONFIDENTIAL UBER			
(In thousand)	2013 (Unaudited)	Q12014 (Unaudited)	Q2 2014 (Unaudited)
Net Revenue	\$ 104405	\$45641	\$56999
Cost and Expenses			
Cost of Revenue	51869	22212	32325
Operations and Support	41931	18091	16710
Sales and Marketing	34189	32371	41466
Research and Development	13457	7988	12262
General Administration	17668	15563	59381
Depreciation and Amortization	1970	1070	1678
Total Costs and Expenses	161084	97295	163822
Loss from Operations	(56679)	(51654)	(106823)
Other Income (Expense)	149	(631)	(2004)
Provision for Income taxes	-	-	-
Net Loss	\$(56530)	\$(52285)	\$(108827)

<http://Gawker.com>”

“Another document, laying out quarterly profits and losses in 2012 and part of 2013, shows the same dynamics: healthy growth in revenue coupled with steadily deepening losses. In 2012, Uber’s losses totaled \$20.4 million; from the first quarter of 2012 until mid-2013, quarterly losses more than doubled from \$3.5 million to \$8.1 million”.<sup>27</sup> In fiscal 2013, the 1st and 2nd Quarter Profit & Loss Account showed a loss of \$15.5 million against the \$ 20 million loss of 2012 though the revenue in the 1st and 2nd quarters logged \$32.5 million against revenue of 2012 at \$16.15. The operational expenditure as a percentage of sales revenue though declining, other 53 expenses are increasing.

<sup>27</sup> Sam Biddle, Here are the internal documents that prove Uber is a money loser, 2014

**Table –XII**  
**“Summary Profit & Loss**                      **Confidential**

Profit & Loss (All \$ in '000s)	Q1'12	Q2'12	Q3'12	Q4'12	Q1'13	Q2'13
Net Revenue	\$1442	\$2130	\$4310	\$8263	\$12994	\$19331
Cost of sales	2291	2494	4178	5702	8815	10514
Gross Margin	(849)	(364)	132	2561	4180	8818
Operating Expenses						
Ops	1228	1963	2742	4314	5911	8395
R&D	553	624	797	1786	1609	2224
Quality	133	263	301	503	420	535
S&M	88	250	237	248	264	459
G&A	564	793	979	1793	2048	3323
Total Opex	2565	3892	5058	8641	10252	14936
Other Expenses (Income	99	96	566	977	1256	2017
EBIT	(\$3514)	(\$4352)	(\$5492)	(\$7060)	(\$7329)	(\$8135)

<http://gawker.com>”

“Mike Dempsey, an analyst at CB Insights who has written extensively on Uber, explained to Gawker that Uber classifies everything it takes in after paying out its drivers as net revenue, and then deducts its other expenses—cost of sales, operations, etc.—to come up with a final (negative) number for profits”.<sup>28</sup>

However, the Uber balance sheet shows how the company’s cash trove has ballooned, even as it takes a loss.

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<sup>28</sup> Ibid

**Table- XIII**  
**“Balance Sheet of Uber**

**“Confidential UBER**

(In thousands)	Q2 2014 (Unaudited)	2013 (Unaudited)
<b>ASSETS</b>		
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents	\$1161922	\$236291
Account receivable	21436	12614
Prepaid expenses and other current assets	16930	7267
<b>Total current assets</b>	<b>\$1200282</b>	<b>\$256173</b>
<b>PROPERTY AND EQUIPMENT – Net</b>	<b>54004</b>	<b>9383</b>
Restricted Cash	26094	1010
Other Assets	4350	1679
<b>TOTAL ASSETS</b>	<b>\$1284735</b>	<b>\$277245</b>
<b>LIABILITIES AND STOCKHOLDERS’ EQUITY</b>		
<b>CURRENT LIABILITIES;</b>		
Accounts payable	\$55472	\$11298
Accrued liabilities	38021	16178
Other current liabilities	20913	13534
<b>Total current liabilities</b>	<b>114406</b>	<b>41010</b>
<b>Long term liabilities</b>	<b>12395</b>	<b>6760</b>
<b>TOTAL TERM LIABILITIES</b>	<b>\$126801</b>	<b>\$42770</b>
<b>STOCKHOLDERS’ EQUITY</b>		
Preferred stock	\$1501701	318796
Additional paid in capital	5763	4564
Accumulated other comprehensive (Loss) Income	(991)	(157)
Accumulated deficit	(348544)	93728)
<b>Total stockholders’ equity</b>	<b>\$1157934</b>	<b>\$229475</b>
<b>TOTAL LIABILITIES AND STOCKHOLDERS’ EQUITY</b>	<b>\$1284735</b>	<b>\$277245</b>

Source : <http://gawker.com>”

## 2.70 Conclusion :

In case of all companies accumulation of cash asset seems to be coexisting with high expenditure which enables the company to show negative figures for EBITN (Earning before Interest and Taxes). The cash balance is because of angel and venture capital investment.

Tax issues are a very nebulous in case of all 5 companies. Most companies show loss, Expedia shows deferred income tax payable. Flipkart is yet to show profit. Its layering of several organisation gives scope for tax avoidance. E-bay and Amazon.com have made

profits but tax paid by them is not indicated. In terms of sales tax and VAT, the figures appear to be way off the mark. Given the origin based VAT in India and market place model the firms like Amazon and Flipkart only pay service tax, though billing is done by Amazon and the responsibility falls on the dealer who is fulfilling the order. Haziness surrounding tax regime provides ready recipe for tax avoidance.

Data was collected from DG-System CBEC. The table shows the service tax paid by Expedia, Uber and Flipkart during the last 3 years. For 2014-15, Expedia paid Rs.35 lakhs, Flipkart paid Rs.19.76 crore and Uber paid Rs.1.94 crore as service tax. Flipkart paying Rs.19.76 crore for the fiscal 2014-2015 is surprising because the company claims that its sale has exceeded 1 billion dollar. During 2015-16, Uber have paid Rs.24.89 crore, Flipkart Rs.16.96 crore and Expedia Rs.28 lakhs. Interestingly, these taxes are paid by several entities under each company.

Sales tax figures from the Government of Telangana shows the Flipkart has not paid any tax during the last 3 years. Amazon has paid Rs.3.84 crore on a turnover of Rs.679 crore in Telangana. The sales have been effected through three companies of Amazon.

The tax responsibility in India gives service tax responsibility to the Centre and the VAT responsibility to the States. If companies do tax planning by structuring their sale, it is not possible to capture all the tax liability. Data though not complete potentially suggest tax avoidance. However, a single GST for goods and services will make these tax avoidance effort difficult.

**Table –XIV**  
**“Revenue Details of E-Commerce Companies**

Financial Year	Assessee Name	All Figures in Rs. Crore	
		Payment Cash	Payment through ITC(Input Credit)
2012-13	EXPEDIA ONLINE TRAVEL SERVICES INDIA PVT LTD.	0.20	0.00
2013-14	EXPEDIA ONLINE TRAVEL SERVICES INDIA PVT LTD.	0.24	0.00
2014-15	EXPEDIA ONLINE TRAVEL SERVICES INDIA PVT LTD.	0.35	0.00
2015-16(H1)	EXPEDIA ONLINE TRAVEL SERVICES INDIA PVT LTD.	0.28	0.90
2012-13	FLIPKART INDIA PRIVATE LIMITED	0.77	0.13
2012-13	FLIPKART INTERNET PRIVATE LTD	1.39	2.61
	<b>Sub-total(Flipkart :2012-13)</b>	<b>2.16</b>	<b>2.74</b>
2013-14	FLIPKART INDIA PRIVATE LIMITED	0.82	0.14
2013-14	FLIPKART INTERNET PRIVATE LTD	0.89	16.70
2013-14	Flipkart Payment Gateway Services Private Limited	0.15	0.19
	<b>Sub-total(Flipkart :2013-14)</b>	<b>1.87</b>	<b>17.03</b>
2014-15	FLIPKART INDIA PRIVATE LIMITED	13.38	1.98
2014-15	FLIPKART INTERNET PRIVATE LTD	5.63	85.71
2014-15	Flipkart Payment Gateway Services Private Limited	0.75	1.19
	<b>Sub-total(Flipkart :2014-15)</b>	<b>19.76</b>	<b>88.88</b>
2015-16(H1)	FLIPKART INDIA PRIVATE LIMITED	9.13	2.08
2015-16(H1)	FLIPKART INTERNET PRIVATE LTD	7.84	97.57
2015-16(H1)	Flipkart Payment Gateway Services Private Limited	0.00	0.00
	<b>Sub-total(Flipkart :2015-16,H1)</b>	<b>16.96</b>	<b>99.65</b>
2012-13	UBER MARKETING SOLUTIONS	0.0002	0.00
2012-13	UBER PROJECTS PVT LTD	0.00	0.01
	<b>Sub-total(Uber :2012-13)</b>	<b>0.00</b>	<b>0.01</b>
2013-14	UBER MARKETING SOLUTIONS	0.0004	0.00
2014-15	UBER CONDO LLP	0.00	0.01
2014-15	Uber India Systems Private Limited	1.03	0.00
2014-15	UBER MARKETING SOLUTIONS	0.02	0.00
2014-15	UBER MINING PRIVATE LIMITED	0.86	0.05
2014-15	UBER SOLUTIONS	0.03	0.00
	<b>Sub-total(Uber :2014-15)</b>	<b>1.94</b>	<b>0.06</b>
2015-16(H1)	UBER DESIGN & CONSTRUCTIONS (PROP.SMITA D DATTA)	0.07	0.00
2015-16(H1)	Uber India Systems Private Limited	24.81	0.00
2015-16(H1)	UBER MARKETING SOLUTIONS	0.01	0.00
2015-16(H1)	UBER SOLUTIONS	0.003	0.00
	<b>Sub-total(Uber :2015-16,H1)</b>	<b>24.89</b>	<b>0.00</b>

*Source: DG-System,CBEC [Data for FY 2015-16 is upto 30 Sep. (April-Sept.), 2015 only]”*



For Amazon, Snapdeal and Jabong, data was collected from sales tax department of Telangana. Upto 2014-15, no tax has been paid though sale of Rs.328 crore has taken place. During 2015-16 though Rs.635.34 crore worth merchandise has been sold through VAT dealers, amount of VATable transaction is 49.66 crore out of Rs.519 crore worth has been sold. It is possible that tax has started flowing this year. Amazon's fulfilment centres started operating from 23.5.2015. But sale and tax figures show that a lot of small sales are not taxable. In case of Jabong and Snapdeal tax earned is zero though Snapdeal logged Rs.430 crore worth sale and Jabong logged Rs.50 crore.

**Table-XV**

“Information on e-Commerce																			
		Flipkart			Amazon (FBA)			Amazon (SOA)			Amazon (Total)			Snapdeal			Jabong		
		2013 - 14	2014 -15	2015- 16	2013- 14	2014- 15	2015- 16	2013- 14	2014- 15	2015- 16	2013- 14	2014- 15	2015- 16	2013- 14	2014- 15	2015- 16	2013- 14	2014- 15	2015- 16
1	All india G.M.V				406.62	5009.5	6759.8				406.62	5009.5	6759.8	2000	6100		430	800	
2	Total value of goods entered into Telangana				23.83	328.23	573.33	7.11	57.51	97.39	30.94	385.74	670.72	140	430		30	50	
A	Sold Direct to Customers of Telangana from the outside the state				23.83	328.23	519.82	6.67	53.79	92.58	30.5	382.02	612.4	140	430		30	50	
B	Sold through the registered VAT dealers of Telangana.				NA	NA	635.34	6.62	37.99	44.6	6.62	37.99	679.94						
	a) Amount of VAT turnover done by the above dealers						49.66	0.44	3.71	4.81	0.44	3.71	54.47						
	b) VAT paid						3.84				0	0	3.84						
	c) Amount of CST turnovers done by the above dealers						542.19	6.18	34.28	39.79	6.18	34.28	581.98						
	d) CST paid						39.63				0	0	39.63						

- Source: Commercial Tax Department, Govt. of Telangana.”

## **CHAPTER-III**

### **Review of Literature: Economic Aspects and Taxation of E-commerce**

**3.0:** Electronic commerce can usefully be defined as “the use of computer networks to facilitate transactions involving the production, distribution, and sale and delivery of goods and services in the marketplace.”<sup>1</sup>

**3.10:** This Thesis is mainly concerned with four types of electronic commerce:

- commerce in ‘*tangible products*’ (e.g., books, mobile phones and Life Style products),
- commerce in ‘*digitized content* downloaded from the Internet’ (e.g., software, music, games, and videos), and
- Services with tangible analogue like travel service or financial services
- Services without tangible analogue and intangibles.

*Terminology:* References to “remote sales” and “electronic commerce” are to transactions that often cross state or national boundaries. They inevitably are linked to the constitutional taxing powers of the states and with international relations in the tax field. “Mail order has been the traditional remote sale. But sale to a consumer in another State by telemarketing or internet purchase is also part of the remote sale. Electronic commerce is a (non-traditional) form of remote sale.

**3.11:** The body of literature dealing with its expected impact on international tax policy has grown along with E-commerce. But the technologically advanced countries have taken the lead in analyzing the expected effects of electronic commerce on tax policy and resultantly it is more from their perspective. A number of policy papers and studies have been issued by countries including the United States, Canada and Australia, and the

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<sup>1</sup> Howard E. Abrams and Richard L. Doernberg, “How Electronic Commerce Works,” *State Tax Notes* 13 (May 1997): 123-36.

international organizations in which these economically and technologically advanced countries participate actively. The European Union<sup>2</sup> and many revenue agencies have also issued major position papers and studies in the area of electronic commerce and existing international tax rules.

**3.20:** In addition, several joint statements and declarations have been made by various countries. Mostly using data from the U.S., several studies explore “various aspects and implications of not taxing e-commerce, domestically and internationally” (Bruce & Fox, 2000; Goolsbee, 2000; Goolsbee & Zittrain, 1999) or EU or OECD countries (McLure, 2003). These studies do not focus on the potential impacts of taxation or lack of it in relation to developing countries.

**3.21:** Several studies “look at the impact of electronic commerce on tariff revenue”, in the context of both developed and developing countries. Teltscher (2002) presents “data on potential revenue losses from import duties on a number of products that have been traded physically in the past but are increasingly being imported digitally”. The finding of the study is that while developing countries account for only 18.5% of world imports of digitized products, their share in tariff revenue resulting from these imports is roughly 65%. The study reports that the absolute value of loss of tariff revenue for developing countries is more than that for the developed countries.

**3.22:** While Teltscher (2002) takes into account only goods, Mattoo et al.(2001) primarily “focus on the electronic supply of products, that is, electronic services”. According to their estimates, “tariff revenue currently collected from printed matter, recorded tapes, CDs and packaged software represents on average, is less than 1% of total revenue, and a small 0.03% of total fiscal revenue”. Optimistically, the study points that “these revenue losses, while small, have to be weighed against the revenue gains from increasing productivity due to e-commerce”.

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<sup>2</sup> The policy of the European Union with respect to electronic commerce was articulated in a European initiative in Electronic Commerce (1997), <http://www.cordis.lu/esprit/src/economic.htm> (“European Report”). The main concern for the European Union has been the impact of electronic commerce on its value added tax (VAT) system.

Panagariya (2000) discusses the “main economic issues raised by e-commerce for the WTO and developing countries”. He suggests that e-commerce by being classified as trade in services, General Agreement on Trade in Services (GATS) will apply and it would be fair to developing countries. While the existing studies examine various aspects of e-commerce, it is easy to observe that both qualitative and quantitative literature on e-commerce in developing countries is limited.

**3.30:** The international debate in respect of the taxation issues from electronic commerce is largely driven by the OECD’s Committee on Fiscal Affairs (CFA), which has assumed a leading role in the process as developed countries have generally agreed that the OECD is the most appropriate to take forward the tax policy issue. Many contend that the OECD is not as inclusive as other forums (such as the WTO) and is therefore limited in being able to secure international consensus on the tax issues relating to electronic commerce. Despite that the primary form of tax coordination among countries is currently being carried out by the OECD’s CFA, as supported by the activities of its various Working Parties.<sup>3</sup>

**3.31:** The recent work of the OECD in the area of electronic commerce can be traced back to November, 1997 when “Turku Conference” with the theme “Dismantling the Barriers to Global Electronic Commerce” was organized by the OECD.<sup>4</sup> Immediately prior to the main conference, the CFA organized an informal Round table discussion between business and government and considered a paper entitled *Electronic Commerce: The Challenges to Tax*

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<sup>3</sup> The OECD currently represents the most influential and central international organization for international tax issues. This Committee meets annually in Paris and it is attended by representatives of tax administrations of all OECD countries. The meetings of the OECD help officials from Member countries and discuss particular technical issues as well as providing a forum to ascertain current thinking and attitudes towards particular issues. The OECD also provides a forum for the exchange of information and the facility to develop agreed positions with respect to particular issues. For all these reasons, the OECD is very valuable and represents an example of a multilateral institutional attempt to coordinate the tax policies of various countries.

<sup>4</sup> Conference and background documents relating to this conference are available at <http://www.oecd.dsti/sti/it/eec/act/turkudoc.htm>, including the OECD background document, “Dismantling the Barriers to Global Electronic Commerce”, which described the main themes, potential solutions, and organizations that may help implement solutions to the challenges created by electronic commerce.

*Authorities and Taxpayers* (“Turku Discussion Paper”),<sup>5</sup> which identified a number of areas where electronic commerce could impact taxation administration. The CFA also identified a number of criteria that governments could use in their search for appropriate ways to “approach the problems of taxing electronic commerce, including simplicity, certainty, and avoidance of economic distortions” and focusing on adapting existing tax arrangements to the Internet rather than examining the introduction of new forms of taxation.

**3.32:** Following the Turku Conference, much work has been undertaken by the OECD and revenue authorities, as well as international organizations (e.g. the International Fiscal Association), to provide greater certainty and clarification on how existing tax rules might apply in an electronic commerce environment. To this end, the OECD was mandated to prepare a framework for the taxation of electronic commerce that was presented at a Ministerial Conference held by the OECD in Ottawa in October 1998 entitled “A Borderless World: Realising the Potential of Global Electronic Commerce” (Ottawa Conference”). A discussion paper was prepared by the CFA and presented for discussion at the OECD Government/Business Dialogue on Taxation and Electronic Commerce that took place as part of this conference.<sup>6</sup>

**3.33:** It was agreed at the Ottawa Conference that the same principles that governments apply to the taxation of conventional commerce should apply equally to electronic commerce. These principles include the well-known tax policy principles of neutrality, efficiency, certainty and simplicity, effectiveness and fairness, and flexibility. The CFA used

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<sup>5</sup> “Electronic Commerce: The Challenges to Tax Authorities and Taxpayers”. An Informal Round Table Discussion between Business and Government, 18 November 1997, Turku, Finland, <[http://www.oecd/daf/fa/e\\_com/turku\\_e.pdf](http://www.oecd/daf/fa/e_com/turku_e.pdf)>

<sup>6</sup> “Electronic Commerce: A Discussion Paper on Taxation Issues”. A Discussion Paper prepared by the Committee on Fiscal Affairs of the OECD presented for discussion at the OECD Government/Business Dialogue on Taxation and Electronic Commerce held in Hull, Quebec on 7<sup>th</sup> October 1998, [http://www.oecd.org/daf/fa/E\\_COM/discuss.pdf](http://www.oecd.org/daf/fa/E_COM/discuss.pdf),

these tax principles to draw the following conclusions that were reflected in one of the conference reports, *Electronic Commerce: Taxation Framework Conditions*.<sup>7</sup>

**3.34:** Turning specifically to the work of the OECD that directly relates to the areas to be covered by the thesis, the starting point is a document that was released by the CFA at the time of the Ottawa Conference entitled *Revision of the Commentary on Article 12 Concerning Software Payments* (“Revised Software Commentary”).<sup>8</sup> This document dealt with the characterization of transactions involving software. This work is significant as many argue that as software represents the typical case of an electronic commerce transaction, the results of the OECD’s work in this regard could be applied to other digital products.

**3.35:** Following the Ottawa Conference, the OECD consulted with business and determined its priority areas and on the basis of this established a work programme to cover the following areas: “characterization of income (royalties/sales of goods and services); permanent establishments, transfer pricing and attribution of profits to permanent establishments; consumption taxes (such as VAT/GST); and tax administration and compliance”.

**3.36:** While the literature seeks to explain the problems and challenges that are created by electronic commerce, not many solutions have been proposed. The preponderant approach has been to believe that electronic commerce related challenges can be met within the current concept. Indeed, there is an emerging consensus (at least among OECD countries) which revolves around countries utilizing existing Taxation concepts and principles;<sup>9</sup>

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<sup>7</sup> Committee on Fiscal Affairs, OECD, *Electronic Commerce: Taxation Framework Conditions* (endorsed by the OECD Member countries on 8 October, 1998 at the OECD Ministerial Conference on Electronic Commerce), [http://www.oecd.org/daf/fa/e\\_com/framewke.pdf](http://www.oecd.org/daf/fa/e_com/framewke.pdf) (“OECD Taxation Framework Conditions”).

<sup>8</sup> See generally [http://www.oecd.org/daf/fa/treaties/art12\\_e.pdf](http://www.oecd.org/daf/fa/treaties/art12_e.pdf)

<sup>9</sup> The literature dealing with the question of how to tax electronic commerce shows that a clear preference for applying existing international tax principles to confront the challenges presented by electronic commerce has developed between the OECD and other international organizations and governments which have considered the problems in this area. This preference can be traced back as far as the Ottawa Conference, that was held in October, 1998, which strongly endorsed the need to maintain traditional international tax policy principles: see generally, “Joint Declaration of Business and Government Representatives Government/Business Dialogue on Taxation and Electronic commerce” (7 October 1998),

maintaining neutrality between electronic commerce and traditional commerce; not considering new or additional taxes; and finally, seeking international cooperation on taxation policies and principles.

### **3.40: THE DEBATE OVER TAXATION OF ELECTRONIC COMMERCE**

Whether E-Commerce should be taxed or not, the debate goes on. Principles embodied in an “Appeal for Fair and Equal Taxation of Electronic Commerce” endorsed by more than 170 academic tax economists and professors of law<sup>10</sup> encapsulates the broad consensus on the principles by which consumption tax should be guided. The principles are:

1. Electronic commerce should not permanently be treated differently (be it exemption or taxed more) from other commerce.
2. “Remote sales, including electronic commerce, should, to the extent possible, be taxed by the state of destination of sales, regardless of whether the vendor has a physical presence in the state” and in no case origin based taxation be resorted to and in case of difficulty, surrogate system should be worked out.
3. Required simplification should be brought in to make destination-based taxation of sales feasible.
4. Efforts should be made to eliminate burdens of compliance on sellers.

The big question, i.e.: “Should states tax e-commerce?” can be answered depending on the situation existing relative to conventional commerce. If a software is taxed in conventional commerce, in remote supply it should be taxed and if not, electronic supply should not be taxed.

**3.41:** The concern many academics would show with regard to taxability of e-commerce is the belief that it enable states to enrich their coffers beyond their reasonable needs. It

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[http://www.oecd.org/daf/fa/E\\_COM/jndec\\_e.pdf](http://www.oecd.org/daf/fa/E_COM/jndec_e.pdf). (“The taxation framework for electronic commerce should be guided by the same taxation principles that guide governments in relation to conventional commerce”).

<sup>10</sup> Federalism in the Information Age: Internet Tax Issues: Hearing Before the Senate Comm. On the Budget, 106<sup>th</sup> Cong. (2000) (attachment to statement of Charles E. McLure, Jr. Senior Fellow, Hoover Institution, Stanford University).

depends on the philosophical appetite of the academic in public good provision. The proposed “Internet Tax Elimination Act”, which extends and makes permanent the “Internet Tax Freedom Act” (“ITFA”), would immunize from tax not only the typical remote sale (e.g. the purchaser of a book from Amazon.com), but also the local purchase of goods and services as long as the transaction was “conducted through Internet access.”

**3.42:** The tax academicians strongly endorse the view that a vendor should be required, to the extent possible, to collect and remit tax on its sales into a jurisdiction regardless of whether the vendor has a physical presence in the state. In the taxation debate physical presence and nexus requirement have generated substantial debate. Without simplified sales tax and use tax rule nexus may be justifiable as a short-term solution because of the compliance burden it entails but is hardly defensible as a long term solution.

### **3.50 Arguments for and against Preferential Taxation of Electronic Commerce**

As a matter of principle, some believe that electronic commerce should not be taxed, while Others believe as strongly that it should be.<sup>11</sup> Some are entirely against taxation of e-commerce making an infant industry argument. They give traction to their argument based on Austan Goolsbees’ study on the importance of network externalities and the negative effects taxation has on electronic commerce.<sup>12</sup> While Goolsbee clearly advocates at most a temporary moratorium on taxation of electronic commerce<sup>13</sup> and temporarily moratorium

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<sup>11</sup> For further discussion, see Charles E. McLure, Jr., “Electronic Commerce and the State Retail Sales Tax: A Challenge to American Federalism,” *International Tax and Public Finance* 6 (May 1999): 193-224.

<sup>12</sup> Austan Goolsbee, “In a World without Borders: The Impact of Taxes on Internet Commerce,” forthcoming, *Quarterly Journal of Economics*; Austan Goolsbee and Jonathan Zittrain, “Evaluating the Costs and Benefits of Taxing Internet Commerce,” *National Tax Journal*, 52(3), September 1999: 413-428; and Austan Goolsbee and Peter Klenow “Evidence on Learning and Network Externalities in the Diffusion of Home Computers,” National Bureau of Economic Research, Working Paper No. 7329, September 1999.

<sup>13</sup> Goolsbee and Zittrain, “Evaluating the costs and benefits of Taxing Internet Commerce,” p.424, state, “The major network externalities are likely to exhaust or at least diminish once the Internet achieves major scale. Too often, infant industry protections turns into established industry protection. Further, we expect that eventually there will be an important negative network externality... increasing Internet congestion.... The congestion problem is likely to get worse as the Internet grows and it argues against subsidizing the growth rate through tax policies.” Goolsbee signed the “Appeal for Fair and Equal Taxation of Electronic Commerce” presented to the Advisory Commission on electronic Commerce on December 15, 1999 and reproduced in the appendix to this chapter.



might have run itself out over the interregnum, the argument does not specify how long the exemption will be.

**3.51: Opposition to preferential tax treatment:** The opponents of tax oppose preferential treatment on the grounds of tax advantage vis-à-vis traditional commerce, distortion in the economic decision making and the resultant economic inefficiency. They believe that tax neutrality between the conventional commerce and electronic commerce requires e-commerce to be taxed. Secondly, preferential treatment will widen the “digital divide,” favoring those who are more affluent members of the society who have access to internet.

**3.52:** Apart from negative effect on revenues of the States if exempted from tax, competitive disadvantage to the main street vendors will be evident. If tangibles and intangibles are taxed differently and the latter were exempted, the choice towards digital delivery will harm commerce. Similarly, exemption of digital commerce will “aggravate distortions of locational decisions”.

### **3.53: Impediments to Equal Tax Treatment of Electronic Commerce**

1. Neither the tax administrators nor the vendor “know the identity, or even the location, of the parties to a transaction conducted over the Internet”. This anonymity involving on-line transaction increases the cost and complexity of compliance and administration of the tax, be they destination or origin based.
2. Sale of digital content is essentially borderless, ordered and delivered on line. The characteristic of digital content enables easy reproduction without concomitant record generation.
3. Vendors of digitized content may be located cross border without coming under the tax jurisdiction and thus “beyond the reach of tax authorities”.
4. Payment for purchases in electronic commerce may be made with digital money and other instruments which creates problem for tracing the transaction Effective tax

administration may face an impossible challenge on the face of digital content, foreign vendor, anonymity and untraceable money.

5. Destination principle which is followed in the jurisdiction where consumption takes place is more widely accepted among nations because of inherent equity, less likelihood of distortion in locational decision (than origin based taxation). Taxation of consumption in the consumption jurisdiction also provides “better proxies for benefit of public services”. Origin based taxation for electronic commerce for digital content though easier to implement will provide an impetus for “race to the bottom”. The problem of location of the customer could be a challenge to implement destination principle.

### **3.60: How Much Revenue Is at Stake?**

A decade ago it was predicted that because of e-commerce the States tax base would vanish into cyberspace. Even before the end of the dotcom boom it came to be realized that these fears could have been overstated.<sup>14</sup>

**3.61:** Cline and Neubig (1999) found revenue losses in 1998 from the failure to tax electronic commerce to be only “one-tenth of one percent of total sales tax revenue”. Goolsbee and Zittrain (1999) estimated that revenue losses in 1998 were “less than one-quarter of one percent of sales tax revenue” and that “in 2003 losses would be less than 2 percent of total sales tax revenues”. Bruce and Fox (2000) estimated losses in 2003 “to be about 1.5 percent of total state and local tax revenues”; they did not translate this figure into percent of sales tax revenues. Emphasizing the uncertainty of any such estimates, the General Accounting Office (2000) “estimated that revenue losses for 2000 would be less than 2 percent of total sales tax revenues” and that “in 2003 revenue losses would fall within the range of 1 to 5 percent of total sales tax revenues”.

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<sup>14</sup> For further discussion, see McLure, “Taxation of Electronic Commerce.” And McLure, “Electronic Commerce and the Tax Assignment Problem.”

**3.62:** Donald Bruce & William Fox of University of Tennessee, prepared a national estimate of revenue loss using detailed forecasts of e-commerce transaction from 2003 to 2008. Their assumptions yielded compliance rate of 40 percent for online B2C and 72 percent for online B2B transactions. The estimated revenue loss of \$ 16.1 billion in 2003 rose to \$33.7 billion by 2008. In a scenario analysis the range of revenue loss is “between \$ 21.5 billion and \$ 33.7 billion”. This revenue loss represented “between 3.9 and 6.1 percent of actual 2003 sales tax”. Actually, e-commerce logged figures much above the forecast figure and hence revenue loss will be much higher and is statistically significant.

**3.63:** George R. Zodrow,<sup>15</sup> following the model for “optimal taxation of traditional and electronic commerce”, found out that simplest characterization of result is that “optimal tax rates on e-commerce tend to cluster around the rate applied to traditional commerce”. The model is a modified version of “the standard single-period optimal commodity taxation model with fixed producer prices described in Auerbach and Hines (2002)”.<sup>16</sup> “Individuals are assumed to maximize a standard utility function defined over several consumption goods and leisure. There is no source of exogenous income and only commodity taxes are allowed. These rather stark assumptions simplify the model and allow for clear analogies to the similar model of Sandmo (1981). However, they admittedly are fairly stringent, especially since one would expect that the number of individuals making online purchases as well as the set of goods sold over the Internet would increase over time”.<sup>17</sup> It also concluded that “the optimal differentials calculated, it is unlikely that traditional prescription of uniform taxation should be overridden by optimal taxation concerns, once the administrative and political difficulty of implementing differential taxations are taken into account”.<sup>18</sup>

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<sup>15</sup> George R. Zodrow

<sup>16</sup> Since Auerbach and Hines provide a detailed treatment of the basic optimal commodity taxation problem, the derivations of the results are outlined here, derivations of the results in this paper are also provided in Zodrow (2000). The model of consumer behavior utilized is also generally similar to that used by Alm and Melnick (2003) in their empirical analysis of the sensitivity of the demand for Internet goods to preferential tax treatment, except that it treats traditional goods and Internet goods as close rather than perfect substitutes, and allows for leisure and a separate good that is exempt from sales tax for distributional or social reasons.

<sup>17</sup> George R. Zodrow.

<sup>18</sup> Electronic commerce and Tax Base Erosion, D.G. Research, European Parliament, Economic Affairs Series, ECON IOS EN-01-1999.

**3.64:** Though there seems to be little statistical evidence that tax base of consumption tax has eroded and it has not been measured successfully so far how much of revenue Governments have lost because of sales conducted over internet, it is evident that the nature of electronic commerce on internet provides opportunity for tax evasion. As per European Parliament's research, E-commerce can provide possibilities of tax avoidance.<sup>19</sup> Since E-commerce includes both goods, services and electronically delivered goods, taxation issues become complex.

**3.65:** On the basis of the model developed by them, James Brox and Christina Fader<sup>20</sup> projected that "by 2005 business-to-consumer electronic commerce will be in the range of \$31 billion in Canada, or approximately three percent of total Canadian consumer transactions". If the parameters of the tax function are not changed, "the resultant prediction of lost sales-tax revenues would be \$1.3 billion, or roughly two percent of the expected level of Canadian sales-tax collections".

### **3.66: Research supporting tax on E-Commerce Sales**

Bruce, Fox and Murray analyzing taxation of E-commerce "in the context of optimal taxation", investigated separately "the taxation of business purchases of intermediate goods, the taxation of consumer purchases of final goods and services and various issues of administration and compliance cost as they apply to development of e-commerce".<sup>21</sup> The authors concluded "that optimal tax literature cannot be used in support of a blanket tax exemption for internet purchases. Certain conditions could lead to the optimality of an exemption, but those conditions are not likely to be met in practice".<sup>22</sup> The findings of the study are:

1. "It is inconsistent to collect differential rate of taxation resulting from inability to collect taxes on remote sales. This is unlikely to be consistent with optimal tax

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<sup>19</sup> James Brox & Christina Fader, University Waterloo, "Forecasting Tax Implication of B2C E-Commerce 2005".

<sup>20</sup> Ibid.

<sup>21</sup> Donald Bruce, William Fox and Mathew Murray, "To tax or not to tax? The case of Electronic commerce.

<sup>22</sup> Ibid.

theory. Findings are more likely to suggest greater rather than lesser taxation of e-commerce”.

2. “Non taxing B2B cannot be justified. As per optimal tax theory where the circumstances for taxation are enumerated as constraints on the set of commodity tax rates that can be imposed and when the industries are characterized by higher degree of imperfect competition. When there is difficulty in taxing final product, there is a role for taxing inputs”.
3. “There is no evidence to show that changes in excess burden plus administration and compliance costs of taxing e-commerce are sufficiently high to warrant blanket exemption of all transactions”<sup>23</sup>.

### **3.70: Studying behaviour shifts due to e-commerce taxation,**

Goolsbee<sup>24</sup> (1999) presented an empirical analysis of “how local taxation affects the decision of consumers to initiate Internet purchases”. His results do suggest that “taxation plays a role in e-commerce”. “Higher tax jurisdictions have higher Internet purchase rates, and, further, the impact of taxes on Internet commerce appears to be greatest for online products that, a priori, are most likely to save the buyer from paying taxes”. The author did acknowledge that the “future may see substantial losses of sales and use tax revenues under the current US tax regime”. Interestingly, his solution is to “make all Internet-based sales tax free for a few years to encourage growth of ecommerce, but to make the sales taxable in the future”.

Goolsbee averred that “the impact of taxes on the decision to adopt new technology” can make dead weight losses even bigger if access is charged, even preventing diffusion of technology. “But he put a caveat too. The fact that applying taxes would reduce Internet Commerce”, as for him, “did not imply that such commerce should not be taxed”. Admitting the economic distortion created by divesting commerce from retail stores to online venues simply to avoid taxes, he was of the opinion that “to justify lower tax rate for e-commerce

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<sup>23</sup> Donald Bruce, William Fox and Mathew Murray, “To tax or not to tax? The case of Electronic commerce.

<sup>24</sup> Goolsbee Austan and Jonathan Zittrain (1999) “Evaluating the costs and benefits of taxing internet commerce,” May

requires some positive externality or some especially high cost of compliance” conceding that externality issues is a matter of opinion not amenable to testing.

Sang-Ho Lee<sup>25</sup> in his paper has considered an “e-commerce market and examined the equilibrium prices of online and offline firms when commodity taxes on transactions are imposed”. He then “compared price differences between online and offline markets at the symmetric and co-existence equilibrium”. It is demonstrated therein that “the equilibrium prices depend on the online access cost, offline transportation cost, and taxes rates”. After accounting for the government tax revenues, he investigated the optimal tax difference between online and offline taxes. It is indicated that “the optimal tax difference depends not only on the ratio of online access cost and offline transportation cost, but on tax distortion cost”. He found that when tax distortion cost is sufficiently low, the optimal condition to have a higher online tax than offline tax is that the ratio of access cost and transportation cost is sufficiently high. However, when tax distortion cost is sufficiently high, tax revenues effect is strong to the social welfare and thus, tax should be placed to the balanced level between the two markets at the equilibrium. Specifically the optimal condition are (i) for a higher online tax than offline tax is that the ratio of access cost and transportation cost is sufficiently low; and (ii) for a lower online tax than offline tax is that the ratio of access cost and transportation cost is sufficiently high.

### **3.71: Problem Areas: Physical presence, Permanent Eastablishment and Nexus**

Physical presence of the supplier in the source country, where the sale has been effected or income has been earned, has been the litmus test for taxing right and determination of tax jurisdiction. In a traditional context, McLure argues that taxation based on the benefit principle suggests that a physical presence is probably needed to establish tax nexus for source-based taxation.<sup>26</sup> “Many of the services provided by the Government (e.g. police and fire protection)” that benefit businesses which provide tangible goods and services would

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<sup>25</sup> Sang-Ho Lee, Price – “Competition between online and offline firms in Electronic Commerce Market and discriminatory Taxation – Hitosubeshi Journal of Economics, Vol.47, No.1 (June 2006).

<sup>26</sup> Charles McLure, Jr. “Source based taxation and alternative to the concept of Permanent Establishment in Canadian Tax Foundation (.ed).2000 Worl Tax Conference Report (2000).

only be available and relevant in the case where such businesses maintain a physical presence in source countries. “An important issue raised by electronic commerce is where income should be regarded as being generated”, if all the value of what is sold is created in the residence country but the customers that determine that value are in the source country. “In such cases, from an economic perspective, the only contribution of a source country would often be its customer base or market”. In this context, it could therefore be argued that source countries “provide little or no benefits relevant to the production of income that would justify source-based taxation under the benefit principle”. This argument can, however, be challenged. First, Skaar provides support for the view that “even if a business does not have a physical presence in the source country it benefits substantially from its infrastructure and therefore should make a contribution to the source country, consistent with the benefit theory of taxation”. According to him:

**“A [permanent establishment] is merely a piece of evidence of economic allegiance, not the reason for source-state taxation.** The circumstance that short-term business operations may accumulate substantial profits from domestic sources indicates on the contrary that the taxpayer benefits substantially from the infrastructure of the host country, even though no [permanent establishment] exists. It seems that an enterprise which does not need to invest in immovable facilities, or other fixed places of business, may still derive considerable advantages from the community in which its income sources located. Today, the performance of a business activity in another country, the duration of the activity and the profits arising from it, are per se significant arguments... [that] requires **all enterprises which obtain such benefits from a country to render a corresponding contribution to this society, whether or not they have a [permanent establishment]**”.<sup>27</sup>

### **3.72: Physical presence permanent establishment**

“A physical permanent establishment will only exist if all of the following conditions are satisfied:<sup>28</sup>

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<sup>27</sup> Arvind A Skaar, Permanent Establishment: Erosion of a Tax Principle (1991), pp 559-60.

<sup>28</sup> Article 5(1) of the OECD MC.

1. There exists a place of business, such as premises, or in certain instances, machinery or equipment;
2. The place of business must be fixed – that is, established at a distinct place with a certain degree of permanence; and
3. Business must be carried on through this fixed place of business”.

A “place of business” “includes any premises, facility, or installation for carrying on business, whether or not it is used exclusively for that purpose”.<sup>29</sup> It is not necessary that the premises, facilities or installations be owned or rented by the enterprise, so long as they are “at the disposal” of the enterprise”.<sup>30</sup> A place of business can also be constituted by machinery or equipment used by an enterprise.<sup>31</sup> These issues become relevant in an electronic commerce context, where, for example, it may become necessary to determine whether a computer server constitutes a place of business and whether leased space on a server can constitute a place of business in a requisite sense.

**3.73:** The “fixed” requirement contains both a geographical and temporal element. To satisfy the geographical requirement, the place of business must have a definite spatial location.<sup>32</sup> This does not mean that “the equipment constituting the place of business has to be actually fixed to the soil on which it stands”.<sup>33</sup> Rather, the OECD Commentary states that “for a place of business to be fixed, there must be a link between the place of business and a specific geographical point”.<sup>34</sup> In addition to the geographical component, the notion of a “fixed” place of business implies a temporal duration.<sup>35</sup>

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<sup>29</sup> Paragraph 4 of the Commentary to Article 5 of OECD MC.

<sup>30</sup> Therefore, the OECD Commentary provides that a pitch in a market place, or an area in a customs dept (e.g. for the storage of dutiable goods) may constitute a place of business:ibid.

<sup>31</sup> Paragraph 2 of the Commentary to Article 5 of the PECD MC.

<sup>32</sup> Richerd Doernberg and Luc Hinnekens, *Electronic Commerce and International Taxation* (1999), p.134.

<sup>33</sup> Oaragraph 5 of the Commentary to Article 5 of OECD Mc.

<sup>34</sup> Oaragraph 5 of the Commentary to Article 5 of OECD Mc.

<sup>35</sup> Doernberg and Hinnekens, aboave note 14, p.134



**3.74:** This does not mean everlasting or perpetual duration, but does not require a certain degree of permanency.<sup>36</sup> Accordingly, the OECD Commentary provides that a place of business of a purely temporary nature is not fixed.<sup>37</sup> At the same time, the OECD Commentary does not specify that a place of business needs to exist for a specified period of time to be considered fixed.<sup>38</sup> The final requirement for a physical presence permanent establishment to exist is that the business of the enterprise must be “carried on” through a fixed place of business. The OECD Commentary provides that this usually means that persons who are dependent on the enterprise conduct the business of the enterprise in the state in which the fixed place of business is located.<sup>39</sup> This implies the need for human intervention. However, the Commentary notes that vending machines and other automated equipment could constitute permanent establishments if the enterprise engages in business beyond the mere installation of such machines and equipment.<sup>40</sup>

**3.75:** Studying from the angle of income tax, Dale Pinto argues that source-based taxation (from geographical source of income) is theoretically justifiable for income that arises from international/cross-border transactions that are conducted in an electronic commerce environment. Resulting source-based taxation should continue to apply in an electronic commerce context. His second argument is that the way in which source is defined for electronic commerce transactions needs to be reconceptualized. Dale Pinto suggested that there was a need to reconceptualise the way source is defined, reconceptualise the way of active and passive income for income tax.

**3.76: Analysis of the way source is defined under the permanent establishment threshold in an electronic commerce context:**

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<sup>36</sup> Paragraph 2 and 6 of the Commentary to Article 5 of the OECD MC.

<sup>37</sup> Paragraph 6 of the Commentary to Article 5 of the OECD MC (“A permanent establishment can be deemed to exist only if the place of business has a certain degree of permanency ,i.e. if it is not a purely temporary nature”)

<sup>38</sup> The OECD Commentary therefore states that if the place of business is not merely set up for a temporary purpose, but only exists for a very short period of time (e.g. due to the nature of the business, or death of the taxpayer), it can still be treated as fixed. Conversely, if a place of business is established for a temporary purpose, it may be fixed, if it continue beyond a period of time that can no longer be considered temporary:ibid.

<sup>39</sup> Paragraph 2 of the Commentary to Article 5 of the OECD MC.

<sup>40</sup> Paragraph 10 of the Commentary to Article of the OECD MC.

Electronic commerce may be regarded as a further step in the introduction of mobility of business and evolution along the continuum that represents the way in which international business activities may be conducted.<sup>41</sup> Further improvements in information and communication technologies, as well as in transport, allow for an increased mobility of both capital and labour, while at the same time facilitating a reduced need for non-resident businesses to maintain physical presences in source countries (especially for digitally produced and delivered goods and services).<sup>42</sup> The characteristics of electronic commerce therefore arguably provide a better example for Skaar's analysis of the increasing erosion of the permanent establishment principle than previous structural changes in international business operations did,<sup>43</sup> and may thereby emphasise the need for a reconsideration in the way source is defined under the permanent establishment threshold – a view with which Professor Skaar himself has recently agreed.

**3.77:** With more mobile international business rules which require a physical presence of some sort at a specific geographical spot for a certain period of time becomes less adequate.<sup>44</sup> The conclusion that may flow from this possibility is that it may signal a need to reconceptualise the way source is defined consistent with the notion that the “effects of the [permanent establishment] concept in international fiscal law [may] have changed”.<sup>45</sup>

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<sup>41</sup> OECD, “Electronic Commerce: The Challenges to Tax Authorities and Taxpayers,” An informal Round Table Discussion between Business and Government, 18 November 1997, Turku, Finland, <http://www.oecd.org/dsri/sti/it/ec/act/turkudoc.htm>[14] (“few would dispute that the speed, global access and automation of functions provided by communications on the internet, the mobility it offers, and the potential for new payment systems, may change the way business is being undertaken. The use of electronic media creates a qualitative difference in the way existing activities can be carried out and taxed”).

<sup>42</sup> Avi-Yonah, above note 47, p.15 (observing that the interaction, speed and electronic payment that has become possible due to electronic commerce allows for business activities to occur remotely on a much greater scale than in the past through, for example, mail-order or catalogue sales). The specific characteristics of electronic commerce that may impact upon the way in which source is defined under the permanent establishment threshold were examined and analysed in detail in the previous chapter of the thesis.

<sup>43</sup> Support for this proposition may be found in the literature, see e.g. Hinekens, above note 30, p.196 (“The transition from the physical to the digital economy offers an even better case for applying Professor Skaar’s analysis of the increasing erosion of the [permanent establishment] principle”).

<sup>44</sup> Skaar, above note 7, p.320.

<sup>45</sup> Ibid, (adding that, “Rather than protecting the tax base in the source state, the permanent establishment principle today has become instrumental in ensuring avoidance of source-state taxation from some economically important business operations”). See also Hinekens, above note 30, p.197 (quoting the OECD,

**3.78:** Electronic commerce allows for the sale of goods and services that may be purchased by individuals over the Internet. In a typical case, customers could log on to the Internet by dialing their Internet service provider (ISP). However, in the case of tangible products, delivery still needs to take place through traditional channels such as postal or courier services. This type of electronic commerce is often referred to as “off-line” or “indirect electronic commerce”, and the electronic presence of a business in this situation is mainly used to automate its marketing, purchasing and payment functions, with delivery by traditional means still being necessary. Therefore, as Cockfield has observed, this type of electronic commerce “devises new ways of selling old products”.<sup>46</sup> However, in addition to being able to transact in tangible goods and services, electronic commerce allows for the sale of digitized goods (e.g. software and music), as well as digitized services (e.g. travel, banking and stock-trading).

**3.79:** Prof. Doernberg’s base erosion approach is to preserve the permanent establishment threshold for active income. But he has proposed a new test for tax nexus in source countries that is based on a withholding tax which is intended to apply to any base evading payment made by source country business tax payers to residence country businesses.

Prof. Lue Hinnekens proposed a virtual permanent establishment approach which sought to adopt a threshold for source based taxation that is lower than that of traditional permanent establishment. A taxing nexus is created in the source country even in the absence of fixed place of business in such countries. On the basis of a virtual permanent establishment in the country of source, taxing jurisdiction is created.

When consumption tax is collected on E-commerce, the likely dispute is not about whether states can impose the tax but about whether state governments can require electronic commerce retailers to collect the appropriate tax on their behalf rather than depending on purchasers to self-assess and pay the use tax.

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“Jurisdictional concepts based on physical geography, such .. permanent establishment, may require modification to fit the world of electronic commerce”).

<sup>46</sup> Cockfield, above note 30, p.151.

“A state can only require vendors to collect sales taxes if the firms have substantial nexus in the state. The U.S. Supreme Court in its decision *Quill Corp v. North Dakota*, 112 U.S. 298 (1992), ruled that “substantial nexus requires some physical presence in the state”. While nexus appears to be a relatively simple concept, “the Court did not give a precise definition of physical presence, leaving open additional issues for litigation on the meaning of physical presence”. In fact, the courts have often relied on facts and circumstances in determining whether a vendor has physical presence in the customer’s jurisdiction.

Importantly, the Court concluded in *Quill* that a mail-order business selling in a state has sufficient presence or contact with the state to satisfy the Due Process Clause of the American Constitution but lacked sufficient presence to satisfy the “substantial nexus” requirement of the Commerce Clause. “Most analysts have presumed that findings like those in the *Quill* case, which are specific only to mail order sales, would also be applied to e-commerce”.

But businesses can avoid nexus by aggressive planning. “The presence or absence of nexus also can become an important issue between online competitors, depending on where they choose to locate their operations”. For example, Dell built a manufacturing plant in Nashville, Tennessee. “When construction on the plant began in 1999, Tennessee residents’ total cost of a Dell computer immediately became approximately 8 percent higher than Dell’s fellow online computer retailers because of the sales tax that Dell must now charge in Tennessee”. But Dell was “able to eliminate the Tennessee sales tax collection responsibility by structuring a subsidiary corporation, separate from the manufacturing corporation, to sell computers in Tennessee”.

### **3.80: Problem Area: Destination or Origin Principle for Consumption Tax**

The application of the benefit principle “to consumption taxation leads to taxation in the country where the consumption takes place”.<sup>47</sup>

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<sup>47</sup> Westberg, Bjorn (2002) Cross-border Taxation of E-commerce, IBFD p.143.

With respect to the taxation of trade in goods among sovereign nations, a distinction can be drawn between the destination principle and the origin principle of taxation. “Under the destination principle exports are exempt from consumption tax – for example, a value added-tax (VAT) or a sales tax – and are subsequently taxed at the rate levied by the importing country, resulting in taxation at the place of consumption”.

**3.81:** “The destination and origin principles for indirect taxation are analogous to the source and resident principles for direct taxation. The difference between the destination and origin principles is that the destination principle imposes tax where consumption takes place, whereas the origin principle imposes tax where production takes place”. As with source taxation, one might argue that the origin principle distorts the location of production. As with resident taxation, one might argue that the destination principle causes distortions in relative savings decisions across countries. “Tax revenue accrues to the country in which the final sale occurs. In a world of perfect competition, the destination principle implies that all firms receive the same tax-exclusive price from selling in any location irrespective of their country of residence.”<sup>48</sup> The destination principle is considered to generate a fair distribution of the tax burden: the private consumption base is viewed as a much better proxy for the benefits of public goods than other tax bases, such as production”.<sup>49</sup>

**3.82:** Under the origin principle, consumption tax is collected at source - that is at the place where the goods are produced or exported. “Imported commodities are exempted to avoid double taxation. The origin principle implies that consumer prices (or tax-inclusive prices), adjusted for transportation costs, are equated across countries. Origin-based taxation induces firms to locate in low-tax countries, which, it is feared, will give rise to a ‘race to the bottom’ in taxes, undermining countries’ ability to raise revenue”. The OECD speaks of

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<sup>48</sup> Ligthart, J.E. (2004) Consumption Taxation in a Digital world; A Primer, Canadian Tax Journal, Volume 52, No.4 p.1079.

<sup>49</sup> Origin and destination taxes have equal effects on neutrality within a closed economy. General imposition of both form of taxation is neutral if factors are fixed in supply. Neutrality is not likely to be realized with either regime in an open economy setting with decentralized taxing authority across sub-national jurisdiction, given the different rates that will be imposed.

‘harmful tax competition’.<sup>50</sup> Some authors have challenged this notion;<sup>51</sup> tax competition may also have the beneficial effect of “reducing a country's incentives to expand an already inefficiently large government. Moreover, tax competition may force government officials to offer public-good packages that are more in line with the preferences of voters”.<sup>52</sup>

**3.83:** Under any destination-based regime, governments typically find it impossible to collect consumption taxes from purchasers. Hence, they “mostly use the sellers of goods and services as a chokepoint and collection agent”. This creates some challenges too. First, it generates extravagant compliance costs, especially for smaller and medium-sized firms, as destination-based taxation compels sellers to calculate, report and remit consumption taxes for each jurisdiction in which sales occur.<sup>53</sup>

**3.84:** However, destination-based taxation is the international norm and is supported by the OECD, the European Union and the World Trade Organization (WTO). The origin principle is rarely applied in practice to trade, except for trade among the former members of the Soviet Union. As Lockwood argues, if not absolute “the case for preferring destination-based taxation over origin-based taxation on efficiency grounds is strong”.

**3.85:** There are six strands of research and resultant literature. The first one is led by most researchers and the question which they grapple with is whether e-commerce should be taxed or not? Goolsbee and Zittrain, McLure etc. lead this field. The second strand is led by OECD and EU about how it is to be taxed. The third strand of research is on how much e-commerce is to be taxed. Sang-Lee-Ho and Zodrow as well as Bruce, Fox lead this field. Fourth strands of research is for estimating how much is the revenue lost led by Bruce, Fox, and Christina Fader and Brox. The fifth strand of literature is on ‘Permanent Establishment’ and ‘Nexus’ and reconceptualizing them. The final strand of research, though sparse is about

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<sup>50</sup> OECD (1998) Harmful Tax Competition : an Emerging Global Issue (OECD: Paris) as cited in Ligthart, J.E. (2004) Consumption Taxation in a Digital World: A Primer, Canadian Tax Journal, Volume 52, No.1079)

<sup>51</sup> Wilson, J.D. (1999) Theories of Tax Competition, National Tax Journal, Vol.52, pp 269-304 as cited in Ligthart, J.E. (2004) Consumption Taxation in a Digital World: A Primer, Canadian Tax Journal, Volume 52, No.4, p 1079

<sup>52</sup> Ligthart, J.E. (2004) Consumption Taxation in a Digital World: A Primer, Canadian Tax Journal, Volume 52, No.4 p.1079.

<sup>53</sup> Cline, Robert J. Neugib, Thomas S. (1999) Masters of Complexity and Bearers of Great Burden: The Sales Tax System and Compliance Costs for Multistate Retailers (Ernst & Young, September 1999)

impact on developing countries led by Sussane Teltscher, Matoo Pangariya and Subhagit Basu. However, there is very little research to show how to design E-commerce ready consumption tax system and what works and what does not.

## **Chapter IV**

### **METHODOLOGY AND SCOPE**

4.0 This research work is more a treatise than a polemical enquiry by testing of hypothesis. The approach used in this research is qualitative and comparative research. The qualitative approach is chosen because of the exploratory nature of the research in its objectives, which seeks to understand in-depth, the characteristics and features of E-commerce taxation issues, and to recommend policy approach for Value Added Tax or GST.

4.10 Lack of data also actuated this approach. Even service tax data collected from the Central Board of Excise and Customs does not segregate data for E-commerce and normal commerce (See Appendix 1). Even in the service lines, which are 124 in number, it is difficult to figure out which ones relate to E-commerce, much less for B2B or B2C. The position with regard to VAT data in the state is exactly the same. According to Patton (1990, p.51), “the advantages of qualitative portrayals of holistic settings and impacts is that greater attention can be given to nuance, setting, interdependencies, complexities, idiosyncrasies and context”.<sup>1</sup>

4.11 Importantly, the review of literature revealed that though literature is quite extensive on question of ‘whether’, ‘what’ and ‘how’ of taxation of E-commerce, there is very little research on how to design on e-commerce ready consumption tax system and research to find out which elements in the VAT/GST system work for E-commerce and which do not.

4.12 Another reason the qualitative approach has been selected is that qualitative research focuses on describing and understanding the subject, which fits the objectives set out for the study, which is to “describe in details the elements and normative approach for indirect taxation on E-commerce.” Consumption tax on E-commerce

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<sup>1</sup> Patton M. (1990), “Qualitative Evaluation and Research Methods”, Beverly Hills CA, Sage



brings in its truck several difficulties.” Electronic commerce in ‘goods’ is taxed as goods under the origin based Value Added Tax system of the States in India. Cross border sale of intangibles and services in the States are taxed as service which is administered and collected by the Federal Government.” Both systems do not segregate data between brick-and-mortar and Electronic Commerce collections. This creates a problem in making an empirical study.

4.20 The empirical portion of the thesis has been conducted by analyzing five case studies of E-commerce firms. Case study method is employed as it “allows investigators to retain the holistic and meaningful characteristics of real-life events-such as individual life cycles, organizational and managerial processes, business and revenue model, international relations, and the maturation of industries”<sup>2</sup> (Yin, 2002, p.2) As business models comprise multiple elements in which complex activities and processes are presented, a case study methodology is appropriate. Even though case study research is a suitable approach to describe activities and understand underlying patterns of the studied subject, it also has limitations. Two frequently mentioned “limitations of case study methods are the lack of statistical generalization and the lengthy narrative”<sup>3</sup> (Yin, 2002, p.11). In order to restrict these limitations, the researcher adopts a comparative study so that commonalities from several cases can be gathered and explored, as well as provides a summary of findings.

4.30 The empirical research on the E-commerce firms reaches its goals by using purely secondary data from various sources. “Data is collected from the reported financial formats of the companies. In addition, materials and content from the case companies’ websites and corporate blogs have also been utilized as a source of data and information.” The case companies are leading digital marketplace or inventory driven platforms. The companies were chosen based on the uniqueness of their business model, influence and position in their respective industry and their popularity in the media. Most of the case platforms are first-movers in their respective fields. The study of the

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<sup>2</sup> Yin R.K. (2002) “Case study research: Design and Methods” Newsbury Park, CA, Sage

<sup>3</sup> Ibid

models shows how in E-commerce, there is an incentive for profit shifting and thereby, resultant base erosion. It is also evident how these companies use multi-sided models and attempt to benefit out of the network effect.

4.40 For comparative analysis, the taxation principles which should apply to E-commerce include, neutrality, efficiency, certainty and simplicity, effectiveness and fairness and flexibility. Tax neutrality is where neutral and equitable tax norms should apply between E-commerce and conventional commerce. Similarly placed tax payers should pay similar level of taxation for similar transaction. A neutral tax is also vertically and horizontally equitable. Efficiency can be achieved when the compliance cost for the tax payers and administrative costs for tax authorities are minimized with least scope for evasion and avoidance. Certainty and simplicity imply that tax rules should be clear and simple, with taxpayers being able to anticipate tax consequences in advance of the transaction and knowing when, where, and how the tax is to be paid and accounted for. Taxation should be fair and effective by producing revenue realization at the right time. The potential for tax evasion and avoidance should be minimized while keeping counteracting measures proportionate to the risk involved. Given the evolving nature of technological and commercial development, the system of taxation, in order to keep pace with such changes, should be flexible. Against this theoretical framework, the comparative study has been done.

4.50 Looking at the evolution of taxation system and frameworks for E-commerce, five countries have been studied to see how they tax E-commerce through their VAT/GST systems. A comparative framework involves how they tax tangibles, intangibles and services through E-commerce. From this naturally flow the challenges concerning-

- (1) How to identify the taxpayer
- (2) Determine their taxing jurisdiction
- (3) How appropriate records are kept and audit trail is maintained
- (4) How is tax collected?

4.51 The comparative analysis throws up the loopholes in each system of VAT in countries like Brazil, India, South Korea, Singapore and South Africa. Here also, quantitative analysis is not made and what is studied is the deviation from the normative and evolving definitions and problems, which come in its track.

4.60 The final analysis is about the Goods and Services Tax in India and the way it is evolving now though it is still a work in progress. Going by the analytical learnings, it is proposed what should be improved and how it should be designed to meet the challenge of E-commerce. This normative set of suggestions will enable E-commerce's consumption tax to be neutral, efficient, effective, fair and simple so that perverse behavior of base erosion and profit sharing does not take place or a system which incentivizes either double taxation or non-taxation is avoided. What is ultimately recommended, is in the nature of recommendations for designing a tax policy. Taking the economic intuit and possibility of technology solving the problems created by it, recommendations will relate both, to the field of tax law and tax economics.

4.70 The focus of this thesis is to provide “balance between prescriptive (how policies to be made in future) and descriptive (how policies are being made or are in existence)”.<sup>4</sup> It ends with a set of recommendations with this research which examines taxation of E-commerce in the context of GST in India and will hopefully amplify the understanding on the issues and challenges involved. It is expected that the output will help policy makers to fine tune the tax policy for E-commerce when GST will roll out.

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<sup>4</sup> Subhajit Basu: Global Perspective on E-commerce Taxation Law, A shagate, 2006.

## **CHAPTER V**

### **Cross - Country Analysis of VAT on E-Commerce: A Comparative Framework**

#### **5.0: VAT as a Consumption Tax and its design features**

Consumption taxes operate as a levy on expenditure relating to the consumption of goods and services, imposed at the time of the transaction. Consumption taxes find their taxable event in a transaction, the exchange of goods and services for consideration either “at the last point of sale to the final end user” (retail sales tax and VAT), or on intermediate transactions between businesses (VAT) (OECD, 2011), or through levies on particular goods or services such as excise taxes, customs and import duties. Income taxes are levied at the place of source of income while consumption taxes are levied at the place of destination (i.e. the importing country). Designed as an indirect tax, it is collected from the suppliers of these goods and services rather than directly from the consumers. The consumers bear the burden of these taxes, in principle, as part of the market price of the goods or services purchased. This Thesis expressly explores VAT and GST (Goods and Services Tax) as a consumption tax on Electronic Commerce. VAT is a General tax on goods and services, though in India it is a tax on goods only. But in this Chapter VAT is used in a generic sense as a tax on goods and services. VAT is the primary form of consumption tax for countries around the world. Rapid global spread of VAT has brought it to centre stage of discussion around cross border trade.

#### **5.01: Main Design Features of a VAT**

The term VAT is used here to cover all value added taxes. In some countries it is also known as “goods and services tax” (GST). Despite considerable diversity among the VAT systems they have certain fundamental design principles. It is a broad-based tax on consumption.

“Many VAT systems impose VAT burden not only on final household consumption, but also on various entities that are involved in non-business activities or in VAT-exempt activities. VAT treats such entities as if they were end consumers, or as “input taxing” the supplies made by such entities on the presumption that the burden of the VAT imposed will be passed on in the prices of the outputs of those non-business activities”.<sup>1</sup>

VAT is a tax that is collected through a staged process. “Each business (taxable person) in the supply chain is responsible for collecting the tax on its outputs (supplies) and remitting the proportion of tax corresponding to its margin, i.e. the value added, in a particular tax period. This means that the taxable person remits the difference between the VAT imposed on its taxed outputs (output tax) and the VAT imposed on its taxed inputs (input tax) for this period”.<sup>2</sup> Thus, “the tax is in principle collected on the “value added” at each stage of production and distribution”.<sup>3</sup> Retail sales tax, instead taxes consumption through a single-stage levy imposed in theory only at the point of final sale.

Fundamentally the burden of taxation under VAT does not rest on the business. There are “two principal approaches to implementing the staged collection process while relieving businesses of the VAT burden. Under the invoice-credit method, each taxable person charges VAT at the rate specified for each supply and passes to the customer an invoice showing the amount of tax charged. If the customer is also a taxable person, it will be able to credit that input tax against the output tax charged on its sales, each being identified at the transaction level, remitting the balance to the tax authorities or receiving a refund of any excess credits”.<sup>4</sup> “Under the subtraction method, the tax is levied directly on an accounts-based measure of value added, which is determined for each business by subtracting the taxable person’s allowable expenditure on inputs for the tax period from taxable outputs for that period and applying the tax rate to the

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<sup>1</sup> OECD Addressing the Tax Challenges of the Digital Economy, OECD BEPs Project, 2014.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

resulting amount” (Cockfield et al., 2013). Most jurisdictions that operate a VAT use the invoice-credit method, the Japanese system being the most notable example of a subtraction method consumption tax.

VAT exemptions create an important exception to the neutrality of VAT. When a supply is VAT-exempt, this means that no output tax is charged on the supply and that the supplier is not entitled to credit the related input tax. Many VAT systems apply exemptions for activities that are hard to tax.

#### **5.02: VAT on cross-border transaction – The destination principle**

Whether VAT should be charged on the jurisdiction of origin is a fundamental policy issue.

Under the destination principle, no VAT is levied on exports and the associated input tax is refunded to the exporting business (this is often called “free of VAT” or “zero-rated”), while imports are taxed on the same basis and at the same rates as domestic supplies. Accordingly, “the total tax paid in relation to the supply is determined by the rules applicable in the jurisdiction of its consumption and all revenue accrues to the jurisdiction where the supply to the final consumer occurs. The application of the destination principle in VAT thus achieves neutrality in international trade, as there is no advantage in buying from a low or no-tax jurisdiction, nor do high and/or multiple VAT rates distort the level or composition of a country’s exports”.<sup>5</sup>

By contrast, under the origin principle “each jurisdiction would levy VAT on the value created within its own borders. Under an origin-based regime, exporting jurisdictions would tax exports on the same basis and at the same rate as domestic supplies, while importing jurisdictions would give a credit against their own VAT for the hypothetical tax that would have been paid at the importing jurisdiction’s own rate”.<sup>6</sup> This approach runs counter to the core features of a tax on consumption, in which the revenue should

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<sup>5</sup> OECD Addressing the Tax Challenges of the Digital Economy, OECD BEPs Project, 2014.

<sup>6</sup> OECD Addressing the Tax Challenges of the Digital Economy, OECD BEPs Project, 2014.

accrue to the jurisdiction where the final consumption takes place. “Under the origin principle, these revenues are shared amongst jurisdictions where value is added. By imposing tax at the various rates applicable in the jurisdictions where value is added”.<sup>7</sup> The origin principle could influence the economic or geographical structure of the value chain and undermine neutrality in international trade.

Both from a theoretical and practical point of view, it is widely believed that the destination principle, with revenue accruing to the country where final consumption occurs, is preferable to the origin principle. In fact, the “destination principle is the international norms and is sanctioned by the World Trade Organisation (WTO) rules. Footnote 1 of the WTO’s Agreement on Subsidies and Countervailing Measures provides that “the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy.”

#### **5.10: Implementing the destination principle**

It is widely accepted that the core efficacy of VAT stems from the destination principle. Because VAT is generally applied on a transaction-by-transaction basis, VAT systems contain “place of taxation” rules that address all transactions, “building on “proxies” that indicate where the good or service supplied is expected to be used by a business in the production and distribution process (if the supply is made to a business) or consumed (if the supply is made to a final consumer)”.<sup>8</sup>

The following paragraphs provide a concise overview of the mechanisms for identifying the destination of a supply, first looking at supplies of goods and subsequently at supplies of services.

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<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

### **5.11: Implementing the destination principle –Goods**

The term “goods” generally means “tangible property” for VAT purposes. The VAT treatment of supplies of goods normally depends on the location of the goods at the time of the transaction and/or their location as a result of the transaction. “The supply of a good is in principle subject to VAT in the jurisdiction where the good is located at the time of the transaction. When a transaction involves goods being moved from one jurisdiction to another, the exported goods are generally free of VAT in the seller’s jurisdiction (and are freed of any input VAT via successive business’ deductions of input tax), whilst the imports are subject to the same VAT as equivalent domestic goods in the purchaser’s jurisdiction. The VAT on imports is generally collected from the importer at the same time as customs duties, before the goods are released from customs control, although in some jurisdictions collection is postponed until declared on the importer’s next VAT return, allowing deduction of the VAT incurred at importation in the same way as input tax deduction on a domestic supply ensures neutrality and limits distortions in relation to international trade”.<sup>9</sup>

Motivated by the administrative costs of bringing low value imported items into the customs system which often outweighs the revenue gained, many VAT systems give exemptions for the importation of low-value goods. Such a VAT relief arrangement, with thresholds varying widely across countries are seen in OECD countries particularly in EU.

### **5.12: Implementing the destination principle – Services**

The VAT legislation in many countries tends to define a “service” negatively. A “supply of services” is often defined as anything other than a “supply of goods”. While this generally also includes a reference to intangibles, some jurisdictions regard intangibles as a separate category.

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<sup>9</sup> OECD Addressing the Tax Challenges of the Digital Economy, OECD BEPs Project, 2014.



“A wide range of proxies can be used by VAT systems to identify the place of taxation of services, including the place of performance of the service. They can be the place of establishment or actual location of the supplier, the residence or the actual location of the consumer, and the location of tangible property (for services connected with tangible property, such as repair services). Many systems use multiple proxies before the place of taxation is finally determined and may use different rules for inbound, outbound, wholly foreign, and wholly domestic supplies” (Cockfield et al., 2013).<sup>10</sup>

The application of these principles for identifying the place of taxation has become increasingly difficult as volumes of cross-border services are growing. VAT systems have considerable difficulties to determine “where services are deemed to be consumed, to monitor this and to ensure collection of the tax, particularly where businesses sell services in jurisdictions where they do not have a physical presence”.<sup>11</sup> In practice, broadly two approaches can be distinguished for applying VAT to cross-border supplies of services (Ebrill et.al., 2001):<sup>12</sup>

- “The first approach focuses on the jurisdiction where the customer is resident (established, located). Under this approach, when the customer is resident in another jurisdiction than the supplier, the supply is free of VAT (“zero-rated”) in the jurisdiction of the supplier and is subject to VAT in the jurisdiction of the customer. In principle, the supplier needs to register in the customer’s jurisdiction and collect and remit the tax there. In practice, when the customer is a VAT-registered business, the VAT is often collected through a “reverse charge” mechanism. This is a tax mechanism that switches the liability to pay the tax from the supplier to the customer”.<sup>13</sup> The business customer will generally be able to credit the input tax on the acquired service immediately against the output tax liability.

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<sup>10</sup> Cockfield,A. et al.(2013), Taxing Global Digital Commerce, Kluwer Law International BV, the Netherlands.

<sup>11</sup> OECD Taxation Framework.

<sup>12</sup> Ebrill.L.et al. (2001), The Modern VAT, International Monetary Fund, Washington, DC.

<sup>13</sup> Item supra at 9.

- Under the second approach, the supply of the service is “subjected to VAT in the jurisdiction where the supplier is resident (established, located)”.<sup>14</sup> “Supplies of services are then subject to VAT in the supplier’s jurisdiction, even when they are performed abroad or supplied to foreign customers. Customers that are taxable businesses are generally able to apply for a refund of the VAT paid on business inputs in the supplier’s jurisdiction, from the tax authorities of that jurisdiction”.<sup>15</sup>

“For B2B supplies, both approaches have ultimately the same effect, in that “exported” services are relieved from any VAT burden in the origin country and subject to VAT in the jurisdiction where the service is deemed to be used by the business customer. The first approach, which identifies the place of taxation by reference to the location of the customer, is recommended as the main rule for applying VAT to B2B supplies of services by the OECD’s International VAT/GST Guidelines” (OECD, 2014)<sup>16</sup>. It was also the recommended approach for “cross-border supplies of services and intangibles that are capable of delivery from a remote location” under the OECD’s 2003 E-commerce Guidelines (OECD, 2003a)<sup>17</sup>. A key advantage of this approach is that it avoids the need for cross-border refunds of VAT to businesses that have acquired services abroad, which often involve considerable “administrative and compliance burden and costs for tax administrations and businesses”.<sup>18</sup> In practice, however, many VAT systems apply the second approach, taxing services by reference to the location of the supplier, mainly to minimize the risk of fraud through claims of exported services which are typically difficult to verify.

Whereas both approaches lead to “a result that is consistent with the destination principle” in a B2B context, the situation is more complicated for business-to-consumer (B2C) supplies. “Implementing the destination principle by zero-rating cross border

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<sup>14</sup> Item *supra*

<sup>15</sup> Item *supra*

<sup>16</sup> OECD (2014), International VAT/GST Guidelines, OECD, Paris.

<sup>17</sup> OECD (2003a), Consumption Taxation of Cross Border Services and Intangible Property in the context of E-commerce, Guidelines on the Definition of Place of Consumption, OECD, Paris

<sup>18</sup> Item at *supra* 12.

supplies to non-resident final consumers and relying on self-assessment by the consumer in its jurisdiction of residence, is likely to result in widespread non-taxation of these supplies in practice. While reverse charge methods operate relatively well in a B2B context, they are generally viewed as ineffectual for B2C supplies. Such a method would require final consumers to self-assess their VAT liability on services purchased abroad, e.g. through their returns”.<sup>19</sup> The level of voluntary compliance can be expected to be low, “as private consumers have no incentive to voluntarily declare and pay the tax due”, unlike taxable persons who can credit input tax paid against output tax (Lamensch, 2010). Collecting and enforcing this VAT, which may be small amounts in many cases, from large number of consumers. This may involve considerable complexity and costs for tax payers and tax authorities while attempting to collect and enforce VAT from many cases of sale.

Most VAT systems therefore tax supplies of services to private consumers in the “jurisdiction where the supplier is resident (established, located)”. “Many jurisdictions that zero-rate cross-border supplies of services to non-resident customers, limit the application of this regime to B2B supplies, notably by applying it only to services that are typically supplied to businesses (advertising, consultancy, etc.). Supplies to foreign private consumers are then subject to VAT in the supplier’s jurisdiction while services acquired from abroad by resident final consumers are not subject to VAT in the consumer’s jurisdiction. While this approach, which effectively results in origin taxation is likely to be less vulnerable to fraud, it may create an incentive for suppliers to divert their activities to jurisdictions where no or a low VAT is applied and to sell remote services into foreign markets VAT-free or at a low VAT rate. This potential distortion and the associated revenue losses become increasingly significant as volumes of cross-border supplies of services keep growing”.<sup>20</sup>

More and more jurisdictions therefore consider ways to implement a destination based approach for both B2B and B2C cross-border supplies of services, thereby relying on a

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<sup>19</sup> OECD Addressing tax challenges of the Digital Economy, OECD BEPs Project, 2014.

<sup>20</sup> Ibid.

system that would require suppliers to collect and remit the tax in line with what was recommended by the OECD's E-commerce Guidelines (OECD), 2003a).<sup>21</sup> A system that requires suppliers to collect and remit the tax to consumption jurisdiction may appear the only realistic alternative. Countries may consider it necessary (as per OECD E-commerce guidelines) for "non-resident vendors to register and account for the tax in the jurisdiction of consumption, and it recommended the use of simplified registration regimes and registration thresholds" to minimize the potential compliance burden. The most notable application of a destination-based approach for taxing B2C cross-border supplies of services relying on a simplified registration system for non-resident suppliers, is the European Union's "One Stop Shop" scheme.

#### **5.20: Challenges Surrounding E-commerce in the VAT/GST system:**

According to the OECD, "many goods once sold in physical format are now available on-line".<sup>22</sup> The distinguishing line between goods and services are getting blurred and often they come bundled together. How to categorize certain e-commerce transactions in which "the end-product is received on-line (e.g., software, online information services, digitized images, and film and video output) is a challenge". Classification issues are "critical because of the possibility of a different tax impact", in any consumption tax laws such as VAT or Sales Tax.<sup>23</sup> For example, "a product imported into a country as a "good" may be subject to the VAT in supplier's country", rather than withholding taxes or income taxes, as long as the destination country does not have a permanent establishment in the country.<sup>24</sup> An "intangible," however, may be "subject to

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<sup>21</sup> OECD (2003a), Consumption Taxation of Cross Border Services and Intangible Property in the context of E-commerce, Guidelines on the Definition of Place of Consumption, OECD, Paris

<sup>22</sup> See Taxes: OECD Studying Ways to Unify Taxation of Electronic Commerce, Int'l Business & Finance Daily (BNA) (Feb.26, 1998), available in LEXIS, BNA-IBF Database.

<sup>23</sup> See James D. Cigler, Harry C. Burritt, and Susan E. Stinnett, Cyberspace: The final Frontier for International Tax Concepts?, 7 J. Int'l Tax'n 340,341 (1996). See generally Michael J.A. Karlin, Computer Programme Prop. Regs. Are a Good But Cautious Start, 8 J. Int'l 64 (1997) (illustrating how sticky classification issues involving evolving new technologies can be). Karlin examines new IRS Proposed Regulations dealing with the classification of different transactions in software, and finds the Proposed Regs lacking. Id. Karlin contends that, ultimately, certain classifications problems will require a legislative solution, based upon an "international consensus." Id. at 73.

<sup>24</sup> See Cigler, Burritt, and Stinnett.

withholding taxes on its royalty payments, but not subject to the VAT”.<sup>25</sup> Finally, a “service” may not be subject to any taxes at all, “as long as the services are provided by a foreign company and are performed outside the country”.<sup>26</sup>

E-commerce which is essentially non-territorial in nature challenges the long held view that “commercial activities are linked to a particular territory”. The challenge that e-commerce poses to taxation is characterized by the disjoint between “the geographical foundations of modern taxing systems on the one hand and the non-territorial character of e-commerce on the other”. As such cross-border transactions have historically been one of the most problematic areas of taxation. The process of disintermediation brought in by “remote vendors who sell directly to customers in other jurisdictions without the mediation of a wholesale distributor or retail outlet creates multiple interface with states or countries for the first time” by thousands of entities. This will snow ball disputes of both “business tax compliance efforts in multiple new foreign jurisdictions, and nexus and jurisdictional disputes over which states or nations can impose income or transactional taxes on e-commerce vendors”. Inherent difficulties of “verifying the location, identity and residence of a seller or purchaser over the internet” will be starting point for exploring resolution of taxing challenges in E-commerce.

Technological innovations incorporated into commercial activities, “change the products and services themselves, their delivery and how processes underlying the completion of a transaction are performed”. A wide array of products and series offered in “digital format that are both purchased and delivered through this digital connectivity”. “In the absence of a ‘product’ delivery, the relevant authorities may not ever know that a transaction has taken place”.<sup>27</sup> The taxation of such services and intangibles raises complex tax issues and the current tax rules may not be adequate.

#### **5.21: Changing Business Models**

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<sup>25</sup> See Ciglet, Burritt, and Stinnett.

<sup>26</sup> See id.

<sup>27</sup> Korbin J. Stephen (2001) ‘Territoriality and Governance of Cyberspace’, Journal of International Business Studies, Vol. 32, No 4, pp 687-704.

The internet is also causing “a revolution in business models that is creating new and challenging issues for state, federal and international tax systems. The internet is characterized not just by remote selling but also by a range of evolving business models such as online auctions, reverse auctions, virtual communities, infomediaries, aggregators and brokers”. Traditional businesses have also undergone changes. Traditional businesses are becoming direct retailers on on-line retailing. “Conventional intermediaries such as wholesalers and distributors are disappearing or being replaced by new web-based intermediaries”, such as telecommunication companies, internet access providers, certification authorities related to digital signatures. Many traditional forms of intermediation carried out by banks and travel agencies is either changing or disappearing. This development could negatively influence tax compliance as previous reporting sources will no longer be available. In international taxation the lack of intermediaries for the withholding of tax on royalties and certain other payments to foreign persons could be problematic.<sup>28</sup> “These business models are significantly altering the landscape of interactions between suppliers, sellers and buyers, creating many new tax issues. This new business model raises new taxation issues such as the identity of the actual retailer, the sourcing of consumption, the classification of the good or service sold and the relevant sales price upon which the transactional tax would be based. New tax rules incorporating these new business models must also allow adaptability to future business models which emerge”. The problem is not merely one of changing rules that no longer make sense but that e-commerce faces technological constraints. According to Professors Abrams and Doernberg “what may be a sound rule from a tax policy perspective may be totally unworkable in light of available technology. Perhaps the most significant implication of the growth of electronic commerce for tax policy may be that technology rather than policy will determine the tax rules of the 21<sup>st</sup> century”.<sup>29</sup>

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<sup>28</sup> Westberg, Bjorn (2002) Cross-border Taxation of E-Commerce, IBFD p 20.

<sup>29</sup> Abrams, Howard E. and Doernberg, Richard L. (1997) ‘How Electronic Commerce Works, State Tax Notes, Volume: 13, at 136.

Flaming from the changing business models and non-changing rules, the following problems and questions also emerge:

1. “Anonymity of identity and location of parties, anonymity of transactions and accounts, disintermediation, transfer pricing issues, online delivery and digital cash, easy access to tax havens and low tax jurisdictions, identification of taxing jurisdiction, new evasion opportunities, difficulties in recovery of tax and exchange of information are new challenges. The dominant stand seems to be that existing tax rules should be applied in a digital environment. The problems caused by digital delivery and e-commerce are not seen as new problems, but only bigger version of earlier ones.”
2. Classification and characterization of transaction and object of transactions are both a necessity as well as sine qua non of taxation system. Classification is important from the point of view of neutrality. Lack of neutrality may become a serious threat to the legitimacy of tax system.
3. Products in networks are neither goods nor services in a traditional sense. Tax law which is based on the production and distribution of physical products, and not services, hardly accommodate information goods. The question which will dog us will be (a) whether they are different forms of delivery of the same product or different products altogether. According to Pinto, if e-commerce transactions are considered analogous to their mail-order counterparts, it can be argued that the principle of neutrality would require that the same (existing) tax rules should apply in both situations. Tax on E-commerce which is not levied on mail order, will emerge as discrimination. The argument is seriously weakened if e-commerce is not analogous to mail order. However, Pinto argues<sup>30</sup> that with e-commerce, “while the type of challenge in establishing physical presence is the same as in a mail-order business, there are important differences between the two types of transactions, which challenge the validity of the analogy, and therefore the assertion, that existing tax rules that apply to

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<sup>30</sup> Pinto, Dale (2005) ‘Conservative’ And ‘Radical’ Alternatives For Taxing E-Commerce (Part I) Journal of International Taxation.

mail-order transactions should also apply to e-commerce transactions”. First, the lack of a local physical presence in the consumer’s country is more acute for a mail-order vendor as compared with an e-commerce vendor. E-commerce transactions can involve not only the purchase of tangible products, but can also extend to the consumption of intangible goods and services, including for example software, photographs, stock trading and gambling.<sup>31</sup> Finally, the ability to effect payment online differentiates an e-commerce transaction from a mail-order purchase.<sup>32</sup> In the light of the above analysis, it is argued that e-commerce transactions are not completely analogous to mail-order transactions and therefore the case for extending to e-commerce transactions the present rules that apply to mail-order transactions on the ground of neutrality is not compelling.<sup>33</sup>

#### **5.22: Tax Avoidance and Tax Evasion**

“Tax avoidance and tax evasion are important issues when it comes to concerns about tax compliance in relation to e-commerce”.<sup>34</sup> In an e-commerce environment the “possibilities of hiding transactions are vast and the possibilities of identifying parties to a transaction are in many cases virtually non-existent or difficult”. Always problematic, tax avoidance and tax evasion issues are to be contended with by tax authorities. Preference of “certain businesses that choose to locate their corporate headquarters or to conduct their business activities from states that offer low or no tax regulation” is well

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<sup>31</sup> This has implications not only because of the broader range of goods and services that can be traded via e-commerce, but also for tax purposes in terms of the characterization of a transaction, which may become more difficult to ascertain than in a mail-order purchase. Apart from characterization issues arising from the intangible nature of many e-commerce transactions is the determination of a purchaser’s identity and location.

<sup>32</sup> This feature also adds to the speed of e-commerce transactions, reduces the credit risk for vendors, and makes it possible to charge for small amounts, which may be insignificant individually but important in the aggregate. That e-commerce makes it possible to pay anonymously online using electronic cash, rather than by credit card, may create tax administration concerns with no reliable audit trail as evidence for such transactions.

<sup>33</sup> Pinto, Dale (2005) ‘Conservative’ and ‘Radical’ Alternatives For Taxing E-Commerce (Part 1) Journal of International Taxation.

<sup>34</sup> Westberg, Bjorn (2002) Cross-border Taxation of E-Commerce, IBFD p 79.



known. This can often result in non-taxation or tax planning for low taxation. Currently, without appropriate rules, there can be double taxation on E-commerce.

### **5.30: VAT and GST: Implication for Tax Policy and Tax Administration in E-Commerce.**

Despite the evolving nature of E-commerce, the preponderant belief is the “basic contours of taxation are not likely to be changed dramatically”. It is believed that either “composition or the nature of taxation is not likely to change fundamentally”. OECD’s work on consumption taxes, which was firmly based on the Taxation Framework Conditions, expressed similar views. Most relevant emerging conclusions of these conditions are:

- “1. the taxation principles that guide governments in relation to conventional commerce should also guide them in relation to e-commerce. In other words, no new taxes should be introduced exclusively for e-commerce.
2. existing taxation rules must be used to implement these principles.
3. the process of implementing these principles should involve an intensified dialogue with business and with non-member economies.
4. efficiency: compliance costs for taxpayers and administrative costs for the tax authorities should be minimized as far as possible;
5. neutrality, certainty and simplicity: the tax rules should be clear and simple to understand so that taxpayers can anticipate the tax consequences in advance of a transaction. This includes knowing when, where and how the tax is to be accounted. Simplicity often conflicts with other important objectives of tax policy: where this is true, it is necessary to make trade-offs between simplicity and other objectives”. This essentially, means countries are likely to tax new digital supplies in the same way as traditional commerce is taxed. McLure<sup>35</sup>

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<sup>35</sup> McLure, Charles E Jr (1997) ‘Taxation of Electronic Commerce: Economic Objectives, Technological Constraints, and Tax Laws’, Tax Law Review, Symposium on Taxation and Electronic Commerce.

identified the principles which should guide deliberations in this area of tax policy as follows:

- (1) “First, it is important to avoid distorting choices of how to satisfy a given need. Taxation rates should not differ depending on the technology and commercial channels used to satisfy needs. It should treat all commerce equally. It should not distinguish between types of products (tangible, intangible or services) of income thereon.
- (2) Second, it is important not to distort the choice of technology used to provide particular intangible products and services.
- (3) Third, taxation should not affect the choices of whether and how to ‘bundle’ various goods and services for the purposes of pricing. This means that there should be neutrality towards bundling.
- (4) Fourth, taxation should not distort location decisions or trade between jurisdictions and should neither favour nor penalize local producers and distributors”.

The principal objective in designing taxation for e-commerce would be to achieve neutrality. “Neutrality avoids distortion in choices involving consumption, production, location or methods of finance”.<sup>36</sup> Neutrality would be especially important in the taxation of e-commerce, because of the “(ease) with which transactions can be diverted in response to differential taxation, for example, to seemingly different products that satisfy the same underlying needs, to quite similar products that are delivered through different distribution channels or to sources located elsewhere. How to achieve economic neutrality in VAT and sales tax involving cross-border sales? An economically neutral sales tax would apply at a single rate to all consumption occurring within a given jurisdiction but not to business purchases or to export”.<sup>37</sup> This would be true whether a given product is tangible or intangible or a service and whether it is produced domestically or imported. In principle, “VAT produces this

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<sup>36</sup> Slemrod, Joel (1990) Optimal Taxation and Optimal Tax Systems, 4 J. Econ. Persp. 157.

<sup>37</sup> Due, John F. And Mikesell, John L (1994) Sales Taxation: State and Local Structure and Administration 1-4 (2d ed.) p 49.

result automatically, since both imports and domestically produced products are subject to tax, exports are zero-rated, and business taxpayers are allowed a credit against tax liability on sales for VAT paid on purchases”. The EU Commission amended the VAT Directive by which “EU suppliers would not be required to charge VAT on online transactions involving non-EU customers so that competitive neutrality with respect to EU exports to non-EU countries is achieved and VAT treatment of non-EU suppliers with EU taxable persons would be taxed at the location of the EU customer following a destination based taxation”.<sup>38</sup>

The growth of e-commerce has been “accompanied by the creation of a small number of brands which have become global leaders in the marketing and distribution of their products through the internet. Strong mergers and acquisitions by ebay and Amazon.com indicate that internet companies using their high market values to eliminate their competitors and to take over other companies with high market shares”.<sup>39</sup> The research by Jupiter Communications, which indicated that the growth in e-commerce would be at the expense of traditional sales and this will be of concern for traditional businesses. Jupiter found that only 6 per cent of B2C internet sales in 1999 were incremental sales. This data indicated that 94 per cent of internet sales were sales that traditional retailers would have expected to make”.<sup>40</sup>

The threat to world wide tax base posed by E-Commerce and thereby to economic balances, economic efficiency and competitive fairness among vendors has been a challenge. But ability to remain under the radar will lead to tax avoidance and evasion and migration of taxable income to low tax jurisdictions. It further gets exacerbated by the choice of location of economic activity because of the ease of offshore establishment. The table below will show the mobility of tax base. When the shift in consumption patterns moves towards greater consumption of services and less consumption of goods, the tax base shrinks relative to the economy as services become

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<sup>38</sup> As discussed in Chapter 8 EU suppliers would not be required to charge VAT on online transactions involving non-EU customers so that competitive neutrality with respect to EU exports to the US is achieved.

<sup>39</sup> Subhajit Basu

<sup>40</sup> Subhajit Basu: Global Perspective on E-Commerce Taxation Law, A shgate,2006

more prominent. This is because services are much less broadly taxed than goods. Remote sale of services to the consumers and exemptions for import of low valued goods create challenges of tax collection.

#### Qualitative Summary of Mobility of Tax Base<sup>41</sup>

Tax Base Item	Mobility in 1970	Mobility in 2000	Mobility in 2030
Consumption of goods	Low	Moderate	Moderate
Consumption of services	Low	Low	Moderate

Services are much less broadly taxed than goods, meaning the base shrinks relative to the economy as services become more prominent. The revenue losses from e-commerce generally arise because e-commerce significantly expanded the potential for remote sales causing a shift from collecting sales tax at the point of sale to collecting analogous use taxes for goods used, consumed or stored in the state of consumption. Compliance rates are much better for sales taxes than for use taxes.

Compared to sales tax destination-based taxation like VAT or GST is “much less likely to distort the location of economic activity than origin-based taxation. Second, taxation of consumption is probably a better proxy for the benefit of public services than taxation of production”<sup>42</sup> though destination based registration may impose huge compliance burden. But to facilitate the process of destination-based registration, as Doernberg and Hinnekens argue,<sup>43</sup> “real-time online systems should be provided whereby the non-resident vendor could check the validity of purchasers’ VAT registration numbers”. Substantial “international cooperation is also required to avoid

<sup>41</sup> Ibid.

<sup>42</sup> Defenders of destination-based taxation argue that the principle is essential to the purpose of taxing consumption. An origin principle, they say, would ‘conceptually’ transform a consumption tax into a tax on production.

<sup>43</sup> Doernberg, Richard L. and Hinnekens, Luc (1999) *Electronic Commerce and International Taxation* (The Hague: Kluwer Law International).

implementation of mutually inconsistent tax policies – potentially giving rise to double or no taxation of trade flows and to provide for the mutual enforcement of tax debts”.<sup>44</sup>

### **Digital Economy and VAT**

1. The digital economy is increasingly becoming the economy itself, it would be difficult if not impossible to ring-fence the digital economy from the rest of the economy for tax purposes. “The digital economy and its business models present some key features which are potentially relevant from a tax perspective. These features include mobility (with respect to intangibles, users and business functions), reliance on data, network effects, the spread of multi-sided business models, tendency towards monopoly or oligopoly and volatility due to lower barriers to entry into markets and rapidly evolving technology”.<sup>45</sup>
2. The importance of intangible in the context of the digital economy, combined with the mobility of intangibles for tax purposes under existing tax rules, generate substantial BEPS (Base Erosion and Profit Shifting) opportunities. Further, “the ability to centralize infrastructure at a distance from a market jurisdiction and conduct substantial sales of goods and services into that market from a remote location, combined with increasing ability to conduct substantial activity with minimal use of personnel, generates potential opportunities to achieve BEPS by fragmenting physical operations to avoid taxation”.<sup>46</sup> Some of the key characteristics of the digital economy also exacerbate risks of BEPS in the context of indirect taxation, in particular in relation to businesses that perform value added tax (VAT) exempt activities (exempt businesses).

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<sup>44</sup> Ligthart, Jenny E. (2004) ‘Consumption Taxation in a Digital World: A Primer’ (September) CentER Discussion Paper No. 2004-102. Available at SSRN: <http://ssrn.com/abstract=625044>.

<sup>45</sup> OECD Taxation Framework Conditions.

<sup>46</sup> OECD, Taxation Framework conditions.

3. Since businesses can acquire “a wide range of services and intangibles from suppliers in other jurisdiction around the world and structure their operation”,<sup>47</sup> particularly under digital economy, “exempt businesses can aggressively plan to avoid or minimize the amount of unrecoverable VAT they incur in the inputs for exempt activities”.<sup>48</sup> OECD guidelines 2 & 4 for VAT/GST on the place of taxation for B2B supplies of services and intangible may “minimize the BEPs opportunity for the exempt businesses which operate through establishments in multiple jurisdictions. But opportunities for tax planning by businesses engaged in VAT exempt activities”<sup>49</sup> cannot be wished away. Opportunities for double non-taxation exist when there is lack of nexus in the destination country and lack of taxation in the source country.
4. When goods, services and intangibles are acquired by private consumers from suppliers abroad, challenges to VAT collection. “The absence of an international standard for charging, collecting and remitting the tax to a potentially large number of tax authorities creates large revenue risks and high compliance costs. For governments, there is a risk of loss of revenue and trade distortion, and the challenge of managing tax liabilities generated by a high volume of low transactions, which can create a significant administrative burden but marginal revenues”.<sup>50</sup>

OECD’s Guideline 2 and 4 may help reducing opportunities.

Guideline 2 of OECD recommends that “the taxing rights on cross-border supplies of services and intangibles between businesses be allocated to the jurisdiction where the customer has located its business establishment and that business customers be required

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<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid

<sup>50</sup> OECD, Taxation Framework conditions.

to self-assess VAT on remotely delivered services of intangibles acquired from offshore suppliers according to the rules of the jurisdiction in which they are located”.<sup>51</sup>

Guideline 4 provides that “when a supply is made to a business that is established in more than one jurisdiction, taxation should accrue to the jurisdiction where the customer’s establishment (branch) using the service or intangible is located”.<sup>52</sup> These Guidelines set out the possible mechanisms for tax authorities to achieve the desired result in practice, which is “allocation of the right to levy VAT on B2B services and intangibles to the jurisdiction where these services are used for business purposes irrespective of how the supply and acquisition of these services and intangibles were structured”.<sup>53</sup>

#### **5.31: Remote digital supplies to exempt businesses**

While self assessment for B2B supplies of offshore sources is a norm BEPS concerns in a VAT context could arise with respect to offshore digital supplies made to an exempt businesses. “Where a business is engaged in VAT-exempt activities, no VAT is levied on the exempt supplies made by the business, and VAT incurred by the business on the associated inputs is not deductible. Exempt business are often not required to self-assess VAT on the services and intangible acquired from abroad as no VAT is levied on the transaction. BEPS concerns also arise if the data processing services would be subject to VAT in the jurisdiction where the supplier is resident (established, located)”.<sup>54</sup> When the jurisdiction has no VAT or a VAT rate lower than the rate in the jurisdiction of the exempt business customer, the loss of revenue can be palpable.

Resultantly, “domestic suppliers of competing services could face potential competitive pressures from non-resident suppliers. Domestic suppliers are required to collect and remit VAT on their supplies or services and intangible while the non-resident supplier,

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<sup>51</sup> OECD, Taxation Framework conditions

<sup>52</sup> Guidelines for VAT/GST, OECD.

<sup>53</sup> Ibid.

<sup>54</sup> OECD Addressing Tax challenges of the Digital Economy, OECD BEPs Project, 2014.

depending on the scenario, could structure to affairs so that it collects and remits no or an inappropriately low amount of tax. An incentive could arise for domestic suppliers to restructure their affairs so that their supplies of services and intangibles are made from an offshore location, which could allow them to make the supplies with no or an inappropriately low amount of VAT. Such relocations by domestic business are likely to have a negative impact on domestic employment and direct tax revenues”.<sup>55</sup>

While vendor collection mechanism after mandatory registration suggested by OECD’s 2003 E-commerce guidelines and European Union’s experience shows that it is the most viable option today, collection through the third party intermediaries only may improve compliance by non-resident suppliers.

### **5.32: Remote digital supplies to a multi-location enterprise**

BEPS concerns could also arise in cases where a digital supply is acquired by an MLE. “It is common practice for multinational businesses to arrange for a wide scope of services to be acquired centrally to realize economies of scale. Typically, the cost of acquiring such a service or intangible is initially borne by the establishment that has acquired it and, in line with normal business practice, is subsequently recharged to the establishments using the service or intangible. The establishments are charged for their share of the service or intangible on the basis of the internal recharge arrangements, in accordance with corporate tax, accounting and other regulatory requirements. However, many VAT jurisdictions do not currently apply VAT to transactions that occur between establishments of one single legal entity”.<sup>56</sup>

This means that “where an establishment of an MLE acquires a service, for instance data processing services, for use by other establishments in other jurisdictions, no additional VAT would apply on any internal cost allocations or recharges made within the MLE for the use of these services by other establishments. On the other hand, the

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<sup>55</sup> OECD Addressing Tax challenges of the Digital Economy, OECD BEPs Project, 2014.

<sup>56</sup> Ibid.



establishment that acquired the service will be generally entitled to recover any input VAT on the acquisition of these services if it is a taxable business”.<sup>57</sup> This means the other establishments using the data processing services are able to acquire their portion of these services without incurring any VAT. This is generally not a great concern from a VAT perspective if all of the establishments of the MLE using the service are taxable businesses. This is because in this case they have a right to recover any input VAT. While it would not be a great concern if all units of MLE using the services are taxable entities if the establishments (units) using the data processing services are exempt businesses, they are not normally entitled to recover VAT paid on their inputs.

Take for example processing of data relating to banking transactions: if an establishment of a multinational bank would acquire such services directly from a local supplier, it would generally incur input VAT on these services; it would not be able to deduct this input VAT as it relates to VAT-exempt activities. Alternatively, this establishment of a multinational bank could acquire these processing services through another establishment of the same bank in another country and then reimburse this other establishment for the cost of acquiring these services on its behalf. This would allow the establishment of this bank to acquire the processing services without incurring any VAT in the jurisdiction where it is located, as no VAT is levied on the dealings between establishments of the same legal entity. If the acquiring establishment would be located in a country without a VAT, the multinational bank could acquire these services for all its establishments around the world without incurring any input VAT at all by channeling its acquisitions through its establishment in a no VAT jurisdiction. VAT-exempt businesses can make substantial VAT savings by using such channeling structure.

### **5.33: Exemptions on Low Value Goods:**

Many VAT jurisdictions apply an “exemption from VAT for imports of low value goods as the administrative costs associated with collecting the VAT on the goods is

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<sup>57</sup> OECD Addressing Tax challenges of the Digital Economy, OECD BEPs Project, 2014.

likely to outweigh the VAT that would be paid on those goods. The value at which the exemption threshold is set varies considerably from country to country but regardless of the threshold value, many VAT countries have seen a significant growth in the volume of low value imports on which VAT is not collected”.<sup>58</sup>

Challenges arise from the ability of businesses to deliberately structure their affairs to take advantage of a country’s low value thresholds and sell goods to consumers without the payment of VAT. For example, a domestic business selling low value goods online to consumers in its jurisdiction would be required to collect and remit that jurisdiction’s VAT on its sales. The business could restructure its affairs so that the low value goods are instead shipped to its consumers from an offshore jurisdiction and therefore qualify under that VAT jurisdiction’s exemption for low value importations. Similarly, a business starting up could structure its operations to deliberately take advantage of the low value exemption and locate offshore rather than in the jurisdiction in which its customers are located.

The exemptions for low value imports have therefore become increasingly controversial in the context of the growing digital economy. The difficulty lies in finding the balance between the need for appropriate revenue protection and avoidance of distortions of competitions, which tend to favour a lower threshold and the need to keep the cost of collection proportionate to the relatively small level of VAT collected, which favours a higher threshold.

Governments would be in a position to lower these thresholds provided there is improvement in the efficiency of process involved. This be achieved by requiring non-resident vendors of low value parcels to charge, collect and remit the tax on the imports of these goods in the importing jurisdiction.

#### **5.34: Administrative challenges in the digital economy**

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<sup>58</sup> OECD, Addressing the Tax Challenges of the Digital Economy, OECD BEPs Project, 2014.

The borderless nature of digital economy produces specific administrative issues around identification of businesses, determination of the extent of activities, information collection and verification, and identification of customers.

### **5.35: Place of consumption**

Taxation Framework Conditions of OECD postulates that “consumption tax rules for cross border electronic commerce should result in taxation in the jurisdiction where consumption takes place”.<sup>59</sup> Tax at the place of consumption is more neutral between conventional and electronic commerce and creates a level playing field.

In contrast to cross-border supply of goods where the place of consumption is the recipient’s address for delivery, there is difficulty where products/services are digitally downloaded and electronically delivered via internet as there is no physical delivery address for the supplier to rely on.

In case of services, for tangible services “such as service relating to land and building (estate agents, hotel accommodation and architects), transport and services relating to physical performance”,<sup>60</sup> place of consumption can be easily identified. On the contrary for intangible service delivery “such as consultancy, accountancy, legal and other ‘intellectual’ services, transfer of copy right, data processing”,<sup>61</sup> place of consumption can be uncertain and pose a problem for arriving at place of consumption.

If we follow a pure definition of ‘Place of Consumption’, intangible services will be consumed in a place where the customer really consumes or uses the services. However, global nature of e-commerce plus the mobility of present day communication, this pure consumption test may be called in question. Pure consumption test may result in significant compliance burden on the vendors. Technology TAG of OECD, however,

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<sup>59</sup> OECD Addressing Tax challenges of the Digital Economy, OECD BEPs Project, 2014.

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

encouraged Governments to remain open to possible shift towards actual place of consumption.

### **Business to Business transaction:**

For B2B transactions, the working party of OECD after reviewing alternatives such as place of contract, location of supplier's profit generating operations, location of supplier's and the recipient's business, concluded that "the location of 'business presence of the recipient would be an establishment to which supply is made. Where there is a choice of locations, such as headquarters in one country and a branch in another, the business presence should be considered as the establishment (for example, headquarters, registered office or branch of the business) of the recipient to which the supply is made".<sup>62</sup> Another approach is "when tax services are performed in more than one place the location of the supplier will be deemed place of taxation".<sup>63</sup> In certain circumstances, revenue authorities may use a different criterion to determine the actual place of consumption to ensure that the business structure or the mobility of communications is not used to avoid taxes by routing services through temporary establishments in non-tax or low-tax jurisdictions.

### **Business-to-consumer transactions:**

"When ordering online, consumers use electronic mail for communicating with the seller but email addresses do not provide enough information about the real, physical residence of its user".<sup>64</sup> However, this problem can be contended with by promising it on place of usual residence. This can be arrived at by either use of credit card, or digital certificate.

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<sup>62</sup> OECD, Addressing the Tax Challenges of the Digital Economy, OECD BEPs Project, 2014.

<sup>63</sup> Ibid.

<sup>64</sup> Working Paper – 1998, at pp.7, 14: Eriksen and Hulsebos (2000) at p. 139; Jenkins (2001) at p.4.

#### **5.40: European Union VAT Law**

The objectives of EU VAT framework is to “attain[ing] the objectives of a common market and to work towards removal of obstacles to the free movement of goods and services between Member States for being a common market”.<sup>65</sup>

The EU VAT model is a harmonized VAT system. Based on the ‘net VAT’ method whereby “tax is added at each stage of the supply chain”<sup>66</sup> and the VAT is determined “on each transaction, based on the net amount of the transaction [and] taking into account the tax incurred on the prior transaction, for which deduction is allowed”.<sup>67</sup>

The EU VAT system typically operated on the ‘destination principle’ for the purpose of imposing VAT, however, for “[t]he realization of the single market abolition of controls at the fiscal frontiers” took place.<sup>68</sup> The ‘transitional VAT system’ was adopted as a transitional regime until a ‘definitive VAT system’ could be devised and agreed upon. The ‘transitional arrangement’ is essentially an origin-destination hybrid system. “Thus, sales to individual community residents would be taxed in the supplier’s country at the applicable VAT rate within the supplier’s country, even if the consumer was located in another EU Member State. Intra-community B2B sales, however, would be taxed in terms of the ‘destination principle’; that is, taxable in the consumer’s country. Furthermore, goods imported from non-EU Member States would also be subject to VAT in terms of the ‘destination principle’”.<sup>69</sup>

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<sup>65</sup> European Commission Taxation & Customs Union, VAT Directive 2 (01.01.2010) eLearning Course (Course on the VAT Directive), Available at [http://ec.europa/taxation\\_customs/common/elarning/vat/index\\_en.htm](http://ec.europa/taxation_customs/common/elarning/vat/index_en.htm) [Accessed 13/12/2010].

<sup>66</sup> Ioc cit European Commission Taxation & Customs Union VAT Directive 2 (01.01.2010) eLearning Course (Course on the VAT Directive). Available at [http://ec.europa.eu/taxation\\_customs/common/elarning/vat/index\\_en.htm](http://ec.europa.eu/taxation_customs/common/elarning/vat/index_en.htm) [Accessed 13/12/2010].

<sup>67</sup> *supra*

<sup>68</sup> European Commission Taxation and Customs Union VAT: VAT and the Single Market -1993 to now. Available at [http://ec.europa.eu/taxation\\_customs/taxation/vat/how\\_vat\\_works/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/index_en.htm) [Accessed 31/05/2011].

<sup>69</sup> Bardopolous Anne Michele, E-commerce and the effects of technology in Taxation, Law, Governance & Technology Series 22,2015.

For supply of services the Council Directive 2008/8/EC amended the VAT Directive<sup>70</sup> with an effective date of 1 January 2010. The Council Directive 2008/8/EC introduced two general rules<sup>71</sup> as follows:

- (i) *The destination principle: “For supply of services to taxable persons already identified for VAT purposes the general principle is that the place of supply is where the customer’s business is established.”<sup>72</sup> The origin principle: “For supply of services to non-taxable persons the general principle is that the place of supply is where the supplier’s business is established.”<sup>73</sup>*

The destination principle and, therefore, the ‘reverse charge mechanism’, may only be applied in terms of B2B transactions. With regard to intra-community acquisition of goods, the place of supply is “*where dispatch or transport of the goods to the buyer ends*”<sup>74</sup>

#### **5.41: Taxable Transactions**

Taxable transactions can be supply of goods and services, imports and “intra-community” acquisition of goods. ‘supply of goods’, ‘supply of services’ and ‘intra-Community acquisitions of goods’, where the transactions must, subject to exceptions, be for ‘consideration’ by a ‘taxable person’. ‘Consideration’, is the price paid in regard to the transaction and it is important to note that the ‘consideration’ is not limited to monetary currency. ‘Consideration’ may also take a non-monetary form, for example, a

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<sup>70</sup> Directive 2006/112/EC.

<sup>71</sup> The two general rules have already been incorporated into Member States legislation as noted in, 18.1.2. The United Kingdom’, Part IV [p188] and the other EU countries, 18.1.4., Part V, examined in this paper [p.195].

<sup>72</sup> Loc cit European Commission Taxation & Customs Union. VAT Directive 2(01.01.2010) eLearning Course (course on the VAT Directive), [http://ec.europa.eu/taxation\\_customs/common/elearning/vat/index\\_en.htm](http://ec.europa.eu/taxation_customs/common/elearning/vat/index_en.htm).

<sup>73</sup> Supra.

<sup>74</sup> European Commission Taxation & Customs Union. VAT Directive 2 (01.01.2010) eLearning Course (Course on the VAT Directive), [http://ec.europa.eu/taxation\\_customs/common/elearning/vat/index\\_en.htm](http://ec.europa.eu/taxation_customs/common/elearning/vat/index_en.htm).

barter transaction.<sup>75</sup> ‘Consideration’ has been highlighted as an important aspect in regard to the supply of services in eCommerce. There must be a direct link between the consideration and supply of services.

In order to qualify as a ‘taxable person’ the above three criteria of carrying on economic activity, independently and regularly must be satisfied regardless of “the purpose of results of that activity.”<sup>76</sup>

### **The EU VAT model and Electronic Services**

The EU Regulation 1777/2005 defines ‘electronically supplied services’ as follows:

*“ ... include services which are delivered over the Internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and in the absence of information technology is impossible to ensure”.*<sup>77</sup>

It is, nevertheless, crucial to appreciate that the various types of software may entail various degrees of ‘human intervention’ and *“It is the degree of human intervention that is decisive for the classification of”*<sup>78</sup> electronically supplied services.

“The EU has shifted the place of supply rules from an origin/destination based principle to the ‘destination based principle’ which is in accordance with the OECD Ottawa Taxation Framework”.<sup>79</sup> Further changes are expected, in *place of supply rules* in respect of electronically supplied services and distance sales”.<sup>80</sup> Tax is payable in the

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<sup>75</sup> Loc cit European Commission Taxation & Customs Union. VAT Directive 2 (01.01.2010) eLearning Course (course on the VAT Directive), [http://ec.europa.eu/taxation\\_customs/common/elearning/vat/index\\_en.htm](http://ec.europa.eu/taxation_customs/common/elearning/vat/index_en.htm).

<sup>76</sup> Article 9(1) of the VAT Directive 2006/112/EC

<sup>77</sup> Article 11(1) of the EU Council Regulation (EC) No.1777/2005

<sup>78</sup> Supra.

<sup>79</sup> Idem, p189 & 255

<sup>80</sup> Bardopolous Anne Michele Bardopolous, E-commerce and the effects of technology on taxation; Springer, 2015.

jurisdiction in which the customer ‘usually resides’. The EU has implemented a “one-stop-scheme” to facilitate taxable suppliers as a result of the of supply rule changes.

“The “one-stop scheme” allows the non-EU established supplier to register in one EU jurisdiction of his choice in regard to taxable supplies occurring through the EU. The non-EU established supplier will, nevertheless, be required to levy VAT on electronically supplied services at the VAT rate applicable in the ‘destination’ jurisdiction”.<sup>81</sup>

Effective from January 1, 2015, new rules for place of supply of “B2C electronic services are now subject to tax where the customer is established or resident. This requires the Foreign Service providers to register and pay VAT in the EU member state of the consumer”.

### **EU’s VAT proposal for Electronic Commerce**

In addition, software manufacturers are also required to “devise a method to keep track of e-commerce sales. Banks would then process the transactions, withhold taxes from the sales, and pass the proceeds onto the appropriate government. Banks could offer such a service for fee to clients, and national governments would help banks defray part of the collection costs”.<sup>82</sup>

### **Role of Banks**

Banks play a pre-eminent role in the plan. They would “collect and disburse e-commerce tax revenues to the appropriate governments”<sup>83</sup>. But there could be conflict of interest of banks “as banks would be motivated by the desire to increase the volume of e-commerce transactions processed (to garner greater fees from taxes collected) and also are vested with the responsibility of allocating tax funds. The danger lies in the

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<sup>81</sup> Bardopolous Anne Nichele Bordopoulous, *E0Commerce and the effects of technology on taxation*, Springer, 2015.

<sup>82</sup> See Schenker, *supra* note 101.

<sup>83</sup> Chan clayton W, *Taxation of Global E-commerce on the Internet: The underlying Issues and Proposed Plans*, 2003.



potential for fraud and abuse in the handling and disbursement of tax revenues by banks”.<sup>84</sup>

EU is adapting to the desired objective of both destination based VAT and tax neutrality.

## **ANALYSIS OF VAT REGIME AND THEIR LOOPHOLES IN 5 COUNTRIES**

### **5.50: BRAZIL**

Brazil has a state VAT system. The State VAT (ICMS) “(Imposto Sobre Circulacao de Mercadorias e Servicos)” is levied by the individual states in Brazil. It is an origin based consumption tax. “The states set the level of taxation, but the Brazilian federal government may set the minimum rate. ICMS applies to the following transactions carried out in Brazil, even if the transaction begins abroad: The circulation of goods, the importation of goods, the supply of transportation between states and between municipalities, the supply of communication services and supply of electricity”.

Exports of manufactured goods and raw materials are exempt from ICMS.

#### **Who is liable?**

**ICMS taxpayer:** “An ICMS taxpayer is any person or legal entity that, on a regular basis, undertakes the shipment or importation of goods, or supplies communication and interstate and inter-municipal transport services”.<sup>85</sup> No turnover threshold applies. Any person or entity that intends to supply goods or services subject to ICMS must register in the roll of ICMS taxpayers’ before beginning activities.

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<sup>84</sup> Chan clayton W, Taxation of Global E-commerce on the Internet: The underlying Issues and Proposed Plans,2003.

<sup>85</sup> Earnest & Young, Worldwide VAT/GST & Sales Tax Guide. EY 2015.

**Non-established businesses:** “A “non-established business” is a business that has no fixed establishment in Brazil. A non-established business is not permitted to register for VAT in Brazil. Only entities that are established under Brazilian law may become taxpayers for the purposes of ICMS”.<sup>86</sup>

**Reverse charge.** “Reverse charge types of mechanism are present on imports of goods. The importer self-assesses ICMS and takes the same amount as credit to be offset with future outputs of the products”.<sup>87</sup>

**Digital economy:** Electronic sales fall into the regular indirect tax rule set. Sales are deemed to “happen in the city/state where the seller is located and VAT is to be assessed and collected in that state”.<sup>88</sup>

### **Recovery of VAT by taxable persons**

“An ICMS taxpayer may recover input tax (that is, obtain a credit) for VAT charged on goods and services supplied to it that are subject to another taxable transaction. An ICMS taxpayer generally recovers input tax by deducting it from output tax, which is VAT charged on supplies made. ICMS may not be recovered before a taxpayer begins making taxable supplies. A valid VAT invoice or customs document must generally accompany a claim for input tax”.

“No ICMS tax may be claimed before a business registers for ICMS. However, a business may register for ICMS as soon as it intends to carry out taxable activities. Input tax deduction is not granted until taxable activities begin. Before making taxable supplies, the taxpayer must record purchase invoices as a “Deferred Asset” account. After taxable supplies begin, the deferred ICMS may be recovered. No time limit applies to the period between registration and the beginning of an activity”.<sup>89</sup>

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<sup>86</sup> Earnest & Young, Worldwide VAT/GST & Sales Tax Guide. EY 2015.

<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

## Invoicing

**“VAT invoices and credit notes.** An ICMS, taxpayer must generally provide a VAT invoice for all taxable supplies made, including exports. A VAT invoice is necessary to support a claim for input tax deduction for ICMS and IPI. Effective June 2013, companies must specify on invoices and receipts the taxes charged that are part of the total amount of the product sale price”.<sup>90</sup>

**Foreign-currency invoices.** “All VAT invoices must be issued in Brazilian reals (BRL)”.<sup>91</sup>

## Loopholes

1. It is mostly an origin based tax, though some features of mixed origin and destination based are available. It is a sort of indirect consumption based taxed system. Exports of manufactured goods and raw materials are tax exempt, though an origin based system.
2. Brazil has not implemented a national VAT system. Like USA each state implements its own indirect tax legislation and compliance rules. Various rates prevail in different states ranging from 7% to 25%. Many intra and inter-state rates prevail. Brazil does not have registration threshold and any person making taxable supplies is required to register for VAT regardless of turnover.
3. Non-resident suppliers may be required to register for VAT when the importation and exportation of goods to and from Brazil and when the place of supply of goods is in Brazil. However, a non-resident is required to form a permanent establishment in Brazil for registration purposes.
4. Consumption states often lose revenue.
5. Tax exports and exempts imports.

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<sup>90</sup> Earnest & Young Worldwide VAT/GST & Sales Tax Guide, EY 2015.

<sup>91</sup> Ibid.

6. Fiscal wars because of loss of revenue and tax competition.
7. Restricts to goods and only transportation and communication services. Hence it has a narrow base.
8. Distortion in allocation of resources; allocation based on tax costs, not on factors of production.

## **5.51: INDIA**

### **Scope of the tax**

Essentially covers goods only. VAT “applies to the following transactions: The sale of goods within the state, which for this purpose includes the transfer of a right to use goods (a lease), The transfer of goods during the execution of works contracts involving the supply of materials and services, The purchase of goods from non-registered vendors in specified situations, The delivery of goods with respect to hire-purchase or any system of payment by instalments, The supply of food or any other article for human consumption or any drink as part of a service or in any other manner”.<sup>92</sup>

**CST (Central Sales Tax)** “CST applies to the interstate sale of goods, that is, to the movement of goods from one state to another, pursuant to a sale. The Central Government collects it and gives it to the destination state”<sup>93</sup>.

**Service tax:** “Service tax is applicable on the supply of services provided in a taxable territory. A service is defined as any activity carried out by a person for another for a consideration. Service tax law sets out a negative list of activities that are not subject to service tax. In addition, notifications provide for service tax exemption for specified activities. Law also declares certain activities to be services. This tax is collected by the Federal Government and retained by the Federal Government. Several services

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<sup>92</sup> Earnest & Young Worldwide VAT/GST & Sales Tax Guide, EY 2015.

<sup>93</sup> Ibid.

numbering 17 have been excluded from the definition of service and are part of the negative list and the mega-exemption notification (46 services)”.<sup>94</sup>

**Proposed goods and services tax.** “The Central Government of India has proposed the introduction of a new goods and services tax (GST). The GST is intended to subsume most of the central and state level indirect taxes currently in force such as current VAT, excise duty and service tax. It is proposed that the new tax would be a “dual” GST”, consisting of Central GST (CGST) and state GST (SGST). The new tax would have a far reaching impact on all sectors of the economy. The current proposed date for introduction of a GST is April 2016. This is proposed to be a destination based consumption tax”.<sup>95</sup>

### **Who is liable?**

“All sellers with a turnover in excess of the registration threshold are liable to register for VAT. In most states, the threshold is INR500,000 of sales. The registration threshold is nil or very low for sellers who import goods into a state”.<sup>96</sup>

**CST:** “Every person that sells goods to a buyer outside the state is required to be registered and pay CST. No turnover threshold applies”.<sup>97</sup>

**Service tax:** “Every person that provides taxable services in excess of the turnover threshold is required to pay service tax. The service tax turnover threshold is INR1 million for discharge of tax. For a few specified activities, the service receiver is liable to deposit the service tax irrespective of the turnover. Also, for a few specified activities, the liability to discharge the service tax is shared between the service provider and the service receiver”.<sup>98</sup>

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<sup>94</sup> Earnest & Young Worldwide VAT/GST & Sales Tax Guide, EY 2015.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid.

<sup>97</sup> Ibid.

<sup>98</sup> Ibid.

**Registration procedures:** Procedures have been prescribed to obtain registration under respective statutes. Relevant department authorities, after review of the application and documents submitted, grant the registration certificate to the dealers.

**Voluntary registration:** “An entity may register voluntarily for CST, excise duty and service tax. Voluntary registration is also available under most states’ VAT laws”.<sup>99</sup>

## **Rates**

**Examples of exempt goods:** “Fruits and vegetables, Agricultural implements, Books”.<sup>100</sup>

**Examples of goods taxable at the 1% rate:** “Gold, Silver, Other precious metals and articles made of such metals”.<sup>101</sup>

## **Availability of credit for registered persons**

**Creditable goods and services:** “In most states, input tax credit is allowed for VAT paid with respect to goods acquired for resale or for use in the manufacturing of taxable goods. Credit is obtained by offsetting the tax paid against VAT charged on sales (output tax). A valid tax invoice must generally be retained to support claims for input tax credits”.<sup>102</sup>

“Exports from India are zero-rated. The exporter has a full right of input tax credit for tax paid on the purchase of the exported goods and on goods used to manufacture exported goods”.

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<sup>99</sup> Earnest & Young Worldwide VAT/GST & Sales Tax Guide, EY 2015.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid.

“Service tax paid on input services are available as a credit to a service provider and/or manufacturer of goods. Exports of services and goods are zero-rated. Service providers and manufacturers of goods are allowed a refund of the service tax and excise duty paid on inputs related to exported services. The pool of excise duty on input goods and service tax on input services is commonly referred to together as CENVAT”.<sup>103</sup>

### Loopholes

1. It is a origin based taxation
2. Complex: varying tax rates, taxable events, taxable base and compliance procedure. VAT in India is a state level VAT.
3. Huge tax cascading effects because other taxes such as entry tax, octroi, luxury tax are leviable.
4. Taxes get collected as service tax or goods tax at varying rates. B2B transaction gets collected as service tax. Digital content, services and intangibles are collected as service tax.
5. Goods tax goes to the state and service tax goes to the Federal Government.

## **5.52: SOUTH KOREA**

### **Scope of the tax**

“VAT applies to the following transactions: The supply of goods and services by a taxable person, Reverse-charge services received by an exempt business person in Korea, The importation of goods, regardless of the status of the importer”.<sup>104</sup>

“Taxable supplies of services include the rendering of services, the leasing of goods or facilities and the granting of rights under a contract or by law. A deemed self-supply of services takes place if traders provide services for their own businesses. However, in practice the Korean tax authorities do not levy VAT on the self-supply of services.

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<sup>103</sup> Earnest & Young Worldwide VAT/GST & Sales Tax Guide, EY 2015.

<sup>104</sup> Ibid.

Generally, services provided free of charge are not viewed as a supply of services, except for commercial properties being leased to related parties free of charge”.<sup>105</sup>

### **Who is liable?**

“Any person that independently undertakes the supply of goods or services in the course of business, whether or not for profit, is liable to VAT. The definition of a VAT-registered trader includes individuals, corporations, the government and local authorities, associations of local authorities, and bodies of persons”.<sup>106</sup>

“Any person that begins a business must register the particulars of each place of business with the tax authorities within 20 days after the date of business commencement”.<sup>107</sup>

“A person that carries on a VAT-exempt business is not required to register under VAT. But input VAT is not refundable for exempt business. However, traders may elect not to be exempted”.<sup>108</sup>

**Reverse charge.** “A trader who receives a supply of services and intangible properties from a non-resident or foreign corporation whether they own a place of business in Korea or not, whether they supply services not attributable or related to domestic place of business must collect the VAT at the time of the payment for such services and pay the amount to the government, unless the services received are used in taxable operations”.<sup>109</sup>

**Non-established businesses.** “Korea refunds VAT incurred by traders that are neither established nor registered for VAT in Korea. A non-established trader may reclaim VAT to the same extent as a VAT-registered trader. A foreign company that is engaged

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<sup>105</sup> Earnest & Young Worldwide VAT/GST & Sales Tax Guide, EY 2015.

<sup>106</sup> Ibid.

<sup>107</sup> Ibid.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid.



in business in its home country but does not have a permanent establishment in Korea may reclaim the VAT incurred on the purchase of some goods and services”.<sup>110</sup>

**Digital economy.** “Effective 1 July 2015, South Korea applies VAT on electronic services purchased by South Korean customers from abroad. Foreign providers of electronic services must register with the South Korean tax authorities through the simplified business registration system. Non-resident distributors of digital content to Korean customers will be charged 10% VAT regardless of whether they have Korean Presence. This applies equally to direct electronic service providers and third party intermediate suppliers. Both will be required to obtain business registration and pay VAT on sales. The inequity arising out of earlier scheme of domestic suppliers paying 10% VAT whereas the overseas suppliers were paying no tax is taken care of. Global online retailers will be captured under this expanded VAT legislation. For failure to register beyond 20 July 2015 a penalty equal to 1% by the value of supplies may be levied”.<sup>111</sup>

“Input VAT (that is, VAT on related purchases) incurred with respect to exempt supplies is not refundable. However, traders may elect not to be exempted”.<sup>112</sup>

Comments: Korean rules are evolving and are keeping pace with changes being brought in elsewhere in digital commerce.

## **5.53: NORWAY**

### **1. General information concerning the Norwegian VAT rules**

The Value Added Tax Act Section 3-1 stipulates “that VAT shall be calculated and paid on the sale of all goods and services. There are several exceptions and exemptions from

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<sup>110</sup> Earnest & Young Worldwide VAT/GST & Sales Tax Guide, EY 2015.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

the duty to pay VAT. VAT shall also be paid on withdrawals for private use or for use in activity outside the VAT area”.<sup>113</sup>

“Foreign businesses that sell goods or services and liable to VAT in Norway, must be registered in the VAT Register when sales and withdrawals liable to VAT exceed NOK 50,000 during a 12-month period. Foreign businesses that have tax liable turnover in Norway are liable for VAT pursuant to the same rules as apply to Norwegian businesses, and they must be registered for VAT in Norway”.<sup>114</sup>

## 2. Obligations and rights as a result of registration in the VAT Register

“A foreign business that has a place of business or place of residence in Norway is obliged to keep accounts of its business activity in accordance with Norwegian accounting legislation”.<sup>115</sup>

“Registered foreign businesses must calculate and pay VAT (output VAT) on sales in Norway of goods and services that are liable to VAT. The foreign business will, at the same time, be entitled to deduct VAT incurred on the purchase of goods and services for use in the VAT liable business activity in Norway (input VAT). The deduction right also includes VAT calculated by the customs authority in connection with the importation of goods to Norway. A foreign business is obliged to submit VAT returns and to pay due VAT within the relevant deadlines”.<sup>116</sup>

## 3. Registration through a VAT representative

“Foreign businesses that establish a business activity in Norway without having a place of business or place of residence in Norway shall be registered through a representative. When registered through a VAT representative, the foreign business has the same rights

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<sup>113</sup> Bardopolous Anne Michele Bordopolous, E-commerce and the effects of technology on taxation; Springer, 2015.

<sup>114</sup> Ibid.

<sup>115</sup> Ibid.

<sup>116</sup> Ibid.

and obligations as follows from normal registration in the VAT Register. The representative must have a place of residence or a place of business in Norway. Both the foreign business and the representative must sign the “Coordinated Registration Notification”.<sup>117</sup>

Norway has such agreement with the following countries; Belgium, Denmark, Finland, Island, Italy, Netherlands, Poland, Slovenia, Spain, Sweden, Great Britain, Czech Republic and Malta. “If the foreign business is from one of these countries as origin countries, the representative will not be jointly or severally liable with the foreign business for VAT. For other countries, both the foreign business and its representative are jointly and severally responsible for VAT being calculated and paid. The VAT registered vendor is to pay tax in 4 bullets along with return during the calendar year”.<sup>118</sup>

The form must be submitted even if there has been no activity in the business during the term. Failure to submit the VAT return within the deadline or giving incorrect figures is a criminal offence pursuant to the Value-Added Tax Act. If the form contains incorrect figures, surtax and interest can be imposed.

#### 4. Foreign businesses that sell electronic services to Norwegian customers

“Private persons in Norway who buy electronic services from abroad must pay VAT. It is the foreign supplier of electronic services who must calculate and collect the VAT in these cases. The Norwegian tax authorities have from 1 July 2011 established a simplified system for registration and reporting.

The new rules and the simplified registration system are very similar to the rules that have been in force in the EU’s member states since 2003. The suppliers can use the

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<sup>117</sup> Bardopolous Anne Michele Bordopolous, *E-commerce and the effects of technology on taxation*; Springer, 2015

<sup>118</sup> Ibid.

simplified system if they deliver electronic services or electronic communication services from abroad to Norwegian private individuals (B2C).

The supplier can also opt to use the system if it also delivers electronic services to businesses and public enterprises (B2B). The supplier cannot use the system if it is established in Norway or chooses to set up business in Norway. In such cases, the supplier has an obligation to register in the Norwegian VAT Register, for example when the supplier has other turnover that triggers a duty to pay VAT. VAT must be declared and paid within the same deadlines as apply to the EU system”.<sup>119</sup>

#### 5. Documentation and compliance requirements for foreign businesses that sell electronic services to Norwegian customers

“The simplified registration system also implies that the supplier must keep a list of all transactions that concern the sale of electronic services to Norwegian private individuals. The list of transactions must be sufficiently detailed for it to be compared with the VAT return and thereby function as a mean of control. The list of transactions must be stored for 10 years and, at the Norwegian VAT authorities’ request, it must be made available electronically within three weeks.

As regards compliance with the regulations, suppliers in the simplified registration system will be subject to most of the Value Added Tax Act’s general administrative provisions. Among other things, this means that the suppliers will have a general duty to disclose information that has a bearing on VAT control and that the VAT authorities can obtain information about the suppliers from third parties. It also means that the VAT authorities can stipulate VAT by discretionary judgement and otherwise impose sanctions such as additional tax or penal sanctions if a supplier provides incorrect or incomplete information or fails to submit a VAT return”.<sup>120</sup>

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<sup>119</sup> Bardopolous Anne Michele Bordopolous, *E-commerce and the effects of technology on taxation*; Springer, 2015

<sup>120</sup> Ibid.

## 6. VAT refund information

Foreign businesses are entitled to refund of VAT incurred on the purchase of goods and services in Norway, or on goods they import, provided some conditions are met.

## 7. Customs credit

In addition to the VAT registration it is also possible to apply for a customs credit in Norway.

“Effective 1<sup>st</sup> January minimum limit for liability to pay import VAT when importing goods into Norway was increased from NOK 200 to NOK 350”.<sup>121</sup>

### Strength and Weaknesses

“Norway operates an online registration system with registered businesses reporting sales through an online portal and remitting tax electronically. This resulted in high level of compliance by non-Norwegian suppliers of affected services”.<sup>122</sup>

### Comments

All taxable persons are required to register regardless of annual turnover. If the turnover occurs in Sweden, if the turnover exceeds SEK 30000/-, if the goods and services in question is liable to VAT and the business operation sells goods and services, VAT is payable.

The place of supply rule is akin to that of UK. For B2B supply of services it is destination based and B2C it is origin based.

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<sup>121</sup> PEC, Norwegian VAT Rules, 2015.

<sup>122</sup> Ibid.

## **5.54: SINGAPORE**

### **Who is liable?**

“A taxable person is a person who is registered or is required to be registered for GST. Singapore has compulsory registration and the GST registration threshold is SGD1 million. An overseas entity that registers for GAT in Singapore must appoint a local agent to be responsible for all its GST matters”.<sup>123</sup>

**Voluntary registration.** “If the value of taxable supplies made by a business is below the registration limit, the business may register for GST voluntarily. A business that registers for GST voluntarily must remain registered for at least two years unless otherwise allowed by the Comptroller”.<sup>124</sup>

### **GST rates**

“The term “taxable supplies” refers to supplies of goods and services that are liable to GST, including supplies that qualify for zero rating relief (subject to GST at 0%). The term “exempt supplies” refers to supplies of goods and services that are exempt from GST. Exempt supplies may give rise to a restriction on the input tax”.

“The standard rate of GST in Singapore is 7%. The standard rate of GST applies to all supplies of goods or services, unless the supplies qualify for zero rating relief or exemption. Exports of goods and international services are zero-rated. International services that qualify for zero rating are specifically listed in the GST Act. Exempt supplies include the sale or lease of residential property, financial transactions listed in the Fourth Schedule to the GST Act and the importation or supply of investment precious metals”.<sup>125</sup>

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<sup>123</sup> Earnest & Young Worldwide VAT/GST & Sales Tax Guide, EY 2015.

<sup>124</sup> Ibid.

<sup>125</sup> Ibid.

## **Recovery of GST by taxable persons**

“A taxable person may recover the GST incurred on its expenses as input tax if the input tax is incurred in the making of taxable supplies or certain prescribed supplies. Input tax refers to GST incurred on goods and services supplied to the taxable person or goods imported into Singapore by the taxable person that are used or to be used for the purpose of any business carried on or to be carried on by the taxable person. A taxable person generally recovers input tax through its GST returns, by deducting it from output tax, which is GST charged on supplies made.

A valid tax invoice or import permit must be held to support a claim for input tax.

A taxable person is required to repay to the IRAS any input tax claimed for which payment has not been made to the supplier for more than 12 months from the due date of the payment”.<sup>126</sup>

“The sale of digitized goods such as online movies, e-books, or computer software that can be downloaded by the customer via the internet is considered to be a supply of services and is also subject to GST just as supply of physical goods. Sale of digitized goods such as music and software over internet to an individual customer or business 7% GST is charged unless the customer does not belong to Singapore. To determine whether a customer belongs to Singapore or a foreign country, the business address, domain name and IP address can be used as indicators”.<sup>127</sup>

Goods imported by post or air and valued at exceeding Singapore \$ 400 attracts GST.

GST registered vendors when they sell goods via internet and goods are delivered in internet, they are chargeable by GST.

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<sup>126</sup> Earnest & Young Worldwide VAT/GST & Sales Tax Guide, EY 2015.

<sup>127</sup> Ibid.

Reverse charge mechanism is currently suspended in Singapore.

## **5.55: SOUTH AFRICA**

### **Scope of the tax**

VAT applies to the following transactions: “The supply of goods or services made in South Africa by a registered person, Reverse-charge services received by a person in South Africa that is not entitled to claim full input tax credits (referred to as imported services), The importation of goods from outside South Africa, regardless of the status of the importer”.<sup>128</sup>

“Goods that are imported from countries in the Southern African Customs Union (that is, Botswana, Lesotho, Namibia, South Africa and Swaziland) are not subject to customs duty, but they are subject to VAT”.<sup>129</sup>

### **Who is liable?**

**“Goods and services supplied in South Africa.** A vendor is required to account for output tax on all goods and services supplied, unless the supply is specifically exempted by the Value-Added Tax Act”.

“A “vendor” (taxable person) is a person (business entity or individual) carrying on an activity in or partly in South Africa on a continuous or regular basis if, in the course of the activity, goods or services are supplied to another person for consideration exceeding the registration threshold. This includes persons who are registered for VAT in South Africa as well as persons who are required to register as vendors”.

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<sup>128</sup> Earnest & Young Worldwide VAT/GST & Sales Tax Guide, EY 2015.

<sup>129</sup> Ibid.



“A person is required to register as a vendor if the value of taxable supplies exceeds (or is expected to exceed) ZAR1 million in any consecutive 12-month period or a signed contract is in place proving that the ZAR1 million threshold will be exceeded in the following 12-month period. Importers are liable to pay VAT on imported goods”.

“Recipients of services are liable to pay VAT on imported services to the extent that the services will be utilized or consumed in the making of non-taxable supplies. Imported services are exempt from VAT if the value of the supply does not exceed ZAR100 per invoice”.<sup>130</sup>

**Voluntary registration:** “A person whose turnover is below the compulsory registration threshold may register for VAT on a voluntary basis if the value of its taxable supplies exceeds ZAR50,000 in any 12-month period (excluding the provision of commercial accommodation, for which the threshold is ZAR60,000). Certain industries such as welfare organizations, projects funded by foreign donors, and municipalities can register even if they don’t meet the voluntary registration threshold”.<sup>131</sup>

**“E-commerce suppliers:** Effective 1 June 2014, the supply of electronic services by a foreign supplier to recipients in South Africa is subject to VAT. The liability to register for VAT will arise where the electronic services are supplied from a place outside South Africa to a recipient that is a resident of South Africa or where payment to the non-established business originates from a South African bank. Effective 1 April 2015 this specific inclusion applies where at least two of the following circumstances are present, namely”:

- “The electronic services are supplied to a South African resident”.
- “Any payment for such services is made from a South African bank”.

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<sup>130</sup> Bardopolous Anne Michele Bordopolous, E-commerce and the effects of technology on taxation; Springer, 2015.

<sup>131</sup> Ibid.

- “The electronic services are supplied to a person with a business address, residential address or postal address in South Africa where a tax invoice will be delivered”.

“Electronic services” is defined in a regulation that provides that the following services are electronic services where provided by means of an electronic agent, electronic communication or the internet for consideration: Educational services (distance teaching programs, educational webcasts, internet-based courses, “Games and games of chance (electronic games, interactive games and electronic betting or wagering), Internet-based auction services, Miscellaneous services (“e-books, audio visual content, still images and music), Subscription services (to any blog, journal, magazine, newspaper, games, internet-based auction service, periodical, publication, social networking service, webcast, webinar, website, web application or web series)”.

“A special compulsory registration threshold of ZAR50,000 applies to the suppliers of electronic services, and VAT is accounted for on a payments basis to the tax authorities”.<sup>132</sup>

“While earlier the local client was required to account for and pay VAT on imported services (a reverse charge mechanism) acquired from the foreign suppliers, now the responsibility is cast on foreign suppliers to register as VAT vendors. But if it is insisted that payment for e-service must be from an account with a South African Bank, the foreign supplier does not require representative vendor acting on his behalf in South Africa. Since it is expected that they will have only output VAT liability there is no need for a South African bank account for the purpose of reviewing VAT regulations”.<sup>133</sup>

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<sup>132</sup> Earnest & Young Worldwide VAT/GST & Sales Tax Guide, EY 2015.

<sup>133</sup> Ibid.

**Tax representatives.** “A registered VAT vendor needs to appoint a natural person residing in RSA as a tax representative to assist in tax matters and to represent the entity in South Africa”.<sup>134</sup>

### **Recovery of VAT by taxable persons**

“A registered vendor may recover input tax (that is, VAT charged on goods and services supplied to it for business purposes) by deducting it from output tax, which is VAT charged on supplies made in a particular tax period provided they have valid tax invoices.

Input tax includes VAT charged on goods and services supplied in South Africa and VAT paid on the importation of goods”.<sup>135</sup>

### **Recovery of VAT by non-established businesses**

“VAT incurred by businesses that are neither established nor registered in South Africa may be recovered only with respect to goods that are exported from South Africa. The goods must be exported from a designated port within 90 days after the invoice date. A refund may be claimed from the VAT Refund Administrator. No claim may be made with respect to services (such as hotel accommodation and restaurant meals) consumed in South Africa.

A business that regularly or continuously supplies goods or services in South Africa may be liable to register as a VAT vendor, even though the business is neither established nor registered in South Africa, if it carries on an enterprise and meets the registration requirements. In this instance, the non-established business registered as a vendor may recover input tax through the normal VAT return process”.<sup>136</sup>

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<sup>134</sup> Earnest & Young Worldwide VAT/GST & Sales Tax Guide, EY 2015.

<sup>135</sup> Ibid.

<sup>136</sup> Ibid.

## **VAT returns and payment**

**VAT returns.** “The tax return period is monthly for persons with annual taxable turnover in excess of ZAR30 million. The tax return period is bimonthly for persons with annual taxable turnover below ZAR30 million. Other tax periods are available (six month and annually) for special categories of persons with annual taxable supplies lower than ZAR1.5 million, such as farmers, farming enterprises and nonprofit associations, but only with the prior agreement of the SARS”.<sup>137</sup>

### **Loopholes**

1. South Africa has two different registration thresholds of ZAR 1million or ZAR 50,000/-, former for compulsory registration and the latter for voluntary registration.
2. Lack of ‘place of supply rule’ in South Africa is a problem as in the alternative physical presence test will be required.
3. Reverse charge mechanism is not restricted to Registered Person. Only in B2B Reverse charge mechanism has a broader application. ‘Imported service’ has been defined as “Supply of services ..... to a recipient who is a resident of the Republic”. However, the self-assessment obligation placed on the non-registered consumers to account for output tax on imported services is generally not enforced as administrative cost is high.
4. VAT on ‘imported service’ to be declared within 30 days from the time of supply, but no further guidelines is provided in respect of practicability or enforceability of such provision.
5. Large commercial internet website shops are abiding by the content of territorial restrictions and avoiding cross-border taxation problem by merely limiting the downloading of certain digitized products to South African jurisdiction.

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<sup>137</sup> Earnest & Young Worldwide VAT/GST & Sales Tax Guide, EY 2015.

**Conclusion:** Most countries including EU have shifted to destination based taxation despite their legacy of origin based start. Hence problem created by origin principle continues to some extent. India's VAT continues to be a tax on goods on origin principle. But recently EU, Norway, South Africa and Singapore have come out with their rules for Electronic transactions, lower turnover threshold, non-insistence on physical presence and rules for foreign supplier to register, collect tax and remit it to consumption jurisdiction. But these countries have been perceptive enough to introduce simplified registrations and return system. In contrast, VAT in India is a goods tax which is origin based. Service tax is a separate tax which is levied and administered by the Centre. Hence Indian VAT is clearly very weak in capturing tax on goods and services and allocating it efficiently. E-commerce players can safely play the game of tax avoidance and evasion. Imports of digital content escape tax. Double taxation and non-taxation are more likely to occur when taxing jurisdiction is so fragmented and the non-consumption jurisdiction often gets tax based on origin principle.

Only when, pure form 'place of consumption' is followed, it would be effective to capture consumption tax on E-commerce. Otherwise, despite having destination principle India may face problems in introducing a tax that is 'neutral' and will enhance tax compliance. Conventional commerce will be disadvantaged in the process too.

## CHAPTER – VI

### **A normative modeling of GST for E-Commerce in India**

6.0 In India's VAT system, VAT is levied and administered by the States. CST (Central Sales Tax) applies to the interstate sale of goods, i.e. to the movement of goods from one State to another, pursuant to sale. CST is levied @ 2% by the Central Government, but collected and ministered by the States. Service tax is levied and administered by the Central Government. Specific rules relating to digital goods and services are not prescribed in India.

Currently, India is in the cusp of introducing a new Goods and Services Tax with effect from 1.4.2016. "The GST is intended to substitute most of the Central and State level indirect taxes currently in force such as current VAT, excise duty and service tax. The new tax is proposed as a dual GST, consisting of Central GST (CGST) and the State GST (SGST). It is expected to attain the objectives of a common market with free movement of goods and services between member states and to reduce tax cascading".<sup>1</sup>

#### **Constitutional position:**

Indian Constitution provides the taxing right on goods to the States under the List II of the Seventh Schedule of the Constitution (Entry 54). This is subject to Entry 92-A of List I which covers Union Government's "power to tax sale and purchase of goods where such sale takes place in the course of inter-State trade or commerce".<sup>2</sup> Now inter-State sale of goods is covered by CST. Originally, there was no provision for tax on services. In the Eighty eighth Amendment Act, 2003, taxation of services was inserted at entry 92-C of List I giving power to Central Government to tax services. Both goods and services often come bundled together. Taxation of services which normally go along with taxation power on 'goods', in many Federal countries is thus segregated and

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<sup>1</sup> World wide VAT/GST and Sales Tax Guide, Earnest and Young, 2015.

<sup>2</sup> Ibid.

remains with the Union Government. Indian VAT is essentially a goods tax by the States while the services are covered by service tax collected and administered by the Union Government.

The way e-commerce is taxed in India is the following:

- (i) B2B sale of digital goods and services is taxed as services. If digital software customized for a company is sold it is sold as services. Customized software while technically a service liable to service tax is being subjected to VAT in some States with judicial precedents affirming such treatment.
- (ii) B2C is taxed as goods or services as the case may be. If it is travel related service it is taxed as services at the rate of service tax. Packaged software when supplied electronically is subjected to the levy of both VAT (as goods) and service tax (as services);
- (iii) If digital content of software is sold with an analogue of tangible package of software is sold in the market it is taxed as goods.

While selling goods and services while the incidence continues to be on the customer, the consumption tax is collected by the dealer (supplier) based on where the invoicing is made. If Amazon sells a product from Bangalore to a consumer in Delhi the tax will be collected at Bangalore and will accrue to Government of Karnataka. Hence two order effects are emerging from this taxation framework. They are:-

- (a) Effectively tax is origin based taxation rather than a destination based taxation if it is out of State sale/cross border sale.
- (b) Goods and services are taxed by different entities and accruable to different jurisdictions the service tax goes to the Government of India kitty and the goods taxation remains with the State. In the process

fungibility of both the categories is likely to be evident and tax competition and accrual to the non-consumption jurisdiction is inevitable. In reality the VAT pans out like an origin based tax and goes in the coffer of the invoicing State rather than where the consumption took place in turn who should be legally entitled to collect the tax. Though it is expected that once the GST is implemented an artificial difference between the goods tax and services tax will evaporate the implementation is nowhere in sight. What it is resulting in the VAT regime is often both goods tax and service tax is being charged making it a case of double taxation.

- (c) The layering of the E-commerce company structure as is evident in case of Flipkart makes it easy for tax avoidance and the evasion. The goods sold in a market place model as aggregator will attract service tax and if at all service tax is being paid it is surely eroding the tax base of the State but would have been entitled to the goods tax. It is expected that the suppliers would have paid the VAT, but it somehow gets concealed in the layering. The base erosion and profit shifting effect (BEPS) appears to be in play but needs further investigation company wise to arrive at robust conclusions.

## 6.10 **VAT & GST**

Introduction of VAT in the States has been a very challenging exercise in a federal country like India, “where each State, in terms of Constitutional provision, is sovereign in levying and collecting State taxes. Before introduction of VAT, in the sales tax regime, apart from the problem of multiple taxation and burden of adverse cascading effect of taxes, there was also no harmony in the rates of sales tax on different commodities among the States. Not only were the rates of sales tax numerous (often more than ten in several States), and different from one another for the same commodity



in different States, but there was also an unhealthy competition among the States in terms of sales tax rates – so-called “rate war” – often resulting in, revenue-wise, a counter-productive situation”.<sup>3</sup> GST is designed to be a destination based tax.

### **Justification of GST**

Despite this success with VAT, “there are still certain shortcomings in the structure of VAT both at the Central and at the State level. The shortcoming in CENVAT of the Government of India lies in non-inclusion of several Central taxes in the overall framework of CENVAT, such as additional customs duty, surcharges, etc., and thus keeping the benefits of comprehensive input tax and service tax set-off out of reach for manufacturers/dealers. Moreover, no step has yet been taken to capture the value-added chain in the distribution trade below the manufacturing level in the existing scheme of CENVAT. The introduction of GST at the Central level will not only include comprehensively more indirect Central taxes and integrate goods and service taxes for the purpose of set-off relief, but may also lead to revenue gain for the Centre through widening of the dealer base by capturing value addition in the distributive trade and increased compliance”.<sup>4</sup>

In the existing State-level VAT structure there are also certain shortcomings. “There are, for instance, even now, several taxes which are in the nature of indirect tax on goods and services, such as luxury tax, entertainment tax, etc., and yet not subsumed in the VAT. Moreover, in the present State-level VAT scheme, CENVAT load on the goods remains included in the value of goods to be taxed under State VAT, and contributing to that extent a cascading effect on account of CENVAT element. This CENVAT load needs to be removed. Furthermore, any commodity, in general, is produced on the basis of physical inputs as well as services, and there should be integration of VAT on goods with tax on services at the State level as well, and at the

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<sup>3</sup> First discussion paper on GST in India, Empowered Committee of States Finance Ministers, New Delhi, Nov. 10, 2009.

<sup>4</sup> Ibid.

same time there should also be removal of cascading effect of service tax. In the GST, both the cascading effects of CENVAT and service tax are removed with set-off, and a continuous chain of set-off from the original producer's point and service provider's point upto the retailer's level is established which reduces the burden of all cascading effects. This is the essence of GST, and this is why GST is not simply VAT plus service tax but an improvement over the previous system of VAT and disjointed service tax. However, for this GST to be introduced at the State level, it is essential that the States should be given the power of levy of taxation of all services. This power of levy of service taxes has so long been only with the Centre. A Constitutional Amendment will be made for giving this power also to the States. Moreover, with the introduction of GST, burden of Central Sales Tax (CST) will also be removed. The GST at the State-level is, therefore, justified for (a) additional power of levy of taxation of services for the States, (b) system of comprehensive set-off relief, including set-off for cascading burden of CENVAT and service taxes, (c) subsuming of several taxes in the GST and (d) removal of burden of CST. Because of the removal of cascading effect, the burden of tax under GST on goods will, in general, fall".<sup>5</sup>

"The GST at the Central and at the State level will thus give more relief to industry, trade, agriculture and consumers through a more comprehensive and wider coverage of input tax set-off and service tax setoff, subsuming of several taxes in the GST and phasing out of CST. "With the GST being properly formulated by appropriate calibration of rates and adequate compensation where necessary, there may also be revenue/ resource gain for both the Centre and the States, primarily through widening of tax base and possibility of a significant improvement in tax-compliance. In other words, the GST may usher in the possibility of a collective gain for industry, trade, agriculture and common consumers as well as for the Central Government and the State Governments. The GST may, indeed, lead to the possibility of collectively positive-sum game".<sup>6</sup>

### **Goods & Services Tax Model For India**

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<sup>5</sup> First discussion paper on GST in India.

<sup>6</sup> Ibid.

- “(i) The GST shall have two components: one levied by the Centre (hereinafter referred to as Central GST), and the other levied by the States (hereinafter referred to as State GST). Rates for Central GST and State GST would be prescribed appropriately, reflecting revenue considerations and acceptability. This dual GST model would be implemented through multiple statutes (one for CGST and SGST statute for every State). However, the basic features of law such as chargeability, definition of taxable event and taxable person, measure of levy including valuation provisions, basis of classification etc. would be uniform across these statutes as far as practicable.
- (ii) The Central GST and the State GST would be applicable to all transactions of goods and services made for a consideration except the exempted goods and services, goods which are outside the purview of GST and the transactions which are below the prescribed threshold limits.
- (iii) Since the Central GST and State GST are to be treated separately, taxes paid against the Central GST shall be allowed to be taken as input tax credit (ITC) for the Central GST and could be utilized only against the payment of Central GST. The same principle will be applicable for the State GST.
- (iv) Cross utilization of ITC between the Central GST and the State GST would not be allowed except in the case of inter-State supply of goods and services under the IGST model which is explained later.
- (v) The administration of the Central GST to the Centre and for State GST to the States would be given. This would imply that the Centre and the States would have concurrent jurisdiction for the entire value chain and for all taxpayers on the basis of thresholds for goods and services prescribed for the States and the Centre.
- (vi) A uniform State GST threshold across States is desirable and, therefore, it is considered that a threshold of gross annual turnover of Rs.10 lakh both for goods and services for all the States and Union Territories may be adopted with

adequate compensation for the States (particularly, the States in North-Eastern Region and Special Category States) where lower threshold had prevailed in the VAT regime. Now there is a separate threshold of services (Rs. 10 lakh) and goods (Rs. 1.5 crore) under the Service Tax and CENVAT. All the thresholds need to be finalized.

- (vii) Keeping in mind the need of tax payer's convenience, functions such as assessment, enforcement, scrutiny and audit would be undertaken by the authority which is collecting the tax, with information sharing between the Centre and the States".<sup>7</sup>

### **Central and State Taxes to be subsumed under GST**

"The various Central, State and Local levies have been identified to be subsumed under GST. While identifying, the following principles were kept in mind:

- (i) Taxes or levies to be subsumed should be primarily in the nature of indirect taxes, either on the supply of goods or on the supply of services.
- (ii) Taxes or levies to be subsumed should be part of the transaction chain which commences with import/ manufacture/ production of goods or provision of services at one end and the consumption of goods and services at the other.
- (iii) The subsumation should result in free flow of tax credit in intra and inter-State levels.
- (iv) The taxes, levies and fees that are not specifically related to supply of goods & services should not be subsumed under GST.
- (v) Revenue fairness for both the Union and the States individually would need to be attempted".<sup>8</sup>

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<sup>7</sup> First discussion paper on GST in India.

<sup>8</sup> Ibid as spura.

“On application of the above principles, it has been recommended that the following Central Taxes should be, to begin with, subsumed under the Goods and Services Tax:

- (i) Central Excise Duty
- (ii) Additional Excise Duties
- (iii) The Excise Duty levied under the Medicinal and Toiletries Preparation Act
  
- (iv) Service Tax
- (v) Additional Customs Duty, commonly known as Countervailing Duty (CVD)
- (vi) Special Additional Duty of Customs - 4% (SAD)
- (vii) Surcharges, and
- (viii) Cesses”.<sup>9</sup>

“Following State taxes and levies would be, to begin with, subsumed under GST:

- (i) VAT / Sales tax
- (ii) Entertainment tax (unless it is levied by the local bodies).
- (iii) Luxury tax
- (iv) Taxes on lottery, betting and gambling.
- (v) State Cesses and Surcharges in so far as they relate to supply of goods and services.
- (vi) Entry tax not in lieu of Octroi”.<sup>10</sup>

### **Taxation of Services:**

As indicated earlier, “both the Centre and the States will have concurrent power to levy tax on all goods and services. In the case of States, the principle for taxation of intra-State and inter-State has already been formulated by the Working Group of Principal

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<sup>9</sup> First discussion paper on GST in India.

<sup>10</sup> Ibid.

Secretaries/Secretaries of Finance/Taxation and Commissioners of Trade Taxes with senior representatives of Department of Revenue, Government of India. For inter-State transactions an innovative model of Integrated GST will be adopted by appropriately aligning and integrating CGST and SGST”.<sup>11</sup>

### **Inter-State Transactions of Goods and Services**

The Empowered Committee has accepted the recommendations of the Working Group of concerned officials of Central and State Governments “for adoption of IGST model for taxation of inter-State transaction of Goods and Services. The scope of IGST Model is that Centre would levy IGST which would be CGST plus SGST on all inter-State transactions of taxable goods and services with appropriate provision for consignment or stock transfer of goods and services. The inter-State seller will pay IGST on value addition after adjusting available credit of IGST, CGST, and SGST on his purchases. The Exporting State will transfer to the Centre the credit of SGST used in payment of IGST. The Importing dealer will claim credit of IGST while discharging his output tax liability in his own State. The Centre will transfer to the importing State the credit of IGST used in payment of SGST. The relevant information will also be submitted to the Central Agency which will act as a clearing house mechanism, verify the claims and inform the respective governments to transfer the funds”.<sup>12</sup>

“The major advantages of IGST Model are:

- a) Maintenance of uninterrupted ITC chain on inter- State transactions.
- b) No upfront payment of tax or substantial blockage of funds for the inter-State seller or buyer.
- c) No refund claim in exporting State, as ITC is used up while paying the tax.
- d) Self monitoring model.
- e) Level of computerization is limited to inter-State dealers and Central and State Governments should be able to computerize their processes expeditiously.

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<sup>11</sup> First discussion paper on GST in India.

<sup>12</sup> First discussion paper on GST in India.

- f) As all inter-State dealers will be e-registered and correspondence with them will be by e-mail, the compliance level will improve substantially.
- g) Model can take 'Business to Business' as well as 'Business to Consumer' transactions into account".<sup>13</sup>

### **GST Rate Structure**

The Empowered Committee has decided "to adopt a two-rate structure –a lower rate for necessary items and goods of basic importance and a standard rate for goods in general. There will also be a special rate for precious metals and a list of exempted items. For upholding of special needs of each State as well as a balanced approach to federal flexibility, and also for facilitating the introduction of GST, it is being discussed whether the exempted list under VAT regime including Goods of Local Importance may be retained in the exempted list under State GST in the initial years. It is also being discussed whether the Government of India may adopt, to begin with, a similar approach towards exempted list under the CGST".<sup>14</sup>

"The States are of the view that for CGST relating to goods, the Government of India may also have a two-rate structure, with conformity in the levels of rate under the SGST. For taxation of services, there may be a single rate for both CGST and SGST.

The exact value of the SGST and CGST rates, including the rate for services, will be made known duly in course of appropriate legislative actions".<sup>15</sup>

### **Zero Rating of Exports**

"Exports would be zero-rated. Similar benefits may be given to Special Economic Zones (SEZs). However, such benefits will only be allowed to the processing zones of

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<sup>13</sup> Ibid.

<sup>14</sup> First discussion paper on GST in India.

<sup>15</sup> Ibid.

the SEZs. No benefit to the sales from an SEZ to Domestic Tariff Area (DTA) will be allowed”.<sup>16</sup>

### **GST on Imports:**

“The GST will be levied on imports with necessary Constitutional Amendments. Both CGST and SGST will be levied on import of goods and services into the country. The incidence of tax will follow the destination principle and the tax revenue in case of SGST will accrue to the State where the imported goods and services are consumed. Full and complete set-off will be available on the GST paid on import on goods and services”.<sup>17</sup>

### **Harmonious structure of GST and the States’ autonomy in a Federal Framework**

“As a part of the exercise on Constitutional Amendment, a special attention would be given, as mentioned earlier to the formulation of a mechanism for upholding the need for a harmonious structure for GST along with the concern for the States’ autonomy in a federal structure”.<sup>18</sup>

## **6.20 Submissions of NASSCOM**

- (a) Of late, several state VAT departments like in Karnataka, UP and Maharashtra have made “E-commerce marketplace operators responsible for computing and paying taxes on behalf of all sellers using the E-commerce marketplaces”.<sup>19</sup> E-commerce marketplace operators are being asked by various state VAT departments to become “commission agents” of the multiple sellers, duly registered under VAT in the

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<sup>16</sup> Ibid.

<sup>17</sup> First discussion paper on GST in India.

<sup>18</sup> Ibid.

<sup>19</sup> NASSCOM submission.



respective states of their principal place of business. Here the point made is resistance to registration of marketplace operators.

- (b) Inter-State consignments are being “subjected to seizure, for both, prepaid and post-paid- Cash on Delivery (COD) consignments which are ordered by the end customer for personal use / self-consumption”.<sup>20</sup>
- (c) Even if products are imported into the municipal areas for ‘self-consumption’ or for ‘personal use’, most of the States/Municipal Corporations have started imposing restrictions in product flow in terms of issuance of forms by end users. Additional levies/penalties/seizures are being imposed on logistics companies in the absence of such forms. Process complication for compliance by the end users as well as Additional levies which are predatorial in nature is objected to.
- (d) All these taxes/levies and ad-hoc regulatory requirements by each state, is leading to a lot of litigation in the ecosystem, creating a cost push factor.

## **ISSUES AND RECOMMENDATIONS**

### **Definition of ‘goods’ and ‘services’**

Article 366(12) of the Constitution of India defines the term “goods” to “include all materials, commodities and articles”.

Further to the same, Article 366(26A) in the Amendment Bill proposes to define services to mean “anything other than goods”.

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<sup>20</sup> Ibid.

As evident from the above, both these definitions are of wide import and do not specifically refer to intangibles.

The characterization as well as tax treatment of software and other intangibles (such as trade-marks, knowhow, e-books, mobile applications, music and movie downloads, ringtones *etc*) as goods vis-à-vis services has been a matter of intense debate and dispute in India, historically.

Specifically, international treatment of electronics supplies as well as most intangibles as a service may be given due consideration in arriving at the appropriate classification.

### **Recommendations:**

- Software and other intangibles may specifically defined to be either ‘goods’ or ‘services’ under the Indian Constitution by making necessary amendments to the Amendment Bill;
- Alternatively, the GST Council should be empowered to issue a binding directive to the Central and all State Governments on the tax treatment of these items akin to VAT directives in the European Union. This can be done by amending Article 279A in the Amendment Bill which gives recommendatory power to GST Council.
- A uniform tax treatment should be accorded to software and other intangibles irrespective of their mode of supply (electronic or on tangible media).

### **Specific definition/clarification for composite supplies**

Article 366(12A) of the Amendment Bill defines “goods and services tax” as “any tax on supply of goods, or services, or both except taxes on the supply of alcoholic liquor for human consumption”.

From the above, it is evident that, composite supplies comprising of supplies of goods as well as services such as maintenance contracts would be covered under GST levy as a taxable supply. Clarity is required for composite supplies whether they would be treated as ‘goods’ or ‘services’ or a separate and distinct treatment as a third category of supply.

### **Recommendation**

It is recommended that the manner of taxation of composite supplies be specified in the Constitution Amendment Bill itself to avoid a situation of divergent treatment and disputes on their taxation (rate, valuation, place of supply etc.) under Central and State GST laws. Alternatively, any directive issued in relation to the same by the GST Council should be given binding value to ensure that the same is uniformly incorporated under all GST laws.

### **Scope of the term ‘supply’ to be defined**

Article 286(1) in the Amendment Bill proposes to authorize the imposition of a GST on the “supply of goods or services or both”.

Further, vide an amendment in the Sixth Schedule, the Amendment Bill proposes the levy of an additional tax of up to 1 percent on the interstate supply of goods for a period of 2 years.

Historically, in India, VAT as well as service tax have been imposed on the supply of goods and services by one person to another for a consideration. Further, international best practices indicate that, levy of GST is confined to economic supplies of goods or services in the course of business by one person to another for a consideration.

However, the term ‘supply’ has not been defined in the Amendment Bill. This has led to an overall concern on whether, any supply, including a supply without any consideration shall attract the levy of GST. Examples of such supplies include samples or other free supply of goods and services within an organization or to customers outside the organization for business promotions etc, stock transfer of goods, warranty services and supplies etc. Coupled with this is the apprehension of possible differences in the definition of ‘supply’ between Central and State GST laws should a uniform definition not be laid down under the Constitution itself.

### **Recommendation**

In order to standardize the levy of GST on a uniform set of supplies of goods and services across the country, it is recommended that the term ‘supply’ be defined in the Amendment Bill as being the supply of goods and/ or services for a consideration by one person to another. Non-economic supplies should be kept out of purview of inter-State supply of goods and unintended taxation of inter-state stock transfer of finished goods for onward sale in destination States should be avoided.

### **Centralized reporting and administration of GST to be preserved**

The service tax law enables service providers to undertake service tax compliances and undergo service tax assessments in a centralized manner. If PAN India reporting is required under GST, given the intangible nature of services, it is apprehended that their taxation across States is likely to lead to technical as well as practical challenges with regard to situs of the same service being determined differently by different GST authorities.

### **Recommendation**

A centralized reporting and assessment of GST should be permitted with service providers reporting their respective State GST liabilities electronically from a single centralized point. Appropriate powers may be granted to the relevant jurisdictional authority in such centralized jurisdiction to assess and audit GST liable to be paid across various central and state GST laws. To obviate dual demands of GST by multiple GST authorities on the same transaction/supply, disbursement of GST revenues will take place of backend of IT.

### **Reconsideration of levy of additional tax of 1 percent**

A potentially non creditable origin based additional tax levy would preserve the ill-effects of a cascading tax system which is an antithesis of a destination based consumption tax such as GST.

### **Recommendation**

It is therefore recommended that the proposed levy of additional tax of 1 percent on interstate supply of goods be reconsidered and consequently clause 18 of the Amendment Bill may kindly be dropped.

### **GST dispute resolution between Centre and States**

The Constitution (115th) Amendment Bill, 2011 had vide introduction of Article 279B provided that the Parliament may, by law, provide for the establishment of a GST Dispute Resolution Authority ('GST DSA') to address GST related disputes in a centralized manner. However, the current Amendment Bill has deleted the provision with respect to creation of such a forum. The "GST DSA was expected to adjudicate

disputes referred to it by a State or the Centre arising out of a deviation from the recommendation of the GST Council”.<sup>21</sup>

### **Recommendation**

The Amendment Bill should provide for a GST DSA to resolve differential interpretation of taxation of supplies by the Central Government and one or more State Governments.

### **Issues to be dealt with by the GST Council**

The Amendment Bill enables the GST Council to frame recommendations on the following issues:

- “Taxes, cesses and surcharges levied by the Centre, States and local bodies which may be subsumed under the GST”;
- “Goods and services which may be subjected to or exempted from GST”;
- “Model GST laws, principles of levy, apportionment of IGST and the principles that govern the place of supply”;
- “Threshold limit of turnover below which goods and services may be exempted from GST”;
- “Rates including floor rates with bands of GST etc”<sup>22</sup>.

However, the GST Council is only empowered to make recommendations meant to be a guiding principle for the Centre and States and not mandatory or legally binding on the Centre or States.

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<sup>21</sup> NASSCOM Submission.

<sup>22</sup> 122<sup>nd</sup> Constitution Amendment Bill.

### **Recommendation**

- The Amendment Bill should be modified to provide unequivocal rights to the GST Council to enforce its decision on key aspects on GST levy on the Centre as well as States.

### **Other Recommendations**

- Uniform introduction of GST across all States as co-existence with VAT may be problematic.

An indication in the Amendment Bill on the maximum rates that can be applied including the prescription of a uniform taxation of goods and services under GST shall enable the introduction of a standard GST regime across the country. Should a band of rates be warranted the same should be narrow and pre-determined to the extent possible.

**GST credits:** Industry fervently hopes that under GST, there would be uninterrupted and free flow of credits pertaining to goods and services along with such goods and services with no exceptions or exclusions being carved out in cases where the supplies are in the course of business.

### **6.21 FICCI's Submission For The Constitution Amendment Bill**

The industry body also gave their submissions. Relevant points from the angle of e-commerce were as given below. They were extracted and given hereunder:-

- (1) "No origin based tax such as the CST should continue to be in the statute post the introduction of a destination based consumption tax such as the GST".<sup>23</sup>

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<sup>23</sup> FICCI's submission.

- (2) Rates of tax: Goods versus Services: “There should be a uniform rate of GST applicable on both goods and services to put an end to interpretative disputes on what are “goods” and what are “services”. For example, in the existing tax regime, there are divergent views between the tax-authorities and the tax-payers on whether software, customised or otherwise, should be taxed under VAT or Service Tax”.<sup>24</sup>
- (3) Number of Rates: The tax structure should be simple and should have minimal rates. Recommendations are: that (a) there should be one Standard Rate (RNR) applicable on all goods and services; (b) a common list of goods and services under a Concessional Rate (e.g., for basic necessities like grains, pulses, cereals, edible oils and public utilities); and, (c) a common list of exempted goods and services.
- (4) Band of Rates: It was recommended that a uniform rate of GST be adopted for a category of goods or service as against a band.
- (5) Classification of Goods and Services: Classification of goods should be uniform across the Centre and the States.
- (6) Threshold Limits: As far as threshold limits are concerned, “different threshold levels for CGST and SGST may cause confusion amongst the trade and also encourage unethical practices. Ideally, the threshold level should be uniform across goods and services and be the same for both CGST and SGST.”
- (7) Exemptions: FICCI was only in favour of area based exemptions to be grandfathered and was not in favour of other exemptions in particular. They recommended to “bring uniformity in the list of goods which are exempted and in the list of merit goods under both Central Excise and State VAT in order to ensure smooth transition. The common list of exempt goods and services should be kept to a minimum”.<sup>25</sup>
- (8) Uniform Laws and Simple Tax Administration: “Multiple jurisdictions and multiple filing of returns are undesirable under GST. Assessors should be

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<sup>24</sup> Ibid.

<sup>25</sup> FICCI submission.



required to submit one composite return covering CGST, SGST and IGST and be subjected to one common jurisdiction with uniform assessment proceedings. It was recommended that the jurisdiction and consequently, assessment, scrutiny, audit, etc. be the responsibility of a single authority, representing both the Centre and the States”.<sup>26</sup>

- (9) Unified adjudication and appellate Authority: It is expected that there will be uniform provisions for both SGST and CGST with respect to classification, valuation, input credits etc. Any dispute that may arise would typically “encompass both CGST and SGST. Hence, there cannot be separate adjudication of the same dispute by the Central Government and State Governments. It is hence imperative that the existing adjudication mechanisms be unified to handle the litigation and the decisions of such authorities be made binding on both the administrations”.<sup>27</sup>

#### 6.30 **Comments:**

Both the NASSCOM and the extracted FICCI submissions are maximalist positions as expected of trade and lobbying bodies. FICCI’s position covered all goods and services and was not limited to e-commerce goods and services. However, some of the concerns regarding E-commerce seem to have been overstated:

- (1) The regarding insistence marketplace operators being registered as commission agent or dealers, it is a matter of over-enthusiastic implementation. Under GST everyone is a supplier and hence it should not be objectionable. In the GST format the last point of sale is expected to collect GST and input credit is also allowed. This arrangement is efficient. As long as someone is a supplier of goods and services, he is expected to be responsible for collecting final stage GST/VAT and remit it to appropriate jurisdiction.

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<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

- (2) The predatorial behavior of seizure etc. for COD delivery is a perverse outcome of a origin based taxation where the consuming state feels that the product is a non-taxed product with a destination based taxation, this problem is not expected to arise.
- (3) OECD had recommended that software and intangibles in E-commerce should be taxed as 'services'. Under the GST, goods and services are treated equally and a product such as intangible is treated as such. For this no constitutional amendment is necessary in as much as it is defined in the statute.
- (4) Problem regarding 'composite suppliers' will be ironed out under GST where a standard rate will prevail. A 'composite supply' taxed as goods or services, the net impact is the same. It should not be taxed both as 'goods' or 'services' which obviously will not happen under GST.
- (5) The term 'supply' need not be defined in the constitution as long as it is defined in the statute. Draft Model Act available in the internet (not put in public domain by Government of India) defines supply.
- (6) Additional 1% tax levy for the benefit of origin state is of course not in synne with destination based taxation. It will have cascading effect. But it is for a limited period of 2 years. Actually, it need not have been put in the constitutional amendment had it not been for negotiation with the 'manufacturing states' who fear that they would lose revenue.
- (7) The court system in India have not been proved to be effective in timely adjudication of commercial matters. Dispute Resolution mechanism is required to resolve the differential interpretation of taxation of suppliers by the Central Government or one or more state governments.
- (8) Recommendation is to give GST Council to have direction making power. Whether GST Council will have this power or not is not very material. The Council will have countervailing power because of its composition and constitutional position.
- (9) Credits - Now intermediate goods and stock in trade will get input credits.

- (10) A uniform rate of GST is desirable to minimize interpretation dispute relating to classification.
- (11) A common list of exempted goods for GST & SGST and a common standard rate and concessional rate is normatively desirable to remove arbitrage opportunities and perverse tax avoidance and tax planning.
- (12) Classification of goods and services should be the same across SGST & CGST.
- (13) Threshold level for tax registration should be the same for CGST and SGST to avoid confusion and arbitrage opportunities. After keeping a uniform threshold level, for tax administration purposes procedures can be differentiated such as simple registration, self declaration, audit requirement and input credit.
- (14) Unified adjudication and appellate authority: While separate adjudication of the same dispute by the central and state governments appear to be repugnant, counter intuitively so long as the tax collecting authority is one be it CGST and SGST, the problems will be resolved. If the state government collects SGST & CGST, same adjudication authority should adjudicate disputes regarding SGST & CGST both with harmonized rates and single point collection, if should be possible. Similarly, for IGST, the adjudicating authority and appellate authority should be the same, whether they relate to SGST or CGST.

**6.40 Designing on E-commerce ready GST:**

- (1) It should be destination based because that is where consumption takes place.
- (2) It should not be artificially advantageous or disadvantageous e-commerce over comparable traditional commerce and should not unnecessarily hinder e-commerce.
- (3) Should be relatively simple and should facilitate voluntary compliance.
- (4) Should enhance the use of reverse charge procedure as a method to ensure accountability and collection.
- (5) Should be based on electronic invoicing.

- (6) Should be on a technology platform.

Like all taxes, GST will be prominent in the cusp of taxation and politics. Negotiation among the political parties on one hand and among the centre and the states is inevitable. While designing the same arrival at Revenue Neutral position is likely to be the forceful driver. What is likely to be lost track of is the possibility of not designing a system of taxation which will capture e-commerce.

A study by Jupiter Communication of 1999 showed that substantial portion of B2C internet sales are incremental sales that the traditional retailers would have expected to make. Most sales of tangibles are competitors to off-line sale.

GST at the design stage should include robust feature to capture tax on e-commerce be it on tangible, intangible or services and particularly cross-border remote sales of goods and services and intangibles. The problem is exacerbated in a federal country where each state is a separate tax jurisdiction. However, following the neutrality principle in a destination based taxation, it should be captured and the base erosion effect should be minimized. It is possible to achieve the above objectives if it is part of the design feature. The problematic nature of E-commerce will impel tax planners to leave it along the way as a residual and contend with that later on when the magnitude of the problem dawns after the problem gets out of hand. It is necessary to examine the following to arrive at normative features.

- (1) Registration and Return
- (2) Inter-state GST
- (3) Import
- (4) Place of supply rules.

Destination based VAT/GST implies 'goods and services' are taxed in the country where they are consumed and assume that the supply will be taxed in the

country of destination. But the arbitrage available can be exploited between VAT/GST systems of the countries and a comparative advantage can be obtained by minimizing tax burden of an enterprise. Net result of such aggressive tax planning can be:

- (a) Government collects less revenue that impacts its economic growth.
- (b) Individual taxpayers bear a greater tax burden.
- (c) Local businesses are harmed because of their diminishing competitiveness vis-à-vis tax arbitrageur.

#### **6.50 Place of Supply:**

A supply of goods means the transfer of actual right to dispose of the goods to the owner. Actual means an economic substance over legal form approach applies. A supply of services is any supply which is not supply of goods.

In EU each state charges and collects their output VAT on supplies that takes place in their state under their own VAT rules which is compliant with the EU's VAT Directive (2006/112/EC). The states do have some discretion in how they apply the VAT rules, including within limits what rates of VAT to apply. Supplies are deemed to take place at a particular location which is known as 'place of supply'. Detailed rules of how to determine the place of supply will determine the taxable event, incidence and where the tax is levied and collected. In terms of VAT, if we take the example of U.K. which is member of EU, if the place of supply is U.K., the UK VAT rules will apply and any output VAT under UK rules is due to UK only. If the supply is made to another EU state, the rules of VAT of that State will apply and the tax is due to that tax authority. If the supply is deemed to be outside EU, no output VAT UK or EU is due either UK or EU authority, but if the recipient state is NON-EU, their VAT will apply and it would be due to non-EU tax authority. Hence, how place of supply is defined in a destination/ based VAT system will determine who is competent to levy VAT and to whom it would accrue. It will also determine the tax losses which occur in trans-border supplies are plugged and the jurisdiction does not lose its tax base.

## **6.51 Korea<sup>28</sup>**

### **Place of Supply**

- (a) A place of supply of goods.
  - (i) In case of supply of goods which require goods to be delivered: the place where the delivery of goods commences.
  - (ii) Supply of goods which does not require goods to be delivered: the place where goods are located at the time of supply of goods.
- (b) Place of supply of services.
  - (i) The place where services are rendered, or where goods and facilities and rights are used.
  - (ii) In case of international transportation carried on by a non-resident individual or foreign corporation: the place where the passengers get abroad or freight is loaded.

## **6.52 Canada**

### **Goods – For sale of goods**

- place where the property is delivered or made available to purchaser. Any other supply of goods (such as lease) deemed to be made where possession or use of goods is given to recipient.
- Supply of intangible personal property – may be deemed to made in Canada, if the property is used in whole or in part in Canada.

**Services** – A service is deemed to be supplied in Canada if the service is performed in a whole or in part in Canada.

Special rules determine if goods or services made in a HST province and thereby subject to HST instead of GST.

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<sup>28</sup> Korean Taxation, Ministry of Strategy & Finance, Korea -2012.

### **6.53 Brazil**

For indirect tax collection, establishment where the merchandise is located at the moment of taxable extent is deemed to be a place of supply.

Under ISS, the services are considered to be rendered (and the tax due) at the location of rendering establishment.

- ICMS – (a) For transportation services, the place where the service is initiated.
- (b) For communication services: the location is the place of generation, emission, transmission takes place.

### **6.54 Singapore**

If the supply of any goods does not involve removal from Singapore and if they are in Singapore, shall be treated as supplied in Singapore. If it involves removal from Singapore will be treated as supplied outside Singapore. For services, a supply of services will be treated as made in Singapore if the supplier belongs in Singapore, but in another country and not in Singapore if the supplier belongs to another country.

In terms of services, services supplied in Singapore in as much as the supplier belongs to another country it is not treated as supply in Singapore and hence the supplier does not become a taxable person nor his supplies taxable.

However, GST Act of Singapore enables the Government to vary the rules for determining where the supply of services is made in relation to services generally or for a particular service which gives them flexibility and freedom from substantial Parliamentary approval.

Currently, sale of digitized goods such as online movies, e-books, or computer software that can be downloaded by the customer is subject to GST just as the supply of physical

goods using business address, domain name and IP addresses it can be determined whether the customer belongs to Singapore or a foreign country and GST can be collected or not collected as the case may be. But import of digitized goods does not attract GST.

#### **6.55 Norway:**

Though the VAT law does not contain any specific provisions for place of supply of goods and services, certain principles can be deduced from various articles of regulations.

- For goods and services both transactions taking place in Norway are subject to Norwegian VAT and transactions taking place abroad are outside the scope of Norwegian VAT.

Determination of Place of Supply is based on:

- Physical location of goods at point of supply.
- Actual place of performance of services
- Place of use of services
- Place of establishment of the supplier and the customer.

Destination principle:

Services physically performed in Norway are subject to VAT, regardless of who performs it whether by a resident or non-resident taxable person. Services physically performed abroad are not taxable. With regard to services capable of delivery from a remote location, the place of supply is abroad if the recipient is resident outside the territory of Norway. If the recipient is a Norwegian entrepreneur or public body, the place of supply is Norway. The customer accounts for Norwegian VAT due.

Entities other than individual, who are not registered must file quarterly special return.



## **EU**

1. The place where goods are located at the time when supply takes place (for supply of goods without transport) or when dispatch or transport of goods to customer begins (for supply of goods with transport).
2. Distance sales –Between taxable supplier and a non-taxable person, the place of supply is where the taxable supplier is established at the time goods are supplied.
3. Goods supplied by one taxable person to another in the EC, though located in different member states, intra-community acquisition of goods will apply where the place of supply is deemed to be the place where the dispatch or transport of goods to the person acquiring them ends.
4. Importation: The place of supply. The member State within whose territory the goods are located when they enter EC.

## **Services:**

Particular provision of place of supply for services is the place where the particular person has established his business. If the fixed establishment of the taxable person located is other than the place where he established his business, then place where fixed establishment is located will be considered. In the absence of such fixed establishment his usual place of residence will be the place of supply.<sup>29</sup>

- For a non-taxable person, it will be the place where the supplier has established his business.
- The use and engagement rule will override the above rules. If the effective use and engagement takes place outside the Commission or inside the Commission, the place of supply will be considered outside the Commission or inside the Commission respectively.

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<sup>29</sup> Anne Richile Bardopoulous: E-commerce and effect of technology on taxation – pages 178-188.

- In case of electronic service supplied to non-taxable person not established within the community. Effective from 1 January, 2015, new rules were introduced governing the place of supply of electronic services supplied by B2C. From that date these services are taxed in the country where the consumer is established regardless of supplier being EU or not-EU. In result, EU taxable persons that supply electronic services must charge VAT to non-taxable persons established anywhere in EU, using the destination principle. Resultant increased compliance burden has been mitigated for non-EU supplier by simplifying compliance under the MOSS (Mini One-Stop Shop) scheme. Where the taxable supplier though given the responsibility of charging VAT as in the destination state, the Non-EU supplier can register in one EU jurisdiction as per his choice. EU supplier who as per 1 January, 2015 guidelines will have to charge VAT to non-taxable persons established anywhere in the EU using destination principle will fulfill their VAT obligation (by registering and reporting) in their home state.

As per the KPMG's alert<sup>30</sup> a global shift is taking place in the way cross border supply of services are to be taxed from a VAT/GST perspective. This shift essentially seeks to tax supplies of services where they are consumed. It will affect supplies to businesses (B2B) in particular multi-location enterprise and the ones engaged in VAT/GST exempt activities such as financial service. Radical changes are expected in remote supplies in Electronic services to consumers which on traditional basis have been taxed in jurisdiction where they established their business. Going forward they may have to register and remit VAT/GST in consumers' markets even where they don't have any physical presence or nexus.

Digital services supplied to private consumers, procurement of services by VAT exempt business using Head office/branch structures and use of low value importation relief to avoid VAT on goods ordered online have been spotted as troubling areas where

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<sup>30</sup> KPMG alert 2014, Publication No.:132008.

no VAT/GST or an inappropriately low amount is being charged and collected. For supply of digital services, OECD is likely to recommend that VAT/GST should be paid where the customer consuming these services are located and collection is best achieved by mandating suppliers to register and remit VAT in their customer's jurisdiction

OECD has finalized its B2B international service guidelines in April, 2014 which is already endorsed by 100 countries. Their recommendation is B2B suppliers should be subject to VAT/GST where the business is receiving the service is based and the business customer should self-assess and pay the relevant VAT/GST.

Without waiting for guidelines on B2C supplies in place, many Governments are charging their VAT/GST rules. In Norway, non-resident suppliers of e-services are required to register and account for VAT, though registration threshold will apply. EU's position is already narrated. In South Africa since June 2014, the non-resident suppliers of e-services are required to register and levy VAT on supplies which are deemed as consumed in South Africa. This applies to both B2B and B2C supplies though there is a registration threshold.

For the GST purposes, the place of supply rules is yet to be put in public domain. However, it is imperative that some must do principles are incorporated and some redlines are avoided. The place of supply rules for the Indian GST was approved by the Empowered Committee but not have been put in the public domain. But by searching 'Google' one can find a copy of Model GST law which incorporates a Place of Supply Rule.

- (1) As GST is going to be destination based supplies of goods and services will have to be taxed where they are consumed.
- (2) Provision for digital supplies of services will have to be factored in and VAT/GST will have to be paid where the customer consuming the services

is resident and the collection is to be achieved by requiring suppliers to register and remit VAT in their customer's jurisdiction.

- (3) Given the non-territorial nature of e-commerce, it should be flexible enough to capture international supplies and cross-border supplies and will include both inter-state and international supplies.
- (4) Place of supply by a person who is not registered taxable person being the location of the services provider should be eschewed. It will go against the international best practices and go against the principle of destination based taxation and make it an origin based taxation. Since Indian GST is dual GST, the Government of India is likely to be indifferent to compromise on destination principle in as much as the tax remains within the territory is likely to happen as convenience often trump equity.

While defining Place of Supply rules, most countries including EU had the problem of legacy overhang. Evolution has corrected the position to certain extent but design weaknesses take a long time to fix and all new forms of commerce manage to avoid taxes if they do tax planning. Referring to Draft Rule from the model Act shows such weaknesses.

15(3) - Where the supply does not involve movement of goods, the place of supply shall be the location of such goods at the time of the delivery.

16(3) – The place of supply of all services except those specified in sub-section 4,5,6,7,8,9,10,11,12 and 13 made to any person other than a registered person shall be the location of the service provider.

16(7) - Says – the place of supply by way of transportation of goods, including mail and courier are:

- (a) For a person other than a registered person shall be the location at which such goods are handed over for transportation.

16(8) – place of supply of passenger transportation service will be where the passenger embarks on the journey.

Hence all supply of services to a non-registered person will be the place of service provider. This is repugnant to destination based taxes on one hand and for e-commerce of intangibles and services on the other.

Under this arrangement, remote supply of services and remote supply of Multi Location Enterprises will face the classic problem of non-taxation and tax planning as well as competitive behavior from the domestic suppliers. The whole question revolves around whether it should accrue at the location of the consumer or the location of supplier. Consumer's usual residence will be a better option. For goods, it is also a tradeoff between location as a result of transaction vs. Location at the time of transaction. Location as a result of transaction will offer a better solution.

#### **6.60 Registration :**

The Empowered Committee has approved a Registration process for GST and the report is in the public domain.

Registration of a business with the tax authorities implies obtaining a unique identification code from the concerned authorities so that all the operations of and data relating to the business can be agglomerated and correlated. In any tax system this is the most fundamental requirement for identification of the business for tax purposes or for having any compliance verification program. Registration under Goods and Service Tax (GST) regime will confer following advantages to the business:

- Legally recognized as supplier of goods or services.
- Proper accounting of taxes paid on the input goods or services which can be utilized for payment of GST due on supply of goods or services or both by the business.
- Pass on the credit of the taxes paid on the goods or services supplied to purchasers or recipients.

The main features are:

- (a) A legal person without GST registration can neither collect GST from his customers nor claim any input tax credit. However, to enter the credit chain voluntary registration can be taken even though the all India annual turnover is below the threshold.
- (b) There will be threshold of Gross Annual turnover including exports and exempted supplies below which supplies of goods and services are not required to take registration.
- (c) However, there will be another relatively higher threshold for suppliers joining the compounding scheme who will not be allowed to collect Tax or collect GST. The suppliers under the compounding scheme can opt against the compounding scheme can join the input tax credit chain by joining normal registration scheme.
- (d) For inter-state supplies, the taxable person is required to pay GST under reverse charge irrespective of supplies and is compulsorily required to take registration. They are neither eligible for exemption threshold nor for the compounding scheme.
- (e) Suppliers supplying to Government authorities and PSUs not making outward supplies of GST goods will have to take an Unique ID and their supplies are treated as B2B supplies.
- (f) One exceptional scheme is the Input Service Distributor presently being followed in the Central law will continue under GST law (if provided for) would obtain GSTIN for distributing the credit of GST paid on services proposed to be used in multiple locations which are separately registered. This was necessitated for service providers as the location of payment of GST may be distinct from the location of goods received.
- (g) For each State the taxable person can take separate registration even though he could be supplying goods and services from more than one state as a single legal entity.

- (h) Limited period suppliers can obtain limited period registration as casual dealers and shall not be allowed to opt for composition scheme, as being eligible to claim ITC on purchases. Such tax payers would be required to self-assess their likely liability and deposit the same as an advance tax.
- (i) Provision of registration for Non-resident supplier includes the same provision as casual dealer but with security deposit.
- (j) A new applicant will take on-line registration.

#### **6.61 Comments and Recommendations:**

- (1) The registration requirement though strong, is not flexible enough to incorporate the registration of suppliers of digital services, intangibles and small suppliers in multiple jurisdictions.
- (2) The Form of registration is detailed and six page long and costs much higher compliance cost on suppliers. It should be simple enough to carry out registration as part of transaction without substantially slowing it down.
- (3) Insistence on tax representative being not there is a welcome feature. Provision for voluntary registration is required which appears to be missing.
- (4) Requirement of registration in every state impose a high compliance and administrative cost. When the focus will be taxation of non-resident supplier with no effective nexus, it is required that a simple scheme like MOSS (Mini One Stop Shop) in which registration in one jurisdiction should be adequate for all jurisdiction or will be considered as a registration of all jurisdiction.
- (5) Insistence on PAN will be deterrent for non-resident suppliers to register. It should be simplified registration for them based on unique ID.
- (6) From the administrative point of view, registration though feasible will increase the cost of compliance and cost of administration (registering, auditing and collections). Compliance cost goes up for non-resident suppliers particularly those making supplies in multiple jurisdiction with relatively few sales in each jurisdiction. Registration threshold introduces the

risk of neutrality and competitive equity. Registration threshold when applied between brick and mortar and electronic commerce should apply in a non-discriminatory manner. Appointment of fiscal representative will be an anathema for e-commerce business models. A simplified interim approach has been suggested by OECD. This will require non-resident suppliers to register through a simplified (electronic) procedure including only very basic data with liability to account for tax will remain with the supplier with straight forward calculation of tax such as jurisdictional tax x tax rate. Recovery of input tax will not be available with such simplified interim approach unless the supplier takes normal full registration. Like Norwegian Registration requirement, the supplier should furnish:

- (1) Full name & address of the business; both post and visiting address.
- (2) The line of business or trade
- (3) Whether the business will involve with import or export
- (4) The date when the business started and the threshold was exceeded.

#### **6.70 Inter-State Trade and Imports**

Under the scheme the centre will levy IGST which will be CGST +SGST on all inter-state transaction of taxable goods and services with appropriate provision for consignment or stock transfer of goods and services. Currently a dealer is allowed on self-assessment basis to claim ITC provided he is in possession of valid tax-invoices for his purchases. The interstate seller will pay IGST on value addition after adjusting available credit of IGST, CGST & SGST on his purchases. The exporting state will transfer to the centre the credit of SGST used in the payment of IGST. The importing state supplier will claim credit of IGST while discharging his output tax liability in his own state. The centre will transfer to the importing state the credit of IGST used in the payment of SGST.



Presently for imports, custom duty + CVD+SAD is collected for imported goods to bring them on par with local manufactured goods. When GST is implemented, these taxes will be abolished and in their place GST on Import will be levied at the entry point of custom. The revenue received will be passed on to the destination state and the Central Government through IGST.

#### **6.71      Comments and Recommendations:**

- (1)      There should be uniform treatment of inter-state and intra-state transactions and even imports.
- (2)      Experience of EU in the impact of VAT exemption for importation of small consignment otherwise known as LVCR (Low value consignment relief) must be contended with. In EU, commercial importation of consignment with value not below EUR 10 but not exceeding EUR 22 are mandated to be exempt from VAT. Recently, there is recommendation that LVCR should be abolished and the current MOSS schemes to be extended to cover cross border B2C sales of goods. This is to be looked at and all small packet consignment may have to bring into a MOSS like regime.
- (3)      All supplies of electronic services even if they are cross-border are to be treated as a sale of service within the country taking cue from EU. Actually, they will never cross the border posts.

#### **6.80      Threshold & Exemptions:**

With a dual GST, there will be legacy thresholds overhang. For central excise it is currently Rs.1.5 crores where as it Rs.5 to 10 lakhs for state VATs. It is imperative to harmonize the thresholds. Now Government of India is pushing for Rs.25 lakhs threshold for VAT. If it is raised to Rs.25 lakhs, Chhattisgarh, Jharkhand, Haryana, West Bengal, Punjab, Uttar Pradesh, Uttrakhand and Rajasthan will suffer. If it becomes Rs.150 lakhs, most states will lose substantially. There is merit in having lower

threshold. (Figures provided in the tables (14 to 20 annexed to this Chapter may be seen).

**6.81 Comments and Recommendations:**

- (1) Threshold for goods and services should be the same.
- (2) For inter-state dealers, the threshold should be zero. Similarly for imported goods and services threshold should be zero.
- (3) Though the recommended threshold for SGST & CGST for goods and services is Rs.25 lakh, the debate is still on with the States insisting on a lower figure of Rs.10 lac.

**Exemptions:**

**Exemptions are exceptions to neutrality principle.**

- (1) Exempted list of goods should be common to SGST & CGST. Revenue in SGST under exempt list covering 96 is low. But CENVAT exemptions are available for nearly 650+ items. State list and Central list should be transposed to get a minimal list.
- (2) Exempted list of services should be common to both SGST and CGST.

**6.90 Conclusions:** India's GST law requires improvement to make it E-commerce ready. The following need to be done;

- (1) India's GST is not E-commerce ready and does not exhibit robust features to handle the complexities of E-commerce taxation.
- (2) There is no provision which will enable taxing supplies of intangibles and services. The existing provisions may come on the way of capturing supplies of services and intangibles. Place of supply should be location as a result of transaction of goods and the place of location of consumer for the services. There is a need for strengthening destination principle in the place of supply rule so that the tax right accrues to the place of consumption.
- (3) Law will have to change to take care of the temporal gap between the non-changing legal regime and technological innovation.
- (4) Intermediaries who are excellent compliance sentinels need to be recreated by way of third party agencies who would harness technology to assist them to collect tax.

**Table - XVI****“Number of Dealers upto Turnover of Rs.25 lakhs**

Sl. No.	State/Service	Dealers	Total	Percentage
		Upto 25 lakhs	Dealers	
1.	Central Excise	23149	114699	20.2%
2.	Service Tax	495608	693145	71.5%
3.	Andhra Pradesh	97330	200209	48.6%
4.	Goa	15512	23195	66.9%
5.	Jammu & Kashmir	29263	43672	67.0%
6.	Karnataka	291458	430697	67.7%
7.	Kerala	109460	179274	61.1%
8.	Madhya Pradesh	158780	241623	65.7%
9.	Maharashtra	254672	531578	47.9%
10.	Punjab	126788	221967	57.1%
11.	Puducherry	5840	9912	58.9%
12.	Uttrakhand	57617	77190	74.6%
13.	Uttar Pradesh	450335	642645	70.1%
14.	Rajasthan	438736	440942	99.5%
15.	Chhatisgarh	7263	24001	30.3%
16.	Jharkhand	29449	43026	68.4%
17.	Haryana	91391	175304	52.1%
18.	West Bengal	95616	169069	56.6%
	<b>Total</b>	<b>2778267</b>	<b>4262148</b>	<b>65.2%</b>

**Source : NIFPM”**

**Table - XVII****“Revenue upto Turnover of Rs.25 lakhs (Rs. In crores)**

Sl. No.	State/Service	Dealers	Total	Percentage
		Upto 25 lakhs	Revenue	
1.	Central Excise	1254.7	154949.1	1%
2.	Service Tax	3415.6	91397.0	4%
3.	Andhra Pradesh	134.5	31808.0	0%
4.	Goa	27.5	1352.2	2%
5.	Jammu & Kashmir	88.7	1580.8	6%
6.	Karnataka	385.0	19534.2	2%
7.	Kerala	304.9	18329.8	2%
8.	Madhya Pradesh	224.1	14684.6	2%
9.	Maharashtra	367.6	44855.4	1%
10.	Punjab	137.1	9968.1	1%
11.	Puducherry	9.4	639.0	1%
12.	Uttrakhand	212.7	3636.0	6%
13.	Uttar Pradesh	3676.8	29664.2	12%
14.	Rajasthan	3498.5	15766.4	22%
15.	Chhatisgarh	5.5	4809.8	0%
16.	Jharkhand	126.1	4997.2	3%
17.	Haryana	335.4	12042.6	3%
18.	West Bengal	146.9	9567.4	2%
	<b>Total</b>	<b>14351.0</b>	<b>469581.8</b>	<b>3.1%</b>

**Source : NIFPM”**

**Table – XVIII**

**“Number of Dealers upto Turnover of Rs.150 lakhs**

Sl. No.	State/Service	Dealers	Total	Percentage
		Upto 150 lakhs	Dealers	
1.	Central Excise	46101	114699	40.2%
2.	Service Tax	637111	693145	91.9%
3.	Andhra Pradesh	159062	200209	79.4%
4.	Goa	20073	23195	86.5%
5.	Jammu & Kashmir	40249	43672	92.2%
6.	Karnataka	383345	430697	89.0%
7.	Kerala	155014	179274	86.5%
8.	Madhya Pradesh	212274	241623	87.9%
9.	Maharashtra	430472	531578	81.0%
10.	Punjab	189919	221967	85.6%
11.	Puducherry	8149	9912	82.2%
12.	Uttrakhand	70268	77190	91.0%
13.	Uttar Pradesh	606679	642645	94.4.%
14.	Rajasthan	440238	440942	99.8%
15.	Chhatisgarh	15673	24001	65.3%
16.	Jharkhand	37863	43026	88.0%
17.	Haryana	142280	175304	81.2%
18.	West Bengal	140102	169069	82.9%
	<b>Total</b>	<b>3734872</b>	<b>4262148</b>	<b>87.6%</b>

Source : NIFPM”

**Table - XIX****Revenue upto Turnover of Rs.150 lakhs (Rs. In crores)**

Sl. No.	State/Service	Dealers	Total	Percentage
		Upto 150 lakhs	Revenue	
1.	Central Excise	1993.9	154949.1	1.3%
2.	Service Tax	11498.3	91397.0	12.6%
3.	Andhra Pradesh	134.5	31808.0	0.4%
4.	Goa	133.2	1352.2	9.9%
5.	Jammu & Kashmir	323.6	1580.8	20.5%
6.	Karnataka	1808.3	19534.0	9.3%
7.	Kerala	1059.7	18329.8	5.8%
8.	Madhya Pradesh	782.3	14684.6	5.3%
9.	Maharashtra	2119.3	44855.4	4.7%
10.	Punjab	529.5	9968.1	5.3%
11.	Puducherry	56.1	639.0	8.8%
12.	Uttrakhand	513.0	3636.0	14.1%
13.	Uttar Pradesh	10756.2	29664.2	36.3%
14.	Rajasthan	4371.1	15766.4	27.7%
15.	Chhatisgarh	88.2	4809.8	1.8%
16.	Jharkhand	504.3	4997.2	10.1%
17.	Haryana	1201.3	12042.6	10.0%
18.	West Bengal	530.6	9567.4	5.5%
	<b>Total</b>	<b>38403.4</b>	<b>469581.6</b>	<b>8.2%</b>

Source : NIFPM''

**Table - XX**  
**“DEALERS (%) TURNOVERWISE AND STATEWISE (CUMULATIVE)**

Turnover	Central Excise	Service Tax	Andhra Pradesh	Goa	Jammu & Kashmir	Karnataka	Kerala	Madhya Pradesh	Maharashtra
Turnover upto Rs.10 lakhs	16.1%	55.5%	34.9%	50.4%	42.1%	53.2%	47.1%	41.8%	30.8%
Turnover upto Rs.20 lakhs	18.9%	67.6%	44.8%	61.4%	56.6%	64.1%	57.5%	57.0%	43.2%
Turnover upto Rs.25 lakhs	20.2%	71.5%	48.6%	66.9%	67.0%	67.7%	61.1%	65.7%	47.9%
Turnover upto Rs.50 lakhs	25.4%	81.9%	61.4%	75.1%	77.9%	77.9%	72.3%	75.1%	63.4%
Turnover upto Rs.60 lakhs	27.1%	84.1%	64.7%	77.5%	84.0%	80.6%	75.1%	80.0%	68.0%
Turnover upto Rs.100 lakhs	33.4%	89.0%	73.4%	81.5%	88.8%	84.9%	81.6%	84.8%	75.4%
Turnover upto Rs.150 lakhs	40.2%	91.9%	79.5%	86.5%	92.2%	89.0%	86.5%	87.9%	81.0%
Turnover upto Rs.200 lakhs	45.5%	93.5%	83.1%	89.5%	94.0%	90.7%	89.1%	90.1%	84.3%
Turnover upto Rs.300 lakhs	53.7%	95.3%	87.2%	91.5%	95.6%	92.6%	92.1%	92.5%	88.0%
Turnover upto Rs.400 lakhs	59.5%	96.3%	89.8%	92.6%	97.0%	94.2%	93.9%	94.3%	90.2%
Turnover upto Rs.500 lakhs	63.7%	96.9%	91.4%	94.8%	97.9%	95.2%	95.0%	96.0%	91.8%
Turnover exceeding Rs.500 lakhs	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

Source : NIFPM”



**Table - XXI****“REVENUE (%) TURNOVERWISE AND STATEWISE (CUMULATIVE)**

Turnover	Central Excise	Service Tax	Andhra Pradesh	Goa	Jammu & Kashmir	Karnataka	Kerala	Madhya Pradesh	Maharashtra
Turnover upto Rs.10 lakhs	0.7%	1.6%	0.1%	1.1%	1.4%	0.7%	0.9%	0.5%	0.2%
Turnover upto Rs.20 lakhs	0.8%	3.1%	0.3%	1.7%	3.2%	1.5%	1.4%	1.0%	0.6%
Turnover upto Rs.25 lakhs	0.8%	3.7%	0.4%	2.0%	5.6%	2.0%	1.7%	1.5%	0.8%
Turnover upto Rs.50 lakhs	0.9%	6.6%	0.9%	3.7%	9.2%	4.0%	2.8%	2.3%	1.9%
Turnover upto Rs.60 lakhs	0.9%	7.5%	1.1%	4.3%	12.4%	4.6%	3.2%	3.0%	2.4%
Turnover upto Rs.100 lakhs	1.1%	10.2%	1.8%	6.3%	16.1%	6.9%	4.4%	4.1%	3.5%
Turnover upto Rs.150 lakhs	1.3%	12.6%	2.6%	9.8%	20.5%	9.3%	5.8%	5.3%	4.7%
Turnover upto Rs.200 lakhs	1.5%	14.4%	3.2%	11.7%	26.3%	11.1%	6.8%	6.8%	5.7%
Turnover upto Rs.300 lakhs	2.1%	17.1%	4.2%	15.1%	33.7%	13.9%	33.8%	9.2%	7.0%
Turnover upto Rs.400 lakhs	2.6%	19.2%	5.1%	17.6%	42.1%	16.2%	35.2%	11.9%	8.1%
Turnover upto Rs.500 lakhs	3.1%	20.8%	5.9%	20.3%	51.3%	18.1%	36.3%	16.3%	9.0%
Turnover exceeding Rs.500 lakhs	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

**Source : NIFPM”**

**Table - XXII****“DEALERS (%) TURNOVERWISE AND STATEWISE (CUMULATIVE)**

Turnover	Chhatisgarh	Jharkhand	Haryana	West Bengal	Punjab	Puducherry	Uttarakhand	Uttar Pradesh	Rajasthan
Turnover upto Rs.10 lakhs	19.4%	55.1%	35.8%	42.7%	44.2%	46.4%	46.1%	48.6%	99.09%
Turnover upto Rs.20 lakhs	27.2%	64.1%	46.9%	52.9%	53.5%	55.9%	63.5%	63.0%	99.4%
Turnover upto Rs.25 lakhs	30.3%	68.4%	52.1%	56.6%	57.1%	58.9%	74.6%	70.1%	99.50%
Turnover upto Rs.50 lakhs	42.0%	77.2%	62.7%	67.6%	69.4%	69.1%	84.4%	83.5%	99.68%
Turnover upto Rs.60 lakhs	46.3%	79.8%	66.7%	70.5%	72.4%	71.7%	85.6%	87.7%	99.72%
Turnover upto Rs.100 lakhs	56.5%	84.7%	74.6%	77.7%	80.1%	77.8%	88.8%	91.6%	99.80%
Turnover upto Rs.150 lakhs	65.3%	88.0%	81.2%	82.9%	85.6%	82.2%	91.0%	94.4%	99.84%
Turnover upto Rs.200 lakhs	70.9%	90.4%	85.1%	85.8%	88.1%	84.8%	92.4%	97.1%	99.87%
Turnover upto Rs.300 lakhs	77.8%	92.5%	89.3%	89.3%	91.1%	88.3%	94.2%	98.2%	99.92%
Turnover upto Rs.400 lakhs	82.0%	94.0%	91.9%	91.3%	92.9%	90.5%	95.2%	99.1%	99.93%
Turnover upto Rs.500 lakhs	84.6%	95.2%	94.0%	92.7%	94.2%	91.8%	95.9%	99.9%	99.95%
Turnover exceeding Rs.500 lakhs	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

**Source : NIFPM”**

**Table - XXIII****“REVENUE (%) TURNOVERWISE AND STATEWISE (CUMULATIVE)**

Turnover	Chhatisgarh	Jharkhand	Haryana	West Bengal	Punjab	Puducherry	Uttarakhand	Uttar Pradesh	Rajasthan
Turnover upto Rs.10 lakhs	0.03%	0.8%	1.1%	0.8%	0.8%	0.5%	1.8%	5.9%	20.4%
Turnover upto Rs.20 lakhs	0.1%	1.9%	2.0%	1.3%	1.2%	1.2%	4.0%	9.7%	21.7%
Turnover upto Rs.25 lakhs	0.1%	2.5%	2.8%	1.5%	1.4%	1.5%	5.8%	12.4%	22.2%
Turnover upto Rs.50 lakhs	0.4%	3.7%	4.2%	2.6%	2.4%	3.3%	11.5%	21.1%	24.0%
Turnover upto Rs.60 lakhs	0.6%	4.8%	5.4%	2.9%	2.7%	3.9%	11.8%	25.1%	24.5%
Turnover upto Rs.100 lakhs	1.1%	7.1%	7.7%	4.2%	4.1%	6.4%	12.9%	30.6%	26.2%
Turnover upto Rs.150 lakhs	1.8%	10.1%	10.0%	5.5%	5.3%	8.8%	14.1%	36.3%	27.7%
Turnover upto Rs.200 lakhs	2.5%	12.7%	12.5%	6.6%	6.2%	10.4%	15.1%	44.6%	28.9%
Turnover upto Rs.300 lakhs	3.5%	14.5%	15.6%	8.4%	7.7%	14.0%	16.7%	49.0%	30.9%
Turnover upto Rs.400 lakhs	4.4%	16.4%	19.5%	9.9%	8.7%	16.6%	18.2%	55.0%	32.6%
Turnover upto Rs.500 lakhs	5.1%	19.2%	24.4%	11.2%	9.7%	18.7%	19.4%	61.2%	34.4%
Turnover exceeding Rs.500 lakhs	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

**Source : NIFPM”**

**RULES FOR PLACE OF SUPPLY OF GOODS AND/OR SERVICES**

**“Place of supply of goods**

- (1) The provisions of this section shall apply to determine the place of supply of goods.
- (2) Where the supply, including a distance supply, involves movement of goods, the place of supply of such goods shall be the location at which the goods are delivered to the receiver.

**Explanation:** The expression 'distance supply' shall mean a supply of goods which satisfies the following conditions:-

- (a) the goods are supplied to a recipient located in another State, and
- (b) the supplier arranges the transport of goods.
- (3) Where the supply does not involve movement of goods, the place of supply shall be the location of such goods at the time of the delivery to the receiver.
- (4) Where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly.
- (5) Where the goods are supplied on board a conveyance, such as a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.
- (6) The place of supply of gas shall be the location at which the gas is used and consumed.

**Place of supply of services**

- (1) The provisions of this section shall apply to determine the place of supply of services.

- (2) The place of supply of all services, except those services specified in sub-sections (4), (5), (6), (7), (8), (9), (10), (11), (12) and (13), made to a registered taxable person shall be the location of the service receiver.
- (3) The place of supply of all services, except those services specified in sub-sections (4), (5), (6), (7), (8), (9), (10), (11), (12) and (13), made to any person other than a registered taxable person shall be the location of the service provider.
- (4) The place of supply of services, -
  - (a) in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work, or
  - (b) by way of lodging accommodation by a hotel, inn, guest house, homestay, club or campsite, by whatever name called and including a house boat or any other vessel, or
  - (c) by way of accommodation in any immovable property for organizing any marriage or reception or matters related therewith, official, social, cultural, religious or business function including services provided in relation to such function at such property, shall be the location at which the immovable property or boat or vessel is located or intended to be located.

**Explanation:** Where the immovable property or boat or vessel is located in more than one State, the supply of service shall be treated as made in each of the States in proportion to the value for services separately collected or determined, in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

- (5) The place of supply of restaurant and catering services and services in relation to training, performance appraisal, personal grooming, fitness, beauty treatment,

health services including cosmetic and plastic surgery shall be the location where the services are actually performed.

- (6) The place of supply of services provided by way of:
- (a) admission to a cultural, artistic, sporting, scientific, educational, or entertainment event or amusement park or any other place, or
  - (b) organization of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of service in relation to a conference, fair, exhibition, celebration or similar events, or
  - (c) services ancillary to such admission to or organization of any of the above events or services, or
  - (d) assigning of sponsorship of any of the above events, shall be the place where the event is actually held.

**Explanation:** Where the event is held in more than one State and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in the each of the States in proportion to the value of services so provided in each State as ascertained from the terms of the contract or agreement entered into in this regard or, in absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

- (7) The place of supply of services by way of transportation of goods, including by mail or courier to,
- (a) a registered person, shall be the location of such service receiver;
  - (b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

- (8) The place of supply of passenger transportation service shall be the place where the passenger embarks on the conveyance for a continuous journey:

Provided that where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the place of supply of such service shall be determined in the manner specified in sub-sections (2) or (3), as the case may be.

**Explanation:** For the purposes of this sub-section, the return journey shall be treated as a separate journey even if the right to passage for onward and return journey is issued at the same time.

- (9) The place of supply of services on board a conveyance such as vessel, aircraft, train or motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.
- (10) The place of supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall:
  - (a) in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;
  - (b) in case of mobile connection for telecommunication and internet services provided on post-paid basis, be the location of billing address of the service receiver on record of the service provider;
  - (c) in cases where mobile connection for telecommunication and internet service are provided on pre-payment through a voucher or any other means, be the location where such pre-payment is received or such vouchers are sold;

Provided that if such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment, the location of the service receiver on record of the service provider shall be the place of supply of such service.”

## **CHAPTER VII**

### **CONCLUSIONS: SUMMARY & RECOMMENDATIONS**

7.0 E-Commerce sales, be they be tangibles or intangibles, goods or services are to be taxed (as per OECD's Ottawa Minister's Convention guidelines) have been accepted on the principle of neutrality. There is a broad consensus on the following:

1. Taxation principles which "guide conventional commerce should guide e-commerce without having to introduce any new tax for commerce".
2. "Existing taxation rules must be used to implement these principles" based on intensified dialogue with the non-member economics and businesses.
3. "To achieve efficiency, both compliance cost for the tax payers and administrative cost for the tax authorities should be minimized".
4. There should be "tax neutrality between e-commerce and conventional commerce will provide clarity and certainty on when, where and how tax is being levied and accounted for." Tax rules should be simple so that tax payers can anticipate the tax consequences in advance of a transaction.

7.01 The debate has settled down with several countries taking the lead in establishing a rules framework for taxing tangibles, intangibles and services delivered digitally particularly delivered by non-resident suppliers and cross-border supplies.

The debate of whether to tax e-commerce or not was led by U.S. which is a major exporter of e-commerce, whereas EU who was a major consumer had a very different approach as EU countries are more dependent on consumption tax such as VAT/GST. OECD's work on base erosion and Cockfield's work on loss of revenue has established the point that e-commerce should neither be disadvantaged or advantaged compared to traditional commerce.



7.02 There was also a debate which taxation is better for E-commerce, i.e. whether income tax or consumption tax like retail Sales Tax or VAT/GST.

A general sales tax by its comprehensive nature tends to be more neutral than the excise taxation which is a tax on production only. VAT is preferable to Sales Tax for E-commerce because of two reasons:

- (1) Often sales tax does not tax services
- (2) Cascading nature of sales tax puts a heavier burden on products which go through several stages before being commercialized.

Compared to income tax which is subject oriented, VAT is transaction oriented, which is a tax base less vulnerable to international tax flight. Doernberg & Hinnekins found VAT/GST to be more steadier and dependable source of revenue. On the basis simplicity, efficiency and fairness, a transaction tax like GST/VAT may score some points on Income Tax. It is easier to collect, deals with a small universe of tax plyers which are covered by registration rule. This is all the more effective in case of E-commerce which is borderless in nature. Core of the efficacy of GST is when it is destination based as the consumption jurisdiction get the tax right, be they goods or services.

Though, this thesis does not cover the inter-se preference of taxes for e-commerce, there is a strong belief that VAT/GST supersedes income tax in flexibility and adaptability in respect of e-commerce. VAT/GST being a transactional tax, systems can be introduced for collection of tax either from the buyer or seller. While in case of income tax there is a need to reconceptualize ‘permanent establishment’<sup>1</sup> etc. In case of VAT, technology has been available to determine the place of supply, carry out enforcement, collection and to cover over all administrative aspect. Consumption tax being on consumer, it being levied where goods and services are consumed, the consumer’s location at the time of service or good is consumed is a key factor. The place of supply rule is to give certainty to traditional cross border transaction

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<sup>1</sup> Dale Pinto, “E-commerce and Source Based Taxation”.

particularly exacerbated by virtual world's need for certainty. The flexible and amenable nature inherent in VAT makes it the preferred taxing system for e-Tax solution in E-commerce which is basically unbounded in nature.

A 'consensus omnium' is required for international harmonization of basic principles, rules and effective application of rules, if double taxation is to be avoided and low taxation or no taxation is to be eschewed. They are; application of destination principle, zero rating of exports, treatment of digital supplies as services and the registration requirement and threshold for persons carrying on taxable activities within a relevant jurisdiction. While a multilateral treaty may be difficult now, with broad acceptance of destination principles on one hand and zero rating of exports on the other, it is possible for countries to bilaterally work towards harmonization. Even if the need for VAT harmonization across geographies to enable more efficient application and administration of VAT/GST is pending, (EU's case is a point in issue), it is possible to go ahead with bilateral agreements in the interim.

7.10 This thesis also not about technology. However, the problems of identification of parties, identification of tax jurisdiction and possibility of compliance and administrative ease are the problems which are at the core are to be solved. Though law and technology influence each other, there could be temporal gap in law catching up with technology innovation. In the interim technological innovation and static non-changing legal regime creates uncertainty. As Cockfield suggested it is important to understand and strive towards changes in law to adjust to technological change. Technology which has created e-commerce and still evolving can provide solutions to the problem. If the benefit of tax does not exceed the resources spent on collecting it, it becomes a deadweight loss. Taxation of E-commerce boils down to two issues. They are:

- (a) Who will bear the tax and compliance burden; and
- (b) How is tax going to be collected?

With GST it is clear who will bear the tax and with the destination principle, it is clearer now who will bear the compliance burden. Cross country analysis showed us how countries are grappling with the problem by effecting changes in their law and rules.

On the issue how tax is going to be collected, the answer lies in technology and change in principles. Technology, particularly internet technology can identify the location of the purchaser, automatically charge, assess and remit taxes on e-commerce to lower compliance cost. Even some suggest that online extranets can enable information exchange between tax authorities. Intermediaries have always been the actual collectors of tax and remitters of sales tax including identifying the consumer. Basu calls them “excellent compliance sentinels”. For e-tailers and for digital supply, an intermediary can be created as OECD suggested that (such as financial intermediaries) would be enlisted to collect GST/VAT on payments made by the consumers and to remit it to country of consumption. But this is to be market-driven commercially viable model with appropriate incentives. A substitute could be technology based or technology facilitated solutions to tax collection. But ultimately it is going to be combination of technology and principles which will hold an answer to the problem of properly calculated tax and remit it to the jurisdiction where the transaction is taxable, to arrive at a taxable transaction and to determine tax rate and gather all information required to calculate GST properly. The required information depends a great deal on the Place of Supply Rules. After the place of supply rules are established, re-creation of intermediaries can take place through the ISPs who know the identity of the user. Verification can be done beyond reasonable doubts by digital certificates; VAT invoices can be signed by use of digital certificate which will enable input credit. Digital certificate can be in the custody of a trusted third party. An alternative to that could be a vendor with the support of credit card, database created by each taxing jurisdiction for determining taxable and tax exempt product. Software like TAXWARE or E-commerce Tax System of IBM which provides comprehensive solution for automatic tax calculation and manage exemption certificates can be helpful. Audit trail can be achieved through ISPs. It is possible to create an intermediary through the ISPs, insist on usage of digital certificate and use a data base for universal product classification

and a software to calculate tax (like TAXWARE or E-Commerce Tax system of IBM) which calculate different taxes, manage exemption certificates and verify addresses in EU, Asia Pacific and South America. ISPs can execute the collection procedure without imposing taxes which will be done by the supplier. ISPs need not be the only third party player. Even banks, third party financial institutions and credit card issues can become the third party players or the required intermediaries.

7.30 Introduction of GST in India is a great attempt to create harmonized tax structure for a unified common market. It involved negotiation between the States and the Centre on one hand and between political parties in the Centre. Basic contours of GST are known now. It is a destination based tax. With GST, the difference between goods tax and services tax get obliterated which makes it easier for taxing products/service particularly intangibles and electronic services. The first advantage is classification as a good and service is not required. Twin treatment of sale of services and intangible products under two taxes will not be necessary. Under e-commerce both product and services come bundled together and the challenge of treating it as a 'good' or 'services' is not a problem, under an omnibus tax for goods and services. OECD's concern that digitally transferred product should be taxed as services are also resolved. This is particularly important when electronic transactions compete with physical forms of supply and goods once supplied in physical form get digitized and losing physical appearance and therefore, regime governing the taxation of goods cannot apply to intangible products. But a tax system used to revenue collection is driven by revenue neutralization motives. If the law does not take care of issues now, and more driven by convenience, the regime will have to struggle to keep up with the technology. From the initial papers it is not clear that the policy makers have thought adequately about the e-commerce issue and have left it as a residual, even though GST is premised on a strong technology platform such as GSTN. From the industry side, the attempt is to stay clear of taxation net by avoiding registration by advocating that market place models' players are not dealers. The need for an intermediary in a staged process of tax where input credit is available and where the distinction between supply of goods and supply service

gets obliterated, this argument is not tenable. This largely stems from the term ‘dealer’ in VAT and Sales Tax. The new tax focuses on ‘supplier, rather than ‘dealer’ with definition of ‘supply’ in place and ‘place of supply’ defined.

7.40 Destination Principle of GST removes all confusions of a consumption tax system as the tax is attributable to the jurisdiction where consumption takes place. It is equitable, non-cascading and non-distortionary. There is no reason for tax competition among the states for locating industries or production points nor need for aggressive tax planning by the enterprises. However, in a country like India with 29 States and 7 Union Territories, border control for this tax with input credits is not possible. Hence policy makers are likely to be tempted to include features of origin based VAT for the sake of convenience and revenue neutrality consideration, if not eschewed at the design stage. Application of origin based tax features are likely to lead to misallocation of VAT revenues among the member States under a given pattern of consumption. It has got potential of distorting consumption and introduces inter-state competition. Simultaneously, there are problems of non-taxation or low taxation on one hand and double taxation on the other.

**Summary of findings are:**

- (1) With a fragmented tax structure, it is easier to do tax planning by E-commerce firms. VAT which is origin based and a goods tax only helps.
- (2) GST has the potential to become the e-tax for E-commerce because of its efficiency, simplicity and it is transaction based.
- (3) GST in current form is not e-tax ready for E-commerce. But learning from EU and other countries, the policy makers should make GST ready for E-commerce as in future much of tangible commerce will move to e-channel and digital supply of services and intangibles will increase.

- (4) While technology has created problems it has solutions too. Technology is available with which help it is possible to identify parties to transaction, collect tax and remit it to appropriate jurisdiction. But principles need to be changed to help in capturing tax in E-commerce.
- (5) With regard to principles, the place of supply is critical as are the simplifying registration, harmonizing threshold and exemptions. 'Place of Supply' rule should be compliant with pure firm destination principle.

7.50 Hence, in this thesis I would like to recommend the following for GST to be ready for E-commerce:

- (1) Defining Supply: Supply of goods and services must be defined to put at rest the reluctance of E-commerce stakeholders to join as suppliers. A relatively simple way of defining 'supply' is to define it as a delivery of goods and the performance of services for consideration including exchange of goods and services. Supply of services is deemed to be any supply that is not defined as supply of goods.
- (2) Place of Supply Rules – As GST is destination based, goods and services are to be taxed and attributed to where they are consumed. The core-efficiency of GST flows from destination based GST. Pure form place of consumption as the place of supply is required to make the tax law E-commerce ready. A place of supply rule does away with the need to have "physical presence" however, de minimis for a supplier which in U.S. System is a requirement for 'substantial nexus'. In E-commerce the task of identifying physical presence is nebulous and extremely difficult to establish even the slightest physical presence often. A place of supply rule designates taxing right and tax collection responsibility without having to establish 'nexus'.

- (3) The place of Supply Rules will have to incorporate the following:
- (i) For supply of services and intangibles, GST will have to be paid where the customer is consuming services. For B2B, it may be reverse charge provision. For B2C, GST should be leviable either where the supply is physically performed with that jurisdiction having taxing right for ‘on-the-spot’ supply of services and intangibles. Otherwise the jurisdiction where the consumer has its usual residence will be the taxable jurisdiction. EU has come out with similar directive. OECD’s discussion paper veers around the same point so that GST occurs and goes to the taxing jurisdiction of consumption.
  - (ii) I propose a formulation for the place of supply rule:  
“For business-to-business supplies, the jurisdiction in which the customer is located has the taxing right over internationally trades services or intangibles. When the customer has establishments in more than one jurisdiction, the taxing right accrue to the jurisdictions where the establishments using the services or intangibles are located.  
The jurisdiction in which supply is physically performed has the taxing right over business – to – consumer supplies of services and intangibles, if the performance is at an identifiable location, if they are ordinarily consumed at the same time and at the same place where they are physically performed and requires the physical presence of the person performing the supply and the person consuming the services or tangible at the same time and at the same place where the supply of service or intangible is physically performed.  
For B2C – the jurisdiction in which the customer has his usual residence has taxing right over business to consumer supplies of services and intangibles.

Transportation: Where dispatch or transport of goods to the buyer ends.”

- (iii) Given the non-territorial nature of e-commerce of services and intangibles on one-hand and separation of assets and activities on the other in the E-commerce business model, ‘nexus’ and ‘situs’ should not be a substantial issue as long as consumer is identifiable.
- (iv) For goods which do not involve movement, location of such goods at the time of delivery to the receiver which brings feature of origin based tax should be avoided.
- (v) For supply of services and intangibles by a non-registered person, several countries have taken the location of service provider as the taxing jurisdiction. This should be avoided as it will go against the principle of destination and make it a origin based taxation.
- (vi) For goods handed over for transportation, origination principle should be avoided and if tax is collected, it should be set off against the tax at the final destination.

#### 7.60 **Registration**

The Empowered Committee approved Registration framework is too tight and does not recognize the problem of E-commerce in general and cross border sale of services and intangible in particular. There is insistence on separate registration with every tax jurisdiction (every State), non-provision for voluntary registration for anyone other than an inter-State supplier and rigid registration requirement. It appears to be inflexible and is likely to impose a high compliance cost on the suppliers and a higher administrative cost. Insistence on PAN number is a deterrent for Non-resident suppliers. While registration and accounting for VAT in the jurisdiction of taxation has been recognized as effective and efficient approach, it requires a simplified approach, particularly for suppliers who supply to several tax jurisdictions with low turnover.



According to traditional approach, a non-resident supplier is required to register in the jurisdiction of taxation and charge, collect and remit any taxes due. In a system where a legal person without GST registration can neither collect GST from his customers nor claim any input tax credit, non-resident suppliers of intangibles and services require a different dispensation. While it may not create much problem in the B2B supplies where reverse charge mechanism is available, highest feasible level of compliance in B2C, is possible if compliance obligation is limited to what is strictly necessary for a proper collection of tax. Insistence on the same procedure for non-resident suppliers of B2C services and intangibles risks creating barriers that may lead to non-compliance. A simplified registration and compliance regime separately from traditional registration and compliance regime without the same rights (e.g. input tax recovery) and obligations (e.g. full reporting) will be required which will serve as an incentive for the non-resident suppliers to engage with the tax authority. The information requested could be limited to necessary details such as Name of the business, including the trading name, name of the contact person responsible for dealing with the tax administration, postal or registered address and its contact person, telephone and electronic address of contact person, websites URL of business, National tax identification number if any. Online registration also should be enabled.

It is required that a simple scheme like MOSS (Mini One Stop Shop) of EU in which registration in one jurisdiction is considered adequate for other jurisdiction should be put in place. In as much as supplier is identifiable in any State or tax jurisdiction that should be taken as the registration for other geographies. The tax registration should file simplified tax return electronically which should strike a balance between the need for simplicity and the tax administrator's need to verify whether tax obligations have been correctly fulfilled. This should incorporate supplier's registered ID, tax period, currency and relevant exchange rate used, taxable amount at the standard rate, taxable amount at the reduced rate and total tax amount payable.

7.70 Inter-State trade and import of goods, services and intangibles.

As per the road map prepared by the Empowered Committee, GST on imports and IGST will be collected by the Central Government which will function as a clearing house. After the study it is recommended that:

- (i) IGST should function seamlessly.
- (ii) There should be equal treatment for inter-State and intra-State transactions.
- (iii) All supplies of cross border services even if they don't actually cross the border post should be treated as sale of service within the country. In any case no customs duty is collectable now because of W.T.O. guidelines.
- (iv) Importation of low value consignments which has proved to be a problem area whether they are imports or inter-State transactions should be brought under a MOSS like scheme. EU's expert group's recommendation is to "abolish the small consignment exemption" should be taken note of. The concern of convenience and decongesting border post has resulted in this exemption but this can be taken care of by following the U.K.'s methodology of prepayment arrangement whereby overseas traders are allowed to charge, collect and pay upfront the import GST for mail order goods. This arrangement gives benefit of avoidance of unnecessary requirements upon arrival of goods making clearances less time consuming and costly for all parties. This is corroborated by U.K.'s cost of (EUR 1.80 – 5.77) being far lower than EU average of EUR 8.96<sup>2</sup>.
- (v) GST will help in removing one set of borders i.e. the state orders. But the country's border still remains. GST will not be able to

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<sup>2</sup> Assessment of the application and impact of VAT exemption for importation of small consignments. E.Y-May 2015

remove it. In E-commerce if taxation is going to be destination based, it is the tax authority of jurisdiction whose right will accrue and in the possible scenario of technological interface, it is possible to collect and remit tax to that authority. The system will get complex, if it is required to collect tax and remit it to two authorities that is state and Centre both. It will be prudent to allow the SGST jurisdiction to collect CGST and have a reverse flow arrangement for the centre just like centre will collect IGST.

#### 7.80 Thresholds and Exemptions

- (a) There should be uniform threshold for goods and services.
- (b) For imports and inter-State supply of goods and service, the threshold should be zero.
- (c) Thresholds for SGST and CGST should be the same.

Exemptions - Exemptions are basically distortionary and changes consumption pattern and encourages business to take locational decisions to take advantage of exemption. It also creates tax-competition issue.

- (a) Exemption list of goods should be common to both SGST and CGST to remove arbitrage opportunity by misclassification.
- (b) Exempted list of services should be common to SGST and CGST.

#### 7.90 **Conclusion:**

If someone asks what is the centre of gravity for the change in GST to be ready for E-commerce, my reply will be take care of four things. They are

- (a) Working towards a pure firm destination principle to change the place of supply rule;

- (b) Simplify registration and return requirement for cross-border supplies of services and intangibles.
- (c) Harmonization of tax rates for goods and services (uniform rate), exempted goods under CGST and SGST, thresholds for goods, service.
- (d) For imports of digital services, content and intangibles, the policy makers should be ready for a 'reverse flow' mechanism where the States collect the tax and give the Central Government's share back to the centre since they would not pass through the border post and it is inconvenient to insist on the vendors to pay taxes in both jurisdiction.

If the law under preparation is fixed, remote supply to exempt businesses, remote supply to multi-location enterprises and low value consignment problems can be contended with and tax avoidance can be plugged. Once GST comes in with necessary enhancement E-commerce related tangibles, intangibles and services will not face any problem and will not face either double taxation or non-taxation.

**End Note:** The negotiations between both leading political parties are on now to pilot the constitutional amendment in Rajya Sabha. The deadlines of April 1,2016 looks distant now. But there could be a silver lining in the delay. When the Model Tax Law which is under preparation is not E-commerce ready, the breather is absolutely required to impress upon the policy makers to make the required changes in the law. In India, making amendments to a law takes long time too. Hopefully, the findings in this thesis will be of some help and influence to the Government of India and Indian Law makers now since there is some time left for rolling out GST.

## ail/TaxInvoice/Cash Memorandum

By

ALPHA

os. 241-244, 275-284, Penjerla (V)

ir (M), Mahabubnagar dist.

rabad - 509228

gana, India



DVVTmgkhR /-1 of 1 -// std-in-remote

TIN Number: 36213828299

Number: 36213828299

Invoice Number: TG-HYD7-141779721-2699

## ig Address

nil Saha

Bhavan, 168 Bidhan Park, Baranagar North 24 Pgns,

ee more

ita, West Bengal - 700090

## Shipping Address

Indranil Saha

Ambuja cements limited, Berhampore warehouse, Murshid.

33/1/B. K.N. Road

Berhampore, West Bengal - 742101

e of Transaction: Sale

r ID 171-4596795-6928322

This is a computer generated inv

DESCRIPTION	GROSS AMOUNT	DISCOUNT	NET AMOUNT (tax inclusive)	TAX TYPE	TAX RATE	TAX AMO (included net)
<b>Franco Leone Men's Black Leather Boots</b> - 7.5 UK X000DWO3XN	Rs. 1379.00		Rs. 1379.00	CST	14.5%	Rs. 174.6
Shipping	Rs. 0.00		Rs. 0.00	Tax	0%	Rs. 0.00
	<b>TOTAL GROSS AMOUNT</b>	<b>TOTAL DISCOUNT</b>	<b>FINAL NET AMOUNT</b>	<b>TAX TYPE</b>	<b>TAX RATE</b>	<b>TAX AMOUNT</b>
	Rs. 1379.00		Rs. 1379.00	CST Tax	14.5% 0%	Rs. 174.6 Rs. 0.00

I hereby certify that my/our registration certificate under the  
gana Value Added Tax Act, 2005 is in force on the date on which  
ale of the goods specified in this Tax/Retail Invoice is made by me /  
id that the transaction of sale covered by this Tax/Retail Invoice has  
effected by me / us and it shall be accounted for in the turnover of  
while filing of return and the due tax, if any, payable on the sale has  
paid or shall be paid.

For A2Z ALPHA

[Authorised Signatory]

tered Address for A2Z ALPHA, HOUSE NO 123, SECTOR 31, GURGAON - 122001, HARYANA, IN

eturn an item, visit <http://www.amazon.in/returns>  
nore information on your orders, visit <http://www.amazon.in/your-account>

mgkhR /-1 of 1 -// std-in-remote/ 0807-17:47/ 0808-17:30



Purchase made on amazon



## Tax Invoice(duplicate)

Amazon Seller Services Private Limited  
# 26/1, Brigade Gateway, 8th Floor., Dr  
Rajkumar Road, Malleshwaram West,  
Banglore, Karnataka, 560055, IN  
Website: [www.amazon.in](http://www.amazon.in)

Invoice Date: 30/09/2015  
Invoice Number: VIA-IN-186270

PAN No: AAICA3918J  
Service Tax Registration No: AAICA3918JSD001  
CIN No: U51900KA2010PTC053234

### Bill to

Name: A2Z ALPHA

Address: HOUSE NO 123, SECTOR 31, GURGAON, HARYANA, 122001, IN

Sl No	Category of Service	Description of Service	Tax Rate	Amount
1.	Business Support Services	FBA Delivery Services Fee		INR 373509.81
		Service Tax	14.00%	INR 52330.41
2.	Business Support Services	Fixed Closing Fee		INR 156510.00
		Service Tax	14.00%	INR,21911.40
3.	Business Support Services	Giftwrap Fee		INR 5239.26
		Service Tax	14.00%	INR 734.08
4.	Business Support Services	Listing Fee		INR 2684342.44
		Service Tax	14.00%	INR 375800.55
5.	Business Support Services	Listing Fee		-INR 3853.74
		Service Tax	12.00%	-INR 462.47
		Education Cess- Service Tax	2.00%	-INR 9.24
		Secondary and Higher Education Cess-Service Tax	1.00%	-INR 4.64
6.	Business Support Services	Refund Processing Fee		INR 108013.56
		Service Tax	14.00%	INR 15123.65
7.	Business Support Services	Shipping Chargeback Fee		INR 77871.70
		Service Tax	14.00%	INR 10901.79
8.	Business Support Services	Shipping Chargeback Fee		-INR 115.51
		Service Tax	12.00%	-INR 13.86
		Education Cess- Service Tax	2.00%	-INR 0.27
		Secondary and Higher Education Cess-Service Tax	1.00%	-INR 0.14
9.	Business Support Services	Weight Based Fee		INR 503008.00





## Tax Invoice(duplicate)

Sl No	Category of Service	Description of Service	Tax Rate	Amount
		Service Tax	14.00%	INR 70421.29
10.	Storage and Warehousing Services	Storage Fee		INR 365719.57
		Service Tax	14.00%	INR 51200.74
		<b>Total:</b>		INR 4868178.38

<b>Subtotal of fees amount</b>	INR 4270245.09
Subtotal for Service Tax	INR 597947.58
Subtotal for Education Cess- Service Tax	-INR 9.51
Subtotal for Secondary and Higher Education Cess-Service Tax	-INR 4.78
<b>Subtotal of service tax amount</b>	INR 597933.29
<b>Total Invoice amount</b>	INR 4868178.38

Date	Category of Service	Description of Service	Tax Rate	Fee Amount	Tax Amount
01/09/2015	Business Support Services	FBA Delivery Services Fee		INR 12678.75	
		Service Tax	14.00%		INR 1775.59
01/09/2015	Business Support Services	Giftwrap Fee		INR 345.82	
		Service Tax	14.00%		INR 48.46
01/09/2015	Business Support Services	Giftwrap Fee		-INR 163.95	
		Service Tax	14.00%		-INR 22.97
01/09/2015	Business Support Services	Listing Fee		INR 140411.29	
		Service Tax	14.00%		INR 19655.51
01/09/2015	Business Support Services	Listing Fee		-INR 72457.65	
		Service Tax	14.00%		-INR 10143.45
01/09/2015	Business Support Services	Listing Fee		-INR 848.75	
		Service Tax	12.00%		-INR 101.85
		Education Cess- Service Tax	2.00%		-INR 2.04
		Secondary and Higher Education Cess-Service Tax	1.00%		-INR 1.02
01/09/2015	Business Support Services	Refund Processing Fee		INR 4682.23	
		Service Tax	14.00%		INR 655.60

# FW: Details requested - Reg

Agnihotri (Tax), Murali <amurali@amazon.com>

Mon 16-11-2015 15:08

To: TG JC ENFORCEMENT1 <tg\_jc\_enft1@tgct.gov.in>;

Forwarding again FYI

Kindest Regards,

Murali Agnihotri

**From:** Agnihotri (Tax), Murali

**Sent:** Monday, November 16, 2015 2:51 PM

**To:** tg\_jc\_enft1@tgct.gov.in

**Cc:** SP, Usha; Sharma (Legal), Ankur; Bansal, Mohit

**Subject:** Details requested - Reg

Dear Madam,

As requested, please find below the required details for the period 2015-2016 for your kind perusal.

(Amount in INR)

Fulfillment By Amazon:	Operations start date in Telangana state May 2015 (23.05.2015)
	<b>Fulfillment By Amazon (FBA)</b> -started operating from last week of May 2015
Total India Gross Turnover April 2015 to October 2015	49,183,282,980
Number of Sellers in the state of Telangana	513
<b>Details of sales from Telangana sellers</b> <b>May 23, 2015 to November 14, 2015</b>	
Local Sales	394,471,747
Taxes on the above	30,972,388



Total Local Sales	425,444,135
Interstate Sales	4,239,863,325
Taxes on the above	311,087,221
Total Interstate Sales	4,550,950,546
Total sales from Telangana sellers May 23, 2015 to November 14, 2015	4,976,394,680
Value of items delivered into the state of Telangana May 23, 2015 to November 14, 2015	3,398,678,010
Taxes on the above	246,320,095
Total value of items delivered into the state of Telangana May 23, 2015 to November 14, 2015	3,644,998,105

(Amount in INR)

	Selling On Amazon (SOA) April 2015 to October 2015
Total India Gross Turnover April 2015 to October 2015	9,081,805,590
Number of Sellers in the state of Telangana	1,117
Details of sales from Telangana sellers April 2015 to October 2015	
Local (inclusive of taxes)	39,921,008
Interstate (inclusive of taxes)	318,394,425
Total sales from Telangana Sellers April 2015 to October 2015	358,315,433
Total value of items (inclusive of taxes) delivered into the state of Telangana from outside state of Telangana April 2015 to October 2015	726,910,148

We would be glad to provide any additional details/information in this regard.

Thanks

Kindest Regards,

Murali Agnihotri

Manager – Tax  
Amazon Seller Services Pvt Ltd,  
24<sup>th</sup> Floor | Brigade Gateway,  
World Trade Centre | No.26/1, Dr.Rajkumar Road  
Malleshwaram(W) | Bangalore-560055  
Phone (Direct): +91 80 67874372 | Mobile : +91 94490 55535 | E-mail : [amurali@amazon.com](mailto:amurali@amazon.com)

**“Telangana details of tax from Flipkart & Amazon**

Rs. In Crores

2015-16			
Particulars	Flipkart	Amazon	
	Upto October 2015	Fulfillment by Amazon	Selling on Amazon (SOA)
		23.5.2015 to 14.11.2015	April 2015 to October 2015
All India GMV	11725	4918.33	908.18
Telangana State *	554	513	11.17
Sale from State dealers			
Telangana State *	208	463.43	35.83 (Incl. tax)
VAT/CST *	11	34.20	
Items delivered into the State of Telangana from outside the State		339.87	72.69 (Incl. tax)
VAT/CST *		24.63	
*Approximately			

**Source : Commissioner, Commercial Taxes, Telangana”**

**“Service Tax : Sector wise revenue performance in 2012-13 and 2013-14**

Rs. In crore

Sl. No.	Service liable to tax	Actuals 2012-13	Actuals 2013-14	% Growth
	<b>Telecommunication</b>			
1	Tax on telephone billing	703	764	8.8
2	Radio Paging Services	-3	-1	-56.6
3	Leased Circuit Services	242	74	-69.4
4	Telegraphic Services	0	0	-33.3
5	Telex Services	1	0	-24.6
6	Facsimile Services	0	0	-29.3
7	Telecommunication Services	5152	8650	67.9
8	Development and supply of content for use in telecom services advertising agency services and on line information and database assess or retrieval services.	68	102	49.7
	<b>Total</b>	<b>6163</b>	<b>9590</b>	<b>55.6</b>
	<b>Information Technology(IT)</b>			
9	Online Information & Database access Service and/ or retrieval service	464	662	42.5
10	Video Tape Production Services	87	114	32.0
11	Internet cafe	7	9	20.3
12	Internet Telephony Services	-107	-77	-27.7
13	Service provided by any person in relation to IT software	2409	4343	80.3
	<b>Total</b>	<b>2860</b>	<b>5051</b>	<b>76.6</b>
	<b>Business</b>			
14	Advertising Services	777	856	10.2
15	Custom House Agent Services	263	347	31.7
16	Clearing and Forwarding Agent Services	641	833	30.0
17	Man Power Recruitment Services	4432	7335	65.5
18	Security/ Detective Agency Services	1772	2421	36.6
19	Market Research Agency Services	124	169	36.0
20	Authorized Service Station	556	796	43.1
21	Storage and warehousing services (except for agriculture produce and cold storage)	401	658	64.3
22	Event Management	286	416	45.5
23	Business auxiliary Service	5011	6599	31.7
24	Franchise service	200	225	12.6
25	Maintenance or repair	2999	4068	35.7
26	Technical testing & analysis; technical inspection and certification	613	894	45.8
27	Business exhibition services	148	165	10.9
28	Survey & Exploration of Minerals	162	123	-24.4
29	Intellectual property Services other than copyright	1218	1958	60.8
30	Cleaning services other than in relation to agriculture,			

	horticulture, animal husbandry or dairying	513	686	33.7
31	Ship Management Services	52	105	100.1
32	Packaging services	43	53	21.9
33	Mailing list compilation and mailing	4	6	28.2
34	Service provided by a Recovery Agent	24	43	78.1
35	Sale of space or time for Advt., other than in Print Media	142	97	-31.7
36	Sponsorship services provided to anybody corporate or film, other than sponsorship of sports events	161	286	78.0
37	Business support services	4368	7118	62.9
38	Auctioneers service, other than auction of properly under directions or orders of a court of law or auction by the Central government	18	30	70.8
39	Public Relation Services	28	42	48.5
40	Design services	81	105	29.0
41	Services of promoting a brand of goods services events business entity etc.	74	96	30.4
42	Services of permitting commercial use or exploitation of any event organized by a person or organization	11	82	638.6
43	Services provided by Electricity Exchange	10	21	113.9
	<b>Total</b>	<b>25133</b>	<b>36632</b>	<b>45.8</b>
	<b>Financial Sector</b>			
44	Tax on Stock brokerage commission	450	526	16.9
45	Underwriter Services	0	2	1216.7
46	Credit Rating Agency Services	94	89	-6.0
47	Banking and other Financial Service	4961	7177	44.6
48	Forward contract services	80	54	-32.2
49	Service provided by a Registrar to an Issue	5	3	-53.1
50	Service provided by a Share Transfer Agent	32	44	36.0
51	Automated Teller Machine Operations, Maintenance or Mgt.	96	184	91.5
52	Credit Card, Debit Card change card or other payment card related services	895	1330	48.5
53	Asset management including portfolio management and all forms of fund management services	13	17	27.6
54	Services provided by a recognized stock exchange in relation to transaction in securities	52	81	55.7
55	Services provided to goods or forward contracts	44	38	-12.8
56	Services provided by a processing and clearinghouse in goods and forward contracts	22	42	95.5
	<b>Total</b>	<b>6745</b>	<b>9585</b>	<b>42.1</b>
	<b>Insurance</b>			
57	Tax on General Insurance Premium	6321	8770	38.7
58	Insurance Auxiliary Service	1149	792	-31.1
59	InsuranceAuxiliary Service relating to life insurance	3264	5710	74.9
60	Services provided by an insurer of life insurance on ULIPS	231	340	47.1
	<b>Total</b>	<b>10966</b>	<b>15612</b>	<b>42.4</b>

	<b>Transport</b>			
61	Courier Services	719	1101	53.1
62	Steamer Agent Services	94	137	45.0
63	Cargo handling (only inland cargo)	715	1032	44.4
64	Transport of goods by road	3419	4637	35.6
65	Transport of goods by air	81	147	81.2
66	Transport of goods through pipeline or other conduit	407	634	55.8
67	Transport of goods in containers by rail by any person, other than Government railway	78	54	-30.3
68	Transport of coastal goods & goods through national waterways or goods through Inland water.	185	262	41.6
	<b>Total</b>	<b>5698</b>	<b>8005</b>	<b>40.5</b>
	<b>Real Estate, Construction &amp; Engg.</b>			
69	Consulting Engineer Services	2185	3085	41.2
70	Architect Services	396	491	23.9
71	Interior Decoration/ Designer Services	106	133	25.3
72	Real Estate Agent/ Consultant Services	348	478	37.4
73	Commissioning and installation	1908	2316	21.4
74	Construction services in respect of commercial Industrial Buildings or civil Structures	1903	1892	-0.6
75	Site preparation and clearance, excavation, earth moving and demolition services, other than those provided to agriculture, irrigation and watershed development	269	348	29.5
76	Construction of residential complexes having more than twelve residential houses or apartments together with common areas and other appurtenances	3559	3922	10.2
77	Renting of immovable property for use in course or furtherance of business or commerce Services	4774	6795	42.3
78	Works contract services	4455	7434	66.9
79	Special services provided by a builder etc. to the prospective buyers such as providing preferential	179	181	0.9
	<b>Total</b>	<b>20082</b>	<b>27074</b>	<b>34.8</b>
	<b>Infrastructure</b>			
80	Port Services	1671	2154	28.9
81	Airport Services	1024	1690	65.1
82	Dredging services of rivers, ports harbours, backwaters and estuaries	139	292	110.1
	<b>Total</b>	<b>2834</b>	<b>4136</b>	<b>46.0</b>
	<b>Professional Services</b>			
83	Chartered Accountant Services	780	1037	33.0
84	Cost Accountant Services	7	10	54.2
85	Company Secretary Services	17	22	28.4
86	Management Consultant Services	2145	3216	49.9
87	Scientific & Technical Consultancy Services	356	484	36.0
88	Fashion designers	7	12	66.0

89	Survey and map making other than by Government Departments	49	67	37.4
90	Legal Consultancy Service	420	901	114.5
	<b>Total</b>	<b>3781</b>	<b>5749</b>	<b>52.1</b>
	<b>Electronic Media</b>			
91	Sound Recording Services	19	23	25.2
92	Broadcasting Service	1209	1535	26.9
93	Cable operators	103	116	12.8
94	TV or radio Programme services	200	232	15.9
	<b>Total</b>	<b>1531</b>	<b>1906</b>	<b>24.5</b>
	<b>Tour&amp;T ravel</b>			
95	Air Travel Agent Services	203	268	32.0
96	Rent A Cab Scheme Operator Services	426	852	99.8
97	Tour Operator Services	297	478	60.9
98	Rail travel agents	16	32	104.7
99	Travel Agents	21	27	27.1
100	Transport of passengers embarking international journey by air, other than economy class passengers	2240	2633	17.5
101	Transport of persons by cruise ship	3	3	5.6
	<b>Total</b>	<b>3207</b>	<b>4293</b>	<b>33.9</b>
	<b>Hospitality &amp; Personal Care</b>			
102	Mandap Keeper Services	404	551	36.3
103	Outdoor Catering	280	388	38.4
104	Pandal or Shamiana services	103	118	15.2
105	Convention Services	52	60	13.7
106	Health Club & Fitness Centers	86	132	53.1
107	Beauty parlours	96	149	55.2
108	Dry cleaning services	19	35	83.3
109	Membership of clubs or associations	294	423	43.6
110	Cosmetic Surgery or Plastic Surgery Service	14	33	142.5
111	Health services like (a) health check up undertaken by hospitals or medical establishments for employee	24	35	42.8
112	Services provided maintenance of medical records of employees business entity	0.5	1	102.2
113	Services of Air -conditioned restaurants having license to serve alcoholic beverages in relation to service of food or beverages.	355	928	161.3
114	Services of providing of accommodation in hotels/Inn/clubs/guesthouses/campsite for a continuous period of less than three months.	847	1144	35.2
	<b>Total</b>	<b>2575</b>	<b>3996</b>	<b>55.2</b>
	<b>Business related to IPR</b>			
115	Services provided by any person in relation to supply of tangible Goods	1237	1861	50.4
116	Services related to (a) Transferring Temporarily or (b) permitting the use or enjoyment of any copyright	142	448	215.2

	<b>Total</b>	<b>1379</b>	<b>2309</b>	<b>67.4</b>
	<b>Others/Miscellaneous</b>			
117	Photographic Services	56	66	18.1
118	Commercial training or coaching	756	1155	52.6
119	Opinion Poll Services	0	1	150.0
120	Mining of mineral, oil or gas services	1640	2759	68.3
121	Services of Promoting Marketing or Organizing of Games of chance including lottery, Bingo or Lotto	24	0.3	-98.6
122	Receipt awaiting transfer to other heads	0.0	0.0	
123	Cess on Education	4025	4319	7.3
124	Other Services since withdrawn (Arrear Payments)/Misc.	-39	-87	120.7
	<b>Total</b>	<b>6462</b>	<b>8214</b>	<b>27.1</b>
	All taxable services	30868	6873	-77.7
	Other taxable services	618	1944	214.7
	<b>Grand Total</b>	<b>130901</b>	<b>150969</b>	<b>15.3</b>

**Source : NIFPM”**



**Bill No. 192 of 2014**

THE CONSTITUTION (ONE HUNDRED AND TWENTY-SECOND  
AMENDMENT) BILL, 2014

A

BILL

*further to amend the Constitution of India.*

BE it enacted by Parliament in the Sixty-fifth Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (One Hundred and Twenty-second Amendment) Act, 2014.

Short title and  
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

2. After article 246 of the Constitution, the following article shall be inserted, namely:—

Insertion of  
new article  
246A.

10 "246A. (1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

Special  
provision  
with respect  
to goods and  
services tax.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

*Explanation.*—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5), of article 279A, take effect from the date recommended by the Goods and Services Tax Council.”. 5

Amendment of article 248. **3.** In article 248 of the Constitution, in clause (1), for the word "Parliament", the words, figures and letter "Subject to article 246A, Parliament" shall be substituted.

Amendment of article 249. **4.** In article 249 of the Constitution, in clause (1), after the words "with respect to", the words, figures and letter "goods and services tax provided under article 246A or" shall be inserted. 10

Amendment of article 250. **5.** In article 250 of the Constitution, in clause (1), after the words "with respect to", the words, figures and letter "goods and services tax provided under article 246A or" shall be inserted.

Amendment of article 268. **6.** In article 268 of the Constitution, in clause (1), the words "and such duties of excise on medicinal and toilet preparations" shall be omitted.

Omission of article 268A. **7.** Article 268A of the Constitution, as inserted by section 2 of the Constitution (Eighty-eighth Amendment) Act, 2003 shall be omitted. 15

Amendment of article 269. **8.** In article 269 of the Constitution, in clause (1), after the words "consignment of goods", the words, figures and letter "except as provided in article 269A" shall be inserted.

Insertion of new article 269A. **9.** After article 269 of the Constitution, the following article shall be inserted, namely:— 20

Levy and collection of goods and services tax in course of inter-State trade or commerce. **“269A. (1)** Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council. 25

*Explanation.*—For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.

(2) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.”. 30

Amendment of article 270. **10.** In article 270 of the Constitution,—

(i) in clause (1), for the words, figures and letter "articles 268, 268A and article 269", the words, figures and letter "articles 268, 269 and article 269A" shall be substituted; 35

(ii) after clause (1), the following clause shall be inserted, namely:—

“(1A) The goods and services tax levied and collected by the Government of India, except the tax apportioned with the States under clause (1) of article 269A, shall also be distributed between the Union and the States in the manner provided in clause (2).” 40

Amendment of article 271. **11.** In article 271 of the Constitution, after the words “in those articles”, the words, figures and letter “except the goods and services tax under article 246A,” shall be inserted.

12. After article 279 of the Constitution, the following article shall be inserted, namely:—

Insertion of  
new article  
279A.

“279A. (1) The President shall, within sixty days from the date of commencement of the Constitution (One Hundred and Twenty-second Amendment) Act, 2014, by order, constitute a Council to be called the Goods and Services Tax Council.

Goods and  
Services Tax  
Council.

5 (2) The Goods and Services Tax Council shall consist of the following members, namely:—

(a) the Union Finance Minister..... Chairperson;

(b) the Union Minister of State in charge of Revenue or Finance..... Member;

10 (c) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government.....Members.

(3) The Members of the Goods and Services Tax Council referred to in sub-clause (c) of clause (2) shall, as soon as may be, choose one amongst themselves to be the Vice-Chairperson of the Council for such period as they may decide.

15 (4) The Goods and Services Tax Council shall make recommendations to the Union and the States on—

(a) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax;

20 (b) the goods and services that may be subjected to, or exempted from the goods and services tax;

(c) model Goods and Services Tax Laws, principles of levy, apportionment of Integrated Goods and Services Tax and the principles that govern the place of supply;

25 (d) the threshold limit of turnover below which goods and services may be exempted from goods and services tax;

(e) the rates including floor rates with bands of goods and services tax;

(f) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;

30 (g) special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and

(h) any other matter relating to the goods and services tax, as the Council may decide.

35 (5) The Goods and Services Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.

40 (6) While discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.

(7) One half of the total number of Members of the Goods and Services Tax Council shall constitute the quorum at its meetings.

(8) The Goods and Services Tax Council shall determine the procedure in the performance of its functions.

(9) Every decision of the Goods and Services Tax Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the following principles, namely:—

(a) the vote of the Central Government shall have a weightage of one-third of the total votes cast, and

(b) the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast,

in that meeting.

(10) No act or proceedings of the Goods and Services Tax Council shall be invalid merely by reason of—

(a) any vacancy in, or any defect in, the constitution of the Council; or

(b) any defect in the appointment of a person as a member of the Council; or

(c) any procedural irregularity of the Council not affecting the merits of the case.

(11) The Goods and Services Tax Council may decide about the modalities to resolve disputes arising out of its recommendation.”.

Amendment of  
article 286.

13. In article 286 of the Constitution,—

(i) in clause (1),—

(A) for the words "the sale or purchase of goods where such sale or purchase takes place", the words "the supply of goods or of services or both, where such supply takes place" shall be substituted;

(B) in sub-clause (b), for the word “goods”, at both the places where it occurs the words “goods or services or both” shall be substituted;

(ii) in clause (2), for the words "sale or purchase of goods takes place", the words "supply of goods or of services or both" shall be substituted;

(iii) clause (3) shall be omitted.

Amendment of  
article 366.

14. In article 366 of the Constitution,—

(i) after clause (12), the following clause shall be inserted, namely:—

“(12A) “goods and services tax” means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption;”;

(ii) after clause (26), the following clauses shall be inserted, namely:—

“(26A) “Services” means anything other than goods;

(26B) “State” with reference to articles 246A, 268, 269, 269A and article 279A includes a Union territory with Legislature;”.

Amendment of  
article 368.

15. In article 368 of the Constitution, in clause (2), in the proviso, in clause (a), for the words and figures “article 162 or article 241”, the words, figures and letter “article 162, article 241 or article 279A” shall be substituted.

Amendment  
of Sixth  
Schedule.

16. In the Sixth Schedule to the Constitution, in paragraph 8, in sub-paragraph (3),—

(i) in clause (c), the word "and" occurring at the end shall be omitted;

(ii) in clause (d), the word "and" shall be inserted at the end;

(iii) after clause (d), the following clause shall be inserted, namely:—

“(e) taxes on entertainment and amusements.”.

**17. In the Seventh Schedule to the Constitution,—**

Amendment of  
Seventh  
Schedule.

(a) in List I — Union List,—

(i) for entry 84, the following entry shall be substituted, namely:—

"84. Duties of excise on the following goods manufactured or produced in India, namely:—

(a) petroleum crude;

(b) high speed diesel;

(c) motor spirit (commonly known as petrol);

(d) natural gas;

(e) aviation turbine fuel; and

(f) tobacco and tobacco products.";

(ii) entries 92 and 92C shall be omitted;

(b) in List II — State List,—

(i) entry 52 shall be omitted;

(ii) for entry 54, the following entry shall be substituted, namely:—

"54. Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.";

(iii) entry 55 shall be omitted;

(iv) for entry 62, the following entry shall be substituted, namely:—

"62. Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council."

**18. (1)** An additional tax on supply of goods, not exceeding one per cent. in the course of inter-State trade or commerce shall, notwithstanding anything contained in clause (1) of article 269A, be levied and collected by the Government of India for a period of two years or such other period as the Goods and Services Tax Council may recommend, and such tax shall be assigned to the States in the manner provided in clause (2).

Arrangement  
for assignment  
of additional  
tax on supply  
of goods to  
States for two  
years or such  
other period  
recommended  
by the  
Council.

(2) The net proceeds of additional tax on supply of goods in any financial year, except the proceeds attributable to the Union territories, shall not form part of the Consolidated Fund of India and be deemed to have been assigned to the States from where the supply originates.

(3) The Government of India may, where it considers necessary in the public interest, exempt such goods from the levy of tax under clause (1).

(4) Parliament may, by law, formulate the principles for determining the place of origin from where supply of goods take place in the course of inter-State trade or commerce.

**19.** Parliament may, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for such period which may extend to five years.

Compensation  
to States for  
loss of  
revenue on  
account of  
introduction  
of goods and  
services tax.

Transitional  
provisions.

**20.** Notwithstanding anything in this Act, any provision of any law relating to tax on goods or services or on both in force in any State immediately before the commencement of this Act, which is inconsistent with the provisions of the Constitution as amended by this Act shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until expiration of one year from such commencement, whichever is earlier. 5

Power of  
President to  
remove  
difficulties.

**21.** (1) If any difficulty arises in giving effect to the provisions of the Constitution as amended by this Act (including any difficulty in relation to the transition from the provisions of the Constitution as they stood immediately before the date of assent of the President to this Act to the provisions of the Constitution as amended by this Act), the President may, by order, make such provisions, including any adaptation or modification of any provision of the Constitution as amended by this Act or law, as appear to the President to be necessary or expedient for the purpose of removing the difficulty: 10

Provided that no such order shall be made after the expiry of three years from the date of such assent. 15

(2) Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

## STATEMENT OF OBJECTS AND REASONS

The Constitution is proposed to be amended to introduce the goods and services tax for conferring concurrent taxing powers on the Union as well as the States including Union territory with Legislature to make laws for levying goods and services tax on every transaction of supply of goods or services or both. The goods and services tax shall replace a number of indirect taxes being levied by the Union and the State Governments and is intended to remove cascading effect of taxes and provide for a common national market for goods and services. The proposed Central and State goods and services tax will be levied on all transactions involving supply of goods and services, except those which are kept out of the purview of the goods and services tax.

2. The proposed Bill, which seeks further to amend the Constitution, *inter alia*, provides for—

(a) subsuming of various Central indirect taxes and levies such as Central Excise Duty, Additional Excise Duties, Excise Duty levied under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, Service Tax, Additional Customs Duty commonly known as Countervailing Duty, Special Additional Duty of Customs, and Central Surcharges and Cesses so far as they relate to the supply of goods and services;

(b) subsuming of State Value Added Tax/Sales Tax, Entertainment Tax (other than the tax levied by the local bodies), Central Sales Tax (levied by the Centre and collected by the States), Octroi and Entry tax, Purchase Tax, Luxury tax, Taxes on lottery, betting and gambling; and State cesses and surcharges in so far as they relate to supply of goods and services;

(c) dispensing with the concept of 'declared goods of special importance' under the Constitution;

(d) levy of Integrated Goods and Services Tax on inter-State transactions of goods and services;

(e) levy of an additional tax on supply of goods, not exceeding one per cent. in the course of inter-State trade or commerce to be collected by the Government of India for a period of two years, and assigned to the States from where the supply originates;

(f) conferring concurrent power upon Parliament and the State Legislatures to make laws governing goods and services tax;

(g) coverage of all goods and services, except alcoholic liquor for human consumption, for the levy of goods and services tax. In case of petroleum and petroleum products, it has been provided that these goods shall not be subject to the levy of Goods and Services Tax till a date notified on the recommendation of the Goods and Services Tax Council.

(h) compensation to the States for loss of revenue arising on account of implementation of the Goods and Services Tax for a period which may extend to five years;

(i) creation of Goods and Services Tax Council to examine issues relating to goods and services tax and make recommendations to the Union and the States on parameters like rates, exemption list and threshold limits. The Council shall function under the Chairmanship of the Union Finance Minister and will have the Union Minister of State in charge of Revenue or Finance as member, along with the Minister in-charge of Finance or Taxation or any other Minister nominated by each State Government. It is further provided that every decision of the Council shall be taken by a majority of

not less than three-fourths of the weighted votes of the members present and voting in accordance with the following principles:—

(A) the vote of the Central Government shall have a weightage of one-third of the total votes cast, and

(B) the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast in that meeting.

*Illustration:*

In terms of clause (9) of the proposed article 279A, the "weighted votes of the members present and voting" in favour of a proposal in the Goods and Services Tax Council shall be determined as under:—

$$WT = WC + WS$$

Where,

$$WT = WC + WS = \left( \frac{WST}{SP} \right) \times SF$$

Wherein—

WT = Total weighted votes of all members in favour of a proposal.

WC = Weighted vote of the Union =  $\frac{1}{3}$  i.e., 33.33% if the Union is in favour of the proposal and be taken as "0" if, Union is not in favour of a proposal.

WS = Weighted votes of the States in favour of a proposal.

SP = Number of States present and voting.

WST = Weighted votes of all States present and voting i.e.,  $\frac{2}{3}$  i.e., 66.67%

SF = Number of States voting in favour of a proposal.

(j) Clause 20 of the proposed Bill makes transitional provisions to take care of any inconsistency which may arise with respect to any law relating to tax on goods or services or on both in force in any State on the commencement of the provisions of the Constitution as amended by this Act within a period of one year.

3. the Bill seeks to achieve the above objects.

NEW DELHI;  
The 18th December, 2014

ARUN JAITLEY

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PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE  
CONSTITUTION OF INDIA

[Copy of letter No. S-31011/07/2014-SO(ST), dated the 18th December, 2014 from Shri Arun Jaitley, Minister of Finance to the Secretary-General, Lok Sabha.]

The President, having been informed of the subject matter of the proposed Bill, recommends under clauses (1) and (3) of article 117, read with clause (1) of article 274, of the Constitution of India, the introduction of the Constitution (One Hundred and Twenty-second Amendment) Bill, 2014 in Lok Sabha and also the consideration of the Bill.



## FINANCIAL MEMORANDUM

Clause 12 of the Bill seeks to insert a new article 279A in the Constitution relating to Constitution of Goods and Services Tax Council. The Council shall function under the Chairmanship of the Union Finance Minister and will have the Union Minister of State incharge of Revenue or Finance as member, along with the Minister in-charge of Finance or Taxation or any other Minister nominated by each State Government.

2. The creation of Goods and Services Tax Council will involve expenditure on office expenses, salaries and allowances of the officers and staff. The objective that the introduction of goods and services tax will make the Indian trade and industry more competitive, domestically as well as internationally and contribute significantly to the growth of the economy, such additional expenditure on the Council will not be significant.

3. At this stage, it will be difficult to make an estimate of the expenditure, both recurring and non-recurring on account of the Constitution of the Council.

4. Further, it is provided for compensation to the States for loss of revenue arising on account of implementation of the Goods and Services Tax for such period which may extend to five years. The exact compensation can be worked out only when the provisions of the Bill are implemented.

#### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 12 of the Bill seeks to insert a new article 279A relating to the constitution of a Council to be called the Goods and Services Tax Council. Clause (1) of the proposed new article 279A provides that the President, shall within sixty days from the date of the commencement of the Constitution (One Hundred and Twenty-second Amendment) Act, 2014, by order, constitute a Council to be called the Goods and Services Tax Council. Clause (8) of the said article provides that the Council shall determine the procedure in the performance of its functions.

2. The procedures, as may be laid down by the Goods and Services Tax Council in the performance of its functions, are matters of procedure and details. The delegation of legislative power is, therefore, of a normal character.

## ANNEXURE

### EXTRACTS FROM THE CONSTITUTION OF INDIA

*	*	*	*	*
<p><b>248.</b> (1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.</p>				
*	*	*	*	*
<p><b>249.</b> (1) Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.</p>				
*	*	*	*	*
<p><b>250.</b> (1) Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List.</p>				
*	*	*	*	*
<p><i>Distribution of Revenues between the Union and the States</i></p>				
<p><b>268.</b> (1) Such stamp duties and such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied by the Government of India but shall be collected—</p>				
<p>(a) in the case where such duties are leviable within any Union territory, by the Government of India, and</p>				
<p>(b) in other cases, by the States within which such duties are respectively leviable.</p>				
*	*	*	*	*
<p><b>268A.</b> (1) Taxes on services shall be levied by the Government of India and such tax shall be collected and appropriated by the Government of India and the States, in the manner provided in clause (2).</p>				
<p>(2) The proceeds in any financial year of any such tax levied in accordance with the provisions of clause (1) shall be—</p>				
<p>(a) collected by the Government of India and the States;</p>				
<p>(b) appropriated by the Government of India and the States,</p>				
<p>in accordance with such principles of collection and appropriation as may be formulated by Parliament by law.</p>				
<p><b>269.</b> (1) Taxes on the sale or purchase of goods and taxes on the consignment of goods shall be levied and collected by the Government of India but shall be assigned and shall be deemed to have been assigned to the States on or after the 1st day of April, 1996 in the manner provided in clause (2).</p>				
<p><i>Explanation.</i>—For the purposes of this clause,—</p>				

Residuary powers of legislation.

Power of Parliament to legislate with respect to a matter in the State List in the national interest.

Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation.

Duties levied by the Union but collected and appropriated by the States.

Service tax levied by Union and collected and appropriated by the Union and the States.

Taxes levied and collected by the Union but assigned to the States.

(a) the expression "taxes on the sale or purchase of goods" shall mean taxes on sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce;

(b) the expression "taxes on the consignment of goods" shall mean taxes on the consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce.

\* \* \* \* \*

Taxes levied and distributed between the Union and the States.

**270.** (1) All taxes and duties referred to in the Union List, except the duties and taxes referred to in articles 268, 268A and 269, respectively, surcharge on taxes and duties referred to in article 271 and any cess levied for specific purposes under any law made by Parliament shall be levied and collected by the Government of India and shall be distributed between the Union and the States in the manner provided in clause (2).

\* \* \* \* \*

Surcharge on certain duties and taxes for purposes of the Union.

**271.** Notwithstanding anything in articles 269 and 270, Parliament may at any time increase any of the duties or taxes referred to in those articles by a surcharge for purposes of the Union and the whole proceeds of any such surcharge shall form part of the Consolidated Fund of India.

\* \* \* \* \*

Restrictions as to imposition of tax on the sale or purchase of goods.

**286.** (1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place—

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1).

(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of,—

(a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce; or

(b) a tax on the sale or purchase of goods, being a tax of the nature referred to in sub-clause (b), sub-clause (c) or sub-clause (d) of clause (29A) of article 366,

be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.

\* \* \* \* \*

## PART XX

### AMENDMENT OF THE CONSTITUTION

Power of Parliament to amend the Constitution and procedure therefore.

**368.** (1) \* \* \* \* \*

(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in—

(a) article 54, article 55, article 73, article 162 or article 241, or

- (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
- (c) any of the Lists in the Seventh Schedule, or
- (d) the representation of States in Parliament, or
- (e) the provisions of this article,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

\* \* \* \* \*

#### SIXTH SCHEDULE

[Articles 244(2) and 275(1)]

##### **Provisions as to the Administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram**

\* \* \* \* \*

**8. (1) \*** \* \* \* \* \*

Powers to assess and collect land revenue and to impose taxes.

(3) The District Council for an autonomous district shall have the power to levy and collect all or any of the following taxes within such district, that is to say—

\* \* \* \* \*

(c) taxes on the entry of goods into a market for sale therein, and tolls on passengers and goods carried in ferries; and

(d) taxes for the maintenance of schools, dispensaries or roads.

\* \* \* \* \*

#### SEVENTH SCHEDULE

(Article 246)

##### List I- Union List

\* \* \* \* \*

84. Duties of excise on tobacco and other goods manufactured or produced in India except—

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics,

but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

\* \* \* \* \*

92. Taxes on the sale or purchase of newspapers and on advertisements published therein.

\* \* \* \* \*

92C. Taxes on services.

\* \* \* \* \*

##### List II-State List

\* \* \* \* \*

52. Taxes on the entry of goods into a local area for consumption, use or sale therein.

\* \* \* \* \*

54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I.

55. Taxes on advertisements other than advertisements published in the newspapers and advertisements broadcast by radio or television.

\* \* \* \*

62. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

\* \* \* \*

LOKSABHA

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A

BILL

*further to amend the Constitution of India.*

---

*(Shri Arun Jaitley, Minister of Finance)*

**LOK SABHA**

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**CORRIGENDA**

**to**

**THE CONSTITUTION (ONE HUNDRED AND TWENTY-SECOND AMENDMENT)  
BILL, 2014**

**[To be/As introduced in Lok Sabha]**

1. Page 2, line 32, -  
for "Contitution,—"  
read "Constitution,—"
2. Page 4, line 16, -  
for "of its recommendation"."."  
read "of its recommendations"."."
3. Page 5, in the marginal citation against clause 18, -  
for "by the Council."  
read "by Council."
4. Page 8, *omit* line 11.

**NEW DELHI;**

**December 19, 2014**  
**Agrahayana 28, 1936 (Saka)**





सत्यमेव जयते

**REPORT OF SUB-COMMITTEE-II  
ON  
MODEL GST LAW**

**Empowered Committee of State Finance Ministers**  
**September, 2015**

## **GOODS AND SERVICES TAX ACT, 2016**

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## CHAPTER I

### PRELIMINARY

#### 1. Short title, extent and commencement

- (1) This Act may be called the Central / State Goods and Services Tax Act, 2016.
- (2) It extends to the whole of India / State's name.
- (3) It shall come into force on such date as the Central or a State Government may by notification in the Official Gazette, appoint in this behalf.

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

#### 2. Definitions

In this Act, unless the context otherwise requires,-

- (1) "**actionable claim**" shall have the meaning assigned to it in section 3 of the Transfer of Property Act, 1882;
- (2) "**address on record**" means the address of the recipient as available in the records of the supplier;
- (3) "**adjudicating authority**" means any authority competent to pass any order or decision under this Act, but does not include the Board, the Commissioner (Appeals) and the Appellate Tribunal;
- (4) "**agriculture**" with all its grammatical variations and cognate expressions, includes floriculture, horticulture, the raising of crops, grass or garden produce and also grazing, but does not include dairy farming, poultry farming, stock breeding, the mere cutting of wood or grass, gathering of fruit, raising of man-made forest or rearing of seedlings or plants:  
  
Explanation – For the purpose of this clause, the expression 'forest' means the forest to which the Indian Forest Act, 1927 applies.
- (5) "**agriculturist**" means a person who cultivates land personally, for the purpose of agriculture;
- (6) "**agricultural extension**" means application of scientific research and knowledge to agricultural practices through farmer education or training;
- (7) "**agricultural produce**" means any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market;
- (8) "**Appellate Tribunal**" means the National Goods and Services Tax Appellate Tribunal constituted under section . . .of this Act;
- (9) "**appointed day**" means the date on which section 1 of this Act comes into effect;
- (10) "**assessment**" means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment and best judgement assessment;



(11) **"associated enterprise"** shall have the meaning assigned to it in section 92A of the Income Tax Act, 1961;

(12) **"Board"** means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963;

(13) **"business"** includes –

(a) any trade, commerce, manufacture, profession, vocation or any other similar activity, whether or not it is for a pecuniary benefit;

(b) any transaction in connection with or incidental or ancillary to (a) above;

(c) any transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital assets and services in connection with commencement or closure of business;

(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members as the case may be;

(f) admission, for a consideration, of persons to any premises; and

(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

but does not include agriculture;

(14) **"capital assets"** shall have the meaning as assigned to it in the Income Tax Act, 1961 (43 of 1961) but the said expression shall not include jewellery held for personal use or property not connected with the business;

(15) **"capital goods"** means plant, machinery and equipment used directly or indirectly in the course of manufacture, trade, commerce, profession, vocation or any other similar activity;

(16) **"casual taxable person"** means a person who occasionally undertakes transactions involving supply or acquisition of goods and/or services in the course or furtherance of business whether as principal, agent or in any other capacity, in a taxable territory where he has no fixed place of business;

(17) **"chartered accountant"** means a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949);

(18) **"Commissioner"** means the Commissioner of Central Goods and Services Tax /Commissioner of State Goods and Services Tax appointed under section 4 of the Central/State Goods and Services Tax Act, 2016;

(19) **"composite supply"** means a supply consisting of -

(a) two or more goods;

(b) two or more services; or

(c) a combination of goods and services

provided in the course or furtherance of business, whether or not the same can be segregated;

(20) **"consideration"** in relation to the supply of goods and/or services to any person, includes

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods and/or services, whether by the person or by any other person;

(b) the monetary value of any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of goods and/or services, whether by the person or by any other person:

Provided that a deposit, whether refundable or not, given in respect of the supply of goods and/or services shall not be considered as payment made for the supply unless the supplier applies the deposit as consideration for the supply;

(21) "**continuous supply of goods**" means a supply involving goods which is provided, or agreed to be provided, continuously or on recurrent basis whether or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis;

(22) "**continuous supply of services**" means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such service as the Central or a State Government may, whether or not subject to any condition, by notification, specify;

(23) "**cost accountant**" means a cost accountant within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959);

(24) "**Council**" means the Goods and Services Tax Council established under Article 279A of the Constitution;

(25) "**declared service**" means

(a) renting of immovable property;

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or before its first occupation, whichever is earlier.

Explanation. For the purposes of this clause-

(1) the expression "competent authority" means the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:-

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or

(ii) a chartered engineer registered with the Institution of Engineers (India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;

(d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and

(f) works contract;

(26) "**document**" includes written or printed record of any sort and electronic record as defined in Information Technology Act, 2000 [21 of 2000];

(27) "**earlier law**" means any of the following laws, that is to say,

(a) . . .

(b) . . .

(c) . . .

as amended from time to time and includes enactments which have validated anything done or omitted to be done under any of the above mentioned laws and also any law repealed by the earlier laws but continued in force under any provisions of the above enumerated laws;

(28) "**exempt supply**" means supply of any goods and/or services which are not taxable under this Act and includes such supply of goods and/or services which are specified in Schedule . . . of the Act or which may be exempt from tax under section 10.

(29) "**export**" with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

(30) "**fund**" means the Consumer Welfare Fund established under section \_\_\_\_;

(31) "**goods**" means every kind of movable property other than actionable claim and money but includes securities, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under the contract of supply;

(32) "**government**" means Central Government and its departments, a State Government and its departments and a Union territory and its departments, but shall not include any entity, whether created by a statute or otherwise, the accounts of which are not required to be kept in accordance with Article 150 of the Constitution or the rules made thereunder;

(33) "**import**" with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

(34) "**IGST**" means the tax levied under the Integrated Goods and Services Tax Act;

(35) "**India**" means,-

(a) the territory of the Union as referred to in clauses (2) and (3) of Article 1 of the Constitution;

(b) its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976;

(c) the seabed and the subsoil underlying the territorial waters;

(d) the air space above its territory and territorial waters; and

(e) the installations, structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof;

(36) **"input tax"** in relation to a taxable person, means the {IGST, CGST or SGST}/{IGST and CGST}/{IGST and SGST} charged on any supply of goods and/or services to him which are used, or are to be used, in the course or furtherance of his business;

(37) **"input tax credit"** means credit of 'input tax' as defined in section 2(36) of this Act;

(38) **"intangible property"** is any property other than tangible property and includes such things as contractual rights, options, intellectual property rights in relation to goods that are not in possession;

(39) **"invoice"** means a document raised by a supplier indicating, inter-alia, details of goods and/or services supplied, their value and tax charged thereon, if any;

(40) **"legal representative"** means any person who stands in place of, and represents the interests of another and includes the executor, administrator of an estate and a court appointed guardian of a minor;

(41) **"local authority"** means

(a) a "Panchayat" as defined in clause (d) of Article 243 of the Constitution:

(b) a "Municipality" as defined in clause (e) of Article 243P of the Constitution

(c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central or any State Government with the control or management of a municipal or local fund;

(d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;

(e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;

(f) a Development Board constituted under Article 371 of the Constitution; or

(g) a Regional Council constituted under Article 371A of the Constitution;

(42) **"location of service provider"** means:

(i) where a supply is made from a business establishment for which registration has been obtained, the location of such establishment;

(ii) where a supply is made from a place other than the business establishment for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;

(iii) where a supply is made from more than one establishment, whether business or fixed, the location of the establishment most directly concerned with the provision of the supply; and

(iv) in absence of such places, the location of the usual place of residence of the person;

(43) **"location of service receiver"** means:

(i) where a supply is received at a business establishment for which registration has been obtained, the location of such establishment;

(ii) where a supply is received at a place other than the business establishment for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;

(iii) where a supply is received at more than one establishment, whether business or fixed, the location of the establishment most directly concerned with the receipt of the supply; and

(iv) in absence of such places, the location of the usual place of residence of the person;

(44) **"market value"** shall mean the full amount which a recipient of a supply is required to pay in order to obtain the goods and/or services of like kind and quality at or about the same time and at the same commercial level where the recipient and the supplier are not related;

(45) **"money"** means Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any such similar instrument when used as consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value;

(46) **"non-resident taxable person"** means a taxable person who occasionally undertakes transactions involving supply or acquisition of goods and/or services whether as principal or agent or in any other capacity but who has no fixed place of business in India;

(47) **"non-taxable territory"** means the territory which is outside the taxable territory;

(48) **"notification"** means notification published in the Official Gazette and the expressions 'notify' and 'notified' shall be construed accordingly;

(49) **"output tax"** in relation to a taxable person, means the IGST/CGST/SGST chargeable under this Act on taxable supply of goods and/or services by him and includes tax payable by him on reverse charge basis;

(50) **"person"** includes—

(a) an individual;

(b) a Hindu undivided family;

(c) a company;

(d) a firm;

(e) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;

(f) any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 2(45) of the Companies Act, 2013 (18 of 2013);

(g) any body corporate incorporated by or under the laws of a country outside India;

(h) a co-operative society registered under any law relating to cooperative societies;

(i) a local authority;

(j) government;

(k) society as defined under the Societies Registration Act, 1860;

(l) trust; and

(m) every artificial juridical person, not falling within any of the preceding sub-clauses;

(51) **"place of business"** includes

(a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, provides or receives goods and/or services; or

(b) a place where a taxable person maintains his books of account; or

(c) a place where a taxable person is engaged in business through an agent, by whatever name called;

(52) **"prescribed"** means prescribed by the rules, regulations or by any notification issued under this Act;

(53) **"proper officer"** in relation to any function to be performed under this Act, means the officer of goods and services tax who is assigned those functions by the Board/Commissioner of SGST;

(54) **"property"** means any property, whether real or personal, movable or immovable, corporeal or incorporeal, tangible or intangible, and includes a right or interest of any kind, but does not include money, actionable claims or negotiable instruments;

(55) persons shall be deemed to be **"related persons"** if only -

(a) they are officers or directors of one another's businesses;

(b) they are legally recognized partners in business;

(c) they are employer and employee;

(d) any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them;

(e) one of them directly or indirectly controls the other;

(f) both of them are directly or indirectly controlled by a third person;

(g) together they directly or indirectly control a third person; or

(h) they are members of the same family.

Explanation I. - The term "person" also includes legal persons.

Explanation II. - Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other shall be deemed to be related;

(56) **"removal"**, in relation to goods, means -

(a) dispatch of the goods for delivery by the supplier thereof or by any other person acting on behalf of such supplier, or

(b) collection of the goods by the recipient thereof or by any other person acting on behalf of such recipient;

(57) **"reverse charge"** means the liability to pay tax by the person receiving services instead of the person supplying the services in respect of such categories of supplies as the Central or a State Government may, on the recommendation of the Council, by notification, specify;

(58) **"schedule"** means a schedule appended to this Act;

- (59) **"services"** mean anything other than goods;
- (60) **"SGST"** means the tax levied under the State Goods and Services Tax Act;
- (61) **"supply"** shall have the meaning as assigned to it in section 3 of this Act;
- (62) **"tangible property"** means any property other than incorporeal property;
- (63) **"tax"** means goods and services tax levied on the supply of goods and/or services except on the supply of alcoholic liquor for human consumption;
- (64) **"taxable person"** shall have the meaning as assigned to it in section 9 of this Act;
- (65) **"taxperiod"** means the period for which the tax return is required to be filed;
- (66) **"taxable supply"** means a supply of goods and/or services which is chargeable to tax under this Act;
- (67) **"tax return preparer"** means any individual who has been authorised to act as goods and services tax return preparer under this Act;
- (68) **"taxable territory"** means the territory to which the provisions of this Act apply;
- (69) **"telecommunication service"** means service of any description provided by means of any transmission, emission or reception of signs, signals, writing, images and sounds or intelligence or information of any nature, by wire, radio, optical, visual or other electro-magnetic means or systems, including the related transfer or assignment of the right to use capacity for such transmission, emission or reception by a person who has been granted a licence under the first proviso to sub-section (1) of section 4 of the Indian Telegraph Act, 1885 and includes—
  - (i) voice mail, data services, audio tex services, video tex services, radio paging;
  - (ii) fixed telephone services including provision of access to and use of the public switched telephone network for the transmission and switching of voice, data and video, inbound and outbound telephone service to and from national and international destinations;
  - (iii) cellular mobile telephone services including provision of access to and use of switched or non-switched networks for the transmission of voice, data and video, inbound and outbound roaming service to and from national and international destinations;
  - (iv) carrier services including provision of wired or wireless facilities to originate, terminate or transit calls, charging for interconnection, settlement or termination of domestic or international calls, charging for jointly used facilities including pole attachments, charging for the exclusive use of circuits, a leased circuit or a dedicated link including a speech circuit, data circuit or a telegraph circuit;
  - (v) provision of call management services for a fee including call waiting, call forwarding, caller identification, three-way calling, call display, call return, call screen, call blocking, automatic call-back, call answer, voice mail, voice menus and video conferencing;
  - (vi) private network services including provision of wired or wireless telecommunication link between specified points for the exclusive use of the client;
  - (vii) data transmission services including provision of access to wired or wireless facilities and services specifically designed for efficient transmission of data; and

(viii) communication through facsimile, pager, telegraph and telex,

but does not include service provided by-

(a) any person in relation to on-line information and database access or retrieval; and

(b) a broadcasting agency or organisation in relation to broadcasting;

(70) **"time of supply of goods"** shall have the meaning as assigned to it in section 11 of this Act;

(71) **"time of supply of services"** shall have the meaning as assigned to it in section 12 of this Act;

(72) **"to cultivate personally"** means to carry on any agricultural operation on one's own account-

(a) by one's own labour, or

(b) by the labour of one's family, or

(c) by servants on wages payable in cash or kind (but not in crop share) or by hired labour under one's personal supervision or the personal supervision of any member of one's family;

Explanation 1. A widow or a minor or a person who is subject to any physical or mental disability or is a serving member of the armed forces of the Union, shall be deemed to cultivate land personally if it is cultivated by her or his servants or by hired labour.

Explanation 2. In the case of a Hindu Undivided Family, land shall be deemed to be cultivated personally, if it is cultivated by any member of such family;

(73) **"turnover"** means the aggregate value of all taxable and non-taxable supplies, exempt supplies and exports, of goods and/or services, to be computed on all India basis and excludes taxes, if any, charged under this Act;

(74) **"Special Economic Zone"** shall have the meaning assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005 [28 of 2005];

(75) **"works contract"** means an agreement for carrying out for cash, deferred payment or other valuable consideration, the building, construction, fabrication, erection, installation, fitting out, improvement, modification, repair, renovation or commissioning of any immovable property;

(76) **"year"** means the financial year; and

(77) **"zero-rated supply"** means a supply of any goods and/or services on which no tax is payable but credit of the input tax related to that supply is admissible;

Explanation: Exports shall be treated as zero-rated supply.

### 3. Meaning and scope of supply

(1) Supply of goods and/or services includes all forms of supply such as sale, transfer, barter, exchange, license, rental, lease or disposal, and importation of services\*, made or agreed to be made for a consideration by a person in the course or furtherance of business and also includes a supply specified in Schedule I, made or agreed to be made without a consideration.



(2) Schedule II, in respect of matters mentioned therein, shall apply for determining what is, or is to be treated as a supply of goods or a supply of services.

(3) Subject to sub-section(2), the Central or a State Government may, upon recommendations of the Council, specify, by notification, the transactions that are to be treated as—

- (i) a supply of goods and not as a supply of services; or
- (ii) a supply of services and not as a supply of goods; or
- (iii) neither a supply of goods nor a supply of services.

## **CHAPTER II**

### **ADMINISTRATION**

#### **4. Classes of officers under the Central Goods and Services Tax Act**

- (1) There shall be the following classes of officers under the Central Goods and Services Tax Act, namely;
  - (a) Principal Chief Commissioners of CGST or Principal Directors General of CGST,
  - (b) Chief Commissioners of CGST or Directors General of CGST,
  - (c) Principal Commissioners of CGST or Principal Additional Directors General of CGST,
  - (d) Commissioners of CGST or Additional Directors General of CGST,
  - (e) Commissioner of CGST(Appeals)
  - (f) Additional Commissioners of CGST or Additional Directors of CGST,
  - (g) Joint Commissioners of CGST or Joint Directors of CGST,
  - (h) Deputy Commissioners of CGST or Deputy Directors of CGST,
  - (i) Assistant Commissioners of CGST or Assistant Directors of CGST, and
  - (j) such other class of officers as may be appointed for the purposes of this Act.

#### **4. Classes of officers under the State Goods and Services Tax Act**

- (1) There shall be the following classes of officers and persons under the State Goods and Services Tax Act namely.
  - a) Commissioner of SGST,
  - b) Special Commissioners of SGST,
  - c) Additional Commissioners of SGST,
  - d) Joint Commissioners of SGST,
  - e) Deputy Commissioners of SGST,
  - f) Assistant Commissioners of SGST, and
  - g) such other class of officers and persons as may be appointed for the purposes of this Act. [List is indicative]

(2) The Commissioner shall have jurisdiction over the whole of the State (...). All other officers shall have jurisdiction over the whole of the State or over such areas as the Commissioner may, by notification, specify.

**5. Appointment of officers under the Central Goods and Services Tax Act**

(1) The Board may appoint such persons as it may think fit to be officers under the Central Goods and Services Tax Act.

(2) Without prejudice to the provisions of sub-section (1), the Board may authorize a Principal Chief Commissioner/Chief Commissioner of Central Goods and Services Tax or a Principal Commissioner/Commissioner of Central Goods and Services Tax or an Additional/Joint or Deputy/Assistant Commissioner of Central Goods and Service Tax to appoint officers of Central Goods and Services Tax below the rank of Assistant Commissioner of Central Goods and Services Tax.

**6. Powers of officers under the Central Goods and Services Tax Act**

(1) Subject to such conditions and limitations as the Board may impose, an officer of the Central Goods and Services Tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(2) An officer of Central Goods and Services Tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of Central Goods and Services Tax who is subordinate to him.

(3) Notwithstanding anything contained in this section, a Commissioner (Appeals) shall not exercise the powers and discharge the duties conferred or imposed on an officer of Central Goods and Services Tax other than those specified in .....of this Act.

## CHAPTER III

### LEVY AND COLLECTION OF TAX

#### 7. Levy and Collection of Central/State Goods and Services Tax

(1) There shall be levied a tax called the Central/State Goods and Services Tax (CGST/SGST) on all intra-State supplies of goods and/or services at the rate specified in the Schedule . . . to this Act and collected in such manner as may be prescribed.

(2) The CGST/SGST shall be paid by every taxable person in accordance with the provisions of this Act.

(3) The Central/State Government may, by notification, specify categories of supply of services the tax on which is payable on reverse charge basis and all the provisions of this Act shall apply *mutatis mutandis* for collection of such tax.

#### 8. Compounded Levy

(1) Notwithstanding anything to the contrary contained in the Act, the Central or a State Government may, subject to such conditions and restrictions as may be prescribed, permit a registered taxable person, whose turnover in a financial year does not exceed fifty lacs of rupees, to pay, in lieu of the tax payable by him, an amount calculated at such rate, not less than one percent, of the turnover during the year:

Provided that no such permission shall be granted to a taxable person who effects any inter-state supplies of goods and/or services or to a person who is liable to pay tax under sub-section (3) of section 7 of this Act.

(2) A taxable person to whom the provisions of sub-section (1) apply shall not charge any tax on supplies made by him nor shall he be entitled to any credit of input tax.

(3) If the proper officer has reasons to believe that a taxable person was not eligible to pay tax under sub-section (1), such person shall, in addition to any tax that may be payable by him under other provisions of this Act, be liable to a penalty equivalent to the amount of tax payable as aforesaid:

Provided that no penalty shall be imposed without affording a reasonable opportunity of being heard to the person proceeded against.

(4) Notwithstanding anything to the contrary contained in the Act, the Central or a State Government may, subject to such conditions, restrictions and limitations as may be prescribed in this behalf, permit a registered taxable person engaged in providing a specified category of taxable service to pay, in lieu of the tax payable by him, an amount calculated at such rate not exceeding . . . percent, as may be notified by the Central or a State Government on the recommendation of the Council.

#### 9. Taxable person

(1) Taxable Person means a person who carries on any business at any place in India/State of \_\_\_\_ and who is registered or required to be registered under Schedule III of this Act for payment of tax.

(2) The Central or a State Government may, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.

(3) The Central Government, a State Government or any local authority shall be regarded as a taxable person in respect of activities or transactions in which they are engaged as public authorities other than the activities or transactions which may be exempted, by notification, by the Central or a State Government, on the recommendation of the Council.

(4) Any person who provides services as an employee to his employer in the course of, or in relation to his employment, or by any other legal ties creating the relationship of employer and employee as regards working conditions, remunerations and employer's liability, shall not be considered as a taxable person.

#### **10. Power to grant exemption from tax**

(1) If the Central or a State Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally either absolutely or subject to such conditions as may be specified in the notification, goods and/or services of any specified description from the whole or any part of the tax leviable thereon.

Explanation: Where an exemption under sub-section (1) in respect of any goods and/or services from the whole of the tax leviable thereon has been granted absolutely, the taxable person providing such goods and/or services shall not pay the tax on such goods and/or services.

(2) If the Central or a State Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, exempt from payment of tax, under circumstances of an exceptional nature to be stated in such order, any goods and/or services on which tax is leviable.

(3) The Central or a State Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

(4) Every notification issued under sub-section (1) or sub-section (3) and every order issued under sub-section (2) shall

(a) unless otherwise provided, come into force on the date of its issue by the Central or a State Government for publication in the Official Gazette;

(b) also be made available in the official website of the department of the Central or a State Government.

#### **11. Time of supply of goods**

(1) The liability to pay CGST / SGST on the goods shall arise at the time of supply as determined in terms of the provisions of this section.

(2) The time of supply of goods shall be the earliest of the following dates, namely,-

(a) (i) the date on which the goods are removed by the supplier for supply to the buyer, in a case where the goods are required to be removed and

(ii) the date on which the goods are made available to the buyer, in a case where the goods are not required to be removed; or

(b) the date on which the supplier issues the invoice with respect to the supply; or

(c) the date on which the supplier receives the payment with respect to the supply; or

(d) the date on which the buyer shows the receipt of the goods in his books of account.

Explanation 1: The provisions of sub-clause (ii) of clause (a) shall apply in cases where the goods

(a) are physically not capable of being moved; or

(b) are supplied in assembled or installed form; or

(c) are supplied by the supplier to himself or to his agent or his principal.

Explanation 2: For the purposes of sub-clause (ii) of clause (a), the expression 'made available to the buyer' shall mean when the goods are placed at the disposal of the buyer.

Explanation 3: For the purposes of clauses (b) and (c) of sub-section (2), the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

(3) In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the time of supply shall be the date of expiry of the period to which such successive statements of accounts or successive payments relate. If there are no successive statements of account, the date of issue of the invoice (or any other document) or the date of receipt of payment, whichever is earlier, shall be the time of supply.

(4) For the purposes of sub section (3) above, the Central or a State Government may specify, by notification, the goods that shall be treated as continuous supply of goods;

(5) If the goods (being sent or taken on approval or sale or return or similar terms) are removed before it is known whether a supply will take place, the time of supply shall be at the time when it becomes known that the supply has taken place or twelve months from the date of removal, whichever is earlier.

(6) In case it is not possible to determine the time of supply under the provisions of sub-section (2), (3) or (5), the time of supply shall

(a) in a case where a periodical return has to be filed, be the date on which such return is to be filed, or

(b) in any other case, be the date on which the CGST/SGST is paid.

## **12. Time of supply of services**

(1) The liability to pay CGST/SGST on services shall arise at the time of supply, as determined in terms of the provisions of this section.

(2) The time of supply of services shall be :-

(a) the date of issue of invoice or the date of receipt of payment, whichever is earlier, if the invoice is issued within the prescribed period; or

(b) the date of completion of the provision of service or the date of receipt of payment, whichever is earlier, if the invoice is not issued within the prescribed period; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or (b) do not apply.

Explanation: For the purposes of clauses (a) and (b), the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

(3) In case of continuous supply of services, the time of supply shall be -

(a) where the due date of payment is ascertainable from the contract, the date on which the payment is liable to be made by the service receiver, whether or not any invoice has been issued or any payment has been received by the service provider;

(b) where the due date of payment is not ascertainable from the contract, each such time when the service provider receives the payment, or issues an invoice, whichever is earlier;

(c) where the payment is linked to the completion of an event, the time of completion of that event;

(4) For the purposes of sub section (3) above, the Central or a State Government may specify, by notification, the services that shall be treated as continuous supply of services;

(5) In case of supplies in respect of which tax is paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely-

(a) the date of receipt of services, or

(b) the date on which the payment is made, or

(c) the date of receipt of invoice, or

(d) the date of debit in the books of accounts.

(6) In a case where the supply of services ceases under a contract before the completion of the supply, such services shall be deemed to have been provided at the time when the supply ceases.

(7) Where it is not possible to determine the time of supply of services in the manner specified in sub-sections (2), (3), (5) and (6), the time of supply shall

(a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or

(b) in any other case, be the date on which the CGST/SGST is paid.

### **13. Change in rate of tax in respect of supply of services**

(1) Notwithstanding anything contained in section 12, the time of supply, in cases where there is a change in the effective rate of tax in respect of services, shall be determined in the following manner, namely:-

(a) in case the taxable service has been provided before the change in effective rate of tax -

(i) where the invoice for the same has been issued and the payment is also received after the change in effective rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or

(ii) where the invoice has been issued prior to change in effective rate of tax but the payment is received after the change in effective rate of tax, the time of supply shall be the date of issue of invoice; or

(iii) where the payment is received before the change in effective rate of tax, but the invoice for the same has been issued after the change in effective rate of tax, the time of supply shall be the date of receipt of payment;

(b) in case the taxable service has been provided after the change in effective rate of tax -

(i) where the payment is received after the change in effective rate of tax but the invoice has been issued prior to the change in effective rate of tax, the time of supply shall be the date of receipt of payment; or

(ii) where the invoice has been issued and the payment is received before the change in effective rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or

(iii) where the invoice has been issued after the change in effective rate of tax but the payment is received before the change in effective rate of tax, the time of supply shall be the date of issue of invoice.

#### **14. Nature of supply**

(1) Subject to the provisions contained in section 15 of this Act, a supply of goods shall be -

(a) an inter-State supply if the supply involves the movement of goods from one State to another.

Explanation: Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State.

(b) an intra-State supply if the goods remain within the same State.

(2) Subject to the provisions contained in section 16 of this Act, a supply of services shall be -

(a) an inter-State supply if the service provider and the service recipient are located in different States,

(b) an intra-State supply if the service provider and the service recipient are located in the same State.



## **15. Place of supply of goods**

(1) The provisions of this section shall apply to determine the place of supply of goods.

[(2) Where the supply, including a distance supply, involves movement of goods, the place of supply of such goods shall be the location at which the goods are delivered to the receiver.]

Explanation—The expression "distance supply" shall mean a supply of goods which satisfies the following conditions:-

- (a) the goods are supplied to a buyer located in another State,
- (b) the supplier arranges the transport of goods.

(3) Where the supply does not involve movement of goods, the place of supply shall be the location of such goods at the time of the delivery to the receiver.

(4) Where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly.

(5) Where the goods are supplied on board a conveyance, such as a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.

(6) Where the place of supply of goods cannot be determined in terms of sub-section (2), (3), (4) and (5), the same shall be determined by law made by the Parliament in accordance with the recommendations of the Council.

## **16. Place of supply of services**

(1) The provisions of this section shall apply to determine the place of supply of services.

(2) The place of supply of all services, except those services specified in sub-sections (4), (5), (6), (7), (8), (9), (10), (11), (12) and (13), made to a registered person shall be the location of the service receiver.

(3) The place of supply of all services, except those services specified in sub-sections (4), (5), (6), (7), (8), (9), (10), (11), (12) and (13), made to any person other than a registered person shall be the location of the service provider.

(4) The place of supply of services,-

- (a) in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights

to use immovable property or for carrying out or co-ordination of construction work, or

- (b) by way of lodging accommodation by a hotel, inn, guest house, homestay, club or campsite, by whatever name called and including a house boat or any other vessel, or
- (c) by way of accommodation in any immovable property for organizing any marriage or reception or matters related therewith, official, social, cultural, religious or business function including services provided in relation to such function at such property,

shall be the location at which the immovable property or boat or vessel is located or intended to be located.

Explanation: Where the immovable property or boat or vessel is located in more than one State, the supply of service shall be treated as made in each of the States in proportion to the value for services separately collected or determined, in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

(5) The place of supply of restaurant and catering services and services in relation to training, performance appraisal, personal grooming, fitness, beauty treatment, health services including cosmetic and plastic surgery shall be the location where the services are actually performed.

(6) The place of supply of services provided by way of—

- (a) admission to a cultural, artistic, sporting, scientific, educational, or entertainment event or amusement park or any other place, or
- (b) organization of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of service in relation to a conference, fair, exhibition, celebration or similar events, or
- (c) services ancillary to such admission to or organization of any of the above events or services, or
- (d) assigning of sponsorship of any of the above events,

shall be the place where the event is actually held.

Explanation: Where the event is held in more than one State and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in the each of the States in proportion to the value of services so provided in each State as ascertained from the terms of the contract or agreement entered into in this regard or, in absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

(7) The place of supply of services by way of transportation of goods, including by mail or courier to,

- (a) a registered person, shall be the location of such service receiver;

- (b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

(8) The place of supply of passenger transportation service shall be the place where the passenger embarks on the conveyance for a continuous journey.

Provided that where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the place of supply of such service shall be determined in the manner specified in sub-sections (2) or (3), as the case may be.

Explanation: For the purposes of this sub-section, the return journey shall be treated as a separate journey even if the right to passage for onward and return journey is issued at the same time.

(9) The place of supply of services on board a conveyance such as vessel, aircraft, train or motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.

(10) The place of supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall—

- (a) in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;
- (b) in case of mobile connection for telecommunication and internet services provided on post-paid basis, be the location of billing address of the service receiver on record of the service provider;
- (c) in cases where mobile connection for telecommunication and internet service are provided on pre-payment through a voucher or any other means, be the location where such pre-payment is received or such vouchers are sold:

Provided that if such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment, the location of the service receiver on record of the service provider shall be the place of supply of such service.

(11) The place of supply of banking and other financial services including stock broking services to any person shall be the location of the service receiver on the records of the service provider:

Provided that if the service is not linked to the account of the receiver, the place of supply shall be location of the service provider.

(12) The place of supply of insurance services shall:

- (a) to a registered person, be the location of the service receiver; and
- (b) to a person other than a registered person, be the location of the service receiver on the records of the service provider.

Provided that for all general insurance services related to an immovable property, the place of supply of services shall be the location of the property.

(13) The place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for identifiable States, shall be taken as located in each of such States and the value of such supplies specific to each State shall be in proportion to amount attributable to service provided by way of dissemination in the respective States as may be determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

## **17. Value of taxable supply**

(1) The value of a supply of goods and/or services shall be the transaction value, that is the price actually paid or payable for the said supply of goods and/or services where the supplier and recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The transaction value under sub-section (1) shall include:

(a) any amount that the supplier is liable to pay but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods and/or services;

(b) the value, apportioned as appropriate, of such goods and/or services as are supplied directly or indirectly by the recipient of the supply free of charge or at reduced cost for use in connection with the supply of goods and/or services being valued, to the extent that such value has not been included in the price actually paid or payable;

(c) royalties and licence fees related to the supply of goods and/or services being valued that the recipient of supply must pay, either directly or indirectly, as a condition of the said supply, to the extent that such royalties and fees are not included in the price actually paid or payable;

(d) any taxes, duties, fees and charges levied under any Statute other than the SGST Act or the CGST Act or the IGST Act;

(e) incidental expenses such as commission, packing, charged by the supplier to the recipient of a supply, including any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of the goods or, as the case may be, provision of the services;

(f) subsidies provided in any form or manner, linked to the supply;

(g) any discount or incentive that may be allowed after the supply has been effected.

(3) The transaction value under sub-section (1) shall not include any discount allowed before or at the time of supply provided such discount is allowed in the course of normal trade practice and has been duly recorded in the invoice issued in respect of the supply.

(4) The value of the supply of goods and/or services in the following situations which cannot be valued under sub-section (1), shall be determined in such manner as may be prescribed in the rules.

- (i) the consideration, whether paid or payable, is not money, wholly or partly;
  - (ii) the supplier and the recipient of the supply are related;
  - (iii) there is reason to doubt the truth or accuracy of the transaction value declared by the supplier;
  - (iv) business transactions in the nature of pure agent, money changer, insurer, air travel agent and distributor or selling agent of lottery;
  - (v) such other supplies as may be notified by the Central or a State Government in this behalf.
- (5) Notwithstanding anything to the contrary contained in the Act or in any contract, the value of a supply of goods made by a taxable person to any person other than a taxable person shall be deemed to be the retail sale price less the tax leviable under this Act on such goods, in a case where such price is required to be declared on the package thereof under the provisions of the Legal Metrology Act, 2009 (1 of 2010) or the rules made thereunder or under any other law for the time being in force.

Explanation 1 — For the purposes of this sub-section, “retail sale price” means the maximum price at which the goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like and the price is the sole consideration for such sale:

Explanation 2 — For the purposes of this sub-section, -

- (a) where on the package of any goods more than one retail sale price is declared, the highest of such retail sale prices shall be deemed to be the retail sale price;
- (b) where the retail sale price, declared on the package of any goods at the time of its supply, is altered to increase the retail sale price, such altered retail sale price shall be deemed to be the retail sale price;
- (c) where different retail sale prices are declared on different packages for the sale of any goods in packaged form in different areas, each such retail sale price shall be the retail sale price for the purposes of valuation of the goods intended to be sold in the area to which the retail sale price relates.



## CHAPTER IV

### INPUT TAX CREDIT

#### **18. Manner of taking input tax credit and utilization thereof**

(1) Every taxable person shall, subject to such conditions and restrictions as may be prescribed in this behalf, be entitled to take credit of input tax and may deduct the amount of admissible credit in respect of a tax period from the output tax for the same period and pay the remaining amount, if any, to the credit of the appropriate Government within such time and in such manner, as may be prescribed.

Explanation: For the purposes of this section, "appropriate Government" means the Central Government in case of the IGST and the CGST, and the State Government in case of the SGST.

(2) Where the goods and/or services are used by the taxable person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

(3) Where the goods, other than capital goods, or services are used by the taxable person partly for effecting taxable supplies and partly for effecting non-taxable supplies, including exempt supplies but excluding zero-rated supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the taxable supplies including zero-rated supplies.

(4) The Central or a State Government may, by notification issued in this behalf, prescribe the manner in which the credit referred to in sub-sections (2) and (3) above may be attributed.

(5)(a) The input tax credit on account of IGST during a tax period shall first be utilised towards payment of IGST; the amount remaining, if any, shall be utilized towards the payment of CGST and SGST, in that order.

(b) The input tax credit on account of CGST during a tax period shall first be utilised towards payment of CGST; the amount remaining, if any, shall be utilized towards the payment of IGST.

(c) The input tax credit on account of SGST during a tax period shall first be utilised towards payment of SGST; the amount remaining, if any, shall be utilized towards the payment of IGST.

(d) No input tax credit on account of CGST shall be utilized towards payment of SGST.

(e) No input tax credit on account of SGST shall be utilized towards payment of CGST.

(6) Where the input tax credit in respect of a tax period exceeds the output tax for the same period, such excess credit may be carried forward for adjustment against the output tax of the subsequent tax period. The amount of input tax credit so carried forward shall be utilised in the order and in the manner specified in sub-section (5):

Provided that where a claim for refund of unadjusted credit is made in terms of sub-section (7), the said amount of unadjusted credit shall not be carried forward.

(7) Subject to the provisions of sub-section (8), any unadjusted input tax credit at the end of any tax period may be refunded in accordance with the provisions of section 22 of this Act:

Provided that no refund of unadjusted input tax credit shall be allowed in cases other than exports or in cases where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on outputs:

Provided further that no refund of unadjusted input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty.

(8) Notwithstanding anything contained in sub-section (7), where any refund is due under the said sub-section to a taxable person who has defaulted in furnishing any return or who is required to pay any tax or penalty, which has not been stayed by any Court, Tribunal or Appellate Authority by the specified date, the proper officer may—

- (a) withhold payment of refund due until the said person has submitted the return or paid the tax or penalty, as the case may be;
- (b) deduct from the refund due, any tax or penalty which the taxable person is liable to pay but which remains unpaid.

Explanation: For the purposes of this sub-section the expression "specified date" shall mean—

- (a) the last date for filing an appeal under this Act, in a case where no appeal has been filed
- (b) thirty days after the last date for filing an appeal under this Act, in a case where an appeal has been filed.

(9) Notwithstanding anything contained in sub-section (1), input tax credit shall not be available in respect of the following:

(a) motor vehicles, except when they are supplied in the usual course of business or are used for providing the following taxable services—

- (i) transportation of passengers,
- (ii) transportation of goods,
- (iii) imparting training on motor driving skills;

[(b) high speed diesel oil, motor spirit (commonly known as petrol), aviation turbine fuel, petroleum crude oil and aviation gasoline;][the goods not liable to pay GST ?]

(c) goods or services provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as leave or home travel concession, when such goods and/or services are used primarily for personal use or consumption of any employee;

(d) goods and/or services acquired by the principal in the execution of works contract when such contract results in construction of immovable property, other than plant and machinery;

(e) goods acquired by a principal, the property in which is not transferred (whether as goods or in some other form) to any other person, which are used in the construction of immovable property, other than plant and machinery;

(f) goods and/or services on which tax has been paid under section 8 of the Act; and

(g) goods and/or services used for private or personal consumption, to the extent they are so consumed.

(10) Notwithstanding anything contained in this section, no taxable person shall be entitled to the credit of any input tax in respect of any supply of goods and/or services to him unless



(a) he is in possession of a tax invoice, issued by a supplier registered under this Act or the IGST Act; and

(b) the tax charged in respect of such supply has been paid to the credit of the appropriate Government, either in cash or through utilization of input tax credit admissible in respect of the said supply.

(11) Where there is a change in the constitution of a taxable person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provision for transfer of liabilities, the said taxable person shall be allowed to transfer the input tax credit that remains unadjusted in its books of accounts to such transferred, sold, merged, demerged, leased or amalgamated business in the manner prescribed.

(12) Where credit has been taken wrongly, the same shall be recovered from the taxable person in the manner as may be prescribed in this behalf.

**CHAPTER V**  
**REMISSION OF TAX**

**19. Remission of tax on supplies found deficient in quantity**

- (1) The Central or a State Government may, by rules made under this sub-section, provide for remission of tax on such supplies which are found to be deficient in quantity due to any natural causes.
- (2) Any rules made under sub-section (1) may, having regard to the nature of the supply fix the limit or limits of percentage beyond which no such remission shall be allowed.

## PART – VI

### DEMANDS AND REFUNDS

#### **Sec. 20      Recovery of tax not paid or short paid or erroneously refunded**

*A.      Recovery of tax not paid or short paid or erroneously refunded for any reason other than fraud or any wilful misstatement or suppression of facts*

(1) Where any tax has not been paid or short paid or erroneously refunded, for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, the proper officer shall, within three years from the relevant date, serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

(2) Where a notice has been issued for any period under sub-section (1), the proper officer may serve, within one year from the date of service of the said notice, a statement, containing the details of tax not paid or short paid or erroneously refunded for the subsequent period, on the person chargeable with tax. The service of such statement shall be deemed to be service of notice on such person under the aforesaid sub-section (1), subject to the condition that the grounds relied upon for the subsequent period are the same as are mentioned in the earlier notice.

(3) The person chargeable with tax may, before service of notice under sub-section (1) or sub-section (2), pay the amount of tax along with interest payable thereon under section 21 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment. The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) in respect of the tax so paid or any penalty leviable under the provisions of this Act or the rules made there under.

(4) Where the proper officer is of the opinion that the amount paid under sub-section (3) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable within one year from the date of receipt of information under sub-section (3).

(5) Where any person chargeable with tax under sub-section (1) or under sub-section (2) pays the said tax alongwith interest payable under section 21 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said tax shall be deemed to be concluded.

(6) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty not exceeding ten percent of tax or five thousand rupees, whichever is higher, due from such person and issue an order.

(7) The proper officer shall issue the order within one year from the date of issue of notice under sub-section (1) or, as the case may be, sub-section (4) or statement under sub-section (2).

***B. Recovery of tax not paid or short paid or erroneously refunded by reason of fraud or any wilful misstatement or suppression of facts***

(1) Where any tax has not been paid or short paid or erroneously refunded by reason of fraud, or any wilful misstatement or suppression of facts to evade tax, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under section 21 and a penalty equivalent to the tax specified in the notice.

(2) Where a notice has been issued for any period under sub-section (1), the proper officer may serve, within one year from the date of service of the said notice, a statement, containing the details of tax not paid or short paid or erroneously refunded for the subsequent period, on the person chargeable with tax. The service of such statement shall be deemed to be service of notice on such person under the aforesaid sub-section (1), subject to the condition that the grounds relied upon for the subsequent period are the same as are mentioned in the earlier notice.

(3) The person chargeable with tax may, before service of notice under sub-section (1) or sub-section (2), pay the amount of tax along with interest payable under section 21 and a penalty equivalent to fifteen per cent of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment. The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) in respect of the tax so paid or any penalty leviable under the provisions of this Act or the rules made thereunder.

(4) Where the proper officer is of the opinion that the amount paid under sub-section (3) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable within one year from the date of receipt of information under sub-section (3).

(5) Where any person chargeable with tax under sub-section (1) or under sub-section (2) pays the said tax along with interest payable under section 21 and a penalty equivalent to twenty five per cent of such tax within thirty days of communication of the notice, all proceedings in respect of the said tax shall be deemed to be concluded.

(6) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(7) The proper officer shall issue the order within a period of eighteen months from the date of issue of the notice under sub-section (1) or statement under sub-section (2).

(8) Where any person served with an order issued under sub-section (6) pays the tax along with interest payable thereon under section 21 and a penalty equivalent to fifty

percent of such tax within thirty days of the communication of order, all proceedings in respect of the said tax shall be deemed to be concluded.

*C. General provisions relating to demand of tax*

(1) Where the service of notice is stayed by an order of a Court or Tribunal, the period of such stay shall be excluded in computing the period of one year, three years or five years, as the case may be.

(2) Where any Appellate Authority or Tribunal or Court concludes that the notice issued under sub-section B(1) or B(2) is not sustainable for the reason that the charges of fraud or any wilful mis-statement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person for the period of three years, deeming as if the notice were issued under sub-section A(1) or A(2).

(3) An opportunity of personal hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

(4) The adjudicating authority shall, if sufficient cause is shown by the person chargeable with tax, grant time, from time to time, to the said person and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a person during the proceeding.

(5) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(6) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on grounds other than the grounds specified in the notice.

(7) Where the Appellate Authority or Tribunal or Court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

(8) Interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

(9) The officer issuing the order under sub-section A(6) or under sub-section B(6) shall be different from the officer who issued the notice to show cause.

(10) The adjudication proceedings shall be deemed to be concluded if the notice to show cause is not decided within one year as provided for in sub-section A(7) or within eighteen months as provided for in sub-section B(7).

D (1) The provisions of sub-section A, B, C above shall apply, *mutatis mutandis*, to the recovery of interest where interest payable has not been paid or part paid or erroneously refunded.

Explanation: For the purposes of this section, "relevant date" means,—

- (i) in the case of goods and/or services in respect of which tax has not been paid or short-paid:
  - a) the date of filing of return under this Act, in a case where a return has been filed;
  - b) the date on which the return was due to be filed under this Act, in a case where no return has been filed;
  - c) in cases other than (a) and (b), the date on which the tax is required to be paid under this Act or the rules made thereunder;
- (ii) in a case where the tax is provisionally assessed under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;
- (iii) in a case where any sum relating to tax has erroneously been refunded, the date of such refund.

## **21. Interest on delayed payment of tax**

(1) Every person liable to pay tax in accordance with the provisions of the Act or rules made thereunder, who fails to pay the tax or any part thereof to the account of the Central or a State Government within the period prescribed, shall, on his own, for the period for which the tax or any part thereof remains unpaid, pay interest at such rate as may be notified by the Central or a State Government.

(2) The interest under sub-section (1) shall be calculated from the first day such tax was due to be paid.

## **22. Refund of tax**

(1) Any person claiming refund of any tax and interest, if any, paid on such tax may make an application in that regard to the proper officer of IGST/CGST/SGST before the expiry of two years from the relevant date in such form and in such manner as may be prescribed.

Provided that the limitation of two years shall not apply where such tax or interest has been paid under protest.

(2) The application shall be accompanied by—

- (a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant, and
- (b) such documentary or other evidence as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on by him to any other person.

(3) If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund.

- (4) The proper officer shall issue the order under sub-section (3) within
- (a) sixty days from the date of receipt of application in case of refund arising from export of goods;
  - (b) ninety days from the date of receipt of application in case of refund arising from export of services;
  - (c) forty five days from the date of receipt of application in case of refund of unadjusted input tax credit under sub-section (7) of section 18;
  - (d) sixty days from the date of receipt of application in case of refund arising on account of a judgement, decree, order or direction of the Appellate Authority or Tribunal or any Court; and
  - (e) ninety days from the date of receipt of application for refund in any other case.

Explanation. The application for the purpose of this sub-section shall mean complete application containing all information as may be prescribed.

(5) Notwithstanding anything contained in sub-section (3), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to –

- (a) refund of tax on goods and/or services exported out of India or on inputs used in the goods and/or services which are exported out of India;
  - (b) refund of unadjusted input tax credit under sub-section (7) of section 18 of the Act;
  - (c) the tax and interest, if any, paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person;
  - (d) the tax or interest borne by such other class of applicants as the Central or a State Government may, by notification, specify.
- (6) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except as provided in sub-section (5).

Explanation — For the purposes of this section –

(A) “refund” includes refund of tax on goods and/or services exported out of India or on inputs used in the goods and/or services which are exported out of India, or refund of unadjusted input tax credit as provided under sub-section (7) of section 18 of this Act;

(B) “relevant date” means –

(a) in the case of goods and/or services exported out of India where a refund of tax paid is available in respect of the goods and/or services themselves or, as the case may be, the inputs used in such goods and/or services, the date on which the return relating to such export of goods and/or services is filed;

(b) in the case of goods returned for being remade, refined, reconditioned, or subjected to any other similar process in any place of business, the date of entry into the place of business for the purposes aforesaid;

(c) in case where the tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of Appellate Authority, Appellate Tribunal or any Court, the date of communication of such judgment, decree, order or direction;

(e) in the case of refund of unadjusted input tax credit under sub-section (7) of section 18, the end of the financial year in which such claim for refund arises; and

(f) in any other case, the date of payment of tax.

### **23. Interest on delayed refunds**

If any tax refundable under section 22 to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, interest at such rate as may be specified in the notification issued by the Central or a State Government shall be payable in respect of such refund from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such tax.

Explanation: Where any order of refund is made by an Appellate Authority, Tribunal or any Court against an order of the proper officer under sub-section (3) of section 22, the order passed by the Appellate Authority, Tribunal or, as the case may be, by the Court shall be deemed to be an order passed under the said sub-section (3) for the purposes of this section.

### **24. Tax collected but not deposited with the Central or a State Government**

(1) Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Tribunal or Court or in any other provision of this Act or the rules made thereunder or any other law, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Central or a State Government, shall forthwith deposit the said amount to the credit of the Central or a State Government, regardless of whether the supplies in respect of which such amount was collected are taxable or not.

(2) Where any amount is required to be paid to the credit of the Central or a State Government under sub-section (1), and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause why the said amount as specified in the notice, should not be paid by him to the credit of the Central or a State Government.

(3) The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person and thereupon such person shall pay the amount so determined.

(4) The person referred to in sub-section (1) shall in addition to paying the amount referred to in sub-section (1) or (3), as the case may be, also be liable to pay interest



thereon at the prescribed rate from the date such amount was collected by him to the date such amount is paid by him to the credit of the Central or a State Government.

(5) An opportunity for personal hearing shall be granted where a request is received in writing from the person to whom the notice was issued to show cause.

(6) The proper officer shall issue an order within one year from the date of issue of the notice.

(7) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(8) The person who has ultimately borne the incidence of the amount referred to in sub-section (1) and (3), may apply for the refund of the same and for such refund, the provisions of section 22 shall apply *mutatis mutandis*.

## **25. Recovery of tax**

(1) Where any amount payable by a person to the credit of the Central or a State Government under any of the provisions of this Act or of the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the modes mentioned below: -

(a) the proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other specified officer.

(b) the proper officer may recover or may require any other specified officer to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the proper officer or such other specified officer.

(c)(i) the proper officer may, by a notice in writing, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central or a State Government either forthwith upon the money becoming due or being held, or at or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;

(ii) every person to whom the notice is issued under this section shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;

(iii) in case the person to whom a notice under this section has been issued, fails to make the payment in pursuance thereof to the Central or a State Government, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this Act or the rules made thereunder shall follow;

(iv) the officer issuing a notice under sub-clause (i) may, at any time or from time to time, amend or revoke such notice or extend the time for making any payment in pursuance of the notice;

(v) any person making any payment in compliance with a notice issued under sub-clause (i) shall be deemed to have made the payment under the authority of the person in default and such payment being credited to the appropriate Government shall be deemed to constitute a good and sufficient discharge of the liability of such person to the person in default to the extent of the amount specified in the receipt;

(vi) any person discharging any liability to the person in default after service on him of the notice issued under sub-clause (1) shall be personally liable to the Central or a State Government to the extent of the liability discharged or to the extent of the liability of the person in default for tax, interest and penalty, whichever is less.

(vii) where a person on whom a notice is served under sub-clause (1) proves to the satisfaction of the officer issuing the notice that the money demanded or any part thereof was not due to the person in default or that he did not hold any money for or on account of the person in default, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the said person or be held for or on account of such person, nothing contained in this section shall be deemed to require the person on whom the notice has been served to pay to the credit of the appropriate Government any such money or part thereof, as the case may be.

(d) the proper officer may, on an authorisation by the competent authority and in accordance with the rules made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;

(e) the proper officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue.

(2) Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.

## **PART – VII REGISTRATION**

### **26. Registration**

- (1) Every person who is liable to be registered under Schedule III of this Act shall get himself registered within thirty days from the date on which he became liable to registration in such manner as may be prescribed.
- (2) A person having multiple business verticals in a State may obtain a separate registration for each business vertical in the State, subject to such conditions as may be prescribed.
- (3) A person, though not liable to be registered under Schedule III, may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered taxable person, shall apply to such person.
- (4) Every person shall have a Permanent Account Number issued under the Income Tax Act, 1961 (43 of 1961) in order to be eligible for grant of registration under sub-section (1), (2) or (3).
- (5) Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer may proceed to register such person in the manner as may be prescribed.
- (6) Any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries and any other person or class of persons as may be notified by the Board / Commissioner, shall obtain a Unique Identity Number, in the manner prescribed, for the purpose(s) notified, including refund of taxes on the notified supplies received by them.
- (7) The registration shall be granted after due verification in the manner and within such period as may be prescribed.
- (8) A registration shall be deemed to have been granted after the prescribed period, if no deficiency has been communicated to the applicant by the proper officer within that period.
- (9) Notwithstanding anything contained in sub-section (7), any rejection of application for registration under the CGST Act / SGST Act shall be deemed to be a rejection of application for registration under the SGST Act / CGST Act.

### **27. Amendment of registration**

- (1) Every registered taxable person shall inform to the proper officer of any changes in the information furnished at the time of registration, or that furnished subsequently, in the manner and within such period as may be prescribed.

(2) The proper officer may, on the basis of information furnished under sub-section (1) or as ascertained by him, and after making such inquiry as he may deem fit, approve amendments in the registration particulars:

Provided that approval of the proper officer shall not be required in respect of amendment of such particulars as may be prescribed.

(3) Any rejection of amendments under the CGST Act/SGST Act shall be deemed to be a rejection of amendments under the SGST Act/CGST Act.

## **28. Cancellation of registration**

(1) The proper officer may, either on his own motion or on an application filed, in the prescribed manner, by the registered taxable person or by his legal heirs, in case of death of such person, cancel the registration from such date, including any anterior date, as he may deem fit, having regard to the circumstances where, -

- (a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or
- (b) there is any change in the constitution of the business; or
- (c) the taxable person, other than the person registered under sub-section (3) of section 26, is no longer liable to be registered under Schedule III.

(2) The proper officer may, in the manner as may be prescribed, cancel the registration of taxable person from such date, including any anterior date, as he may deem fit, where, -

- (a) the registered taxable person has contravened the provisions of the Act or the rules made thereunder as may be prescribed; or
- (b) the taxable person has not filed the return for a continuous period of six months; or
- (c) any person who has taken voluntary registration under sub-section (3) of section 26 has not commenced business operations within six months from the date of registration.

(3) The proper officer shall not cancel the registration without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.

(4) The cancellation of registration under this section shall not affect the liability of the taxable person to pay tax and other dues under the Act for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

(5) The cancellation of registration under the CGST Act/SGST Act shall be deemed to be a cancellation of registration under the SGST Act/CGST Act.

(6) Every registered taxable person whose registration is cancelled shall pay, in respect of all goods held in stock on the date of cancellation, an amount equal to the input tax credit availed of on such goods or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:

Provided that In case of capital goods, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods reduced by the percentage points as may be specified in this behalf.

## **29. Revocation of cancellation of registration**

(1) Subject to such conditions and in such circumstances as may be prescribed, any registered taxable person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order.

(2) The proper officer may, by way of an order, to be passed within thirty days, either revoke cancellation of the registration or reject the application for revocation for good and sufficient reasons after providing the applicant an opportunity of being heard.

(3) Revocation of cancellation of registration under the CGST Act / SGST Act shall be deemed to be a revocation of cancellation of registration under the SGST Act / CGST Act.

## **Suggestions in respect of Schedule III of the report of the Sub-Committee-I**

In Schedule III, after item (iii) of paragraph 5, the following items may be added:

- (iv) non-resident taxable persons;
- (v) persons who are required to deduct tax under section 48;
- (vi) persons who supply goods and/or services on behalf of other persons whether as an agent or otherwise ; and
- (vii) such other person or class of persons as may be notified by the Central Government or a State Government on the recommendations of the Council.

## **PART - VIII**

### **ACCOUNTS AND RECORDS**

#### **30. Tax invoice**

A registered taxable person supplying taxable goods and/or services shall issue, at the time of the supply, a tax invoice showing the amount of tax which will form part of the price at which such goods and/or services are supplied and such other particulars as may be prescribed:

Provided that a registered taxable person supplying non-taxable goods and/or services or paying tax under the provisions of section 8 of this Act shall issue, instead of a tax invoice, a bill of supply containing such particulars as may be prescribed.

#### **31. Credit and debit notes**

(1) Where a tax invoice has been issued for supply of any goods and/or services and the taxable value and/or tax charged in that tax invoice is found to exceed the taxable value and/or tax payable in respect of such supply, the taxable person, who has supplied such goods and/or services, may issue to the recipient a credit note containing such particulars as may be prescribed on or before the thirtieth day of September following the end of the financial year in which such supply was made, or the date of filing of the relevant annual return, whichever is earlier.

(2) Where a tax invoice has been issued for supply of any goods and/or services and the taxable value and/or tax charged in that tax invoice is found to be less than the taxable value and/or tax payable in respect of such supply, the taxable person, who has supplied such goods and/or services, shall issue to the recipient a debit note containing such particulars as may be prescribed on or before the thirtieth day of November following the end of the financial year in which such supply was made, or the date of filing of the relevant annual return, whichever is earlier.

(3) Any registered taxable person who issues or receives a credit or debit note in relation to a supply of goods and/or services shall declare the details of such credit or debit note, as the case may be, in the return for the month during which such credit or debit note has been issued or received or in the return for any subsequent month but not later than September or November, as the case may be, following the end of financial year in which such supply was made, or the date of filing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in the manner specified in this Act.

#### **32. Accounts and other records**

(1) Every registered taxable person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of production or manufacture of goods, of inward or outward supply of goods and/or services, of stock of goods, of input tax credit availed, of output tax payable and paid, and such other particulars as may be prescribed in this behalf:

Provided that where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business concerned.

(2) The [Commissioner/Chief Commissioner] may notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified.

(3) Where the [Commissioner/ Chief Commissioner] considers that any class of taxable persons is not in a position to keep and maintain accounts in accordance with the provisions of this section, he may, for reasons to be recorded in writing, permit such class of taxable persons to maintain accounts in the manner as may be prescribed.

(4) Every registered taxable person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit to the proper officer a copy of the audited statement of accounts, the reconciliation statement under sub-section (2) of section 43 and such other documents in the form and manner as may be prescribed in this behalf.

### **33. Period of retention of accounts**

(1) Every registered taxable person required to keep and maintain books of account or other records under sub-section (1) of section 32 shall retain them until the expiry of sixty months from the date of filing of Annual Return for the year pertaining to such accounts and records:

Provided that a taxable person, who is a party to an appeal [or revision] or any other proceeding before any Appellate Authority or Tribunal or Court, whether filed by him or by the department, shall retain the books of account and other records pertaining to the subject matter of such appeal [or revision] or proceeding for a period of one year after final disposal of such appeal [or revision] or proceeding, or for the period specified under sub-section (1), whichever is later.

## **PART - IX**

### **RETURNS**

#### **34. Furnishing details of outward supplies**

(1) Every registered taxable person, other than a person paying tax under the provisions of section 8 of this Act, shall furnish, electronically, the details of outward supplies of taxable goods and/or services effected, including outward supplies of goods and/or services taxable under the IGST Act, and credit or debit notes issued in respect of such supplies during a tax period on or before the tenth day of the month succeeding the tax period in the manner and format as may be prescribed:

Provided that the Board / Commissioner may, for valid and sufficient reasons, by notification, extend the time limit for furnishing such details.

(2) The details of outward supplies furnished under sub-section (1) shall be communicated, in the manner prescribed, to the registered taxable persons receiving such supplies within the period prescribed for furnishing the details of inward supplies under sub-section (2) of section 35.

(3) The details of credit or debit notes issued by the supplier and furnished under sub-section (1) shall be communicated, in the manner prescribed, to the corresponding registered taxable person receiving such supplies within the period prescribed for furnishing the details under sub-section (2) of section 35.

(4) Any registered taxable person, who has furnished the details under sub-section (1) for any tax period, shall, upon discovery of any error therein relating to tax paid by him or input tax credit availed of by the recipient but remaining unmatched under section 38, rectify such error in the tax period during which such error is noticed and shall pay the tax and interest, if any, in case there was a short payment of tax on account of such error, in the return to be furnished for such tax period:

Provided that no rectification of error in respect of outward supply or a debit note issued by the supplier shall be allowed after filing of the return under section 36 for the month of November following the end of the financial year to which the supply pertains, or filing of the relevant annual return, whichever is earlier:

Provided further that no rectification of error in respect of a credit note issued by the supplier shall be allowed after filing of the return under section 36 for the month of September following the end of the financial year to which the supply pertains, or filing of the relevant annual return, whichever is earlier.



### **35. Furnishing details of inward supplies**

(1) Every registered taxable person, including a person paying tax under the provisions of section 8 of this Act, shall verify, validate, modify or, if required, delete the outward supplies and credit or debit notes communicated under sub-section (2) or under sub-section (3) of section 34, as the case may be, to prepare details of his inward supplies and credit or debit notes and may include therein, the details of inward supplies and credit or debit notes received by him in respect of such supplies that have not been declared by the supplier under sub-section (1) of section 34.

(2) Every registered taxable person shall furnish, electronically, the details of inward supplies of taxable goods and/or services, including inward supplies of services on which the tax is payable on reverse charge basis under this Act and inward supplies of goods and/or services taxable under the IGST Act, and credit or debit notes received in respect of such supplies during a tax period on or before the fifteenth day of the month succeeding the tax period in the manner and format as may be prescribed:

Provided that the Board/Commissioner may, for valid and sufficient reasons, by notification, extend the time limit for furnishing such details.

(3) Any registered taxable person, who has furnished the details under sub-section (2) for any tax period, shall, upon discovery of any error therein relating to input tax credit availed of by him or tax paid by the supplier but remaining unmatched under section 38, rectify such error in the tax period during which such error is noticed and shall pay the tax and interest, if any, in case there was a short payment of tax on account of such error, in the return to be furnished for such tax period:

Provided that no rectification of error in respect of inward supply or a debit note received by him shall be allowed after filing of the return under section 36 for the month of September following the end of the financial year to which the supply pertains, or filing of the relevant annual return, whichever is earlier:

Provided further that no rectification of error in respect of a credit note received by him shall be allowed after filing of the return under section 36 for the month of November following the end of the financial year to which the supply pertains, or filing of the relevant annual return, whichever is earlier.

### **36. Returns**

(1) Every registered taxable person shall, for every tax period, furnish a return, electronically, of inward and outward supplies of goods and/or services, input tax credit availed, tax payable, tax paid and other particulars as may be prescribed within twenty days after the end of such tax period:

Provided that a registered taxable person paying tax under the provisions of section 8 of this Act shall furnish a return for each quarter, electronically, in such form and in such manner as may be prescribed, within eighteen days after the end of such quarter:

Provided further that a registered taxable person shall not be allowed to furnish return for a tax period if return for any previous tax period has not been furnished by him.

(2) Every taxable person, who is required to furnish a return under sub-section (1), shall pay to the credit of the appropriate Government the tax due as per such return not later than the last date on which he is required to furnish such return.

(3) A return furnished under sub-section (1) by a taxable person without payment of full tax due as per such return shall not be treated as a valid return for allowing input tax credit in respect of supplies made by such person.

(4) Every registered taxable person shall furnish a return for every tax period underin sub-section (1), whether or not any supplies of goods and/or services have been effected during such tax period.

(5) Every person required to deduct tax at source shall furnish a return, electronically, in such form and in such manner as may be prescribed, for the month in which such deductions have been made along with the payment of tax so deducted, within ten days after the end of such month.

(6) If any taxable person after furnishing a return under sub-section (1) discovers any omission or incorrect particulars therein, other than as a result of audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be filed for the month or quarter, as the case may be, during which such omission or incorrect particulars are noticed, subject to payment of interest, where applicable and as specified in the Act:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for filing of return for the month of Novemberor any earlier month mentioned in section 34 or 35 or second quarter, as the case may be, following the end of the financial year, or the actual date of filing of relevant annual return, whichever is earlier.

### **37. Claim of input tax credit and provisional acceptance thereof**

(1) Every taxable person may claim the input tax credit in the return furnished under section 36.

(2) On filing of the return, the claim of input tax credit under sub-section (1) shall be provisionally allowed and credited to the input tax credit ledger of such taxable person.

[Note. States of Karnataka and Tamil Nadu strongly felt that credit of ITC should not be allowed on provisional basis in the event of short payment of tax. However, States of Bihar, Madhya Pradesh, Delhi and Maharashtra felt that credit of ITC should be allowed provisionally even if there was a short payment of tax].

### **38. Matching of input tax credit claimed by the recipient and tax paid by the supplier**

(1) After expiry of the due date for furnishing of return for a tax period, the input tax credit claimed by a taxable person and credited to his input tax credit ledger in respect of each inward supply and/or debit note received by him shall be verified to check if there is any duplication of claims and shall be matched with the corresponding outward supply and/or debit note declared by the supplier in his valid return for the same or any previous tax period.

(2) The input tax credit claimed by a taxable person in respect of goods imported by him shall be matched with the additional duty of customs paid under section 3 of the Customs Tariff Act, 1975 (51 of 1975) on such goods.

(3) Where the input tax credit claimed by a taxable person in his return in respect of inward supply and/or debit note received matches with the tax paid on the corresponding outward supply and/or debit note declared by the supplier in his valid return, or the additional duty of customs paid by him in case of imported goods, the claim shall be deemed to have been finally accepted and such acceptance shall be communicated to the taxable person claiming the input tax credit:

Provided that no claim for input tax credit shall be deemed to have been finally accepted if the goods and/or services are not eligible for such credit under sub-section (9) of section 18.

(4) After the claim for input tax credit has been accepted under sub-section (3), the taxable person making the outward supply shall not be allowed to reduce the amount of tax payable in respect of such supply except where the taxable person issues a credit note for such supply.

(5) In case the input tax credit claimed by a taxable person in respect of a supply is in excess of the tax paid by the supplier for the same supply or the outward supply is not declared by the supplier in his valid returns, the discrepancy shall be notified to both such taxable persons in the manner prescribed.

### **39. Reversal of input tax credit allowed provisionally for a supply**

(1) Where the input tax credit provisionally allowed under sub-section (2) of section 37 is found, upon verification under sub-section (1) of section 38, to be a duplication of claims, the excess credit so claimed shall be reduced in the input tax credit ledger of the taxable person during the month in which the verification is carried out.

(2) Where the taxable person making the outward supply does not rectify the discrepancy communicated under sub-section (5) of section 38 in his valid return for the tax period succeeding the period in which the input tax credit was claimed by the recipient, the input tax credit provisionally allowed earlier shall stand reduced to the extent of discrepancy in the input tax credit ledger of the recipient.

(3) Where input tax credit is reduced under sub-section (1) on account of duplication of claims or under sub-section (2) on account of failure to rectify the discrepancy, the taxable person claiming the input tax credit shall be informed in the manner prescribed.

(4) On being informed, the taxable person shall pay an amount equal to the input tax credit reduced along with applicable interest in the return for the tax period in which the reduction is communicated under sub-section (3).

#### **40. Matching of credit note issued by a supplier and reduction in input tax credit by the recipient**

(1) After expiry of the due date for furnishing of return for a tax period, the reduction of tax liability in respect of outward supplies by a taxable person on account of inclusion of a credit note in the details furnished under sub-section (1) of section 34 shall be verified to check if there is any duplication of claims and matched with the reduction in input tax credit claimed by the recipient of such supplies in his valid return for the same or any previous tax period.

(2) Where the reduction of tax liability in respect of outward supplies by a taxable person matches with the reduction in input tax credit claimed by the recipient, such reduction in the tax liability shall be deemed to have been finally accepted and such acceptance shall be communicated to the supplier.

(3) Where the reduction of tax liability in respect of outward supplies by a taxable person is in excess of the reduction in the input tax credit claimed by the recipient in his valid return or the corresponding credit note is not declared by the recipient under sub-section (1) of section 35, the discrepancy shall be notified to both such taxable persons in the manner prescribed.

#### **41. Reversal of reduction in tax liability**

(1) Where any reduction in output tax liability is found, upon verification under sub-section (1) of section 40, to be on account of duplication of claims, the tax liability of the supplier shall be enhanced to the extent of such duplicate claim during the month in which the verification is carried out.

(2) Where a taxable person, on being notified under sub-section (3) of section 40 in respect of his inward supplies, does not rectify the discrepancy and reduce his input tax credit claim in his valid return, to be furnished within the due date, for the tax period in which the discrepancy was notified, the tax liability of the supplier shall be enhanced to the extent of the discrepancy.

(3) Where the tax liability of the supplier is enhanced under sub-section (1) on account of duplication of claims or under sub-section (2) for failure of the recipient to rectify the discrepancy, the supplier shall be informed in the manner prescribed.

(4) On being informed, the supplier shall pay an amount equal to the tax liability enhanced along with applicable interest in the return for the tax period in which the enhancement is communicated under sub-section (3).

#### **42. Reclaim of input tax credit and reduction in tax liability after its reversal**

(1) A taxable person shall be eligible to reclaim the input tax credit reversed under section 39 only after the concerned supplier has furnished the details of the invoice and/or debit note in his valid return:

Provided that where the concerned supplier has not furnished the details of the invoice and/or debit note in his valid return, the input tax credit so reclaimed shall stand reversed and the taxable person shall be liable to pay the tax and penal interest at such rate as may be specified in the same tax period.

(2) A taxable person shall be eligible to reclaim the reduction in tax liability reversed under section 41 only after the concerned recipient has furnished the details of the credit note in his valid return:

Provided that where the concerned recipient has not furnished the details of the credit note in his valid return, the reduction in tax liability so reclaimed shall stand reversed and the taxable person shall be liable to pay the tax and penal interest at such rate as may be specified in the same tax period.

(3) After successful reclaim under sub-section (1) and (2), the interest paid by the taxable person as per sub-section (4) of section 39 and sub-section (4) of section 41 shall be refunded by crediting to the corresponding head in the cash ledger of the such taxable person:

Provided that the amount of interest to be credited in any case shall not exceed the amount of interest paid by the taxable person.

(4) No reclaim under sub-section (1) and (2) shall be allowed after the due date for filing of the return for the tax period of September following the end of the financial year or the date of filing of relevant annual return, whichever is earlier.

#### **43. Annual return**

(1) Every registered taxable person, other than a casual or non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and in such manner as may be prescribed on or before the thirty first day of December following the end of such financial year.

(2) Every taxable person who is required to get his accounts audited under sub-section (4) of section 32 shall furnish, electronically, the annual return along with the audited copy of the annual accounts and a reconciliation statement, reconciling the value of supplies declared in the returns furnished for the year with the audited annual financial statement, and such other particulars as may be prescribed.

**44. Final return**

Every registered taxable person who applies for cancellation of registration shall furnish a final return along with the application for cancellation of registration in such form and in such manner as may be prescribed.

**45. Levy of late fee**

Any registered taxable person who fails to furnish the details of outward or inward supplies or return required under this Act by the due date shall be liable to a late fee of rupees one hundred for every day during which such failure continues subject to a maximum of rupees five thousand.

**46. Submission of returns through Tax Return Preparers**

- (1) A registered taxable person may, in the manner prescribed, authorise an approved Tax Return Preparer to furnish the details of outward supplies under section 34, the details of inward supplies under section 35 and the return under section 36, 43 or section 44, as the case may be, and such other tasks as are prescribed in the rules.
- (2) The appropriate Government may, by rules, prescribe the manner of approval of Tax Return Preparers, their eligibility conditions, duties and obligations, manner of removal and such other conditions as may be relevant for their functioning as a Tax Return Preparer.
- (3) Notwithstanding anything contained in sub-section (1), the responsibility for correctness of any particulars furnished in the return and other details filed by the Tax Return Preparer shall continue to rest with the registered taxable person on whose behalf such return and details are filed.

## **PART-X**

### **PAYMENT OF TAX**

#### **47. Payment of tax, penalty, interest and other amounts**

(1) Every deposit made towards tax, interest, penalty, fee or any other amount by a taxable person by any of the prescribed modes shall be credited to the electronic cash ledger of such person to be maintained in the manner as may be prescribed.

(2) The input tax credit as self-assessed in the return of a taxable person shall be credited to his electronic credit ledger to be maintained in the manner as may be prescribed.

(3) The tax, interest, penalty, fee or any other amount payable under the provisions of the Act or the rules made there under shall be paid by debiting the electronic cash or credit ledger in such manner and subject to such conditions and limitations and within such time as may be prescribed.

(4) After fully utilizing the balance in the electronic [cash and] credit ledgers under this Act, the balance available in the credit ledger under IGST Act may be utilized to pay the tax dues under this Act.

[(4B) Subject to the conditions and limitations specified under sub-section (7) of section 18, the balance in the cash or credit ledger after payment of tax, interest, penalty, fee or any other amount payable under the Act or the Rules made thereunder shall belong to the taxable person. Such balance shall represent the amount not due to the appropriate government and not be construed as a part of the consolidated fund of the State/India.]

(5) All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic register as may be prescribed.

(6) Where the amount available in the electronic cash or the credit ledger falls short of the aggregate of tax, interest, penalty, fee or any other amount due, the said amount shall be liable to be debited in the following order:

- (a) interest liability related to returns of previous tax periods;
- (b) tax liability related to returns of previous tax periods;
- (c) tax liability of the current tax period; and
- (d) any other amount payable under the Act including the demand determined under section 20.

(7) A taxable person, after fully discharging his liability under this Act, may utilize the balance or any part thereof available in his electronic credit ledger under sub-section (2) for discharging his tax dues under the IGST Act in the manner prescribed.

(8) Where input tax credit availed of under the CGST Act is utilised for payment of tax dues under the IGST Act as per sub-section (7) above, the Central Government shall

transfer to the IGST account, in the manner prescribed, an amount equal to the credit so utilised.

**Note. CGST Act**

(8) Where input tax credit availed of under the SGST Act is utilised for payment of tax dues under the IGST Act as per sub-section (7) above, the State Government shall pay to the Central Government, in the manner prescribed, an amount equal to the credit so utilised.

**Note. SGST Act**

(9) On an application filed by a taxable person, the [Commissioner/Chief Commissioner] may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under the Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly installments not exceeding twelve, subject to payment of interest under section 21 with such restrictions and conditions as may be prescribed:

Provided that where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery.

**48. Tax deduction at source**

(1) Notwithstanding anything contained to the contrary in this Act, the Central or a State Government may mandate, -

- (a) a department of the Central or State Government, or
- (b) Local authority,
- (c) Governmental agencies, or
- (d) such category of entities as may be notified, by the Central or a State Government on the recommendations of the Council,

[hereinafter referred to in this section as the deductor], to deduct tax at the rate of one percent from the payment made or credited to the supplier [hereinafter referred to in this section as the deductee] of taxable goods and/or services, notified by the Central or a State Government on the recommendations of the Council, where the total value of such supply, under a contract, exceeds rupees ten lakhs.

Explanation – For the purpose of deduction of tax specified above, the value of supply shall be taken as the amount excluding the tax indicated in the invoice.

(2) The amount deducted as tax under this section shall be paid to the credit of the appropriate Government by the deductor within ten days after the end of the month in which such deduction is made, in the manner prescribed.

(3) The deductor shall furnish to the deductee a certificate mentioning therein the contract value, rate of deduction, amount deducted, amount paid to the appropriate Government and such particulars as may be prescribed in this behalf.

(4) If any deductor fails to furnish to the deductee the certificate, after deducting the tax at source, within five days of crediting the amount so deducted to the appropriate Government, the deductor shall be liable to pay, by way of a late fee, a sum of rupees one hundred per day from the specified period until the failure is rectified:



Provided that the amount of fee payable under this sub-section shall not exceed rupees five thousand.

(5) The deductee shall claim credit, in his cash ledger, of the tax deducted and reflected in the return of the deductor filed under sub-section (7), in the manner prescribed.

(6) Every deductor responsible for making deduction of tax under this section shall obtain a registration within the time specified and in the manner prescribed:

Provided that where the deductor is already registered under this Act, no separate registration is required.

(7) Every deductor shall, within the period specified, furnish a return in the form and manner prescribed.

(8) Any deductor who fails to comply with the requirement under sub-section (6) and (7) shall be liable to pay a late fee of rupees one hundred per day from the day on which such requirement arose until the failure is rectified:

Provided that the amount of late fee payable under this sub-section shall not exceed rupees five thousand.

(9) If any deductor fails to pay to the credit of the appropriate Government the amount deducted as tax under sub-section (1), he shall be liable to pay interest in accordance with the provisions of section 21 of the Act, in addition to the amount of tax deducted.

(10) Recovery of the amount in default under this section shall be made in the manner specified in section 20 of this Act.

(11) Refund to the deductor, arising on account of excess or erroneous deduction shall be dealt with in accordance with the provisions of section 22 of this Act.

## **PART – XI**

### **ASSESSMENT AND AUDIT**

#### **49. Self-Assessment**

Every registered taxable person shall himself assess the taxes payable under this Act and furnish a return for each tax period as specified under section 36.

#### **50. Scrutiny of returns**

- (1) The proper officer may scrutinize the return and related particulars furnished by the taxable person to verify the correctness of the return in such manner as may be prescribed.
- (2) The proper officer shall inform the taxable person of the discrepancies noticed, if any, after such scrutiny in such manner as may be prescribed and seek his explanation thereto.
- (3) In case the explanation is found acceptable, the taxable person shall be informed accordingly and no further action shall be taken in this regard.
- (4) In case no explanation is furnished or the explanation furnished is not found satisfactory or the taxable person fails to take the corrective measure after accepting the discrepancies, the proper officer may initiate appropriate action including those under section 54, 55 or section 68, or proceed to determine the tax and other dues under sub-section (6) of section 20A or under sub-section (6) of section 20B of this Act.

#### **51. Assessment of non-filers of returns**

- (1) Where a registered taxable person fails to furnish his periodical or final return even after issue of a notice to do so, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order.
- (2) Where the taxable person furnishes a valid return within thirty days of the service of the assessment order under sub-section (1), the proper officer may withdraw the said assessment order.

#### **52. Assessment of unregistered persons**

Where a taxable person fails to obtain registration even though liable to do so, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgement for the relevant tax periods and issue an assessment order:

Provided that no such assessment order shall be passed without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.

#### **53. Summary assessment in certain special cases**

The proper officer may, on any evidence showing a tax liability of a person coming to his notice, with previous permission of [Additional/Joint Commissioner], proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so will adversely affect the interest of revenue:

Provided that no such assessment order shall be issued without complying with the principles of natural justice:

Provided further that where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and pay tax and amount due under this section.

#### **54. Audit**

(1) The [Commissioner of CGST/Commissioner of SGST] or any officer authorised by him, by way of a general or a specific order, may undertake audit of the business transactions of any taxable person for such period, at such frequency and in such manner as may be prescribed.

(2) The tax authorities referred to in sub-section (1) may conduct audit at the place of business of the taxable person and/or in their office.

(3) The taxable person shall be informed, by way of a notice, sufficiently in advance, not less than fifteen working days, prior to the conduct of audit in the manner prescribed.

(4) The audit under sub-section (1) shall be carried out in a transparent manner and completed within a period of three months from the date of commencement of audit:

Provided that where the [Commissioner] is satisfied that audit in respect of such taxable person cannot be completed within three months from the date of commencement of audit, he may, upon giving the taxable person an opportunity of being heard and for the reasons to be recorded in writing, extend the period for another three months.

Explanation. For the purposes of this sub-section, 'commencement of audit' shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the taxable person or the actual institution of audit at the place of business, whichever is earlier.

(5) During the course of audit, the authorised officer may require the taxable person,

- (i) to afford him the necessary facility to verify the books of account or other documents as he may require and which may be available at such place,
- (ii) to furnish such information as he may require and render assistance for timely completion of the audit.

(6) On conclusion of audit, the proper officer shall without delay notify the taxable person, whose records are audited, of the findings, the taxable person's rights and obligations and the reasons for the findings.

(7) Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit erroneously availed, the proper officer may initiate action under section 20 of the Act.

## **55. Special audit**

(1) If at any stage of scrutiny, enquiry, investigation or any other proceedings before him, any officer not below the rank of [Deputy/Assistant Commissioner] having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the [Commissioner], direct such taxable person by notice in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the [Commissioner] in this behalf.

(2) The chartered accountant or cost accountant so nominated shall, within the period of ninety days, submit a report of such audit duly signed and certified by him to the said [Deputy/Assistant Commissioner] mentioning therein such other particulars as may be specified:

Provided that the proper officer may, on an application made to him in this behalf by the taxable person or the chartered accountant or cost accountant for any material and sufficient reason, extend the said period by another ninety days.

(3) The provision of sub-section (1) shall have effect notwithstanding that the accounts of the taxable person have been audited under any other provision of this Act or any other law for the time being in force or otherwise.

(4) The taxable person shall be given an opportunity of being heard in respect of any material gathered on the basis of audit under sub-section (1) which is proposed to be used in any proceedings under this Act or rules made there under.

(5) The expenses of, and incidental to, the examination and audit of records under sub-section (1), including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the [Commissioner] and that such determination shall be final.

## **CHAPTER – XII**

### **OFFENCES AND PENALTIES**

#### **56. Offences and penalties**

- (1) Where a taxable person who -
  - (i) supplies any goods and/or services without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;
  - (ii) issues any invoice or bill without supply of goods and/or services in violation of the provisions of this Act, or the rules made thereunder;
  - (iii) collects any amount as tax but fails to pay the same to the credit of the appropriate Government beyond a period of three months from the date on which such payment becomes due;
  - (iv) collects any tax in contravention of the provisions of this Act but fails to pay the same to the credit of the appropriate Government beyond a period of three months from the date on which such payment becomes due;
  - (v) takes and/or utilizes input tax credit without actual receipt of goods and/or services either fully or partially, in violation of the provisions of this Act, or the rules made thereunder;
  - (vi) obtains fraudulently refund under this Act;
  - (vii) falsifies or substitutes financial records or produces fake accounts and/or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;
  - (viii) is liable to be registered under this Act but fails to obtain registration;
  - (ix) furnishes any false information with regard to particulars specified as mandatory, either at the time of applying for registration, or subsequently;
  - (x) obstructs or prevents any officer in discharge of his duties under the Act;
  - (xi) transports any taxable goods without the cover of documents as may be specified in this behalf;
  - (xii) suppresses his turnover leading to evasion of tax under this Act;
  - (xiii) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;
  - (xiv) fails to furnish information and/or documents called for by a CGST/SGST officer in accordance with the provisions of this Act or rules made thereunder or furnishes false information and/or documents during any proceedings under this Act;
  - (xv) supplies, transports or stores any goods which he has reason to believe are liable to confiscation under this Act;

- (xvi) issues any invoice or document by using the identification number of another taxable person;
- (xvii) tampers with, or destroys any material evidence;
- (xviii) disposes off or tampers with any goods that have been detained, seized, or attached under this Act;

shall be liable to a penalty of rupees ten thousand or an amount equivalent to the tax evaded or input tax credit availed of or passed on irregularly, or the refund claimed fraudulently, as the case may be, whichever is higher.

(2) Any registered taxable person who repeatedly makes short payment of tax shall be liable to a penalty of rupees ten thousand or ten percent of the tax short paid, whichever is higher;

**Explanation.-** For the purposes of this sub-section, a taxable person shall be deemed to have made short payments 'repeatedly', if there were short payments in three returns during any six consecutive tax periods;

(3) Any person who

- (a) aids or abets any of the offences specified in clauses (i) to (xviii) of sub-section (1) above;
- (b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reason to believe are liable to confiscation under this Act or the rules made thereunder;
- (c) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this Act or the rules made thereunder;
- (d) fails to appear before the CGST/SGST officer, when issued with a summon for appearance to give evidence or produce a document in an enquiry;
- (e) fails to issue invoice in accordance with the provisions of this Act or rules made thereunder, or fails to account for an invoice in his books of account;

shall be liable to a penalty which may extend to rupees twenty five thousand.

## **57. General penalty**

Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to rupees twenty five thousand.

## **58. General disciplines related to penalty**

(1) No tax authority shall impose substantial penalties for minor breaches of tax regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning.

Explanation. For the purpose of this sub-section –

(a) a breach shall be considered a 'minor breach' if the amount of tax involved is less than rupees five thousand.

(b) an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on record.

(2) The penalty imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.

(3) No penalty shall be imposed on any taxable person without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.

(4) The tax authority shall ensure that when a penalty is imposed in an order for a breach of the laws, regulations or procedural requirements, an explanation is provided therein to the persons upon whom the penalty is imposed, specifying the nature of the breach and the applicable law, regulation or procedure under which the amount or range of penalty for the breach has been prescribed.

(5) When a person voluntarily discloses to a tax authority the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the tax authority, the tax authority may consider this fact as a potential mitigating factor when establishing a penalty for that person.

(6) The provisions of this section will not apply in such cases where the penalty prescribed under the Act is either a fixed sum or expressed as a fixed percentage.

## **59. Detention of goods and levy of penalty**

(1) Where any person –

(i) transports any goods or stores such goods while they are in transit in violation of the provisions of this Act; or

(ii) stores or keeps in stock goods or supplies goods which have not been accounted for in the books or records maintained by him in the manner required by this Act;

all such goods shall be liable to detention, in the manner prescribed, by the proper officer and shall be released only after payment of applicable tax, interest and penalty leviable thereon or upon furnishing a security, in such form as may be prescribed, equivalent to the amount of the applicable tax, interest and penalty.

(2) No tax, interest or penalty shall be determined under sub-section (1) without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.

#### **60. Confiscation of goods and levy of penalty**

(1) If any person –

(i) supplies any goods in contravention of any of the provisions of this Act or rules made thereunder leading to evasion of tax; or

(ii) does not account for any goods on which he is liable to pay tax under this Act; or

(iii) supplies any goods liable to tax under this Act without having applied for the registration; or

(iv) contravenes any of the provisions of this Act or rules made thereunder with intent to evade payment of tax,

then, all such goods shall be liable to confiscation and the person shall be liable to penalty under section 56 of the Act.

(2) Whenever confiscation of any goods is authorized by this Act, the CGST/SGST officer adjudging it shall give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Provided that such fine shall not exceed the market price of the goods confiscated, less the tax chargeable thereon.

(3) Where any fine in lieu of confiscation of goods is imposed under sub-section (2), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any tax and charges payable in respect of such goods.

(4) No order of confiscation of goods and/or imposition of penalty shall be issued without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.

(5) Where any goods are confiscated under this Act, the title of such goods shall thereupon vest in the appropriate Government.

(6) The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every Officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.

#### **61. Confiscation of conveyances**

Any conveyance used as a means of transport for carriage of taxable goods without the cover of documents as may be prescribed in this behalf shall be liable to confiscation, unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance:



Provided that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

## **62. Confiscation or penalty not to interfere with other punishments**

No confiscation made or penalty imposed under the provisions of this Act or of any rule made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law.

## **63. Prosecution**

(1) Whoever commits any of the following offences, namely—

- (a) supplies any goods and/or services without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;
- (b) issues any invoice or bill without supply of goods and/or services in violation of the provisions of this Act, or the rules made thereunder;
- (c) collects any amount as tax but fails to pay the same to the credit of the appropriate Government beyond a period of three months from the date on which such payment becomes due;
- (d) collects any tax in contravention of the provisions of this Act but fails to pay the same to the credit of the appropriate Government beyond a period of three months from the date on which such payment becomes due;
- (e) takes and/or utilizes input tax credit without actual receipt of goods and/or services either fully or partially, in violation of the provisions of this Act, or the rules made thereunder;
- (f) fraudulently obtains refund of any CGST/SGST;
- (g) falsifies or substitutes financial records or produces fake accounts and/or documents or furnishes any false information with an intention to evade payment of tax due under this Act;
- (h) who obstructs or prevents any officer in the discharge of his duties under this Act;
- (i) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reason to believe are liable to confiscation under this Act or the rules made thereunder;
- (j) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this Act or the rules made thereunder;
- (k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which

shall be upon him, that the information supplied by him is true) supplies false information; or

(l) attempts to commit, or abets the commission of, any of the offences mentioned in clauses (a) to (k) of this section;

shall be punishable –

(i) in cases where the amount of tax evaded exceeds two hundred and fifty lakh rupees, with imprisonment for a term which may extend to five years and with fine;

(ii) in cases where the amount of tax evaded exceeds fifty lakh rupees but does not exceed two hundred and fifty lakh rupees, with imprisonment for a term which may extend to three years and with fine;

(iii) in the case of any other offence where the amount of tax evaded exceeds twenty five lakh rupees but does not exceed fifty lakh rupees, with imprisonment for a term which may extend to one year and with fine.

(2) If any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, the imprisonment referred to in sub-sections (1) and (2) shall not be for a term of less than six months.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Act, except the offences referred to in sub-section (4) shall be non-cognizable and bailable.

(4) The offences relating to taxable goods and/or services where the amount of tax evaded exceeds two hundred and fifty lakh rupees shall be cognizable and non-bailable.

(5) A person shall not be prosecuted for any offence under this section except with the previous sanction of the designated authority.

#### **64. Cognizance of offences**

No Court shall take cognizance of any offence punishable except with the previous sanction of the [competent authority], and no Court inferior to that of a Magistrate of the First Class, shall try any such offence.

#### **65. Presumption of culpable mental state**

(1) In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation. — In this section, “culpable mental state” includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

## **66. Relevancy of statements under certain circumstances**

(1) A statement made and signed by a person before any gazetted officer of CGST/IGST/SGST during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,-

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a Court, as they apply in relation to a proceeding before a Court.

## **67. Offences by Companies and certain other persons**

(1) Where an offence committed by a person under this Act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. - For the purposes of this section, -

(a) "company" means a body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

(3) Where an offence under this Act has been committed by a taxable person being a partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a trust, the partner or karta or managing trustee, as the case may be, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly and the provisions of sub-section (2) shall apply mutatis mutandis to such persons.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

## **PART - XIII**

### **INSPECTION, SEARCH, SEIZURE AND ARREST**

#### **68. Power of inspection, search and seizure**

(1) Where the CGST/SGST officer, not below the rank of Joint Commissioner, has reasons to believe that -

(a) a taxable person has suppressed any transaction relating to supply of goods and/or services or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under the Act or has indulged in contravention of any of the provisions of this Act or rules made thereunder to evade tax under this Act; or

(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act,

he may authorize in writing any other officer of CGST/SGST to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

(2) Where the CGST/SGST officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorize in writing any other CGST/SGST officer to search and seize or may himself search and seize such goods, documents or books or things:

Provided that the goods, documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceeding under this Act.

(3) The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any almirah, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, box or receptacle is denied.

(4) The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an officer of CGST/SGST.

(5) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within sixty days of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the aforesaid period of sixty days may, on sufficient cause being shown, be extended by the [competent authority] for a further period not exceeding sixty days at a time subject to a maximum of six months.

(6) The Central or a State Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central or a State Government may determine.

(7) Where any goods, being goods specified under sub-section (5), have been seized by a proper officer under sub-section (2), he shall prepare an inventory of such goods in the manner as may be prescribed in this behalf.

(8) The provisions of the Code of Criminal Procedure, 1973 (Act 2 of 1974), relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the words [Principal Commissioner/Commissioner of CGST/Commissioner of SGST] were substituted.

#### **69. Power to arrest**

(1) If the [Commissioner of CGST or the Commissioner of SGST] has reason to believe that any person has committed an offence punishable under clause (i) or (ii) of sub-section (1) or under sub-section (2) of section 63, he may, by order, authorise any CGST/SGST officer to arrest such person.

(2) Where a person is arrested for any cognizable offence, every officer authorised to arrest a person shall inform such person of the grounds of arrest and produce him before a magistrate within twenty four hours.

(3) In the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner of CGST/SGST, as the case may be, shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station has, and is subject to, under section 436 of the Code of Criminal Procedure, 1973.

(4) All arrests made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrest.

#### **70. Power to summon persons to give evidence and produce documents in inquiries under this Act**

(1) Any [CGST/SGST officer], duly authorised by the competent authority in this behalf, shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making for any of the purposes of this Act.

(2) A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

(3) All persons so summoned shall be bound to attend, either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required:

Provided that the exemptions under Sections 132 and 133 of the Code of Civil Procedure, 1908 (5 of 1908) shall be applicable to requisitions for attendance under this section.

(4) Every such inquiry as aforesaid shall be deemed to be a "judicial proceeding" within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860).

## **71. Access to business premises**

(1) Any CGST/SGST officer authorized by the [Additional/Joint Commissioner of CGST or SGST] shall have access to any business premises to inspect books of account, documents, computers, computer programs, computer software (whether installed in a computer or otherwise) and such other things as he may require and which may be available at such premises, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

(2) Every person in charge of premises referred to in sub-section (1) shall, on demand, make available to the officer authorized under sub-section (1) or the audit party deputed by the Additional/Joint Commissioner of CGST or SGST or the Comptroller and Auditor General of India or a cost accountant or chartered accountant nominated under section 55 of the Act, as the case may be,-

- (i) the records as prepared or maintained by the registered taxable person and declared to the CGST/SGST officer as may be prescribed;
- (ii) trial balance or its equivalent;
- (iii) Statements of annual financial accounts, duly audited, wherever required;
- (iv) cost audit report, if any, under section 148 of the Companies Act, 2013 (18 of 2013);
- (v) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961 (43 of 1961); and
- (v) any other relevant record,

for the scrutiny of the officer or audit party or the cost accountant or chartered accountant, as the case may be, within a reasonable time, not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the cost accountant or chartered accountant, as the case may be.

## **72. Officers required to assist CGST/SGST officers**

(1) All officers of Police, Customs and those of State/Central Government engaged in collection of goods and services tax and all officers of State/Central Government engaged in the collection of land revenue, and all village officers are hereby empowered and required to assist the CGST/SGST Officers in the execution of this Act.

(2) The [Board/Commissioner of SGST] may, by notification, empower and require any other class of officers to assist the CGST/SGST Officers in the execution of this Act.

## **PART – XIV**

### **MISCELLANEOUS**

#### **73. GST compliance rating**

- (1) Every taxable person shall be assigned a GST compliance rating score based on his record of compliance with the provisions of this Act.
- (2) The GST compliance rating score shall be determined on the basis of parameters to be prescribed in this behalf.
- (3) The GST compliance rating score shall be updated at periodic intervals and intimated to the taxable person and also placed in the public domain in the manner prescribed.

#### **74. Inspection of goods in movement**

- (1) With a view to improving tax compliance, the Central or a State Government may, by notification, require the person in charge of a goods vehicle or a boat, ship or similar vessel to carry with him such documents and in respect of such goods as may be notified in this behalf.
- (2) Where any vehicle referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said vehicle to produce such documents for verification and the said person shall be liable to produce the documents.

#### **75. Obligation to furnish information return**

- (1) Any person, being—
  - (a) a registered taxable person; or
  - (b) a local authority or other public body or association; or
  - (c) any authority of the State Government responsible for the collection of value added tax or sales tax; or
  - (d) an income tax authority appointed under the provisions of the Income-tax Act, 1961; or
  - (e) a banking company within the meaning of clause (a) of section 45A of the Reserve Bank of India Act, 1934; or
  - (f) a State Electricity Board; or an electricity distribution or transmission licensee under the Electricity Act, 2003, or any other entity entrusted, as the case may be, with such functions by the Central Government or the State Government; or
  - (g) the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908; or
  - (h) a Registrar within the meaning of the Companies Act, 2013; or
  - (i) the registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988; or
  - (j) the Collector referred to in clause (c) of section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; or

(k) the recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956; or

(l) a depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996; or

(m) an officer of the Reserve Bank of India, constituted under section 3 of the Reserve Bank of India Act, 1934,

who is responsible for maintaining record of registration or statement of accounts or any periodic return or document containing details of payment of tax and other details of transaction of goods or services or transactions related to a bank account or consumption of electricity or transaction of purchase, sale or exchange of goods or property or right or interest in a property, under any law for the time being in force, shall furnish an information return of the same in respect of such periods, within such time, in such form (including electronic form) and manner, to such authority or agency as may be prescribed.

(2) Where the prescribed authority considers that the information submitted in the information return is defective, he may intimate the defect to the person who has furnished such information return and give him an opportunity of rectifying the defect within a period of thirty days from the date of such intimation or within such further period which, on an application made in this behalf, the prescribed authority may allow and if the defect is not rectified within the said period of thirty days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, such information return shall be treated as not submitted and the provisions of this Act shall apply.

(3) Where a person who is required to furnish information return has not furnished the same within the time specified in sub-section (1) or sub-section (2), the prescribed authority may serve upon him a notice requiring furnishing of such information return within a period not exceeding ninety days from the date of service of the notice and such person shall furnish the information return.

#### **76. Penalty for failure to furnish information return**

If a person who is required to furnish an information return under section 75 fails to do so within the period specified in the notice issued under sub-section (3) thereof, the prescribed authority may direct that such person shall pay, by way of penalty, a sum of one hundred rupees for each day of the period during which the failure to furnish such return continues.

#### **77. Presumption that the incidence of tax has been passed on to the buyer**

Every person who has paid the tax on goods and/or services under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the buyer of such goods and/or services.

#### **78. Consumer Welfare Fund**



(1) There shall be established by the Central or a State Government a fund, to be called the Consumer Welfare Fund.

(2) There shall be credited to the Fund, in such manner as may be prescribed, -

(a) the amount of tax referred to in sub-section (3) of section 22; and

(b) any income from investment of the amount credited to the Fund and any other monies received by the Central or a State Government for the purposes of this Fund.

#### **79. Powers of CGST/SGST officers**

A CGST/SGST officer may exercise the powers and discharge the duties conferred or imposed under this Act on any other CGST/SGST officer who is subordinate to him.

#### **80. Test purchase of goods and/or services**

The [Commissioner] of CGST/SGST or an officer authorized by him may cause purchase of any goods and/or services by any person authorized by him from the business premises of any taxable person, to check issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount paid towards the goods after cancelling any tax invoice or bill of supply issued.

#### **81. Drawal of samples**

The [Commissioner] of CGST/SGST or an officer authorized by him may take samples of goods from the possession of any taxable persons, where he considers it necessary, and provide a receipt for any samples so taken.

### **PART – XV**

#### **APPEALS AND REVIEW**

#### **82. First Appeals to First Appellate Authority—**

(1) Any person aggrieved by any decision or order passed under this Act by an adjudicating authority<sup>1, 2</sup> may appeal to the First Appellate Authority.

(2) The Commissioner of GST may, of his own motion, call for and examine the record of any proceeding in which an adjudicating authority has passed any decision or order under this Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any GST Officer subordinate to him to apply to the first appellate authority for the determination of such points arising out of the said decision or order as may be specified by the Commissioner of

<sup>1</sup>To be defined by sub-committee I in the definitions section

<sup>2</sup> As informed by CCT Gujarat (on 5<sup>th</sup> August), after the last full committee meeting on 22<sup>nd</sup> – 23<sup>rd</sup> July, some states (Karnataka, Kerala etc.) want to retain the reassessment / revision model. Subject to a final decision on this issue, the words adjudicating authority in this provision would be defined appropriately.

GST in his order.<sup>3</sup>

(3) Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the first appellate authority, such application shall be dealt with by the first appellate authority as if it were an appeal made against the decision or order of the GST Officer and the provisions of this Act relating to appeals shall, so far as may be, apply to such application.

(4) Every appeal under this section shall be filed within three months from the date on which the decision or order sought to be appealed against is communicated to the Commissioner of GST, or, as the case may be, the other party preferring the appeal.

PROVIDED that the first appellate authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of one month.

(5) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner.

(6) No appeal shall be filed under sub-section (1) unless the appellant has deposited an amount of ten percent of the amount in dispute in pursuance of the decision or order sought to be appealed against.

Explanation: For the purposes of this sub-section, the expression "amount in dispute" shall include –

- i. amount determined under section -----(*the section relating to demands*)
- ii. amount of erroneous or irregular input tax credit
- iii. amount payable under rule-----of the GST Credit Rules 201...
- iv. amount of penalty imposed

PROVIDED that nothing in this sub-section shall affect the right of the departmental authorities to apply to the first appellate authority for ordering a higher amount of pre-deposit in a case which is considered by the Commissioner of GST to be a "serious case".

Explanation :- For the purpose of this proviso, the expression "serious case" shall mean a case involving a disputed tax liability of not less than Rupees Twenty Five Crores and where the Commissioner of GST is of the opinion (for reasons to be recorded in writing) that the department has a very good case against the taxpayer.

(7) The First Appellate Authority shall give an opportunity to the appellant to be heard, if he so desires.

(8) The First Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing.

PROVIDED that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(9) The First Appellate Authority may, at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if the First Appellate Authority is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

(10) The First Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or

<sup>3</sup> Depending on the decision regarding the issue in footnote 2 above, this review provision may have to be deleted / amended/ supplemented with revision.

annulling the decision or order appealed against, or may (for reasons to be recorded) refer the case back to the adjudicating authority with such directions as the First Appellate Authority may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.

PROVIDED that an order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order.

PROVIDE FURTHER that where the First Appellate Authority is of the opinion that any tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, no order requiring the appellant to pay such tax shall be passed unless the appellant is given notice within the time limit specified in section -----<sup>4</sup> to show cause against the proposed order.

(11) The order of the First Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.

(12) The First Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year<sup>5</sup> from the date on which it is filed.

(13) On disposal of the appeal, the First Appellate Authority shall communicate the order passed by him to the appellant and to the adjudicating authority.

(14) A copy of the order passed by the First Appellate Authority shall also be sent to the jurisdictional Commissioner of CGST (or the authority designated by him in this behalf) and the jurisdictional Commissioner of SGST (or the authority designated by him in this behalf)<sup>6</sup>.

### **83. Constitution of the National Appellate Tribunal**

(1) The Central Government shall on the recommendation of the GST Council constitute a National Goods and Services Tax Appellate Tribunal (hereinafter referred to as the appellate tribunal)<sup>7</sup>.

(2) The Appellate Tribunal shall be headed by a National President.

(3) The Appellate Tribunal shall have one branch at every place where a High Court has a Bench, which shall be called as the State GST Tribunal.

(4) Every State GST Tribunal will be headed by a State President.

(5) Every State GST Tribunal shall consist of as many Members (Judicial), Members (Technical - CGST) and Members (Technical - SGST) as may be prescribed, to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

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<sup>4</sup> From sub-committee I/II

<sup>5</sup> There was a view that it is preferable to put fixed time limit here in line with the fixed time limits for the initial adjudication adopted by the sub-committee I in section 20 of their draft.

<sup>6</sup> The reference to the phrase "designated authority" was added in view of the apprehensions expressed by the states about the infeasibility of the Commissioner receiving a copy of each appellate order, considering that states have only one Commissioner.

<sup>7</sup> While finalizing this section and the related statutory provisions regarding appointment etc., the federal constitutional independence of the Centre and the States will need to be kept in mind. This sub-committee has therefore kept only the basic minimum provisions in this draft so that the other questions can be decided at the appropriate levels separately.

- (6) The qualifications, eligibility conditions and the manner of selection and appointment of the National President, the State Presidents, and the Members shall be as may be prescribed.
- (7) The powers and functions of the National President and the State Presidents shall be as may be prescribed.
- (8) On ceasing to hold office, the National President, the State Presidents or other Members of the Appellate Tribunal shall not be entitled to appear, act or plead before the Appellate Tribunal.

#### **84. Second Appeals to the Appellate Tribunal**

- (1) Any person aggrieved by an order passed by the first appellate authority under sub-section (10) of section 82 may appeal to the Appellate Tribunal against such order.
- (2) The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where the tax involved or the difference in tax involved or the amount of fine or penalty determined by such order, does not exceed two lakh rupees.
- (3) The Board\*\* (*\*\*or the corresponding body in the states*) may by order constitute such Committees as may be necessary for the purposes of filing appeals against the orders of the first Appellate Authority. Every such Committee shall consist of two designated officers<sup>8</sup> of GST.
- (4) The Committee of designated officers of GST may, if it is of the opinion that an order passed by the first Appellate Authority under sub-section (10) of section 82, is not legal or proper, direct any GST Officer authorized by it in this behalf to apply to the Appellate Tribunal for the determination of such points arising out of the order passed by the first Appellate Authority as may be specified by the Committee in its order.  
PROVIDED that where the Committee of designated officers of GST differs in its opinion, it shall be deemed that the Committee has formed the opinion that the order under review is not legal or proper.
- (5) Where in pursuance of an order under sub-section (4) the authorized officer makes an application to the Appellate Tribunal, such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order of the first Appellate Authority and the provisions of this Act shall, so far as may be, apply to such application, as they apply in relation to appeals filed under sub-section (1).
- (6) Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the Commissioner of GST, or, as the case may be, the other party preferring the appeal.
- (7) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (6).
- (8) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the period referred to in sub-section

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<sup>8</sup> For reasons of difficulties of the states as mentioned earlier

(6) or sub-section (7) respectively, if it is satisfied that there was sufficient cause for not presenting it within that period.

(9) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a prescribed fee.

PROVIDED that no such fee shall be payable in the case of an appeal referred to in sub-section (5) or a memorandum of cross-objections referred to in sub-section (7).

(10)(a) No appeal shall be filed under sub-section (1) unless the appellant has deposited an amount of ten percent of the amount in dispute in pursuance of the decision or order sought to be appealed against (in addition to the amounts deposited under sub-section (6) of section 82).

Explanation: For the purposes of this sub-section, the expression "amount in dispute" shall include –

- i. amount determined under section -----(*the section relating to demands*).
- ii. amount of erroneous or irregular input tax credit
- iii. amount payable under rule-----of the GST Credit Rules 201...
- iv. amount of penalty imposed

PROVIDED that nothing in this sub-section shall affect the right of the departmental authorities to apply to the appellate tribunal for ordering a higher amount of pre-deposit in a case which is considered by the Committee of designated officers of GST to be a "serious case".

Explanation :- For the purpose of this proviso, the expression "serious case" shall mean a case involving a disputed tax liability of not less than Rupees Twenty Five Crores and where the Committee of designated officers of GST is of the opinion (for reasons to be recorded in writing) that the department has a very good case against the taxpayer.

(b) The provisions of clause (a) shall also apply mutatis mutandis to cross objections filed under sub-section (7).

(11) Every application made before the Appellate Tribunal, –

(a) in an appeal for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application,

shall be accompanied by a prescribed fee :

PROVIDED that no such fee shall be payable in the case of an application filed by or on behalf of the Commissioner of GST under this sub-section.

## **85. Orders of Appellate Tribunal**

(1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the First Appellate Authority who passed the decision or order appealed against, or to the original adjudicating authority, with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.

(2) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

PROVIDED that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(3) The Appellate Tribunal may amend any order passed by it under sub-section (1) so as to rectify any mistake apparent from the record, if such mistake is brought to its notice by the Commissioner of GST or the other party to the appeal within a period of three months from the date of the order:

PROVIDED that no amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the other party, shall be made under this sub-section, unless the Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

(4) The Appellate Tribunal shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed.

(5) The Appellate Tribunal shall send a copy of every order passed under this section to the First Appellate Authority against whose order the appeal was filed, the appellant (or where the appeal was filed by the Department, then the respondent), the jurisdictional Commissioner of CGST and the jurisdictional Commissioner of SGST.

(6) Save as provided in section 89 or section 90, orders passed by the Appellate Tribunal on an appeal shall be final.

## **86. Procedure of Appellate Tribunal**

(1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the National President or the State Presidents from amongst the members thereof.

(2) Subject to the provisions contained in sub-section (3), a Bench shall consist of one Member (Judicial), one Member (Technical - CGST) and one Member (Technical - SGST).

(3) The National President or a State President, or any other member of the Appellate Tribunal authorized in this behalf by the National President or a State President, may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member, where in any disputed case, the tax involved or the difference in tax involved or the amount of fine or penalty involved, does not exceed fifty lakh rupees.

(4) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority; but if the members are equally divided, they shall state the point or points on which they differ and make a reference to the National President or the State President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of these members of the Appellate Tribunal who have heard the case, including those who first heard it.

(5) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure and the procedure of the Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

(6) The Appellate Tribunal shall, for the purposes of discharging its functions, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely :-

- a) discovery and inspection;
- b) enforcing the attendance of any person and examining him on oath;
- c) compelling the production of books of account and other documents; and
- d) Issuing commissions.

(7) Any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

#### **87. Interest on delayed refund of pre-deposit**

Where an amount deposited by the appellant under sub-section (6) of section 82 or under sub-section (10) of section 84 is required to be refunded consequent upon the order of first Appellate Authority or of the Appellate Tribunal, as the case may be, there shall be paid to the appellant interest at such rate, not below five percent per annum and not exceeding thirty-six percent per annum, as is for the time being fixed by the Central Government (or the state government), on the recommendation of the GST Council, by notification in the Official Gazette, on such amount from the date of payment of the amount till the date of refund of such amount.

#### **88. Appearance by authorised representative**

(1) Any person who is entitled or required to appear before a GST Officer or the Appellate Tribunal in connection with any proceedings under the Act, may, otherwise than when required under this Act to appear personally for examination on oath or affirmation, subject to the other provisions of this section, appear by an authorized representative.

(2) For the purposes of this section, "authorised representative" means a person authorised by the person referred to in sub-section (1) to appear on his behalf, being —

- (a) his relative or regular employee; or
- (b) any legal practitioner who is entitled to practise in any civil court in India; or
- (c) any person who has acquired such qualifications as the Central Government (or the state government) may prescribe for this purpose.

(3) Notwithstanding anything contained in this section, no person who was serving in the indirect tax departments of the Government of India or of any State Government, and has retired or resigned from such service after having served for not less than three

years as a Gazetted officer in that department shall be entitled to appear as an authorised representative in any proceedings before a GST Officer for a period of two years from the date of his retirement or resignation, as the case may be.

(4) No person, —

- a) who has been dismissed or removed from government service; or
- b) who is convicted of an offence connected with any proceeding under this Act, the Central Excise Act, 1944 (1 of 1944) or Chapter V of the Finance Act 1994 (25 of 2014) or under any of the Acts passed by a state legislature dealing with the imposition of taxes on sale of goods or supply of goods and services, or
- c) who has become an insolvent,

shall be qualified to represent any person under sub-section (1) --

- (i) for all times in the case of a person referred to in clause (a),
- (ii) for such time as the Commissioner of GST or the competent authority under the Acts referred to in clause (b) may, by order, determine in the case of a person referred to in clause (b), and
- (iii) for the period during which the insolvency continues in the case of a person referred to in clause (c).

(5) If any person, —

- (a) who is a legal practitioner, is found guilty of misconduct in his professional capacity by any authority entitled to institute proceedings against him, an order passed by that authority shall have effect in relation to his right to appear before a GST Officer or the Appellate Tribunal as it has in relation to his right to practice as a legal practitioner;
- (b) who is not a legal practitioner, is found guilty of misconduct by the prescribed authority in connection with any proceedings under this Act or under any of the Acts referred to in clause (b) of sub-section (4), the prescribed authority may direct that he shall thenceforth be disqualified to represent any person under sub-section (1).

(6) Any order or direction under clause (b) of sub-section (4) or clause (b) of sub-section (5) shall be subject to the following conditions, namely:—

- a) no such order or direction shall be made in respect of any person unless he has been given a reasonable opportunity of being heard;
- b) any person against whom any such order or direction is made may, within one month of the making of the order or direction, appeal to the Board to have the order or direction cancelled; and
- c) no such order or direction shall take effect until the expiration of one month from the making thereof, or, where an appeal has been preferred, until the disposal of the appeal.

## **89. Appeal to the High Court**

(1) The Commissioner of GST or the other party aggrieved by any order passed by the Appellate Tribunal under section 104 may file an appeal to the High Court and the High Court may admit such appeal if it is satisfied that the case involves a substantial question of law.

(2) Notwithstanding the provisions of sub section (1), no appeal shall lie to High



Court against an order passed by the appellate tribunal under section 85 if such order relates, among other things, to:-

- i) a matter where two or more states, or a state and center, have a difference of views regarding the treatment of a transaction(s) being intra-State or inter-State; or
  - ii) a matter where two or more states, or a state and center, have a difference of views regarding place of supply.
- (3) An appeal under sub-section (1) shall be -
  - a) filed within one hundred and eighty days from the date on which the order appealed against is received by the Commissioner of GST or the other party;
  - b) accompanied by a prescribed fee ;
  - c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.
- (4) The High Court may admit an appeal after the expiry of the period of one hundred and eighty days referred to in clause (a) of sub-section (3), if it is satisfied that there was sufficient cause for not filing the same within that period.
- (5) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.
- (6) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question.  
 PROVIDED that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.
- (7) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.
- (8) The High Court may determine any issue which -
  - a) has not been determined by the Appellate Tribunal; or
  - b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1) or sub-section (6).
- (9) When an appeal has been filed before the High Court, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.
- (10) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only, by one or more

of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

(11) Where the High Court delivers a judgment in an appeal filed before it under this section, effect shall be given to such judgment by either side on the basis of a certified copy of the judgment.

(12) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

#### **90. Appeal to the Supreme Court**

(1) An appeal shall lie to the Supreme Court from any judgment or order passed by the High Court in an appeal made under section 89, in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certifies to be a fit one for appeal to the Supreme Court.

(2) An appeal shall lie to the Supreme Court from any order passed by the Appellate Tribunal under section 85 where such order is of the nature referred to in sub section (2) of section 89.

#### **91. Hearing before Supreme Court**

(1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under section 109 as they apply in the case of appeals from decrees of a High Court :

PROVIDED that nothing in this sub-section shall be deemed to affect the provisions of section 92.

(2) The costs of the appeal shall be in the discretion of the Supreme Court.

(3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 89 in the case of a judgment of the High Court.

#### **92. Sums due to be paid notwithstanding appeal etc.**

Notwithstanding that an appeal has been preferred to the High Court or the Supreme Court, sums due to the Government as a result of an order passed by the Appellate Tribunal under sub-section (1) of section 85 or an order passed by the High Court under section 89, as the case may be, shall be payable in accordance with the order so passed.

#### **93. Exclusion of time taken for copy**

In computing the period of limitation prescribed for an appeal or application under this Chapter, the day on which the order complained of was served, and if the party preferring the appeal or making the application was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order, shall be excluded.

#### **94. Appeal not to be filed in certain cases**

(1) The Board or the State Government may, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the GST officer under the provisions of this Chapter.

(2) Where, in pursuance of the orders or instructions or directions, issued under sub-section (1), the GST officer has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such GST officer from filing appeal or application in any other case involving the same or similar issues or questions of law.

(3) Notwithstanding the fact that no appeal or application has been filed by the GST Officer pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal or application shall contend that the GST officer has acquiesced in the decision on the disputed issue by not filing an appeal or application.

(4) The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the GST Officer in pursuance of the orders or instructions or directions issued under sub-section (1).

#### **95. Non Appealable decisions and orders:**

Notwithstanding anything to the contrary in any provisions of this Act, no appeal shall lie against any decision taken or order passed by a GST officer if such decision taken or order passed relates to any one or more of the following matters:-

- a) An order of the Commissioner or other competent authority for transfer of proceeding from one officer to another officer;
- b) An order pertaining to the seizure or retention of books of account, register and other documents; or
- c) An order sanctioning prosecution under the Act.

**96. Exclusion of time taken for copy.** — In computing the period of limitation prescribed for an appeal or application under the Act, the day on which the order complained of was served, and if the party preferring the appeal or making the application was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order shall be excluded.

#### **97. Definitions**

In this Chapter —

“High Court” means, —

- (i) In relation to any State, the High Court for that State;
- (ii) In relation to a Union Territory to which the jurisdiction of the High Court of a State has been extended by law, that High Court;
- (iii) In relation to the Union Territories of Dadra and Nagar Haveli and Daman and Diu, the High Court at Bombay;
- (iv) In relation to any other Union Territory, the highest court of civil appeal for that territory other than the Supreme Court of India;

## **PART – XVI**

### **ADVANCE RULING**

**98. Definitions.** — In this Chapter, unless the context otherwise requires, -

- (a) “advance ruling” means the determination, by the authority of a question specified in sub-section (2) of section 120 in an application regarding the liability of an applicant to pay tax in relation to the supply of goods or services or both proposed to be undertaken or being undertaken by the applicant;
- (b) “applicant” means any person registered or desirous of obtaining registration under the Act.
- (c) “application” means an application made to the Authority under sub-section (1) of section 120;
- (d) “Authority” means the Authority for Advance Ruling, constituted under section 118 of the Act;

**99. The Authority for Advance Ruling-**

- (1) The Authority shall have as many benches as may be prescribed.
- (2) Each bench shall comprise one member CGST and one member SGST to be appointed respectively by the Central Government and the State Government.
- (3) The qualifications, eligibility conditions, method and the process of appointment of the members shall be as may be prescribed.

**100. Vacancies, etc., not to invalidate proceedings -**

No proceeding before the Authority (including the pronouncement of advance ruling) under this Chapter shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Authority.

**101. Application for advance ruling. –**

- (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and in such manner as may be prescribed, stating the question on which the advance ruling is sought.

- (2) The question on which the advance ruling is sought shall be in respect of,
- (a) classification of any goods or services or both under the Act;
  - (b) applicability of a notification issued under provisions of the Act having a bearing on the rate of tax;
  - (c) the principles to be adopted for the purposes of determination of value of the goods under the provisions of the Act;
  - (d) notifications issued, in respect of tax under the Act;
  - (e) admissibility of input tax credit of tax paid or deemed to have been paid;
  - (f) determination of the liability to pay tax on any goods or services or both under the Act;
  - (g) whether applicant is required to be registered under the Act;
  - (h) whether any particular thing done by applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.
- (3) The application shall be accompanied by a fee as may be prescribed.

**102. Procedure on receipt of application.-**

(1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the officers as may be prescribed and, if necessary, call upon him to furnish the relevant records:

PROVIDED that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said prescribed officers.

(2) The Authority may, after examining the application and the records called for and after hearing the applicant or authorized representative of the applicant as well as the authorized representative of the prescribed officers, by order, either admit or reject the application:

PROVIDED that the Authority shall not admit the application where the question raised in the application is, -

- (a) already pending in the applicant's case before any Appellate authority, the Appellate Tribunal or any Court;
- (b) the same as in a matter already decided by the Appellate Tribunal or any Court;
- (c) the same as in a matter already pending in any proceedings in the applicant's case under any of the provision of the Act;
- (d) the same as in a matter in the applicant's case already decided by the adjudicating authority or assessing authority, whichever is applicable.

PROVIDE FURTHER that no application shall be rejected under this sub-section unless an opportunity has been given to the applicant of being heard:

PROVIDED also that where the application is rejected, reasons for such rejection shall be given in the order.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the prescribed officers.

(4) Where an application is admitted under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority and after providing an opportunity of being heard to the applicant or authorized representative of the applicant as well as to the authorized representative of the prescribed officers, pronounce its advance ruling on the question specified in the application.

**Explanation.** - For the purposes of this sub-section, "authorized representative" shall have the meaning assigned to it in sub-section .....

(5) Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point of difference which shall be referred to another member of the Authority and the final decision shall be as per the majority.

(6) The Authority shall pronounce its advance ruling in writing within ninety days of the receipt of application.

(7) A copy of the advance ruling pronounced by the Authority, duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and to the prescribed officers, as soon as may be, after such pronouncement.

### **103. Applicability of advance ruling. -**

(1) The advance ruling pronounced by the Authority under this chapter shall be binding only -

- (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 101 of the application for advance ruling;
- (b) on the jurisdictional tax authorities in respect of the applicant.

(2) The advance ruling referred to in sub-section (1) shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

### **104. Advance ruling to be void in certain circumstances.-**

(1) Where the Authority finds that advance ruling pronounced by it under sub-section 4 or 5 of section 102 has been obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of the Act shall apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section) to the applicant as if such advance ruling had never been made.

PROVIDED that no order shall be passed under this sub-section unless an opportunity has been given to the applicant of being heard.

(2) A copy of the order made under sub-section (1) shall be sent to the applicant and the prescribed officers.

### **105. Powers of Authority.—**

(1) The Authority shall, for the purpose of exercising its powers regarding discovery and inspection, enforcing the attendance of any person and examining him on oath, issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908).

(2) The Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974), and every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

**106. Procedure of Authority:—**

The Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure in all matters arising out of the exercise of its powers under the Act.

## **PART XVII**

### **SETTLEMENT OF CASES**

*In the full Committee Meeting held on 22<sup>nd</sup> & 23<sup>rd</sup> July 2015 at New Delhi, majority of the States were of the view that in the GST regime, settlement provision may not be there as it creates discrimination. Presently, very few States have such provisions (Odisha, UP, Kerala). In the Centre, there is a robust Settlement Commission mechanism.*

*After discussion, it was decided in that meeting that for the purpose of drafting the model law, we may not keep the settlement provision. The issue can be revisited later.*



## PART XVIII

### COMPOUNDING OF OFFENCES

#### **107. Compounding of offences.**

(1) Any offence under the Act may, either before or after the institution of prosecution, be compounded by the Competent Authority on payment, by the person accused of the offence to the Central Government or the State Government as the case be, of such compounding amount and in such manner of compounding as may be prescribed:

PROVIDED that nothing contained in this section shall apply to ---

- (a) a person who has been allowed to compound once in respect of any of the following offences;
  - (i) ..... of the CGST Act
  - (ii) ..... of the SGST Act of the State
  - (iii).....of the IGST Act
- (b) a person who has been allowed to compound once in respect of any offence (other than those in clause (a)) under the Act or under the provisions of any other SGST Act or IGST Act in relation to supplies of value exceeding rupees one crore;
- (c) a person who has been accused of committing an offence under the Act which is also an offence under the Narcotic Drugs and Psychotropic Substance Act, 1985 (61 of 1985), the Foreign Exchange Management Act, 1999 (42 of 1999) or any other Act;
- (d) any other class of persons or offences as may be prescribed.

PROVIDE FURTHER that any compounding allowed under the provision of this section shall not affect the proceedings if any, instituted under any other law.

PROVIDED also that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

(2) The fees for compounding of offences under this section shall be as may be prescribed under the rules to be made under sub-section (1), subject to the minimum fee not being less than rupees ten thousand or fifty per cent of the tax involved, whichever is greater, and the maximum fee not being more than rupees thirty thousand or one hundred and fifty per cent of the tax, whichever is greater.

(3) On payment of such sum as may be determined by the prescribed authority, no further proceedings shall be initiated under the Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

## PART XVIII

### MISCELLANEOUS PROVISIONS

#### **108. Burden of Proof:-**

If any person claims that he is not liable to pay tax under the Act in respect of any supply of goods or services or both, or that he is eligible for a tax credit under ....., or that he ....., the burden of proving such claim or claims shall lie on him.

#### **109. Power to collect statistics.**

(1) The competent authority, if it considers that for the purposes of the better administration of the Act, it is necessary so to do, may by notification, direct that statistics be collected relating to any matter dealt with, by or in connection with to the Act.

(2) Upon such notification being issued, the Commissioner, or any person authorised by the Commissioner in this behalf may call upon all concerned persons to furnish such information or returns as may be specified therein relating to any matter in respect of which statistics is to be collected.

(3) The form in which the persons to whom or, the authorities to which, such information or returns should be furnished, the particulars which they should contain, and the intervals in which such information or returns should be furnished, shall be as may be specified.

#### **110. Disclosure of information required under section 128:-**

(1) No information of any individual return or part thereof, with respect to any matter given for the purposes of section 128 shall, without the previous consent in writing of the taxpayer or person or his authorised agent, be published in such manner as to enable any particulars to be identified as referring to a particular taxpayer and no such information shall be used for the purpose of any proceedings under the provisions of the Act.

(2) Except for the purposes of prosecution under the Act, or any other Act, no person who is not engaged in the collection of statistics under the Act or of compilation or computerization thereof for the purposes of the Act, shall be permitted to see or have access to any information or any individual return referred to in that section.

(3) If any person required to furnish any information or return under section 128,-

- (a) without reasonable cause fails to furnish such information or return as may by that section be required, or
- (b) willfully furnishes or causes to furnish any information or return which he knows to be false,

he shall, on conviction, be punished with fine which may extend to one hundred rupees and in case of a continuing offence to a further fine which may extend to one hundred

rupees for each day after the first day during which the offence continues subject to a maximum limit of one thousand rupees.<sup>9</sup>

(4) If any person engaged in connection with the collection of statistics under section 109 or compilation or computerization thereof wilfully discloses any information or the contents of any return given or made under that section, otherwise than in execution of his duties under that section or for the purposes of the prosecution of an offence under the Act or under any other Act, he shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

PROVIDED that, no prosecution shall be instituted under the subsection, except with the previous sanction of the Central Government or State Government.

(5) Nothing in this section shall apply to the publication of any information relating to a class of dealers or class of transactions, if in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.

**111. Persons discharging functions under the Act shall be deemed to be public servants.**— All persons discharging functions under the Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860).

**112. Indemnity:**

No legal proceedings shall lie against any goods and services tax officer, for anything which is done or intended to be done in good faith under the Act or the rules.

**113. Disclosure of information by a public servant:-**

(1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with the Act, or in any record of evidence given in the course of any proceedings under the Act (other than proceeding before a Criminal Court), or in any record of any proceedings under the Act shall, save as provided in sub-section (3), be treated as confidential;

(2) Notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall save as aforesaid, be entitled to require any GST officer to produce before it or to give evidence before it in respect of particulars referred to in sub-section (1).

(3) Save as provided in sub-section (4), if any GST officer discloses any of the particulars referred to in sub-section (1), he shall, on conviction, be punished with imprisonment which may extend to six months or with fine or with both:

PROVIDED that, no prosecution shall be instituted under this section except with the previous sanction of the Central Government or the State Government, as the case may be.

(4) Nothing contained in this section shall apply to the disclosure of,-

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<sup>9</sup> This provision needs to be shifted to the chapter relating to offences and penalties being drafted by the Sub-Committee II.

- (a) any such particulars in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, for the purpose of any prosecution under the Indian Penal Code (45 of 1860) or the Prevention of Corruption Act, 1988 (49 of 1988), or the Act, or any other law for the time being in force; or
- (b) any such particulars to the Central Government or the State Government or to any person acting in the execution of this Act, for verification of such particulars or for the purpose of carrying out the object of the Act; or
- (c) any such particulars when such disclosure is occasioned by the lawful employment under the Act of any process for the service of any notice or the recovery of any demand; or
- (d) any such particulars to a Civil Court or Tribunal constituted under any Central law in any suit or proceeding, to which the Government or any authority under the Act is a party, which relates to any matter arising out of any proceeding under the Act or under any other law for the time being in force authorising any such authority to exercise any powers thereunder; or
- (e) any such particulars to any officer appointed for the purpose of audit of tax receipts or refunds of the tax imposed by the Act; or
- (f) any such particulars where such particulars are relevant the purposes of any inquiry into the conduct of any GST officer, to any person or persons appointed as an inquiry officer under any relevant law; or
- (g) such facts to an officer of the Central Government or any State Government as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty imposed by it; or
- (h) any such particulars, when such disclosure is occasioned by the lawful exercise by a public servant or any other statutory authority, of his or its powers under any law for the time being in force; or
- (i) any such particulars relevant to any inquiry into a charge of misconduct in connection with any proceedings under the Act against a practising advocate, tax practitioner, a practising cost accountant, a practising chartered accountant, a practising company secretary to the authority empowered to take disciplinary action against the members practising the profession of a legal practitioner, cost accountant, chartered accountant or company secretary, as the case may be; or
- (j) any such particulars to any agency appointed for the purposes of data entry on any automated system or for the purpose of operating, upgrading or maintaining any automated system where such agency is contractually bound not to use or disclose such particulars except for the aforesaid purposes; or
- (k) any such particulars to an officer of the Central Government or any State Government as may be necessary for the purposes of any other law in force in India; and
- (l) any information relating to any class of taxpayers or class of transactions for publication, if, in the opinion of the Competent authority, it is desirable in the public interest, to publish such information.

#### **114. Publication of information respecting persons in certain cases.**

- (1) If the Competent Authority is of opinion that it is necessary or expedient in the public interest to publish the names of any person and any other particulars relating to

any proceedings or prosecutions under the Act in respect of such person, it may cause to be published such names and particulars in such manner as it thinks fit.

(2) No publication under this section shall be made in relation to any penalty imposed under the Act until the time for presenting an appeal to the first appellate authority under section 101 has expired without an appeal having been presented or the appeal, if presented, has been disposed of.

**Explanation.** – In the case of firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasures or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Competent Authority, circumstances of the case justify it.

**115. Assessment proceedings, etc. not to be invalid on certain grounds.—**

(1) No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of the Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings is/are in substance and effect in conformity with or according to the intents, purposes and requirements of the Act or any earlier law.

(2) The service of any notice, order or communication shall not be called in question if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earliest proceedings commenced, continued or finalised pursuant to such notice, order or communication.

**116. Bar of Jurisdiction of civil courts.**

(i) Save as provided by section 89 and 90, no civil court shall have jurisdiction to deal with or decide any question arising from or relating to anything done or purported to be done under the Act;

(ii) ..... *(to see if any specific protections need to be provided to the taxpayer/citizen for being able to approach a civil court for valid reasons)*

**117. Levy of fees.**

Wherever a copy of any order or document is to be provided to any person on an application made by him for that purpose, there shall be paid such fee as may be prescribed, which may include a fee for such application also.

**118. Power of Central (or State) Government to make rules:**

(1) The Central Government (or the State Government) may make rules, including rules conferring the power to issue notifications with retrospective effect under those rules, to carry into effect the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may —

- 1) provide for the date for determination of rate of tax and the place of supply of goods or services or both;
- 2) having regard to the normal practice in the supply of goods or services, define or specify the kinds of trade discount to be excluded from the value under section----- including the circumstances in which and the conditions subject to which such discount is to be so excluded;
- 3) provide for determining the value of taxable supplies in the situations mentioned under section----- ;
- 4) provide, subject to such conditions as may be prescribed, for the grant of input tax credit of tax paid on the input supplies of goods or services used in or in relation to the providing of the output taxable supplies of goods or services, and the manner of utilization of such credit.
- 5) provide for the lapsing of input tax credit lying unutilized, in the circumstances as may be specified in the rules;
- 6) provide for withdrawal of facilities or imposition of restrictions (including restrictions on utilisation of input tax credit) on taxable person or suspension or revocation of registration of taxable person, for dealing with evasion of tax or misuse of input tax credit;
- 7) provide, subject to such conditions as may be prescribed, for the carrying forward<sup>10</sup> of the unutilized balances of cenvat credit of the duties of excise and the service tax, under the Cenvat Credit Rules 2004, (or of VAT credit under the state VAT credit rules) lying with the taxable persons on the date of their switching over to GST;
- 8) provide for the remission of tax leviable on any taxable supplies, which due to any natural causes are found to be deficient in quantity, the limit or limits of percentage beyond which no such remission shall be allowed and the different limit or limits of percentage for different varieties of the same taxable supply or for different areas or for different seasons;
- 9) specify the persons who shall get themselves registered under section ----- and the time, manner and form in which application for registration shall be made;
- 10) provide for the manner of verification of application and issue of registration under the Act and the fees, if any, to be charged therefor ;
- 11) provide for the situations and manner of grant of deemed registration under the Act;
- 12) provide for the manner of migration, amendment, surrender, revocation, suspension, cancellation of registration under the Act ;
- 13) provide for the assessment and collection of tax, the authorities by whom functions under the Act are to be discharged, the issue of notices requiring payment, the manner in which tax shall be payable, and the recovery of tax not paid;
- 14) impose on taxable persons or other persons as may be specified, the duty of furnishing information, maintaining records and filing returns, and may also prescribe the nature of such information and the form of such records and returns, the particulars to be contained therein, and the manner in which they shall be verified;

<sup>10</sup> This is added for the purposes of transition

- 15) provide for the form, manner and frequency of the returns to be furnished and the late fee for delayed furnishing of return under relevant section ;
- 16) provide for charging or payment of interest under the various provisions of the Act;
- 17) provide for the detention or attachment of goods, plant, machinery or material and other movable or immovable properties for the purpose of exacting the tax on taxable supplies in respect of which breaches of the Act or rules made thereunder have been committed and the disposal of things so detained or attached or confiscated;
- 18) authorise and regulate the composition of offences against, or liabilities incurred under the Act or the rules made thereunder;
- 19) provide for the amount to be paid for compounding and the manner of compounding of offences under sub-section (----) of section-----;
- 20) provide for publication, subject to such conditions as may be specified, the names and other particulars of persons found guilty of contravention of any provision of the Act or of any rule made thereunder;
- 21) provide for the manner of recovery of any amount due to the Central Government (or state government) under section --- ;
- 22) authorise and regulate the inspection and audit of business premises and provide for the taking of samples, and for the making of tests, of any substance produced therein, and for the inspection or search of any place or conveyance used for the production, storage, sale, supply or transport of goods, and so far as such inspection or search is essential for the proper levy and collection of the tax imposed by the Act, of any other taxable supply of goods or services;
- 23) specify the form and manner in which application for refund shall be made under section ----- ;
- 24) provide for the manner in which amounts shall be credited to the Consumer Welfare Fund, their utilization, and the form in which the accounts and records relating to the Fund shall be maintained;
- 25) specify the forms in which appeals, applications and memoranda of cross objections shall be filed and verified under Chapter----- of the Act;
- 26) provide for the qualifications and the manner of appointment of the National President, the State President, and the Members of the Appellate Tribunal under section.....of the Act, and other matters related or incidental thereto;
- ~~27) provide for the settlement of cases, in accordance with Chapter ---- of this Act;~~
- 28) regulate in such manner as the Central Government / State Government thinks fit, the movement of supplies from any part of India to any other part thereof;
- 29) regulate the removal of taxable supplies of goods from the place where produced, stored or manufactured or subjected to any process of production or manufacture and their transport to or from the premises of a registered person, or a bonded warehouse, or to a market;
- 30) provide for the appointment, licensing, management and supervision of bonded warehouses and the procedure to be followed for entry of goods into such warehouses and clearance of goods therefrom;
- 31) provide for the distinguishing of supply of goods which have been manufactured after registration, of materials which have been imported, and of supply of goods on which tax has been paid, or which are exempt from tax under this Act, or any other class of goods as may be specified in such rules;

- 32) require that taxable supplies of specified goods shall not be made except in prescribed containers, bearing a banderol, stamp or label of such nature and affixed in such manner as may be prescribed;
- 33) provide for the grant of a rebate of the tax paid on supply of goods or services which are exported out of India or shipped for consumption on a voyage to any port outside India including interest thereon;
- 34) provide for rebate of tax paid or payable on the taxable supply of services used as input services in the supply of goods or services exported out of India under section -----;  
*(Comment: It appears that sub-Committee I has in section 22 of the draft report used the generic word "refund" to also refer to rebate on export. Accordingly, whether the word rebate or refund is to be used may be decided later on)*
- 35) provide for the charging of fees for the examination of goods intended for export out of India and for rendering any other service by a GST Officer under this Act or the rules made thereunder;
- 36) authorise the Board (or competent authority) or officers of GST, as the case may be, appointed for the purposes of this Act to provide, by written instructions, for supplemental matters arising out of any rule made by the Central Government (or the State Government) under this section;
- 37) provide for the manner of provisional attachment of property under section ----  
 --;
- 38) make provisions for determining export of taxable supply of services;
- 39) provide for grant of exemption to, or rebate of tax paid on, taxable supply of services which are exported out of India;
- 40) provide for manner of administering of payment of taxes under the compounding of tax
- 41) provide for dealing with situations where goods are returned
- 42) provide for specifying the details to be given in the invoices, the maintenance of accounts, the furnishing of audit reports, and matters related thereto;
- 43) provide for the qualifications and the manner of appointment of the Advance Ruling authority under section.....of the Act, and other matters related to functioning of the authority;
- 44) provide for the qualifications of tax return preparers, tax practitioners and authorized representatives under various provisions of the Act, the manner of their selection or appointment or nomination, their codes of conduct, and other matters related or incidental thereto;
- 45) provide for matters relating to tax deducted at source;
- 46) provides for matters covered by section 149
- 47) any other matter related to administering or enforcing the provisions of the Act.

(3) The power to make rules conferred by this section shall on the first occasion of the exercise thereof include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Chapter come into force.

(4) In making rules under this section, the Central Government (or State Government) may provide that any person committing a breach of any rule shall, where no other penalty is provided by the Act, be liable to a penalty not exceeding ten thousand rupees.



**119. Delegation of powers.** - The Competent Authority may, by notification in the Official Gazette direct that subject to such conditions, if any, as may be specified in the notification, any power exercisable by any authority or officer under the Act may be exercisable also by another authority or officer as may be specified in such notification.

**120. Instructions to GST Officers.** — The Competent Authority may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of the Act, issue such orders, instructions or directions to the GST Officers as it may deem fit, and thereupon all GST officers and all other persons employed in the execution of the Act shall observe and follow such orders, instructions or directions.

PROVIDED that no such orders, instructions or directions shall be issued—

- a) so as to require any GST Officer to make a particular assessment or to dispose of a particular case in a particular manner; or
- b) so as to interfere with the discretion of the first appellate authority in the exercise of his appellate functions.

**121. Removal of difficulties:-**

(1) If any difficulty arises in giving effect to any provision of the Act, the Central Government / State Government may, by general or special order published in the Official Gazette, do anything not inconsistent with the provisions of the Act which appears to it to be necessary or expedient for the purpose of removing the difficulty.

PROVIDED that no such order shall be made after the expiry of a period of two years from the date of effect of the provision giving rise to the difficulty.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before Parliament / State Legislature.

**122. Service of Notice in certain circumstances.**

(1) Any decision, order, summons, notice or other communication under the Act or the rules made thereunder shall be served by any one of the following methods, namely: -

- (a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxpayer or to his manager or to agent duly authorized or an advocate or a tax practitioner holding authority to appear in the proceeding on behalf of the taxpayer or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxpayer, or
- (b) by post or courier with acknowledgement due, to the person for whom it is intended or his authorised agent, if any at his last known place of business or residence, or
- (c) by facsimile message, if such address is furnished, or
- (d) by sending an authenticated communication to his e-mail address, or
- (e) on **dashboard** of the taxpayer if available on the web-site, or
- (f) by sending a message on his registered mobile number, or
- (g) by publication in a newspaper circulating in the locality in which the taxpayer or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain, or

- (h) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence, or
- (i) if the mode prescribed under (h) is also not practicable for any reason, then by affixing a copy thereof on the notice board of the officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).

(3) When such decision, order, summons, notice or any communication is sent by registered post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by a registered letter in transit unless the contrary is proved.

### **123. Rounding off of tax etc.-**

The amount of tax, interest, penalty, fine or any other sum payable, and the amount of refund or any other sum due, under the provisions of the Act shall be rounded off **to the nearest rupee** and, for this purpose, where such amount contains a part of a rupee consisting of paise then, if such part is fifty paise or more, it shall be increased **to one rupee** and if such part is less than fifty paise it shall be ignored.

### **124. Effect of amendments, etc., of rules, notifications or orders. —**

Where any rule, notification or order made or issued under the Act or any notification or order issued under such rule, is amended, repealed, superseded or rescinded, then, unless a different intention appears, such amendment, repeal, supersession or rescinding shall not -

- (a) revive anything not in force or existing at the time at which the amendment, repeal, supersession or rescinding takes effect; or
- (b) affect the previous operation of any rule, notification or order so amended, repealed, superseded or rescinded or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any rule, notification or order so amended, repealed, superseded or rescinded; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under or in violation of any rule, notification or order so amended, repealed, superseded or rescinded; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the rule, notification or order, as the case may be, had not been amended, repealed, superseded or rescinded.

### **125. Publication of rules and notifications and laying of rules before Parliament / State Legislature. —**

(1) All rules made and notifications issued under the Act shall be published in the Official Gazette.

(2) Every rule made under the Act, every notification issued under section -----, section ----, section ----- and section ----- (*depending on the final full draft*) and every order made under section -----, section ----, section ----- and section ----- (*depending on the final full draft*), other than an order relating to goods or services or both of strategic, secret, individual or personal nature, shall be laid, as soon as may be after it is made or issued, before Parliament / State Legislature, while it is in session, for a total period of thirty days which may be comprised in one session, or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, Parliament / State Legislature agree in making any modification in the rule or notification or order, or Parliament / State Legislature agree that the rule should not be made or notification or order should not be issued or made, the rule or notification or order shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification or order.

## PART XIX

### PRESUMPTION AS TO DOCUMENTS

**126. Presumption as to documents in certain cases:** – Where any document-

- (i) is produced by any person under the Act or any other law, or
- (ii) has been seized from the custody or control of any person under the Act or any other law, or
- (iii) has been received from any place within or outside India in the course of any proceedings under the Act or any other law

and such document is tendered by the prosecution in evidence against him or any other person who is tried jointly with him, the court shall-

(a) unless the contrary is proved by such person, presume —

- (i) the truth of the contents of such document;
- (ii) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the Court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

**127. Admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence. —**

(1) Notwithstanding anything contained in any other law for the time being in force, —

- a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or
- b) a facsimile copy of a document; or
- c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a "computer printout"), if the conditions mentioned in sub-section (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question; or
- d) any information stored electronically in any device or media, including any hard copies made of such information

shall be deemed to be also a document for the purposes of the Act and the rules made there under and shall be admissible in any proceedings there under, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer printout shall be the following, namely:—

- a) the computer printout containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;
- b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;
- c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and
- d) the information contained in the statement reproduced or is derived from information supplied to the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause

(a) of sub-section (2) was regularly performed by computers, whether —

- a) by a combination of computers operating over that period; or
- b) by different computers operating in succession over that period; or
- c) by different combinations of computers operating in succession over that period; or
- d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings under this Act and the rules made thereunder where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, —

- a) identifying the document containing the statement and describing the manner in which it was produced;
- b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;
- c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section, —

- a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

- b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;
- c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation. — For the purposes of this section, —

- a) “computer” means any device that receives, stores and processes data, applying stipulated processes to the information and supplying results of these processes; and includes the hard disc thereof or a mirror image of hard disc thereof; and
- b) any reference to information being derived from other information shall be a reference to its being derived there from by calculation, comparison or any other process.

## PART XX

### TRANSITIONAL PROVISIONS

#### 128. Repeal and saving:-

(1) From the date of commencement of the Act, the (State) General Sales Tax Act, the Central Excise Act 1944, and the Central Excise Tariff Act 1985 shall apply only in respect of goods included in the entry 84 and entry 54 of the Union List and the State List of the Schedule VII to the Constitution of India.

PROVIDED that the aforesaid restriction of the application of the statutes referred above shall not—

- (a) Revive anything not in force or existing at the time at which the restriction takes effect; or
- (b) Affect the previous operation of the unrestricted Acts or anything duly done or suffered thereunder; or
- (c) Affect any right, privilege, obligation, or liability acquired, accrued or incurred under the unrestricted Acts; or
- (d) Affect any tax, surcharge, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed under the provisions of the unrestricted Acts; or
- (e) Affect any investigation, enquiry, assessment proceeding, any other legal proceeding or remedy in respect of any such tax, surcharge, penalty, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, enquiry, assessment proceeding, other legal proceeding or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so restricted.

(2) The following Acts are hereby repealed, to the extent mentioned hereunder, namely:-(as per the taxes subsumed under GST .....)

- (a) The Entry Tax Act,.....
- (b) The Entertainment Tax, .....
- (c) The Luxury Tax Act, .....
- (d) Duty of Excise on Medicinal and Toilet Preparation Act, .....
- (e) Chapter V of the Finance Act, 1994.

*(Comments: Presently, under the provisions of the Central Sales Tax Act, 1956, a deeming fiction has been created empowering the adoption of VAT Statutes and machinery for the purpose of collection/administration of CST under the State law. The officers drafting the IGST Act would need to see as to in what manner the repealing of the CST Act is to be drafted and in what manner and to what extent the savings are to be provided)*

(3) The repeals referred to in sub-section (2) shall not—

- (a) Revive anything not in force or existing at the time at which the repeal takes effect; or

- (b) Affect the previous operation of the repealed Acts or anything duly done or suffered thereunder; or
- (c) Affect any right, privilege, obligation, or liability acquired, accrued or incurred under the repealed Acts; or
- (d) Affect any tax, surcharge, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed under the provisions of the repealed Acts; or
- (e) Affect any investigation, enquiry, assessment proceeding, any other legal proceeding or remedy in respect of any such tax, surcharge, penalty, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, enquiry, assessment proceeding, other legal proceeding or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been enacted.

### **129. Transitional provisions.**

Notwithstanding anything contained elsewhere in the Act and until specifically so or otherwise prescribed or notified or done in accordance with the provisions of the Act,

- (a) All persons appointed by the respective Governments for discharging various functions under the Central/State laws relating to taxes on goods or services (which are being subsumed in GST) and continuing in office on the appointed day, shall be deemed to have been appointed as GST officers/Competent Authorities under the respective provisions of the Act.
- (b) The continuation or otherwise of any incentive schemes (including deferment schemes) under which any assessee or dealer may be operating on the appointed day, shall be decided in the manner as may be prescribed.
- (c) The migration of the existing registration to the registration under the GST laws shall be done as may be prescribed.
- (d) The Central Government (or the State Government) may issue orders or make rules consistent with the need for smooth transition to GST including the need to take care of matters not specifically covered hereinbefore so long as such matters are not in conflict with the purposes of the Act.

### **130. Tax credit for stock on 31st March, 20....**

The taxable person may carry forward the unutilized balances of cenvat credit of the duties of excise and the service tax, under the Cenvat Credit Rules 2004, (or of VAT credit under the state VAT Act / rules) lying with him on the date of his switching over to GST in such manner as may be prescribed.

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### **Suggestions of Sub-Committee-II on section 21 drafted by Sub-Committee-I**

In case a taxable person makes an undue or excess claim of input tax credit, he shall be liable to pay interest on such undue or excess claim at the prescribed rate for the period computed in the manner prescribed.

### **Suggestions of Sub-Committee-II to include additional definitions**

**"address of delivery"** means the address of the recipient of goods and/or services indicated on the tax invoice issued by a taxable person for delivery of such goods and/or services;

**"Audit"** means detailed examination of records, returns and other documents maintained or furnished by the taxable person under this Act or rules made there under or under any other law for the time being in force to verify, inter alia, the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or rules made there under;

**"business vertical"** shall have the meaning assigned to a 'business segment' in Accounting Standard 17 issued by the Institute of Chartered Accountants of India;

**"credit note"** means a document issued by a taxable person as referred to in sub-section (1) of section 31 of this Act;

**"debit note"** means a document issued by a taxable person as referred to in sub-section (2) of section 31 of this Act;

**"return"** means any return prescribed or otherwise required to be furnished by or under this Act;

**"tax invoice"** shall have the meaning as assigned to it under section 30 of this Act;

**"Tax Return Preparer"** means any person who has been approved to act as a Tax Return Preparer under the Scheme framed under section 46 of this Act;

**"valid return"** shall have the meaning assigned to it under sub-section (3) of section 36.

## **SCHEDULE I**

### **MATTERS TO BE TREATED AS SUPPLY WITHOUT CONSIDERATION**

1. Permanent transfer/disposal of business assets.
2. Temporary application of business assets to a private or non-business use.
3. Services put to a private or non-business use.
4. Self supply of goods and/or services.
5. Assets retained after deregistration.

## **SCHEDULE II**

### **MATTERS TO BE TREATED AS SUPPLY OF GOODS OR SERVICES**

1. Transfer
  - (1) Any transfer of the title in goods is a supply of goods.
  - (2) Any transfer of goods or of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services.
  - (3) Any transfer of title in goods under an agreement which stipulates that property in goods will pass at a future date upon payment of full consideration as agreed, is a supply of goods.
2. Land and Building
  - (1) Any lease, tenancy, easement, licence to occupy land is a supply of services.
  - (2) Any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.
3. Treatment or process

Any treatment or process which is being applied to another person's goods is a supply of services.
4. Transfer of business assets
  - (1) Where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person.
  - (2) Where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services.
  - (3) Where any goods, forming part of the business assets of a taxable person, are sold by any other person who has the power to do so to recover any debt owed by the taxable person, the goods shall be deemed to be supplied by the taxable person in the course or furtherance of his business.

(4) Where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—

- (a) the business is transferred as a going concern to another person; or
- (b) the business is carried on by a personal representative who is deemed to be a taxable person.

. . .

### **SCHEDULE III**

#### **LIABILITY TO BE REGISTERED**

1. Every person who, on the appointed day, is registered or holds a license under an earlier law, shall be liable to be registered under this Act with effect from the said day.

2. Every person to whom the provisions of paragraph 1 above do not apply, shall be liable to be registered under this Act if his turnover in a financial year exceeds the [taxable threshold].

Explanation 1: For the purposes of this Schedule, the taxable threshold shall be such amount as may be specified in the notification issued in this behalf by the Central or a State Government on the recommendations of the Council.

Explanation 2: The taxable threshold shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals.

3. Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee, or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.

4. Notwithstanding anything contained in paragraph 1 and 2 above, in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, de-merger of two or more companies by an order of a High Court, the transferee shall be liable to be registered, where required, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court.

5. Notwithstanding anything contained in paragraph 1 and 2 above, the following categories of persons shall be required to be registered under this Act:

- (i) persons making any inter-State supply, irrespective of the taxable threshold specified under paragraph 2;
- (ii) casual taxable persons; and
- (iii) persons who are required to pay tax under reverse charge.

### **GST Valuation (Determination of the Value of Supply of Goods and Services) Rules, 2016**

### 1. Short title, commencement and application.

- (1) These rules may be called the GST Valuation (Determination of Value of Supply of Goods and Services) Rules, 2016.
- (2) These Rules shall come into force on the day the Act comes into force.
- (3) They shall apply to the supply of goods and/or services under the IGST/CGST/SGST Act.

### 2. Definitions—(1) In these rules, unless the context otherwise requires:

- (a) "Act" means the IGST Act or the CGST Act or, as the case may be, the SGST Act;
- (b) "goods of like kind and quality" means goods which are identical or similar in physical characteristics, quality and reputation as the goods being valued, and perform the same functions or are commercially interchangeable with the goods being valued and supplied by the same person or by a different person;
- (c) "services of like kind and quality" means services which are identical or similar in nature, quality and reputation as the services being valued and supplied by the same person or by a different person; and
- (d) "transaction value" means the value of goods and/or services within the meaning of section 17 of the IGST / CGST / SGST Act.

(2) Words, expressions and terms not defined in these Rules shall have the same meaning as is assigned to them in the Act.

### 3. Methods of determination of value—

- (1) Subject to rule 7, the value of goods and/or services shall be the transaction value.
- (2) The "transaction value" shall be the value determined in monetary terms.
- (3) Where the supply consists of both taxable and non-taxable supply, the taxable supply shall be deemed to be for such part of the monetary consideration as is attributable thereto.
- (4) The transaction value shall be accepted even where the supplier and recipient of supply are related, provided that the relationship has not influenced the price.
- (5) Where goods are transferred from—
  - (a) one place of business to another place of the same business,
  - (b) the principal to an agent or from an agent to the principal,
 whether or not situated in the same State, the value of such supply shall be the transaction value.
- (6) The value of supplies specified in sub-section (4) of section 17 of the Act shall be determined by proceeding sequentially through rules 4 to 6.

### 4. Determination of value of supply by comparison—

- (1) Where the value of a supply cannot be determined under rule 3, the value shall be determined on the basis of the transaction value of goods and/or services of like kind and quality supplied at or about the same time to other customers, adjusted in accordance with the provisions of sub-rule (2).
- (2) In determining the value of goods and/or services under sub-rule (1), the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including—

- (a) difference in the dates of supply,
- (b) difference in commercial levels and quantity levels,
- (c) difference in composition, quality and design between the goods and/or services being valued and the goods and/or services with which they are compared,
- (d) difference in freight and insurance charges depending on the place of supply.

5. Computed value method— If the value cannot be determined under rule 4, it shall be based on a computed value which shall include the following:-

- (a) the cost of production, manufacture or processing of the goods or, the cost of provision of the services;
- (b) charges, if any, for the design or brand;
- (c) an amount towards profit and general expenses equal to that usually reflected in supply of goods and/or services of the same class or kind as the goods and/or services being valued which are made by other suppliers.

6. Residual method— Where the value of the goods and/or services cannot be determined under the provisions of rule 5, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules.

7. Rejection of declared value—

(1)(a) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any goods and/or services, he may ask the supplier to furnish further information, including documents or other evidence and if, after receiving such further information, or in the absence of any response from such supplier, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such goods and/or services cannot be determined under the provisions of sub-rule (1) of rule 3.

(b) The reasons to doubt the truth or accuracy of the value of the supply declared by the supplier shall include, but not be limited to the following:

- (i) the significantly higher value at which goods and/or services of like kind or quality supplied at or about the same time in comparable quantities in a comparable commercial transaction were assessed;
- (ii) the significantly lower or higher value of the supply of goods and/or services compared to the market value of goods and/or services of like kind and quality at the time of supply; or
- (iii) any mis-declaration of goods and/or services in parameters such as description, quality, quantity, year of manufacture or production.

(2) The proper officer shall intimate the supplier in writing the grounds for doubting the truth or accuracy of the value declared in relation to the supply of goods and/or services by such supplier and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

(3) If after hearing the supplier as aforesaid, the proper officer is, for reasons to be recorded in writing, not satisfied with the value declared, he shall proceed to determine the value in accordance with the provisions of rule 4 or rule 5 or rule 6, proceeding sequentially.

Explanation: For removal of doubts, it is hereby declared that this rule by itself does not provide a method for determination of value. It provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value.

#### 8. Valuation in certain cases

##### (1) Pure Agent

(a) Notwithstanding anything contained in these rules, the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely:-

- (i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods and/or services procured;
- (ii) the recipient of service receives and uses the goods and/or services so procured by the service provider in his capacity as pure agent of the recipient of service;
- (iii) the recipient of service is liable to make payment to the third party;
- (iv) the recipient of service authorises the service provider to make payment on his behalf;
- (v) the recipient of service knows that the goods and/or services for which payment has been made by the service provider shall be provided by the third party;
- (vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;
- (vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and
- (viii) the goods and/or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

Explanation: For the purposes of this sub-rule, "pure agent" means a person who-

- (a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;
- (b) neither intends to hold nor holds any title to the goods and/or services so procured or provided as pure agent of the recipient of service;
- (c) does not use such goods and/or services so procured; and
- (d) receives only the actual amount incurred to procure such goods and/or services.

##### (2) Money Changer

The value of taxable service provided for the services in so far as it pertains to purchase or sale of foreign currency, including money changing, shall be determined by the service provider in the following manner:-

For a currency, when exchanged from, or to, Indian Rupees (INR), the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India (RBI) reference rate for that currency at that time, multiplied by the total units of currency:

Provided that in case where the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received, by the person changing the money:

Provided further that in case where neither of the currencies exchanged is Indian Rupee, the value shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by RBI.



## **THE INTEGRATED GOODS AND SERVICES TAX ACT, 2016**

### **PART - I PRELIMINARY**

1. Short title, extent and commencement
2. Definitions

### **PART - II PRINCIPLES FOR DETERMINING SUPPLY OF GOODS AND/OR SERVICES IN THE COURSE OF INTER-STATE TRADE OR COMMERCE**

3. Supplies of goods and/or services in the course of inter-State trade or commerce

### **PART - III LEVY AND COLLECTION OF TAX**

4. Charge of tax

### **PART - IV PLACE OF SUPPLY OF GOODS AND/OR SERVICES**

5. Place of supply of goods
6. Place of supply of services

### **PART - V PAYMENT OF TAX**

7. Payment of tax

### **PART - VI INPUT TAX CREDIT**

8. Manner of taking input tax credit and utilization thereof
9. Transfer of input tax credit

### **PART - VII**

## **APPORTIONMENT OF TAX AND SETTLEMENT OF FUNDS**

10. Apportionment of tax collected under the Act and settlement of funds

## **PART - VIII MISCELLANEOUS**

11. Application of certain provisions of the CGST Act, 2016
12. Power to make rules
13. Levy of interest

## **PART - IX ADMINISTRATION**

14. Classes of officers under the Integrated Goods and Services Tax Act, 2016
15. Appointment of officers under the Integrated Goods and Services Tax Act, 2016

## **PART- I PRELIMINARY**

### **1. Short title, extent and commencement**

- (1) This Act may be called the Integrated Goods and Services Tax Act, 2016.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

### **2. Definitions**

- (1) In this Act, unless the context otherwise requires,-

- (a) **"appropriate State"** means -

- (i) in relation to a taxable person who has one or more places of business situated in one State, that State;
- (ii) in relation to a taxable person who has places of business situated in more than one State, every such State with respect to the place or places of business situated within its territory.

Explanation: For the purpose of this Act, "State" includes Union Territory with Legislature.

- (b) **"Government"** means the Central Government;
- (c) **"IGST"** means tax levied under this Act on the supply of any goods and/or services in the course of inter-State trade or commerce.

Explanation: A supply of goods and/or services in the course of import into the territory of India shall be deemed to be a supply of goods and/or services in the course of inter-State trade or commerce.

(d) **"input tax"** in relation to a taxable person, means the IGST charged on any supply of goods and/or services to him which are used, or are to be used, in the course or furtherance of his business;

(e) **"supply of goods and/or services"** includes all forms of supply such as sale, transfer, barter, exchange, license, rental, lease or disposal, and importation of services\*, made or agreed to be made, whether or not for a consideration, by a person in the course or furtherance of business.

(2) Words and expressions not defined in this Act shall have the meaning assigned to them in the Central Goods and Service Tax Act, 2016.

## - PART - II

### PRINCIPLES FOR DETERMINING SUPPLY OF GOODS AND/OR SERVICES IN THE COURSE OF INTER-STATE TRADE OR COMMERCE

#### 3. **Supplies of goods and/or services in the course of inter-State trade or commerce**

(1) Subject to the provisions of section 5, a supply of goods shall be deemed to take place in the course of inter-State trade or commerce if the location of the supplier and the place of such supply are in different States.

(2) Subject to the provisions of section 6, a supply of services shall be deemed to take place in the course of inter-State trade or commerce if the location of the service provider and the place of supply of service are in different States.

**PART- III**  
**LEVY AND COLLECTION OF TAX**

**4. Charge of tax**

- (1) There shall be levied a tax called the Integrated Goods and Services Tax on all supplies of goods and/or services made in the course of inter-State trade or commerce at the rate specified in the Schedule to this Act and collected in such manner as may be prescribed.
- (2) The Integrated Goods and Service Tax shall be paid by every taxable person in accordance with the provisions of this Act.
- (3) The Central Government may, by notification, specify categories of supply of services the tax on which is payable on reverse charge basis and the tax thereon shall be paid by the person receiving such service in such manner as may be prescribed at the rate specified in sub-section (1) and all the provisions of this Act shall apply to such person as if he is the person liable for paying the tax in relation to such service.
- (4) Notwithstanding anything contained in this Act but subject to such conditions as may be notified in this behalf, no tax under this Act shall be payable by any taxable person in respect of such supplies of goods and/or services as are specified in Schedule . . . to the Act.

## **PART - IV**

### **PLACE OF SUPPLY OF GOODS AND/OR SERVICES**

#### **5. Place of supply of goods**

(1) The provisions of this section shall apply to determine the place of supply of goods.

(2) Where the supply, including a distance supply, involves movement of goods, the place of supply of such goods shall be the location at which the goods are delivered to the receiver.

Explanation: The expression 'distance supply' shall mean a supply of goods which satisfies the following conditions:-

(a) the goods are supplied to a recipient located in another State, and

(b) the supplier arranges the transport of goods.

(3) Where the supply does not involve movement of goods, the place of supply shall be the location of such goods at the time of the delivery to the receiver.

(4) Where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly.

(5) Where the goods are supplied on board a conveyance, such as a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.

(6) The place of supply of gas shall be the location at which the gas is used and consumed.

#### **6. Place of supply of services**

(1) The provisions of this section shall apply to determine the place of supply of services.

(2) The place of supply of all services, except those services specified in sub-sections (4), (5), (6), (7), (8), (9), (10), (11), (12) and (13), made to a registered taxable person shall be the location of the service receiver.

(3) The place of supply of all services, except those services specified in sub-sections (4), (5), (6), (7), (8), (9), (10), (11), (12) and (13), made to any person other than a registered taxable person shall be the location of the service provider.

(4) The place of supply of services, -

(a) in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work, or

(b) by way of lodging accommodation by a hotel, inn, guest house, homestay, club or campsite, by whatever name called and including a house boat or any other vessel, or

(c) by way of accommodation in any immovable property for organizing any marriage or reception or matters related therewith, official, social, cultural, religious or business function including services provided in relation to such function at such property, shall be the location at which the immovable property or boat or vessel is located or intended to be located.

Explanation: Where the immovable property or boat or vessel is located in more than one State, the supply of service shall be treated as made in each of the States in proportion to the value for services separately collected or determined, in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

(5) The place of supply of restaurant and catering services and services in relation to training, performance appraisal, personal grooming, fitness, beauty treatment, health services including cosmetic and plastic surgery shall be the location where the services are actually performed.

(6) The place of supply of services provided by way of—

(a) admission to a cultural, artistic, sporting, scientific, educational, or entertainment event or amusement park or any other place, or

(b) organization of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of service in relation to a conference, fair, exhibition, celebration or similar events, or

(c) services ancillary to such admission to or organization of any of the above events or services, or

(d) assigning of sponsorship of any of the above events,

shall be the place where the event is actually held.

Explanation: Where the event is held in more than one State and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in the each of the States in proportion to the value of services so provided in each State as ascertained from the terms of the contract or agreement entered into in this regard or, in absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

(7) The place of supply of services by way of transportation of goods, including by mail or courier to,

(a) a registered person, shall be the location of such service receiver;

(b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

(8) The place of supply of passenger transportation service shall be the place where the passenger embarks on the conveyance for a continuous journey:

Provided that where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the place of supply of such service shall be determined in the manner specified in sub-sections (2) or (3), as the case may be.

Explanation: For the purposes of this sub-section, the return journey shall be treated as a separate journey even if the right to passage for onward and return journey is issued at the same time.

(9) The place of supply of services on board a conveyance such as vessel, aircraft, train or motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.

(10) The place of supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall—

(a) in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;

(b) in case of mobile connection for telecommunication and internet services provided on post-paid basis, be the location of billing address of the service receiver on record of the service provider;

(c) in cases where mobile connection for telecommunication and internet service are provided on pre-payment through a voucher or any other means, be the location where such pre-payment is received or such vouchers are sold:

Provided that if such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment, the location of the service receiver on record of the service provider shall be the place of supply of such service.

(11) The place of supply of banking and other financial services including stock broking services to any person shall be the location of the service receiver on the records of the service provider:

Provided that if the service is not linked to the account of the receiver, the place of supply shall be location of the service provider.

(12) The place of supply of insurance services shall:

(a) to a registered person, be the location of the service receiver; and

(b) to a person other than a registered person, be the location of the service receiver available on the records of the service provider:

Provided that for all general insurance services related to an immovable property, the place of supply of services shall be the location of such immovable property.

(13) The place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for identifiable States, shall be taken as located in each of such States and the value of such supplies specific to each State shall be in proportion to amount attributable to service provided by way of dissemination in the respective States as may be determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

[Note. It is the view of the Centre that in the context of B2B supplies, the primary factor for determining the place of supply would be the location of the recipient subject to specified exceptions.]

## **PART -V**

### **PAYMENT OF TAX**

#### **7. Payment of Tax**

(1) Every deposit made towards tax, interest, penalty, fee or any other amount by a taxable person by any of the prescribed modes shall be credited to the electronic cash ledger of such person to be maintained in the manner as may be prescribed.

(2) The input tax credit as self-assessed in the return of a taxable person shall be credited to his electronic credit ledger to be maintained in the manner as may be prescribed.

(3) The tax, interest, penalty, fee or any other amount payable under the provisions of this Act or the rules made there under shall be paid to the IGST account of the Central Government by debiting the electronic cash or credit ledger under this Act in such manner and subject to such conditions and limitations and within such time as may be prescribed:

Provided that after fully utilizing the balance in the electronic [cash or] credit ledger under this Act, the balance available in the credit ledger under the CGST Act may be utilized to pay the tax under this Act:

Provided further that after fully utilizing the balance in the electronic [cash or] credit ledgers under this Act and in the credit ledger under the CGST Act, the balance available in the credit ledger under the SGST Act may be utilized to pay the tax under this Act.



**PART - VI**  
**INPUT TAX CREDIT**

**8. Manner of taking input tax credit and utilization thereof**

(1) Every taxable person shall, subject to such conditions and restrictions as may be prescribed in this behalf, be entitled to take credit of input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger to be maintained in the manner as may be prescribed.

(2) A taxable person, after fully discharging his tax dues under this Act, may utilize the balance or any part thereof available in his electronic credit ledger for discharging his tax dues under the CGST Act in the manner as may be prescribed.

(3) A taxable person, after fully discharging his tax dues under this Act and the CGST Act, may utilize the balance or any part thereof available in his electronic credit ledger for discharging his tax dues under the SGST Act in the manner as may be prescribed.

Explanation: For the purpose of this section, 'tax dues' shall mean the tax payable under this Act and does not include interest, fee or penalty.

**9. Transfer of input tax credit**

(1) On utilization of input tax credit under this Act for payment of tax dues under the CGST Act as per sub-section (2) of section 8, the Central Government shall transfer an amount equal to the credit so utilized from the IGST account to the CGST account in the manner and time as may be prescribed.

(2) On utilization of input tax credit under this Act for payment of tax dues under the SGST Act as per sub-section (3) of section 8, the Central Government shall transfer an amount equal to the credit so utilized from the IGST account to the SGST account of the appropriate State Government in the manner and time as may be prescribed.

## **PART - VII**

### **APPORTIONMENT OF TAX AND SETTLEMENT OF FUNDS**

#### **10. Apportionment of tax collected under the Act and settlement of funds**

- (1) Out of the IGST paid to the Central Government in respect of inter-State supply of goods and/or services to an unregistered person or to a taxable person paying tax under section 8 of the CGST Act, the amount of tax calculated at the rate equivalent to the CGST on such supply shall be apportioned to the Central Government and shall be transferred to the CGST account in the manner and time as may be prescribed.
- (2) Out of the IGST paid to the Central Government in respect of inter-State supply of goods and/or services made in a year to a registered taxable person, where the supply is either not eligible for input tax credit or where the recipient does not avail of the said credit within the specified period and thus remains in the IGST account after expiry of the due date for filing of annual return for such year in which the supply was made, the amount of tax calculated at the rate equivalent to the CGST on such supply shall be apportioned to the Central Government and shall be transferred to the CGST account in the manner and time as may be prescribed.
- (3) Out of the IGST paid to the Central Government in respect of import of goods by an unregistered person, the amount of tax calculated at the rate equivalent to the CGST on such supply shall be apportioned to the Central Government and shall be transferred to the CGST account in the manner and time as may be prescribed.
- (4) The balance tax remaining in the IGST account in respect of the supply for which an apportionment to the Central Government has been done under sub-section (1), (2) or (3) shall be apportioned, in the manner and time as may be prescribed, to the State where such supply takes place as per section 5 or 6.

## **PART - VIII MISCELLANEOUS**

### **11. Application of certain provisions of the CGST Act, 2016**

The provisions relating to registration, valuation, time of supply of goods, time of supply of services, change in rate of tax in respect of supply of services, exemption from payment of tax, input tax credit and utilization thereof, accounts and records, payment, return, audit, assessment, adjudication, demands, refunds, interest, recovery of tax, offences and penalties, inspection, search and seizure, prosecution and power to arrest, appeals, review, advance ruling and compounding shall apply, so far as may be, in relation to the levy of tax under this Act as they apply in relation to levy of tax under the CGST Act, 2016.

### **12. Power to make rules**

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the matters which under any provision of this Act are required to be prescribed or to be provided for by rules.

### **13. Levy of interest**

Every person, liable to pay the tax in accordance with the provisions of section . . . or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest at such rate as may be specified, by Notification, for the period by which such crediting of the tax or any part thereof is delayed.

**PART - IX**  
**ADMINISTRATION**

**14. Classes of officers under the Integrated Goods and Services Tax Act, 2016**

- (1) There shall be the following classes of officers under the Integrated Goods and Services Tax Act, 2016 namely;
  - (a) Principal Chief Commissioners of IGST or Principal Directors General of IGST,
  - (b) Chief Commissioners of IGST or Directors General of IGST,
  - (c) Principal Commissioners of IGST or Principal Additional Directors General of IGST,
  - (d) Commissioners of IGST or Additional Directors General of IGST,
  - (e) Commissioner of IGST (Appeals)
  - (f) Additional Commissioners of IGST or Additional Directors of IGST,
  - (g) Joint Commissioners of IGST or Joint Directors of IGST,
  - (h) Deputy Commissioners of IGST or Deputy Directors of IGST,
  - (i) Assistant Commissioners of IGST or Assistant Directors of IGST, and

such other class of officers as may be appointed for the purposes of this Act.

**15. Appointment of officers under the Integrated Goods and Services Tax Act, 2016**

- (1) The Board may appoint such persons as it may think fit to be officers under the Integrated Goods and Services Tax Act, 2016.
- (2) Without prejudice to the provisions of sub-section (1), the Board may authorize a Principal Chief Commissioner/Chief Commissioner of Central Goods and Services Tax or a Principal Commissioner/Commissioner of Central Goods and Services Tax or an Additional/Joint or Deputy/Assistant Commissioner of Central Goods and Service Tax to appoint officers of Integrated Goods and Services Tax below the rank of Assistant Commissioner of Integrated Goods and Services Tax Act, 2016.

[Note. It is the view of the States that certain powers under the IGST Act such as i) audit, ii) enforcement and iii) inspection should also be exercised by the officials of the State Government. Likewise, the powers under the SGST Act relating to the above subjects should be exercised by the officials of the Central Government.]

## **ADDITIONAL TAX ON CERTAIN INTER-STATE SUPPLIES**

### **Levy of Additional Tax**

(1) Notwithstanding anything contained in this Act, there shall be levied a tax called 'additional tax' on any supply of taxable goods made in the course of inter-State trade or commerce by a taxable person at a rate not exceeding one per cent and for a period of two years or such other period, as may be notified by the Central Government on the recommendation of the Council, and collected in such manner as may be prescribed.

Explanation: For the purposes of this sub-section, 'supply' shall mean all forms of supply made for a consideration.

(2) Every taxable person liable to pay tax under sub-section (1), shall furnish a return declaring the taxable value of the supplies made during a tax period and shall pay tax due thereon in the manner and time as may be prescribed.

(3) The Additional Tax paid under this section shall not be claimed as Input tax credit under this Act or under any law for the time being in force.

(4) The amount of Additional Tax paid under this section, except such amount attributable to the Union Territories, shall not form part of the Consolidated Fund of India and shall be assigned to the State from where the supply of goods originates.

(5) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt generally either absolutely or subject to such conditions as may be specified in the notification, goods of any specified description from the whole or any part of the additional tax leviable thereof.

## **GLOSSARY OF TERMS**

**Externalities:** occur when “..an activity of entity affects the welfare of Another entity in a way that is outside the market. In other words, an externality exists when the market price of a good does not reflect its true benefit or cost to the society.

**Inelastic Demand:** Goods with inelastic demand are goods that consumers would continue to purchase at the same rate, even when the price rises.

**Regressive Tax:** Regressive Tax is a tax whose burden falls disproportionately on low-income taxpayers.

**Public Goods:** are the goods for which the marginal cost of production does not increase with consumption and goods from which no one's can be excluded from consuming. Examples are highway systems and public defense.

**Deadweight loss:** The term in simple term means excess burden of taxation or monopoly. The loss of economic well being imposed by a tax reducing consumer and producer surplus making taxed goods less attractive.

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