Pre-Budget Memorandum 2016-17

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Introduction

India today has more than 400 million internet users, making it the second largest behind China and ahead of the US. While Internet in India took more than a decade to move from 10 million to 100 million and 3 years from 100 to 200 million, it took only a year to move from 300 to 400 million users. Clearly, Internet is main stream in India today.

India's Internet economy is at an inflexion point-and with the right actions, it can triple to USD 200 billion in the next five years-with significant benefits for consumers, businesses and society. A few key elements will be essential to unlock this potential. Following are some of the proposed initiatives that can help foster faster adoption and reach of internet and broadband across the length and breadth of the country, and unlock this potential. A majority of these issues can be addressed by suitable policy initiatives and direct and indirect tax benefits. And it is with this belief we submit the following fiscal proposals to the Government of India in the following chapters. These proposals echo the voice and concerns of our members across sectors such as Digital Commerce, Digital Payments, Digital Advertising and Digital Start-ups.

1.0 Digital Market Place

The Government of India has been showing considerable intent to promote investments in E-commerce and logistics sectors. Besides, the digital marketplace industry has been effectively contributing for generating employment to the youth of our country. Given the potential of the digital market place sector and the ability to generate employment opportunities, it is necessary that tax friendly policies are established, to stabilize and provide momentum to this sector.

1.1 Direct Tax

1.1.1 Clarification with respect to certain e-commerce transactions

Issue:

In absence of boundaries/physical nature of transacting in goods/services, taxation of e-commerce transaction raises several issues. One of the issues pertains to data warehousing, which involves the storage of computer data by the customers on servers owned and operated by the service providers. Thus, the question of taxability would arise in the context of whether the payments made by the customer for the storage of computer data could be characterized as "royalty", "fee for technical service" or "business income".

Another important issue of applicability of withholding tax on payments made towards sale of space or time slots for advertisements. Apart from the ones mentioned above, there are various other e-commerce transactions whose characterization, from an income-tax perspective, still remains uncertain. Examples being payments made for website hosting, data retrieval, delivery of high value data, sale of digitized books etc.

Recommendations:

It is recommended to issue necessary administrative guidelines with respect to taxation of various e-commerce transactions to provide for clarity. In particular, it is recommended to clarify that payments made for storage of computer data on servers, website hosting charges, data retrieval, access to online database and online advertisement should not be subject to withholding tax in India.

1.1.2 Carry forward/set-off of business loss for e-commerce companies

Issue:

Currently, as per the provisions of section 72 of the IT Act, business loss can be 'carry forward' and set-off for a period of 8 years and certain restrictions prescribed u/s 79 of the IT Act. Given the capital intensive nature of the industry and huge gestation period typically experienced by e-commerce companies, the time-limit of 8 years may not be sufficient for absorption of the losses as and when the enterprise starts reporting positive income. There is a need to issue Clarification circular that restriction prescribed u/s 79 of Income tax should not apply to e-commerce companies where change in shareholding pattern is due to infusion of funding by Investors without change in the management of the company run by original founders.

Recommendations:

In view of the above and in order to provide for additional time for absorption of losses, it is

recommended that the time-limit for carry forward and set-off of business loss be extended from the current period of 8 years to 12 years under section 72 of the IT Act to enterprises operating in the field of e-commerce.

Rigors of section 79 of the IT Act should be restricted only in cases where the change in shareholding is effected with a view to avoid or reduce tax liability by way of a restructuring exercise. This will certainly boost investment in Start-up India.

1.1.3 TDS u/s 194-C, 194-H and 194-I when the e-commerce service provider collects the gross sales consideration and pays amount (net of commission, service charges, rental etc.) to the actual seller of goods or services

Issue:

Currently, the provisions of section 194C, 194H and 194-I of the Act mandate deduction of TDS upon accrual or payment when a principal pays commission or warehouse rental or service charges to a service provider. However, in the e-commerce business, the e-commerce service provider collects the entire sales consideration from the end customer and pays amounts (net of commission, service charges) etc. to the actual seller of goods or services; similar to the credit card industry.

The current provision of TDS u/s 194-C, 194-H or 194-I envisage only a situation when a principal seller of goods or services pays commission or rental or services charges to a service provider. However, the flow of payment and corresponding income is exactly the reverse in the e-commerce industry. In order to comply with stringent TDS compliance requirements, the principal sellers of goods and services await computation of commissioner/service charges and remittance of sales consideration from e-commerce service provider and, then deposit applicable TDS thereon. Later, they have to claim reimbursement from e-commerce service provider for the TDS so deducted and deposited.

Presently, the e-commerce sector serves several thousand small and medium enterprises and for whom, it is practically very difficult to comply with TDS provisions. Further, this results in several million instances of TDS deposits and reporting in quarterly TDS returns.

Recommendations:

Our request is that since all e-commerce companies are in the organized sector and are audited by large accounting firms, a notification may be issued u/s 197A (1F) to exempt applicability of TDS u/s 194-C, 194-H or 194-I on manufacturers or traders in India for commission, service charges, rental etc. deducted and retained by e-commerce service providers before making any payment to them.

It may be worth-while to note here that a similar situation was faced by credit card issuers who retain their share of commission and remit sales consideration (net of commission) to the sellers of goods and services. To ease the burden of TDS compliance on such sellers of goods and services, CBDT issued notification no.56/2012 dated 31.12.2012 whereby the commission paid to banks on credit card and several other services was exempted from TDS deduction.

However, if for some reasons, our above request is not acceptable, we request that instead of forcing thousands of small and medium enterprises to comply with TDS provisions on retention of commission or service charges or rental etc. by the e-commerce companies, the tax collection at source (TCS) may be strengthened by inserting a new clause (1E) to Section 206C (1) as follows:

"Every e-commerce service provider, at the time of retention or deduction of any service charges, commission, rental etc. from the sales consideration payable to the actual seller of goods or services or at the time of actual payment of sales consideration (net of service charges) in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deposit a sum equal to one percent of such commission or service charges etc, subject to the provisions of Section 197"

From an administrative perspective also, this would help the Government fix the responsibility on one taxpayer instead of thousands of suppliers. Further, it will widen the tax base as well as government will have information available about service charges, commissions etc. collected by e-commerce companies from several thousand suppliers across the country.

1.1.4 Inclusion of e-commerce companies in the definition of in-house R&D

Issue:

Section 35 (2AB) of Income Tax Act, 1961 provides tax incentive (200% weighted deduction on certain expenditure) to companies who are engaged in the business of business of bio-technology or in any business of manufacture or production of any article or thing or computer software and incur expenditure on scientific research.

The key criteria for claiming the deduction is that the company should be engaged in the business of bio-technology or business of manufacture of article or things not prescribed in the Eleventh Schedule. The nature of our industry requires us to develop many technologies in-house. These technologies either improve our efficiency of operations or enhance the customer experience. For example, several e-commerce companies invest heavily in developing and designing warehousing, Technology and logistics processes to handle millions of products situated in multiple locations through robotic or other processes. Similarly, a customer can search a product simply by uploading an image of the product.

Recommendations:

The provisions of section 35(2AB) should be widened to extend the benefits of the research and development to e-commerce service providers who use technology to develop various tools in the course of/for rendering service. We request that the suitable amendment be brought in the Act as well as the DSIR guidelines as well.

This would also be in line with many foreign countries where the R&D incentive provisions are liberal and not restricted to a brick and mortar setup.

1.1.5 Characterisation of payments in e-commerce transactions

Issues:

Tax litigation has emerged in multiple areas concerning characterisation of payments under e-commerce transactions. These range in some cases from simpliciter purchase of goods to complex services that may or may not involve grant of copyright. Such services may range from website or data hosting, data processing, data storage, ad space services, cloud computing, grant of copyright, etc. The issue on characterisation, both under the provisions of the Income tax Act, 1961 and an applicable Double Taxation Avoidance Agreement ('DTAA') gives rise to potential withholding tax on payments made under a rather uncertain taxing regime. This result in varied positions being adopted across transactions that may in form and substance be same or similar, leading eventually to different tax positions resulting ultimately in increased litigation. India's position on taxation of such transactions is unclear and different positions are being adopted by field officers in different jurisdictions. All of this has lead to uncertainty for the businesses both within as well as outside India. This uncertainty and aggressive or pro-revenue approach in some cases adopted by the administration has resulted in the fast receding trust of the common businessman in the country's tax system.

Recommendations:

Taxation of e-commerce transactions and the digital economy is being debated formally at the international level and India should determine its position on taxability of such transactions after due consideration of the international dialogue and recommendations especially considering the Base

Erosion and Profit Shifting ('BEPS') initiative of the Organisation for Economic Co-operation and Development ('OECD'). It is therefore recommended that no action should be taken in a hurry but should be taken only after due consideration.

It is necessary to align the Indian position on characterisation with the globally accepted position on such transactions. This is particularly required in context of DTAA's since by definition these are agreements signed for avoidance of double taxation. The underlying premise of a DTAA is that the two countries understand terms and taxation of income streams identified under the DTAA in a particular way. A unilateral amendment or contrarian position would not be in line with the fundamental proposition of a DTAA. Accordingly, it is recommended that India's position on the matter on characterisation of e-commerce transactions must be aligned with the international approach and hence the definition of the term royalty should be brought in line with the internationally accepted principles and practice.

Considering the above, it is recommended that the Government may review the issues related to the above and release a draft guidance on characterisation of e-commerce transactions for income tax purposes, aligning these to the international recommendations and also to indirect tax laws in India. Post a publicly debated process, an authoritative guidance in the form of a Central Board of Direct Taxes ('CBDT') circular may be released on the subject.

1.1.6 Ease of compliance for foreign companies earning only income in the nature of royalty and fee for technical services ('FTS')

Issues:

Currently foreign companies earning income in the nature of interest and specific dividends on which appropriate tax withholding has been undertaken are not required to file an Indian tax return. To ease compliance requirements, such relaxation should also be extended to foreign companies which earn income in nature of royalty and FTS on which appropriate tax withholding has been undertaken.

Recommendations:

Provisions of section 115A (5) should be extended to non-residents receiving royalty and FTS payments on which due taxes have been deducted at source.

1.2 Indirect Taxes

1.2.1 Roll-out of Goods and Services Taxes (GST)

Issue:

The Goods and Services Tax (GST) proposes to replace the plethora of Indirect Taxes with dual levy of Central GST (CGST) and State GST (SGST) on each of the business transactions, a system that will help all stakeholders-government, business and consumers by preventing leakage, cascading of taxes and lowering the incidence of Tax. Although it was to be rolled out from April1, 2010, it has been delayed due to differences between States and the Centre.

Recommendations:

It is recommended that the Government should provide adequate time to Industry on introduction and implementation of GST. It should also lay down sufficient time for stakeholder consultations.

While implementing the GST model, the Government should consider the Uniform Taxation Structure which would significantly change the current administration by replacing the string of Central and

State levies such as Central Excise, Service Tax, Central Sales Tax, Value Added Tax and Octroi with a unified Tax structure, thereby bringing simplicity, removing the cascading effect and creating a common national market. Integrated Central GST is the need of the hour.

It is recommended that the Government should maintain the Revenue Neutral Rate (RNR) for both the Goods and Services at around 6% CGST+6% SGST as suggested by the Thirteenth Finance Commission chaired by Shri. Vijay Kelkar.

The necessary drafts of Central and State GST Acts and Rules be framed and published well in advance, so that the Trade and Industry get enough time to work around and prepare for a smooth transition into the new regime.

1.2.2 Taxes on e-commerce Transactions

Issue:
In the current taxation structure, the key issues relate to applicability of Value Added Tax on e-Commerce transactions. It is observed that recently the concerned VAT authorities of various States are questioning the e-Commerce Companies which allow various Vendors to register themselves in the Warehouse, store the goods and sell them to the respective buyers. In substance, the concerned VAT authorities are asking the e-Commerce Companies to obtain VAT Registration in all such States, and discharge VAT on the transactions, on the sales done by the Vendors/ Suppliers.

Recommendations:
Based on information available in Media, it is understood that the Government is considering introduction of new Tax rules for global e-Commerce Firms soon. While it is expected that the same would resolve the current issues, it is suggested that the practical difficulties of the e-Commerce Firms are duly consulted and considered. Further, it is suggested that e-Commerce Transaction be specifically defined in the present legislation also so as to avoid any diverse treatments amongst the various States on this transaction model.

Since the Value Added Tax is a State subject, we are separately representing the concerned issues and key aspects before the State Governments authorities.

As and when the GST is rolled out, it is suggested that adequate consideration should be given to modality of taxation whereby the nature of activities involved in the end to end transactions are clearly defined and smooth implementation of e-Commerce Transactions becomes possible .

The taxation of e-Commerce is a complicated issue since the logistics, production and consumption takes place in different parts of the globe/ country therefore it is recommended to consider E-Commerce at par with Service providers subject to unified GST registration and IGST mechanism should apply.

1.2.3 Concurrent demand of CST from origin state and local VAT from the destination state

Issues:
The provisions of section 9 deal with the levy and collection of tax and penalties under the Central Sales Tax Act, 1956 (hereinafter known as CST Act). It explicitly states that tax shall be collected by the state from which the movement of goods commence. The said section has been reproduced herein for ease of reference and understanding:

“Section 9. Levy and collection of tax and penalties (1) The tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-state trade or commerce, whether such sales fall

within clause [a] or clause[b] of section 3, shall be levied by the Government of India and the tax so levied **shall be collected by that Government in accordance with the provisions of sub section [2], in the State from which the movement of the goods commenced**....."

From the above, it is clear that the state from which the movement of the goods commences is entitled to collect such tax payable on sales of goods affected by a dealer in the course of inter-state trade or commerce. However, due to revenue collection pressures and lack of awareness, the VAT authorities of states to which the goods are consigned also demand VAT with respect to sales made to the consumers in their respective states. In other words, there is a double claim of tax -from the origin state from which the movement of the goods occasioned and the destination state where the consumers are located.

The current appeal and fast track dispute resolution mechanism provided u/s 18A of CST Act, 1956 prescribe that if a dealer receives a tax demand u/s 6A (2) or (3) from a state on stock transfer of goods and on whose sales he has already paid tax in another state, he can directly appeal to VAT tribunal of the origin state. However, no such appeal procedure has been prescribed for a vice-versa situation i.e. where the Central Sales Tax has already been paid in one state on inter-state sales of goods and where the other state also demands VAT on the same, alleging the same to be local sales in its state. In most of the states, a tax payer is even compelled to make a substantial pre-deposit to even file an appeal before the first appellate authority. Further, in an eventuality of such inter-state transaction being held as local sale, there is no recourse to claiming refund of CST paid to the Origin state; or for the settlement of the tax paid amongst the States.

Recommendations:
In wake of the above, it is recommended that expeditious appellate mechanism prescribed under section 18A of the CST Act, be extended to disputes entailing whether transaction qualifies to be inter-state sale under section 3 of the CST Act, involving two States seeking to tax the same transaction (i.e., the origin State seeking to tax the transaction as an interstate sale and the destination State seeking to treat the transaction as a local sale).

Further, we request that Advance Ruling Authority constituted under the CST Act may be empowered to issue clarification in respect of the following amongst others:

- CST liability on transactions entailing interstate movement of goods
- CST liability on transaction in the course of export or import
- This mechanism should aid in reducing litigation and in providing certainty of tax position to dealers.

1.2.4 Clarification under Central Excise w.r.t. activity of reconditioning and refurbishment of Customer returns to make the Inventory live again by Sellers on E-Commerce platforms

Issue:
E-Commerce retailing suffers higher returns from the Customers and many times these items require some reconditioning and refurbishment to become saleable again. Reverse Logistics of return is quite complex and majority of players suffers losses in this activity due to vast length and breadth of country. Activities performed by third party service providers are liable to service tax and sale of goods is liable to VAT.

Recommendations:
A Clarification under Central Excise should be issued that activities of reconditioning & secondary

repacking in case of damaged goods, which is a service in nature, should not be liable to Central excise if Service tax is paid/payable by the person performing such activity for consideration. This will bring tax certainty and help e-commerce sector better comply with the law of land and manage the heavy losses caused by returns of goods by Consumers to Sellers.

1.2.5 Currently industry is having difficulty in obtaining centralized registration due to voluminous documentation and delay in granting of registration. The lead for obtaining service tax centralized registration takes around 30-45 days after submission of all documents required by the authorities. Authorities in most of instances are cancelling the registrations due to want of documents which were not initially required as per the legislation.

Issue:
Denial of credits due to delay in registration procedures. Cumbersome registration process due to voluminous documents such as affidavit, declarations, etc.

Recommendations:

A circular giving the detailed document requirement for registration would ensure easier filing of registration application.

1.2.6 As per the current excise regulations (i.e. Section 2(f)(ii) and 2(f)(iii) of the Central Excise Act, 1944), various activities such as packing, re-packing, labelling, re-labelling, declaration of MRP/ RSP on the products or adoption of any other treatment on the goods to render the product marketable to the consumer have been artificially defined to qualify as 'manufacture', i.e. a deemed provision has been created wherein various activities are treated as 'manufacture' and thus, liable to excise duty.

Issues:
The purpose of introducing the deeming fiction of 'manufacture' under Section 2(f)(ii) and 2(f)(iii) is to capture the value addition to the products. The products received and stored by e-commerce companies are ready and fit for sale and are capable of being sold without undertaking any additional activities. However, the excise authorities generally takes aggressive views in such cases and construe such activity as deemed 'manufacture' under Section 2(f)(ii) and 2(f)(iii).

Recommendations:
The activities undertaken by e-commerce companies do not bring any value addition in the products, as the products are already in a pre-packaged form and bears adequate declarations including the MRP/ RSP, wherever required. The e-commerce companies do not change the MRP/ RSP, if any, affixed on the product. Moreover, the products have already been subject to excise duty at the time of clearance by the Manufacturers; levying excise duty again on such product would violate the basic concept of excise and result in stretching the definition of manufacture to every stage of sale.

The activities undertaken by e-commerce companies are for the limited purpose of better inventory management, shipment and customer experience. Based on the above, it is recommended that a detailed clarification should be issued stating that these activities should not qualify as manufacture under Section 2(f)(ii) and 2(f)(iii) the Central Excise Act, 1944.

1.2.7 Many e-commerce companies are involved in providing digital content over the internet or through electronic network. Given the wide interpretation of the definition of OIDAR, digital content such as books, music, ringtones, etc which are more akin to sale of goods may also be categorized as OIDAR. This is also evident from the fact that the Education Guide issued by the Central Board of Excise and Customs in one of the illustration has clarified that digital content of books and web based services providing access or download of digital content should qualify as OIDAR service.

Issue:

The Supreme Court in the ruling of Tata Consultancy Services vs. State of Andhra Pradesh[1] held that 'goods' may be a tangible property or an intangible; it would become 'goods' if it has attributes of utility, transferability, delivery, storage, possession, etc. The Supreme Court also held that Software (as in case of paintings or books or music or films) in a medium form is 'goods'.

Thus, if Tata Consultancy Services ruling (ibid) is relied on, the digital content (being in intangible form) having aforesaid attributes should be regarded as 'goods'. Thus, the same should be subject to VAT/ CST. Given this, there is a possibility of both service tax and VAT being levied on sale of digital content which significantly increases the tax cost in the hands of the customers.

This proposition is against the Circular issued under the Maharashtra Value Added Tax, 2003 in the context of taxability of software license where it has been clarified that the taxability of software would be independent of the medium i.e. when sold through a physical medium vis-à-vis internet or email.

Recommendations:

Given the possibility of dual levy of service tax and VAT on digital content, it is recommended that the scope of OIDAR service should be clarified. Further, provision of digital content which is more akin to the sale of goods should be kept outside the purview of service tax regulations.

1.3 Policy Issues:

The growth of e-commerce and electronic payments is inextricably linked within the Indian eco-system. With regulatory layers governing both the e-commerce industry as well as the e-payments space it is critical that these industry stakeholders come together and develop a cohesive strategy to grow the online market, develop a trusted and consumer friendly online eco-system and catapult the Indian market into a mature internet economy. In India, e-tailing has the potential to grow more than hundredfold in the next 9 years to reach a value of USD 76 billion by 2021.[2]

The country's growing Internet-habituated consumer base, which will comprise ~180 million broadband users by 2020, along with a burgeoning class of mobile Internet users, will drive the e-tailing story. [3] The penetration of debit/ credit cards is low in India. COD is helping in gaining access to that part of population which doesn't own debit/ credit cards due to a trust deficit and complexity of perceived transaction use by the customer.

1. 2004 (178) ELT 22 (SC)
2. E-tailing in India: Unlocking the Potential- Technopak, May 2013
3. "

There are currently 17.6 Million credit cards and 278 Million debit cards in circulation which is an abysmally low figure as compared to 331 Million credit cards and 3.2 billion debit cards in China.[4] The financial services industry and the e-commerce industry must come together to bridge the trust deficit with the customer as well as work with policymakers to create a greater and more enabling environment for growth.

Below are a summary of key issues impacting the growth of the E-commerce industry:

1.3.1 FDI policy:

Under the extant FDI policy of 2012 and 2013, e-commerce is treated as an entry under the section-Trading. Although 100% FDI is allowed under the automatic route for business to business online trading, FDI in online business to consumer retail trading is restricted. We find the same restriction repeated as a condition while outlining the physical store multi-brand retail trading guidelines.

This in a nutshell essentially points to a complete restriction in foreign investment in online retailing directly to consumers. This poses a number of problems for e-commerce players both global and Indian.

It is well recognized that only flexible and a hybrid model which combines both the marketplace model enabling third party sellers to transact directly with consumers as well as the inventory led model where online retailers can source directly from manufacturers; co-existing on the same platform is the most effective model for e-commerce, for the consumer and for the growth of the industry.

This is because this hybrid model allows consumers a vast selection at great prices and sustainable availability and boosts demand. This in turn also greatly benefits local manufacturing and growth for small businesses. Currently due to existing policy restrictions, the over dependence on the marketplace model allowing foreign investment only in seller based models hugely restricts the innovation and growth of the e-commerce industry as well the ability for e-commerce companies to scale and invest in enhanced infrastructure, supply chain and logistics. It is important to also note that riders such as state specific restrictions in a policy framework will go against the very problems that e-commerce through technological innovations solves for scale and access. E-commerce is distinct from multi-brand retail in so far as it:

a. Does NOT create large retail stores in semi-urban areas therefore poses no threat to smaller stores in the same area. In fact smaller stores such as the Kirana can be used as delivery points for E-commerce. Thereby benefiting the eco-system overall. This has already started

b. Pure-play online players do not have offline presence and can also be restricted

1.3.2 Ease of doing business: .

Onerous and unfriendly tax environments in specific states:

The varied tax rates and structures among the states of India, is a major hurdle for the smooth movement of goods within the country affecting seller and consumer experiences online. Presently, the industry is facing a number of serious challenges on this front which will significantly impact the industry's ability to enhance investments in India and conduct operations smoothly. Few examples are listed below:

4. e-Commerce: Rhetoric, Reality and Opportunity- KPMG, September, 2013

VAT liabilities:
E-commerce marketplaces do not and cannot act as a seller and/or commission agent for the products that are offered for sale to the end-customers on the website since (a) it is neither factually correct; nor (b) E-commerce marketplaces are permitted to sell goods to end customers as part of an online B2C e-commerce transaction due to the restriction under the extant FDI policy. VAT liabilities, to be deposited by sellers, are being passed on to E-commerce marketplaces. We recommend that responsibility to charge and deposit VAT shall continue to lie with the Sellers.

Cash on Delivery (COD):
Inter-State consignments are subjected to seizure and incidences are becoming rampant, for both, prepaid and post-paid- Cash on Delivery (COD) consignments that are ordered by the end customer for self-consumption. Since, the tax liability on these is already being discharged by the seller in the state from where the shipment has originated, therefore we shouldn't be asked to pay for the tax again. We are specifically facing these concerns in Kerala and UP

Local Body Tax (LBT):
In Maharashtra, E-commerce marketplaces have received notices by the authorities to pay local body tax by various municipal bodies for transactions from our platform. Industry has made representation to the Maharashtra Government explaining how LBT is not applicable for sales meant for self-consumption and why E-commerce marketplaces are not liable to pay LBT.

Waybill compliances:
Waybills are required for movement of goods into or outside a State. Most of the states/ municipal corporations require forms for the movements of the consignments even though the consignments that are brought in are for self-consumption. We would request for uniformity and standardization of documentation process across all states. Having the online standardized systems/forms will improve the efficiency and enable better integration of the whole process till GST is implemented. For example – In UP and Uttrakhand, the State Governments have enforced the implementation of Form 39, a regulatory document to accompany all shipments exceeding INR 5,000 in value. This form needs to be procured by the customer from the local sales tax office, filled up and sent to the shipper for authorizing movement of the shipment into the state. This is a very tedious process and failure to comply may lead to seizure of shipment and/or penalty

Other Issues:
On the lines of liability of intermediary technology platforms, online marketplaces face similar hurdles from other state departments like the Legal Metrology, Food and Drug Administration (FDA) etc.

These issues arise squarely because of a lack of clarity on the role of Intermediaries, which the online marketplaces are, and this has led to the present spate of punitive actions against some of them by various enforcement agencies. Similar to the requirements for VAT compliance directly by the Sellers using an online marketplace, the onus of compliance with the Legal Metrology Act and correct labelling of product information and weights and measures is on part of Sellers directly and not the technology intermediary. In case of any issues of concern, online marketplaces should extend full cooperation to the authorities and also exercise 'due diligence' as prescribed by the law for taking actions against the sellers engaged in such acts.

2.0 Digital Payments

The payments landscape in India is at a point of inflexion. With intense competition and strategic collaboration among market participants lowering the costs of banking and underserved and unbanked consumers beginning to find utility in formal financial services, the opportunity will be immense. The new payments ecosystem will supplement as well as ride the wave of smartphones, internet penetration and recent policy initiatives like Jan Dhan, Aadhaar, Digital India and Digilocker to find creative ways to deal with each other in the new marketplace to settle their positions on where they will play and how they will win. Thus, the government will need to provide directional clarity to the market to encourage the new paradigm as well as to actively bring new users for newer and innovative ideas and practices.

2.1 Direct Tax:

2.1.1 Promotion Cashless Transactions in the Economy

Issue:
In terms of section 17(2)(v), any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family, is not considered as a perquisite, if such sum does not exceed INR 15,000 in a year.

There is lot of administrative costs involved in the reimbursement process. This can be reduced by making the transaction cashless and electronic, through a prepaid medical card. This will make it easier to administer and monitor the expenses rather than doing it through the cash receipts/bills. Hence, suitable provisions may be made on this aspect.

Recommendations:
Any sum paid by the employer in respect of any expenditure actually incurred by the employee or availed through a prepaid medical card on his medical treatment or treatment of any member of his family, is not considered as a perquisite, if such sum does not exceed INR 15,000 in a year.

2.1.2 The ease of doing business requires new and cost effective solutions, for each and every enterprise. Prepaid vouchers and cards for meals allow enterprise, to run businesses without blocking capital in cafeteria/canteens. This also supports the Quick Service Restaurant business to expand, along with the overall growth in economic activity.

Issue:
In this regard, attention is drawn to a need, to revise the allowable limit on prepaid meal cards under Rule 3(7) (iii) suitably, to match the current requirement. It may be noted that the current limit of Rs 50 per meal was set in 2001 and is today inconsequential to support such a welfare measure.

Recommendations:
The rules for valuation of perquisites post abolition of FBT notified in 2009 are identical to the erstwhile rules introduced in 2001; hence it is of utmost importance to revise the valuation norms suitably to keep their relevance in current times.

2.1.3 Issue of TDS on fees made by merchants to Payment Aggregators

Issue:
As per the notification no. 56/2012 [F.No.275/53/2012-IT (B), Dated 31-12-2012, TDS shall not apply on debit or credit card commission for transactions between merchant establishments and acquirer banks. It is pertinent to note here that this notification is applicable only on payments made to scheduled banks. Payments to establishments other than scheduled banks may not fall within the purview of this notification. Moreover, on careful analysis of various TDS provisions, arrangement between merchant and payment aggregator does not fall in any of the present provisions. For e.g. commission sections are generally used to deduct TDS by merchants, however, as per the above notice (not a direct reference), clearly declares that it cannot be regarded as principal agent relation between Merchant and Payment provider. Also, Payment aggregator share in the fee earned from merchant is very small and it has to pay good amount to Acquiring bank. Presently, deducting TDS at the rate of 10% on Gross receipts means blocking working capital of Payment aggregators, which already operates on thin margins.

Recommendations:
This unnecessary mechanism is putting additional work load to the administrative machinery of Government. If the Payment aggregator is in losses, then more time is spent in issuing them 197 (lower withholding certificates) and refunds. Additionally, as a market practice in India, merchants are generally settled on net basis after deducting fees by payment aggregators (through Nodal Accounts). In such a situation, merchants need to deposit TDS to Government out of their own pocket and claim the reimbursement from Payment aggregators. This is not in essence to the mechanism of withholding tax laws.

2.1.4 Impetus to e-payments

Issue:
The Government is seeking to introduce measures to promote electronic payment mechanisms and it should thus seek to provide incentives to market players intending to contribute to this sector.

Recommendations:
In order to incentivize players in the market to operate payment gateway systems and solutions and also to ensure capital for investment in further development of such solutions, we recommend offering tax incentives / tax holidays to such businesses.

2.2 Indirect Taxes

2.2.1 Service Tax on Unused/Unclaimed cash amount on expiry of Prepaid cards

Issue:

Before the Negative List, services in relation to charge cards/ prepaid cards were covered under the credit card, debit card, charge card or other payment card services. Under the old regime issuance of card was covered under the above entry. All these prepaid cards are issued free of charge.

The amount remaining unutilised on the expiry of the card cannot be considered towards any service rendered, but is merely a write back of a liability / unclaimed cash amount of the customer. Intimation is sent to the customer regarding the expiry of his card in compliance with the RBI regulations. In cases where the card of the customer expires with outstanding cash balance on the card, the liability towards the customer ceases and hence such amount is written back. However, under the new regime, service has been defined to include any activity carried out by a person for another for consideration, and includes a declared service, but shall not include an activity which constitutes merely a transaction in money or actionable claim.

Recommendations:

The IAMAI is therefore desirous to seek a clarification on the taxability to service tax in relation to the unutilized amounts on the prepaid cards on their expiry.

2.2.2 Meal benefit to employees

Issue:

The provision of free meals by employer to the employees is a welfare measure. The provision of free meals to the employees by the employer is a welfare measure and it is for this reason that such a perquisite is treated as non-taxable in the hands of the employees. The Revenue Department clearly spelt out the welfare rational behind this in their explanatory circular No.15 of 2001, dated 12.12.2001. In this Circular, estimation of income under the head "Salaries" is dealt with in para (5). Para 5.1(4)(IX) deals with free meals. The same is reproduced, as follows:

"IX. Free Meal:

The provision of free meals varies widely from uniform canteen food, coupons, etc. to lavish hotel meals. The scheme of free meals as a staff welfare measure had been recognized and was admissible upto Rs.35, for each meal. The new rule does not treat as perquisite meals if the cost per meal does not exceed Rs.50. Where any amount is recovered from the employee, such amount shall be reduced from the value of perquisite. Such free or subsidized meal should, however, be provided at office premises or through non-transferable vouchers meant for only meals during working hours. These vouchers should be provided by employers, encashable only at an eatery, a restaurant or a café. Tea or similar non-alcoholic beverages and snacks – in the form of light refreshments during working hours are not charged as perquisite. Also, arrangements for meals in 'remote areas' as prescribed in para 5.1 and similar off-shore sites as specified, shall be exempt. However, expenditure on provision of free meals by the employer in excess of Rs.50, should be treated as perquisite, as reduced by recoveries made from the employee."

From the aforesaid part of Circular, it is clear that the scheme of free meals is a staff welfare measure

and as a special benefit to the employees, provision of free meals up to ₹ 50, per meal, has been made free from tax.

Evolution of the Tax law on Meal provisions for Employees. The meal benefit was adjusted for inflation in 2001 when the limit was enhanced from Rs 35/ to Rs 50. Under Fringe Benefit Tax, the whole expense was exempt from any Fringe Benefit Tax. This brought it on par with any business related expense and was fully treated as expense necessary for a person to perform his duty. Unfortunately on roll back of Fringe Benefit Tax 2009, the Department reinstated the earlier perquisite taxation rules without considering the impact that inflation would have had and that the earlier meal limit of 2001 was not applicable in 2009. Today we are in 2015 and the same old limit of 2001 applies to meals provided by employer to employees.

DESCRIPTION	YEAR	TAXABILITY ON EMPLOYEE	COMMENTS
Startup law	1997 to 2001	Tax Free up to Rs.35 per day	
Valuation of Perquisites	2001 to 2005	Tax Free up to Rs 50 per meal	Limit enhanced looking at price inflation on meals
Fringe Benefit Tax	2005 to 2009	Tax Free with no limits defined	All expense on meals were kept exempt
Valuation of Perquisites	2009 to 2014	Tax Free up to Rs 50 per meal	Post abolition of FBT, the old rules of perquisites was reinstated in 2009 without taking into account any price increase since 2001

Recommendations:

Meal Expense has a direct co-relation with work and is not personal in nature. An examination of different perquisite taxation shows that meal clearly falls in the category of expense which is work related and not related to a personal benefit. Hence it should be seen differently than other benefits, which are of a personal nature.

Breakup of Allowances/Perquisites whether related to work or personal in nature:-

Work Related Necessity	Personal Nature or nature of benefit
Conveyance allowance to place of work	HRA LTA Medical
Car for only office use	Car for mixed or personal use Sweeper, Gardener, Watchman, Personal Attendant Gas, electricity, water Interest Free or concessional loans Holiday expenses Free or concessional travel
Free meals	Free education Gift Vouchers
Credit Card fee expenses for office expenses	Club expenses Use of movable assets Transfer of assets to employees ESOP

Conclusion: Conveyance to place of work and meals should be protected at all times

Whether inflationary impacts are considered for work related necessity:-

Work Related Necessity	Comments
Conveyance allowance to place of work	Impacted by inflation. But Revised recently
Car	Not impacted by inflation. The tax incident on employee is capped
Free meals	Impacted by Inflation, needs revision
Credit Card fee expenses	Not impacted by inflation as all office expense are exempt

As evident from above table except for Free meals other work related benefits are either not impacted by inflation or have been revised recently.

2.3 Policy Issues:

2.3.1 Balancing the Security and Usability of Payment Instruments (2FA)

While there is significant policy and regulatory focus on providing the access to financial products, the association feels that there is an equal focus required on deepening a customer's usage of these products to drive an integrated program of financial inclusion, hence a recommendation for gradual relaxation of 2FA, starting with returning customers at trusted merchants/ Payment Gateways and encouraging innovation in payments authentication within extant guidelines was made via a white paper filed with RBI on balancing the security and usability of payment instruments.

2.3.2 Coordinated efforts between issuers and acquirers to drive the adoption of electronic payments for everyday purchases using debit cards

We recommend capping the interchanges fees for Debt cards at a lower rate than currently applied in the market. This cap in conjunction with the Merchant Discount Rate (MDR) cap will leave sufficient margins for the acquiring banks and the Intermediaries to earn some revenue so that they can continue to work towards developing the market and fill the gap between the existing POS Terminals and Cards Issued.

3.0 Digital Advertising

Although there has been a rapid growth in the digital forms of advertisements across product categories, according to the marketers and industry experts, it is facing quite a few challenges which are impacting its growth significantly.

3.1 Direct Tax

3.1.1 Advertisement and marketing expenditure

Issue:
The digital industry is an emerging sector and significant amount of selling expenses in the nature of advertisement and sales promotion are incurred as part of the company's marketing strategy.

In some cases, Revenue has sought to scrutinize the heavy spending on advertisement and marketing expenditure incurred by Indian companies and taking a view that such heavy spending result in the creation of a marketing intangible. This has an effect of curtailing the need to spend on advertising and sales promotion which in turn would have a negative impact on the growth of the digital industry.

Recommendations:
It is recommended that administrative guidelines be issued to clarify that as long as the advertisement and marketing expenditure incurred are in connection with products sold/ to be sold in India a full deduction for the said expenditure should be allowed in the year in which the expenditure is incurred.

The above measure would provide better clarity for Indian enterprises in planning their advertising and marketing spending as per the business needs without the risk of uncertainty in terms of potential tax adjustments resulting from such spending.

3.2 Indirect Taxes

3.2.1 Restoration of Export Status of 'On-line information and Data Base access or retrieval services' based on location of Service Recipient

Provision of law:
Post introduction of the Negative List Regime with effect from July 1st 2012, the provision of services from Indian Service Provider to Overseas Entities is liable to Service Tax only where the Place of Provision of such service is in India. The Place of Provision of Service Rules 2012 (POPS Rules) under Rule 3 prescribed that while generally the Place of Provision of a Service would be linked to the location of Service Recipient, in case of services of specific nature, a different place of provision was prescribed (i.e. Rule 9).

Amongst other services, Rule 9 also covers: - 'On-line Information and Data Base Access or Retrieval Services', and hence POPS of the said service is linked to location of Service provider.

Issue:

The effect of above change is that 'Online Information and Data Base Access or Retrievable Services' provided by Service Providers located in India would now be treated as provided in India, and would not be considered as export even where the Service recipients are located outside India and make payment in Foreign Exchange. [In the Erstwhile provisions, such services were considered as Service Export, in terms of Export of Services Rules as prevailing during that time].

Recommendations:

Service Tax is a destination based consumption tax, therefore, in case of cross-border provision of services, the Tax accrues to the jurisdiction where the services are consumed. It may be noted that the POPS Rules framed under the Indian Service Tax Legislation, are also based upon the said international principle of taxing services, in the jurisdiction of consumption. In fact, the following few instances render support and / or substantiate that the POPS Rules are destination based:-

1. Generally the Place of Provision of a Service has been linked to the location of service recipient. In common understanding, a service is consumed by the service recipient; accordingly the Place of supply should ideally be linked to the location of the recipient.

2. It has been specified (under Rule 4) that in case of services in respect of goods that are required to be made physically available by the recipient of service to the provider of service, the Place of Provision of Service is linked to the location where the services are performed.

Further, it may be seen that Rule 13 of said Rules, confers power on Government to notify any description of service or circumstances in which the place of provision shall be the place of effective use and enjoyment of a service. This is done in order to prevent double taxation or non-taxation of the provision of a service, or for the uniform application of rules. As per the Education Guide issued by the Tax Board, this rule is in essence an enabling power to correct any injustice being done due to the applicability of rules in a foreign territory in a manner which is inconsistent with these rules, leading to double taxation.

Considering the above principle with respect to provision of Online Database Access or Retrieval services to Foreign Service recipients is concerned, it may be said that effective enjoyment and use of such services is outside India, where such data is accessed or retrieved. Further, following the destination principle the instant services being import, may be levied to Service Tax/ VAT/ GST in the country of import, leading to double taxation.

Therefore, it is recommended that the position regarding Export of 'Online information and Database access or retrieval services', may please be rectified, so as to restore the position which existed before July 1st, 2012 for Internet Service providers. This industry is in a nascent stage and such fiscal support, is important for its development.

3.2.2 Services rendered by Ad networks

Issue:

Provision of law

The scope of Service Tax on 'Sale of Space or Time for Advertisement' has been expanded in the Budget 2014. Earlier, Service Tax was leviable only on sale of space or time for advertisements in broadcast media, namely radio or television. However, in Budget 2014, the levy was extended to cover sale of space in Internet Websites, On-line media, ATMs, Aerial Advertisement, etc. Only Sale of space for Advertisements in Print Media has been kept outside the ambit of levy.

Recommendations:

It is recommended that earlier position of restricting the levy to sale of space in broadcasting media on radio and television, be restored back.

3.2.3 Utilisation of Cenvat Credit for Payment of Service Tax on Reverse Charge

Provision of law:

As per Rule 3 of CENVAT Credit Rules 2004 (in short 'CCR 2004'), Cenvat Credit is available for utilization for payment of Service Tax on any 'Output Service'. However, 'Output Service' under Rule 2(p) of the CCR 2004 excludes a service where the whole of Service Tax is liable to be paid by the recipient of service. By virtue of the same, Service Tax payable under Reverse Charge Mechanism (whether wholly or partially) is required to be paid in 'Cash' despite having accumulated balance of CENVAT Credit.

Issue:

This anomaly in the law is resulting in a situation where service providers are ending up in payment of Service Tax on these services in cash, despite having accumulated Cenvat Credit balance in their books. Service Exporters face a lot of difficulty in obtaining the Refunds, thereby affecting the Cash flow of such Companies adversely.

Recommendations:

It is recommended that the definition of 'Output Service' in Rule 2(p) of CCR 2004 is amended to include service on which service provider is required to pay Service Tax under reverse charge mechanism also. This will help in removing the anomaly in treatment of these services for payment of service tax, and for utilization of credit.

Since the Service Exporters are anyway eligible to claim the refund of the Cenvat Credit, it is a revenue neutral situation for the Government, but it will significantly help the businesses in avoiding the blockage of funds

3.2.4 Clarification on utilization of credit of Education Cess (E Cess) and Secondary & Higher Education Cess (SHE Cess) lying in Cenvat balance as on 31 May 2015

Issue:

Education Cess and Secondary & Higher Education Cess on taxable services has been discontinued. Further, no clarification has been provided regarding utilization of credit of E Cess an SHE Cess lying in the Cenvat balance as on 31 May 2015.

Recommendations:
The Government / Department should clarify that the closing balance of Education Cess and Higher Education Cess be available as a set off against the service tax liability arising on or after 1 June 2015.

Rationale:

- It is general rule to provide transitional rules for assessee to claim unutilized balances
- Cess balance lying with assessee would become cost
- Mitigating litigation

3.2.5 Amendment in the definition of Input services under the Cenvat Credit Rules, 2004

Issue:
Definition of 'input services' has been amended to specifically exclude services of rent-a-cab and services related to employees (i.e. consumption of employees) such as outdoor catering, life/health insurance, etc. The service industry is one of the major providers of employment opportunities in the country today. Given the fact that the offices under such industries run on a 24X7 basis, the services of transportation, provision of food to the employees, health and life insurance services are necessary pre- requisites which the employer has to provide to its employees to ensure that the output service is provided efficiently. Lapsing provisions had been introduced in respect of Cenvat credit on inputs and input services (i.e. vide Budget 2014). The amended provisions per Budget 2015 require credit to be availed within one year from the date of issue of specific documents.

Recommendations:
These costs form a material component of total costs and therefore, denial of Cenvat credit on such input services would result in extreme hardship to this sector and would drastically reduce their competitive advantage in the global market.

Also, keeping a time limit within which assessee need to avail Cenvat credit adds on to complexities/ hardships from a compliance stand point; and is also leading towards leakages in Cenvat credit despite bearing the incidence of tax.

3.2.6 Service tax - Extend time limit to file original and revised return

Issue:

- The original half yearly service tax returns are to be filed within 25 days from the end of the respective half years. The time limit provided for filing the original return for said periods of financial year are short and not adequate
- Further, the time limit of 90 days prescribed under Rule 7 of service tax Rules for revising of returns is woefully short as there is no further avenue available to an assessee to rectify mistakes and file revised returns (under the legislation) post 90 days

Recommendations:

- The due date for filing original service tax return should be extended by at least 3 months and revised service tax return should be extended to 9 to 12 months

Rationale:

- Most assesses require longer time for checking records and identifying reason for revising the return

- Other tax legislations like Income tax (2 years), State VAT and other legislations (10 - 12 months) provide for far longer time for revising returns. A similar approach needs to be adopted for service tax

3.2.7 Recently, CBEC has clarified that credit of education cess for all the invoices received after 1st June, 15 will be allowed as Input

- However, accumulated credit as on 31st May, no such clarification has been issued.

3.3 Policy Issues

3.3.1 Permanent Account number for Non-Resident (206AA)

Issue:

- As per section 206AA, it is mandatory for non-residents to obtain PAN in order to avail withholding tax rate as per Income tax Act / Tax Treaty else the tax needs to be deducted at the higher rate of 20%. Many non-residents may have one-off transaction with Indian parties, in which case obtaining PAN could lead to administrative burden. Also, in many cases where the tax is to be borne by Indian parties, the overall cost of the Indian party is increased due to non-availability of PAN.
- Further, provisions of section 206AA suggest that it overrides Tax treaties signed by India with other countries. Recently even judiciary (Bangalore and Pune ITAT in the case of Infosys BPO and Serum Institute of India Limited respectively) has taken a view that 206AA cannot override tax treaties signed by India with other countries.

Recommendations:

- Provisions of section 206AA should be relaxed for non-residents
- It may continue to apply for residents

Rationale:

- To further the objectives of achieving "ease of doing business in India". This administrative hurdle for non-residents should be removed.
- Most of the developed countries do not require non-residents to register or obtain tax account numbers for transacting business with residents. This is global practice.

4.0 Digital Start-ups

The Indian start-up ecosystem is fast evolving, which is being driven by an extremely young, diverse and inclusive entrepreneurial landscape. This is leading to emergence of focused domain solutions for verticals like ecommerce, food delivery, healthcare, agriculture, and education etc. An additional driving force is a four-fold increase in access to capital through VCs, angel investment and seed funding, which is allowing Indian entrepreneurs to work on building tailor-made products for their customers.

However, we should not forget that there is some work needs to be done. We need to address challenges on creating supportive government policies in terms of ease of doing business, tax incentives, availability of risk capital etc for the 'Make in India' initiative to become a resounding success.

4.1 Direct Tax

4.1.1 Angel Tax

Issue:
Angel Tax, which was introduced in the Finance Act, 2012, mandated that if an unlisted company raise capital from any individual against an issue of shares in excess of the fair market value, then it will have to pay 33 percent tax under Sec 56 (2) of the Income Tax Act.

Therefore in June 2013, Securities and Exchange Board of India had articulated a rule, under which angel funds would be identified as a sub-category with a smaller corpus requirement under the SEBI AIF (Alternative Investment Funds) Regulations 2012.

Angel Tax under Sec 56 (2) of the Income Tax Act has not been actually tailored to restrict start-ups funding but it has put start-ups under the Income tax scanner questioning the valuation by domestic individual investors. Though in the Union Budget 2014-15, the government has recommended to streamline the entire Angel Tax regime, it is yet to be clarified.

Recommendations:
The criteria to qualify as an angel fund are stringent and need to be eased to support the start-up ecosystem in the country. In fact, there should be tax breaks and incentives for individuals supporting start-ups with capital.

4.1.2 Capital Gains Tax

Issue:
Capital gains bother young start-ups. One can't equate investing in real estate and investing in start-ups the same way. The risk of investing in start-ups is much higher. Smaller funds and even angel investors find it difficult to deal with the capital gains as it eats into returns it seems that even before the ecosystem matures, they are getting penalised for trying.

Recommendations:
The association would request to cut down on government funding and as an effort to help more angel investors get involved, cut the capital gains taxes on profits earned on early stage companies. The last time India gave a favourable tax treatment, it created global giants like Infosys, Wipro and TCS.

4.2 Indirect Tax

4.2.1 Start-ups have to pay huge amount for the first three years in way of service tax

Issue:
Unfortunately, Start-ups have to pay huge amount of over the first three years in way of service tax. It is not that they don't want to pay, but they have survival issues and this takes a back seat and penalties just make a struggling start-up's life harder.

Recommendations:
Thus, we suggest, for the first three years, the service tax could be waived or incentivise start-ups if they pay their service taxes on time.

4.3 Policy Issues

4.3.1 Unfriendly regulations

Unfriendly regulations and policy paralysis have led many start-ups in India to set up ventures in other developing countries. Currently, most of the start-ups fail to compete with the large firms as public procurement rules are tailored towards larger firms, mostly PSUs and MNCs.

Recommendations:
In India, a same level of compliance is required for a private company valued at INR 20 lakhs or INR 20,000 crores and the New Companies Act has made matters worse. Also, Procurement Policy needs to be simplified for start-ups where a minimum percentage will be procured from start-ups.

The government should initiate a working capital support on softer terms for start-ups under the procurement policy with the loan decision and disbursal on a fast track basis.

4.3.2. Simplify Exits to Increase the Velocity of Capital Flow

In order for the start-up ecosystem to function, businesses must be able go through every stage of the lifecycle without hassle. Investors and entrepreneurs must be able to exit through acquisition or IPO if the company succeeds or a swift bankruptcy process if it fails.

Recommendations:
Making exits easier is key to attracting and maintaining more capital in India. Every investor dreams of taking a company public. It's the ultimate proof of concept when a business is able to stand on its own. Once a start-up reaches IPO, the investor may feel it's time to move on to his or her next venture. Unfortunately India's Companies Act of 2013 puts serious restrictions on investors and entrepreneurs in what would otherwise be an enviable scenario.

4.3.3 Intermediaries' protection

The uncertainty created by the current liability regime in India creates excessive costs for online intermediaries and start-ups, which could otherwise contribute more to the Indian economy and increase growth.

Online marketplace players have a stringent due diligence process to onboard sellers and it is also communicate in their agreement with sellers that they have to comply with all the regulatory obligations which lie on the supplier/seller or manufacturer of goods. However, in spite of this, if the seller fails to comply with certain regulations, intermediary technology platforms should not be held liable. For example, in Karnataka, the department of legal metrology has asked one player to comply with obligations which lie on the seller or manufacturer of goods. In some other instances, merchants may erroneously or intentionally violate some other product category regulations. Intermediaries such as e-commerce marketplaces should be required to take strong seller vetting and seller assessment steps. They should also be required to put in place product compliance process to check of errors in sale of illegal or restricted products. Intermediaries should be required to fully cooperate with authorities in helping bring those merchants to task in case of such error and to remove products or listings violating regulations. But intermediaries cannot be held liable themselves for these violations. These cause tremendous business continuity issues and a burden to a nascent, growing industry.

In fact, in India, Section 79 of the IT Act proffers safe harbor to intermediaries (marketplaces, aggregators and platforms), as long as they act on complaints and do not knowingly allow the usage of their platform to break the law.

Recommendations:
Intermediaries should not be harassed by the frivolous and mal-intentioned notices of the take down, and Internet users must be allowed to use online services without fear of illegal censorship or harassment, and online businesses, ranging from established international companies to small Indian start-ups, should be allowed to take advantage of a more conducive business environment.

4.3.4 FinTech innovations like P2P lending and crowd-funding need an impetus and clarity from Government

Peer-to-peer lending or P2P lending has become an established model of funding consumers and businesses in the US, UK and China and growing adoption in India. India is capital starved country and needs new alternative vehicles to increase access of capital. While some early inroads have been made in the P2P lending segment in the country, individual efforts have not translated into a policy from the government. The lack of clarity of rules and regulations has meant the industry is shooting in the dark.

In the absence of dictated policy or scriptures, it is quite plausible that misguided individuals may fall prey to unscrupulous operators that may look to make a quick buck.

Recommendations:
We would request the RBI to conduct impact assessments and come up with laws and mandates that include the overall. What is required is appointment of monitors that are trusted by users, have clear laws about what's acceptable and what's not and lay down procedures to resolve conflicts. This, however, has to be done keeping in mind how P2P sites work and what makes them unique. Any regulations that look to stifle the industry and contain market forces from driving down interest rates will be counterproductive.

Summary of Recommendations:

Digital Marketplace:

- It is recommended that the time-limit for carry forward and set-off of business loss be extended from the current period of 8 years to 12 years under section 72 of the IT Act to enterprises operating in the field of e-commerce. Rigors of section 79 of the IT Act should be restricted only in cases where the change in shareholding is effected with a view to avoid or reduce tax liability by way of a restructuring exercise.
- Our request is that since all e-commerce companies are in the organized sector and are audited by large accounting firms, a notification may be issued u/s 197A (1F) to exempt applicability of TDS u/s 194-C, 194-H or 194-I on manufacturers or traders in India for commission, service charges, rental etc. deducted and retained by e-commerce service providers before making any payment to them.
- It is recommended to issue necessary administrative guidelines with respect to taxation of various e-commerce transactions to provide for clarity. In particular, it is recommended to clarify that payments made for storage of computer data on servers, website hosting charges, data retrieval, access to online database and online advertisement should not be subject to withholding tax in India.
- The provisions of section 35(2AB) should be widened to extend the benefits of the research and development to e-commerce service providers who use technology to develop various tools in the course of/for rendering service. We request that the suitable amendment be brought in the Act as well as the DSIR guidelines as well.
- It is recommended that the Government should maintain the Revenue Neutral Rate (RNR) for both the Goods and Services at around 6% CGST + 6% SGST as suggested by the Thirteenth Finance Commission chaired by Shri. Vijay Kelkar.

Digital Payments

- Any sum paid by the employer in respect of any expenditure actually incurred by the employee or availed through a prepaid medical card on his medical treatment or treatment of any member of his family, is not considered as a perquisite, if such sum does not exceed INR 15,000 in a year.
- In order to incentivize players in the market to operate payment gateway systems and solutions and also to ensure capital for investment in further development of such solutions, we recommend offering tax incentives / tax holidays to such businesses.
- Meal Expense has a direct co-relation with work and is not personal in nature. An examination of different perquisite taxation shows that meal clearly falls in the category of expense which is work related and not related to a personal benefit. Hence it should be seen differently than other benefits, which are of a personal nature.

Digital Advertising

- It is recommended that administrative guidelines be issued to clarify that as long as the advertisement and marketing expenditure incurred are in connection with products sold/ to be sold in India a full deduction for the said expenditure should be allowed in the year in which the expenditure is incurred.
- It is recommended that the position regarding Export of 'Online information and Database access or retrieval services', may please be rectified, so as to restore the position which existed before July 1st,

2012 for Internet Service providers. This industry is in a nascent stage and such fiscal support, is important for its development.

- The due date for filing original service tax return should be extended by at least 3 months and revised service tax return should be extended to 9 to 12 months

Digital Start-ups

- The criteria to qualify as an angel fund are stringent and need to be eased to support the start-up ecosystem in the country. In fact, there should be tax breaks and incentives for individuals supporting start-ups with capital.
- We suggest, for the first three years, the service tax could be waived or incentivise start-ups if they pay their service taxes on time.

About IAMAI

The Internet and Mobile Association of India [IAMAI] is a young and vibrant association with ambitions of representing the entire gamut of digital businesses in India. It was established in 2004 by the leading online publishers, and in the last 11 years has come to effectively address the challenges facing the digital and online industry including mobile content and services, online publishing, mobile advertising, online advertising, ecommerce and mobile & digital payments among others.

Eleven years after its establishment, the association is still the only professional industry body representing the online and mobile VAS industry in India. The association is registered under the Societies Act and is a recognized charity in Maharashtra. With a membership of 190 plus Indian and MNC companies, and with offices in Delhi, Mumbai and Bengaluru, the association is well placed to work towards charting a growth path for the digital industry in India.

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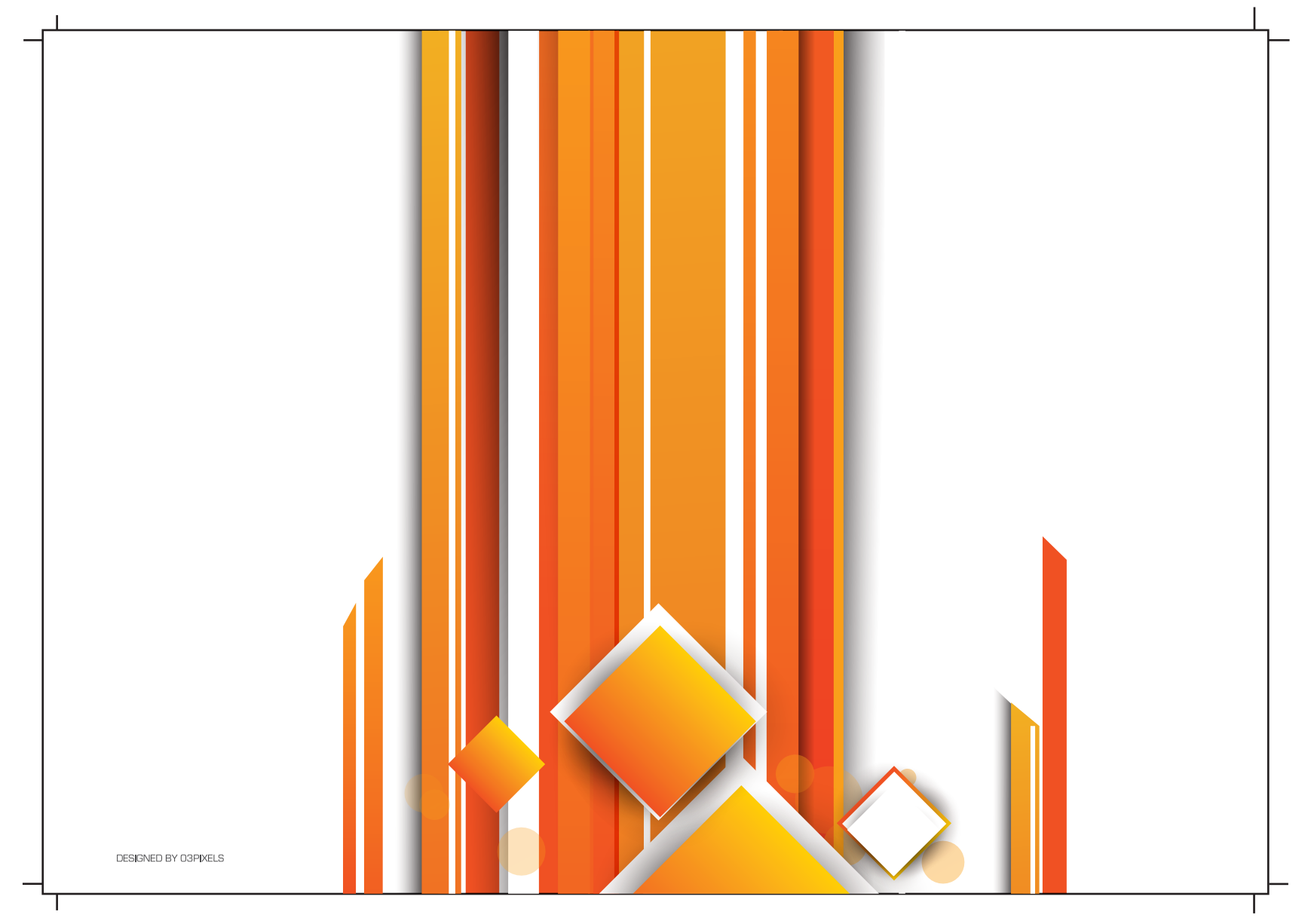
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