IAMAI

Internet And Mobile Association Of India

IAMAI PRE-BUDGET SUBMISSION 2022

EXECUTIVE SUMMARY

India has witnessed a rapid adoption of digital technologies in the last decade. Guided by the foresight of the Hon'ble Prime Minister's vision for a 'Digital India', the government has played the role of an encouraging enabler of digital technology since 2014. In the five years since the launch of the 'Digital India' programme, the country has witnessed a steady rise in the growth of digital infrastructure and e-governance services, that in turn have enabled the digital inclusion and empowerment of citizens.

India's digital economy generates around $230 billion which is 8 per cent of our GDP[1]. As per the Ministry of Electronics and Information Technology, this number is set to rise to $1 trillion by 2025[2]. Technology use and adoption is going to be the driving force of India's journey to becoming a USD 5 trillion economy. The positive externalities and the multiplier effect that digital and emerging technologies are going to bring about are going to be at the root of India's endeavours to become one of the largest economies of the world. Contribution of digital ecosystems to the economy are going to play a key role in the growth of existing and new sectors of the economy.

The government's proactive efforts have attracted various foreign technology companies to invest and conduct business in India. Besides, there has been phenomenal rise in home-grown tech start-ups particularly in the fin-tech and e-commerce space.

Within the digital sector, e-commerce has been one of the leading employment generating sectors in the economy and has provided significant growth opportunities for the logistics sector, warehousing, technology, infrastructure and support services. The sector has empowered millions of microentrepreneurs, and MSMEs are leveraging e-commerce to attract consumers from India and across the globe. However, to achieve its true potential the digital sector needs a stable tax and regulatory environment.

The Internet and Mobile Association of India ("IAMAI") is a not-for-profit industry body and we play a key role in ensuring the growth and sustainability of the digital industry. Our members comprise the majority players in India's digital ecosystem today and are representative of the diversity in India's e-commerce ecosystem. On behalf of our members, we would like to make the following suggestions for consideration of the Ministry of Finance for the Union Budget 2022. The submission, consisting of asks from the digital services sector will act as an impetus to the vision of Digital India.

Direct Taxes:

Key Issues at hand:

- The 1% TDS rate under section 194-O sometimes exceed the Income Tax liability of many small sellers. This creates unwarranted challenges as working capital of sellers gets blocked until they receive refund of the excess TDS.
- There are several digital platforms that merely list the seller's product alongside price, product description and contact information. However, owing to the wide meaning of the term "facilitate", doubts may arise whether such platforms which act as classifieds/ repositories will also be obligated to withhold tax under Section 194-O.

[1]'Digital economy a $1-trillion opportunity for India' - The Hindu BusinessLine
[2]MeitY_TrillionDollarDigitalEconomy.pdf (digitalindia.gov.in)

- The 2% Equalisation Levy (EL) not only covers transactions with Indian residents but with any person who merely uses an Indian IP address. It may be challenging for companies to track IP addresses of users and requires significant technical/workforce resources to implement.
- 206AB and section 206CCA in the Income-tax Act, 1961 ("ITA") require payers (in case of TDS) / payees (in case of TCS) to check whether the other party has filed tax return and accordingly do a higher withholding for a person who has not filed income tax return in the last 2 years. CBDT introduced 'Compliance Check functionality' for deductors/collector for determining applicability of section 206AB/206CCA. However, this functionality does not allow a real-time API based checking.
- CBDT prescribed thresholds for determining Significant Economic Presence (SEP) of a non-resident entity in India lacks clarity on the meaning of "systematic and continuous soliciting of business activities", "engaging in interactions" and "user".
- The process of filing a lower deduction certificate application is a long-drawn process and involves submission of several document and subsequent follow up with the tax officers in person.
- There is overlap of GAAR with the Principal Purpose Test ('PPT') or the Limitation of Benefit/Relief ('LOB') clause in the existing tax treaty.
- Taxpayers have been unsuccessful in obtaining personal (virtual) hearing with the tax officer after introduction of e-assessment proceedings.
- While industry has been working on ZERO MDR but is facing serious issues to continue it further as they have incurred a loss of approx. Rs. 3800 crores for UPI and RuPay Debit from Jan 2020 till date. At this rate, industry will not be able to invest further on expansion and adoption of digital payments acceptance.
- In October 2020, government introduced leave travel concession (LTC) cash voucher scheme to boost consumption. Under the scheme, the central government employees can claim cash equivalent of the LTC amount, comprising leave encashment and fare. With travel restriction easing, the travel sector needs an incentive to boost travel spending by consumers.

IAMAI Suggestions:

- To ease the burden on small businesses, TDS rate under Section 194-O should be reduced from 1 % to 0.25 %.
- Platforms that merely provide for listing of products, price, referrals, and other product related information should be excluded from scope of Section 194-O.
- To promote ease of doing business in India and in the spirit of collaboration with other countries, it is recommended to withdraw Equalization Levy with immediate effect or alternatively provide a credit mechanism similar to the Joint statement by EU countries.
- The Levy based on IP address in India is not an appropriate measure to determine application of EL. Government should hold consultations with industry to find a better method.
- CBDT may consider building a real-time API mechanism to validate ITR status.
- CBDT should clearly define the "systematic and continuous soliciting of business activities", "engaging in interactions" and "user". It should provide guidance using appropriate examples and quantifiable metric for explaining meaning of systematic and continuous.
- CBDT should simplify the documentation requirement for applying for a lower deduction certificate.
- GAAR provisions should not be applicable in the case where the existing tax treaty contains the PPT or LOB clause.

- In cases where tax adjustments are proposed by the tax officer as against the return of income filed, personal (virtual) hearing could be made mandatory to be offered to taxpayer. As an alternative, tax officers to provide reasons for not granting an opportunity for an in-person hearing.
- A reasonable MDR is required to sustain the industry. We would like to propose a revised, lower and controlled MDR on UPI and RuPay debit card.
- Government should allow a tax exemption for next two years for all employees with a maximum limit of INR 50,000 per person, provided the employee spends a sum equal to three times the allowable exemption amount on hotel accommodation, airfare or any other travel related booking including tour packages.

Indirect Taxes :

Key Issues at hand:

- In terms of Section 24 (ix) of the CGST Act, every supplier who is supplying goods through e-commerce is required to mandatorily obtain a registration irrespective of the turnover achieved. In general, intra-state offline suppliers are eligible for a threshold exemption of Rs 40 lakhs.
- Due to the limitation imposed vide the provisions of Section 10(2)(d), a supplier registered under the composition scheme will not be allowed to supply online through an e-commerce liable for TCS.
- Definition and scope of intermediary are widely interpreted by various authorities to include even principal to principal transactions. This is creating many issues for genuine taxpayers like unwanted litigation and denial of refunds at ground level.
- Indian GST registered sellers exporting through e-commerce platforms suffer Tax Collection at Source ('TCS') of 1% under GST laws, since GST laws do not exclude zero rated export supply from TCS levy affecting their working capital.
- Current requirement of payment of RCM liability in cash results in cash outflow for businesses which is returned as input credit. This unnecessarily leads to blockage of working capital, particularly in these trying times.
- Currently there is no effective dispute resolution body to address the litigation and issues relating to GST. GST law allows credit only if service is received. As a result, in case of advances input tax credit cannot be claimed. It has been observed that seller report proforma invoices/ advance voucher as B2B transactions in GSTR 1 and subsequently on provision of service, issue a GST invoice which is not reported in GSTR 1.
- Taxpayers are generally used to paying the tax "under protest" when they are not certain about the tax treatment whenever there are two views emerging. However, current GST regulation doesn't have any provision to support the payment of GST "under protest".
- Currently, some GST authorities are contending that, entire amount collected by the online gaming companies i.e. rake fee plus the prize money pool, is subject to GST. Further, the rate of GST applicable is contended to be 28% instead of 18%. The varied misinterpretation by a few states and tax authorities has created uncertainty for the industry and is impacting investor confidence along with business continuity plans for the operators.

IAMAI Suggestions:

- The benefit of a turnover threshold should be extended for intra-state suppliers of goods who make their supplies through an e-commerce platform in order to enable them to be treated equitably.
- The suppliers registered under the composition scheme should be allowed to effect sales through an e-commerce platform which will benefit the dealers and general trade overall. This can be restricted to intra-state sales only.
- We request government to issue an urgent clarification to exclude IT and ITeS service providers and service providers who provide service on a principal-to-principal basis from the definition of intermediary. Further, a clear guideline must be issued to define who qualifies as an intermediary, the condition/ test for an intermediary, etc.
- Clarifying that an e-commerce operator (ECO) is not obliged to hold back TCS on goods exported by seller through the ECO would reduce the compliance burden and improve working capital of sellers and thereby incentivizing exports from India.
- Remove requirement of payment of GST under RCM only in cash under Rule 85(4) of CGST Rules by way of amending the said rule.
- An effective dispute resolution body should be set up so that open GST issues can be addressed on fast-track basis. This will help address existing pending litigation at the earliest.
- A provision should be included to allow Input tax credit on advances. As anyways the recipient would pay tax to the supplier and such supplier is required to pay tax to the Government once payment has been received, on principles of equity ITC should be allowed to the recipient as well.
- Considering the fact that GST law is evolving and keeping in mind the divergent advance rulings, concept like payment “under protest” is an extremely important necessity for the taxpayer. Necessary amendment should be made to the GST law to bring the concept of payment “under protest".
- Only the Gross Gaming Revenue or the Platform Fee alone, may continue to be considered as value of supply which is being currently followed by the entire Online Gaming industry and hence continue to tax only platform fee/rake fee and not on the prize pool. GST applicable on the platform fees retained by the online gaming companies should continue to be charged at 18%.

DIRECT TAXES

Section 194-O of Income-Tax Act, 1961 (ITA):

Issue at hand:

Finance Act 2020 introduced Section 194-O that requires e-commerce platforms to deduct TDS (over and above TCS). Under such provision, an e-commerce operator, facilitating the supplies of goods or services by an Indian resident merchant, is required to deduct tax at source at the rate of 1% on the value of goods or services sold. Withholding taxation creates cash flow and working capital concerns, especially for the numerous small-scale sellers seeking wider market access via e-commerce platforms. It also raises administrative burden and compliances for such small-scale sellers in form of reporting and reconciliation. Some of the areas of concern with Section 194-O and IAMAI suggestions are following:

- The section mandates that TDS be deducted by an e-commerce operator, at the rate of 1% on the gross amount of sale of goods or services, facilitated by such e-commerce operator through its digital or electronic facility or platform. The section does not define the term "facilitation", which leads to ambiguity regarding its scope and ambit. There is a lack of clarity on what level of participation by an e-commerce operator in the supply chain is required so as to 'facilitate' the online sale of goods or services.
- There are several digital platforms that merely list the seller's product alongside price, product description and contact information (akin to a classifieds page in a newspaper or an advertisement). Accordingly, a potential buyer can only view such information on the digital platform but cannot make any purchases on such a platform. A potential buyer interested in making a purchase may be redirected to the seller's website or he may reach out to the seller through phone, email, messaging platform or any other manner. However, owing to the wide meaning of the term "facilitate", doubts may arise whether such platforms which act as classified repositories will also be obligated to withhold under Section 194-O. This issue has been recently a subject matter of Writ Petition before the Calcutta High Court in the case of MJunction Services Ltd.[1]
- Section 194-O requires the e-commerce operator to withhold tax even on payments that are not routed through the e-commerce operator. This is onerous because in certain types of e- commerce transactions, where the sale of goods or provision of service takes place directly between the buyer and seller, the e-commerce operator does not have visibility over the transaction, pricing of the goods/services, conclusion of the contract, etc. Also, there are numerous e-commerce models or aggregators where e-commerce operators may not be earning any commission. Levying TDS obligation on such e-commerce models also adds to administrative inconvenience and working capital hurdles.
- Section 194-O provides for levy of taxes on the gross amount of sales or services for which amount is remitted by the e-commerce operator to the e-commerce participant. The provisions are currently widely worded i.e. amount of sales has not been defined in terms of what relevant items it should include. In case of sales of goods, sales returns are very common in both retail and wholesale scenarios. In categories like fashion merchandise, the returns can be as high as 25% of the sales. TDS on gross level adversely affects the working capital of the e-commerce participant. The provisions of Tax Collection at Source ('TCS') on e-commerce operators under Goods and Services Tax ('GST') specifically provides for a reduction of "taxable supplies returned to the suppliers through the e-commerce operator" from the sales value to arrive at the 'net value of taxable supplies' on which the provisions of TCS are applicable. The suggested change aligns the TDS provisions on par with GST provisions for sales returns.

[1]WPO/441/2021

- Further, in addition to the sale of the goods or service, incidental charges such as delivery or transport charges, packing charges, gift wrap charges, convenience fee, etc. are charged by sellers to customers and form part of the invoice raised by the sellers. The incidental charges such as delivery, packing etc. charged to end customers by e-commerce participants represent the actual expenses incurred for availing services from the e-commerce operator. Accordingly, such incidental charges should not be subjected to TDS.
- As per the provisions of section 194-O an exemption of INR 5 lakhs is provided to Individuals and HUFs on the gross sales in a financial year. However, once the amount exceeds INR 5 lakhs, TDS is required to be deducted on the entire amount during the financial year.

  In the context of an online marketplace, it is inherently difficult, at the start of the year, to forecast whether the cumulative sales of a particular small and medium seller will cross INR 5 lakhs during the year and start applying TDS from the first sale itself – also, given increasing digitization, a lot of new small and medium sized sellers are getting on boarded which will amplify this situation and impact these sellers. An interest of @1% per month will also be unfairly triggered on deducting TDS for the sales below INR 5 lakhs once the sales cross INR 5 lakhs.

  - Many Indian businesses use e-commerce channels to export products outside of India. TDS under section 194-O will add to the working capital burden of the e-commerce participant who usually operate on very thin margins.
  - E-commerce operators are required to report lakhs of transaction for thousands of sellers in the quarterly e-TDS returns which is an onerous exercise due to the quantum of transactions. Reporting lakhs of transactions in the e-TDS returns is challenging and time consuming due to the sheer volume of transactions. Further, the NSDL and TRACES websites are unresponsive at times.
  - As per the existing law and the CBDT circular No. 17 of 2020 dated 29th September 2020, Section 194-O is applicable to Payment Gateway Service Provider ('PG') if tax has not been deducted by the e-commerce operator. As the PG's are involved only in processing of the transactions and are not linked with the e-commerce operator / customer, it will be difficult to do the TDS compliances if the e-commerce operator is not obliging the same. Further, the PG's operate at a very low margin. Hence, it is a challenge to comply with provisions, if the e-commerce operator fails to comply with.

IAMAI Suggestions:

- The 1% TDS rate under section 194-O sometimes exceed the Income Tax liability of many sellers. The creates unwarranted challenges as working capital of sellers gets blocked until they receive refund of the excess TDS. To ease the burden, TDS rate under Section 194-O should be reduced from 1 % to 0.25 %.
- Platforms that merely provide for listing of products, price, referrals, and other product related information should be excluded from scope of Section 194-O. It is impracticable for such e-commerce operators/ digital platforms, that merely list products and services to deduct TDS, in the absence of complete knowledge of the transaction and its terms.
- E-commerce operators should be liable for TDS only when payment is routed through them. It should be clarified that Section 194-O of the ITA will not cover the transactions strictly between user/customer and e-commerce participant and where no payment is due from the e-commerce operator to the e-commerce participant. Alternatively, it may be clarified that TDS obligation will extend to only such transactions where customer has a choice to pay either through e-commerce operator or directly to e-commerce participant and e-commerce operator holds information of consummation of transaction between customer and e-commerce participant.

- It may be clarified that Sales returns or cancellations shall be excluded while computing the 'gross amount' for the purpose of section 194-O of the Act and the withholding applies to the net amount of sales, similar to GST.
- Charges incidental to the sale of the goods or service should be excluded while computing the 'gross amount' for the purpose of section 194-O of the Act, provided, the same is separately shown on the invoice.
- It is requested that the exemption threshold for TDS deduction be increased to at least INR 40 lakhs for individuals and Hindu Undivided Family (HUFs), aligned with the threshold for GST registration[2] prevailing in majority of the states. Further, it may be clarified that the withholding tax under section 194-O for individuals or HUFs, being e-commerce participants shall apply only on the incremental amount exceeding the minimum threshold during the financial year.
- It may be clarified that provision of section 194-O will not apply when the e-commerce operator facilitates sale of goods or services by a resident seller to a customer outside India i.e. only sales to customers in India are covered under the provisions.
- The reporting requirements can be relaxed allowing e-commerce operators to report a monthly-consolidated entry to report all transactions during the month by a seller.
- It may be clarified that provision of Section 194-O will not apply to Payment Gateway Service provider involved only in payment processing of the transactions.

Equalisation Levy (EL):

Issue at hand:

The progress on OECD Inclusive Framework proposals on Pillar 1 and Pillar 2 are at an advanced level. Implementation is on the horizon by end 2023. The Multi-lateral Convention is expected to be developed and signed by participating countries in 2022. Increasing number of countries are moving ahead with withdrawal of Digital Service Taxes ('DSTs') and relevant similar measures. As per the recent Joint statement, Austria, France, Italy, Spain and UK have reached a political agreement with USA on providing credit for interim period against future tax liabilities to Multinational Enterprises ('MNEs') once the DST solution is implemented. In exchange, United States has agreed to terminate its proposed trade actions.

Separately, amendments were made in the Finance Act 2021 to clarify and expand the scope of the EL. The expanded provisions of EL are susceptible to alternative interpretations and likely to create significant uncertainty and complexity on scope and magnitude of the levy. It is requested to clarify below items with respect to charge of equalisation levy under section 165A of Finance Act 2016.

- Under the current provision, keeping track of all transactions which may happen partially online and partially offline would require businesses to keep books in accordance with each step of a transaction taking place, as opposed to keeping track of entire transactions at a time. Not only will this cost businesses operationally, but could also increase the amount of tax dispute and tax collection costs for the Government. This will inadvertently lead to an increase in transactional costs as well as operational costs for most stakeholders involved.

[2]GST exemption limit in India - Times of India (indiatimes.com)

- Under the current provision, any consideration received by a non-resident e-commerce operator for facilitating Indian sellers to export to markets outside India would be subject to EL. Imposing the levy on fees earned by non-resident marketplaces for facilitating exports from India will adversely impact exports from India as this will essentially be a tariff for Indian sellers exporting outside India and make them uncompetitive in the global market.
- Current provisions may unintendedly cover certain transactions and business models which are B2B supplies and therefore should be carved out of its scope, as these result in double taxation, such as inter-group services including IT/ ITES services, management support services, support services etc. provided by foreign group companies to its group entity in India; and Reseller/ Distributor arrangements wherein digital services/ goods are sold by non-resident entities through Indian establishments acting as re-sellers/ distributors.
- The 2% EL not only covers transactions with Indian residents but with any person who merely uses an Indian IP address. Further, the sale of advertisement space targeting Indian residents or customers who access the advertisement through an IP address located in India, and the sale of data collected from Indian residents or a person who uses an IP address located in India, are also covered within the scope of 2% EL. It may be challenging for companies to track IP addresses of users. Companies would need to commit significant technical resources and workforce for the purpose of building new systems or reengineer existing systems to track such IP addresses, which may not be 100% accurate, due to the presence of bots, and also due to the use of VPNs for genuine privacy reasons (e.g. corporate networks). The levy applies even in the case of foreign e-commerce operators selling goods and services to non-residents who may be temporarily in India and using Indian IP addresses. In such a case, the seller and buyer are both outside India's jurisdiction and there is no basis for such taxation as no value is generated from Indian customers.
- Furthermore, attempt by a non-resident e-commerce operator to ascertain whether the underlying sale was done using IP address in India, is conflicting with the Privacy Laws of many countries, thereby leading to 'impossibility of performance' in the hands of the foreign e-commerce operator.
- The provisions of EL are covered under the Finance Act, 2016 and have been kept outside the ambit of the Income Tax Act. However, there is an ambiguity on whether EL paid by e-commerce operator is in the nature of income-tax thereby, leading to challenges in claiming Foreign Tax Credit ('FTC') in the foreign country. This could lead to dual levy of tax on same income.
- As per the return format prescribed for the non-resident e-commerce operators (Form No 1), excess payment of EL is required to be claimed as a refund. However, there is no clarification/ guideline is issued regarding the process of claiming refund. Further, there is no option given for furnishing the bank account details while filing the return with refund claim. the time gap provided for making the EL payment is just 7 days for the first three quarters, and in the case of last quarter, non-resident e-commerce operators are required to deposit EL by the last day of the quarter itself. Because of such a tight timeline, most of the time, payments are based on the estimate, resulting in excess/ short payment of EL.
- In the case of excess payment, the only option given to non-resident e-commerce operators is to claim a refund. Claiming a refund is an administratively cumbersome and also time-consuming process.
- Income earned by e-commerce operator on which EL is applicable, is exempt under Income Tax Act. However, no clarification is provided that no income should be attributed to SEP in case the same is chargeable to EL.
- Post-discharge of Levy by a non-resident, in case a dispute arises as to the taxability of receipt (such as the existence of Permanent Establishment (PE) or characterization of royalty or Fee for Technical Services (FTS)), and the non-resident is made to pay the new tax demand and penalty and interest imposed by the tax authorities, the non-resident will be subject to double taxation and liable to pay penalty and interest for no fault on its part.

IAMAI Suggestions:

- On similar lines, to promote ease of doing business in India and in the spirit of collaboration with other countries, it is recommended to withdraw Equalization Levy with immediate effect or alternatively provide a credit mechanism similar to the Joint statement by EU countries.
- Facilitation fee earned by non-resident e-commerce operator on exports from India should be exempt from EL with the objective of incentivizing exports.
- EL provisions should specifically exclude transactions, which are traditionally not in the nature of e-commerce/ digital transactions. Hence, Intra- group company transactions for provision of goods & IT/ITES services and reseller/ distributor arrangements or transactions that are offline i.e the principal activity is carried out physically with merely placement/ acceptance or in some cases transmission of final deliverable is made online, should be excluded from coverage of EL. A clarification may be issued to the effect that there shall be no double taxation of the same intra-company transaction between related group entities.
- The above-mentioned transactions were also never intended to be covered in BEPS Action Plan 1 as well as CBDT's report on digital transactions. In this regard, an appropriate amendment should be made, or clarification issued to exempt intra-group transactions from applicability of EL.
- Considering that the objective of the EL provisions is to cover foreign digital companies and foreign e-commerce operators; it should be specifically clarified that the sale of goods or services facilitated through emails or define ERP platforms should not be subject to EL.
- The Levy based on IP address in India is not an appropriate measure to determine application as it is not reliable and requires significant technical/workforce resources to implement. Government should hold consultations with industry to find a better solution. It is also requested that the levy based on IP address should be ascertained and not be conflicting with the Privacy laws of many countries.
- On claiming the credit of EL paid, we also suggest issuing the necessary amendment to enable the self-adjustment option in the case of excess payment of EL. Under the self-adjustment option, non-resident e-commerce operators should be allowed to adjust the extra amount with subsequent period liability.
- Clarification should be provided to eliminate the overlap of SEP and EL provisions to ensure that the income chargeable to EL which is exempt, should not be attributed to SEP.
- In case a tax demand is made against the non-resident under any other grounds such as the existence of PE or characterization of royalty or FTS after the non-resident has discharged the Levy, such Levy paid by the non-resident should be adjusted against the tax demand. Further, no interest and penalty should be imposed on the non-resident with respect to such tax demand given the lack of clarity in the law regarding the applicable grounds for taxation of the non-resident.

Section 206AB and Section 206CCA:

Issue at hand:

- Finance Act 2021 introduced changes in the Tax Deduction at Source (TDS)/Tax Collection at Source (TCS) through Section 206AB and section 206CCA in the Income-tax Act, 1961 ("ITA"). These provisions require payers (in case of TDS) / payees (in case of TCS) to check whether the other party has filed tax return and accordingly do a higher withholding for a person who has not filed income tax return in the last 2 years and the aggregate of tax deducted at source and tax collected at source in his case is Rs. 50,000 or more in each of these two previous years. Higher rate applies to notified taxpayers referred to as 'Specified Persons".

- These provisions will create significant additional compliance burden on the taxpayer to check whether the deductee has filed its tax returns for the last two years. CBDT has introduced 'Compliance Check functionality' for deductors/collector for determining applicability of section 206AB/206CCA. However, this functionality does not allow a real-time API based checking. In the absence of such real-time API based functionality it becomes infeasible for taxpayers to check compliance towards an online real-time transaction. Recovery of additional TDS/TCS from customer once the transaction is already executed would lead to financial loss to the taxpayer.
- The 'Compliance Check functionality' also lists non-resident deductees as Specified Person. However, it is not specified on the functionality whether the non-resident deductee has a Permanent Establishment ('PE') in India or not.

IAMAI Suggestions:

- Government should reconsider whether such additional compliance obligations are needed. Nonetheless, CBDT may consider building a real-time API mechanism to validate ITR status. Till the time a real-time API based functionality is made available by CBDT to verify such compliance against a particular PAN the applicability of these provisions should be deferred.
- It should be specified in the functionality as to whether the non-resident deductee has a PE in India or not.
- Alternatively, the deductor should be allowed to proceed for non-applicability of section 206AB on the basis of the declaration provided by the non-resident deductee.

Significant Economic Presence:

Issue at hand:

As given above, various countries are moving ahead with withdrawal of DSTs and relevant similar measures. Further, Significant Economic Presence (SEP) provisions increases the compliance burden for taxpayers.

Separately, Finance Act, 2018 introduced SEP under Income-tax Act, 1961 ("the Act") by inserting explanation 2A to section 9(1)(i)[3]. The Central Board of Direct Taxes (CBDT) has stipulated Rule 11UD to prescribe the 'revenue' and 'users' threshold for the purpose of determining SEP of a non-resident entity in India. It will come into effect from 1st of April, 2022. CBDT prescribed following thresholds:

- Payments arising from transactions in respect of any goods, services or property carried out by a non-resident with any person in India, including provision of download of data or software in India during the previous year exceeds INR 2 Crores.
- Number of users with whom systematic and continuous business activities are solicited or with whom non-resident is engaged in interaction exceeds 300,000.

If non-resident entities meet either of the above-mentioned thresholds, they will be liable to pay taxes under Indian laws, even if they do not have physical presence in the country. Some of the key concern regarding this are following:

[3]CBDT defined SEP in explanation 2A to section 9(1)(i) as "transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed; or systematic and continuous soliciting of business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means". 5217GI.p65 (egazette.nic.in)

- Lack of clarity on the meaning of "systematic and continuous soliciting of business activities", "engaging in interactions" and "user".
- Same user logs in through various devices like smartphone, laptop, etc. with different IP address thereby increasing the user threshold. It is not clear whether customers of Indian resellers/ distributors of foreign exporters can be considered as users? The users may be active or passive. In the absence of clear guidance on how to quantify users for the purpose of clause (b) to explanation 2A, inconsistent approach may be adopted by taxpayers and tax authorities leading to ambiguity and tax disputes.
- In terms of section 163(1)(b), in relation to a non-resident "agent" includes any person in India who has any business connection with the non-resident. In terms of section 160(1)(i) an "agent" will be treated as a "representative assessee".

IAMAI Suggestions:

- To improve ease of doing business in India and in the spirit of collaboration with other countries on implementing OECD inclusive framework proposals, it is recommended to withdraw SEP provisions.
- Separately, CBDT should clearly define the "systematic and continuous soliciting of business activities", "engaging in interactions" and "user". It should provide guidance using appropriate examples and quantifiable metric for explaining meaning of systematic and continuous. In absence of specific guidance, it would be extremely difficult to apply this provision and this could result in litigation.
- CBDT should provide guidance or methodology for quantifying number of users providing examples for different types of businesses. Further, clarify that only active users are to be considered and clearly define level of engagement that needs to be considered as an active user. In absence of specific guidance, it would be extremely difficult to apply this provision and this could result in litigation.
- Guidance should be provided for implementation and interpretation of SEP provisions in the form of frequently asked questions. Draft guidance / FAQs should be released for public consultation so that industry could provide its insights and consensus on quantification of number of users, determine when activities could be said to be systematic and continuous etc.
- Prescribe rules for attribution of income at the earliest to provide certainty and smooth implementation of SEP provision. The attribution rules ideally be consistent with the recognized principles. Also, request public consultation on the draft rules. Till the time attribution rules are prescribed, keep implementation of the SEP provision on hold.
- It should be clarified that the provisions of Chapter XV of the Income Tax Act, 1961 related to "agent" and "representative assessee" does not get trigged when business connection is created as a result of Explanation 2A to section 9(1)(i). Business connection in the nature of significant economic presence gets created on account of interactions / transactions with multiple persons and such persons may not even know creation of business connection.

Simplifying procedure for obtaining Lower Deduction Certificate:

Issue at hand:

- CBDT has introduced the non-TDS deduction/ Lower rate deduction certificates to reduce the compliance burden. However, the process of filing a lower deduction certificate application is a long process and involves submission of several document and subsequent follow up with the tax officers in person.

IAMAI Suggestions:

- CBDT should simplify the documentation requirement for applying for a lower deduction certificate. Also, metrics such as past year losses incurred by taxpayer can be taken into consideration for issuing lower deduction certificate.
- Alternatively, CBDT can consider introduction of a scheme for issue of certificates on self-certification basis pursuant to a pre-defined criteria. To facilitate ease of doing business and help taxpayers especially MSMEs to obtain lower deduction certificates especially in the early years when the businesses may be incurring losses, it is essential to obtain a lower deduction certificate to ease the cash flow impact on account of accumulated TDS credits.

Income tax return ('ITR') for non residents:

Issue at hand:

- As per the amendment in Budget 2020, non-resident are exempted from filing income-tax return on their income of the nature of royalty or fee for technical services, if tax has been deducted at the rate given in section 115A. However, in a scenario where tax rate under Treaty is less than the rate under the Act, the same may not be available which will defeat the purpose of amendment and introduce compliance burden for non-resident.

IAMAI Suggestions:

- CBDT should provide clarification and use cases when a non-resident is required to furnish the ITR in India. Provide exemption where applicable taxes are deducted under Treaty where beneficial Treaty rate is applied. A clarification will enable the non-resident in ease of undertaking tax compliances and the clarity will enable in avoidance of litigation.

TCS on sale of goods:

Issue at hand:

- Finance Act 2020 introduced new section 206C (1H), it requires TCS to be collected by a seller on sale of goods (aggregate value of consideration from a buyer exceeding INR 50 lakhs in a financial year) at 0.1% of the sale consideration, provided the total sales / gross receipts / turnover of the seller exceeds INR 100 million[4]. With the introduction of TDS provision under section 194Q, the quantum of transactions that would be subject to TCS provisions would stand substantially reduced. TDS provisions under section 194Q[5] triggered on accrual or payment whichever is earlier. However, TCS provisions trigger on payment basis. If a transaction has suffered TDS under section 194Q, then TCS provisions will not apply on such transaction. This implies that the seller needs to first ascertain whether the buyer of goods would undertake TDS compliances under section 194Q, if not then again test the transaction for applicability of TCS provisions. Such an obligation on taxpayers is extremely cumbersome to comply. It is practically difficult to comply and reconcile provisions of Section 206C(1H) and Section 194Q on account of the above complexities and may lead to disputes between the buyers and sellers.

[4] 3218938.pdf (egazette.nic.in)
[5] circular_13_2021.pdf (incometaxindia.gov.in)

- A prescribed seller is required to comply with TCS compliances under section 206C(1H) in Form 27EQ on a quarterly basis. Rule 31A of Income tax rules prescribes the format for TCS return, which requires supplier of goods to report transactions on which TCS is not collected due the option selected by the customer of deducting TDS. Suppliers are also required to report details of challan number and date of remittance of TDS u/s 194Q by customers. Collection of details from customers of challan number and date of remittance of TDS u/s 194Q on monthly basis could be a challenge due to following reasons. (1) This will be a manual input and not validated by the tax portal, (2) There is no obligation for the buyer to provide this information, (3) limited period of a week's time to collect last month's details of every quarter (for instance the due date for last month's remittance is 7th of subsequent month and TCS return to be filed by 15th of that month).

IAMAI Suggestions:

- It is recommended that the provisions on TCS under section 206(1H) are withdrawn as the objective of tracking high value transactions are now achieved by introducing Section 194Q.
- The requirement of reporting details of challan number and date of remittance of TDS u/s 194Q by customers should be withdrawn.

Interest on non-deduction of TDS:

Issue at hand:

- As per section 201 of the Income-tax Act, delay in deduction of TDS within the same month attracts interest @1%. Even if there is a single day delay in deduction of TDS, a full month interest is applicable even when the deduction is made within the same month and liability remitted on time as per the due date.

IAMAI Suggestions:

- This provision should be amended to give relaxation in cases where TDS is deducted within the same month and TDS is paid on time within the due dates. Relaxation should be provided on any administrative delays especially for small businesses adopting a manual accounting process. Also, the consequential penalty can be relaxed in genuine cases of administrative delays. In addition, CBDT should provide clarity to non-residents on maintaining documentation and records for the specified period.

Applicability of valuation rules under section 56(2)(x) and 50CA of the Act:

Issue at hand:

- Valuation rules for section 56(2)(x) and section 50CA are applicable even in cases of genuine internal restructuring where ultimate ownership does not change.

IAMAI Suggestions:

- Suitable amendments should be made in Rule 11UA to provide that fair market value (FMV) of the underlying assets for valuation of an unquoted equity share should only be adopted only in cases of transactions resulting in change in control and management in the company. Further, to determine, 'control' or 'ownership of the company', precedence can be taken from prevalent practices/rules followed under the Act and may be appropriately provided for in the rules.
- The rules for determination of FMV of unquoted equity shares for section 56(2)(x) and 50CA of the Act had been introduced as anti-abuse provisions and intended to curb transfers of unquoted shares at nominal value despite such shares holding underlying assets of substantial value. However, it would be inequitable to apply the rule in cases where control in the company has not changed. Genuine cases of internal restructuring where the ultimate ownership does not change should be provided an exemption from adopting FMV as in case of rearrangement within the same owner group.
- It may be clarified that in cases where a price has been negotiated in terms of the applicable law / regulations, such price shall would be deemed to be the FMV of such listed shares and securities for the purposes of section 56(2)(x) of the Act. It could not have been the legislative intent to visit such genuine, bona fide transactions and tax-payers with a liability in such cases where the pricing determination is made within the framework of application Indian regulations.

Applicability of General Anti Avoidance Rules ('GAAR'):

Issue at hand:

- Overlap of GAAR with the Principal Purpose Test ('PPT') or the Limitation of Benefit/Relief ('LOB') clause in the existing tax treaty.
- Overlap of GAAR with the anti abuse provisions introduced in the Multilateral Instrument ('MLI').

IAMAI Suggestions:

- GAAR provisions should not be applicable in the case where the existing tax treaty contains the PPT or LOB clause. GAAR provisions should be invoked only in rare instances where it is directly apparent from the documentation or behaviour of the taxpayer that the transactions have been designed to abuse the provisions of the Act for the evasion of tax; genuine transactions that may confer tax benefits should be kept out of the purview of GAAR. In cases where the tax treaties already have the PPT or LOB provisions, subjecting the taxpayer to rigors of the anti-abuse provisions of GAAR also is cumbersome and not in favour of ease in doing business in India.
- GAAR provisions should not be applicable to transactions which are subjected to anti abuse provisions of the MLI. Further, it should be clarified that provisions of the MLI should not be resorted to take away the benefit of grandfathering granted in respect of income from transfer of investments made before 1 April 2017. Also it is recommended that suitable safeguards (similar to those present in GAAR provisions) should be put in place for invocation of PPT.
- Excluding GAAR also when anti abuse provisions under the MLI are applicable would pave the way for a conducive economic environment and persuade the global multinationals to establish their footprint in India with clarity on the domestic tax laws prevalent in the country. Further, if suitable safeguards for invocation of PPT is not provided, it could alleviate widespread concern of the taxpayers that PPT will be invoked by the IRA without satisfying the checks and balances as provided in the GAAR provisions.

Transfer pricing mark-ups for Captives:

Issue at hand:

- IT/ITES Captives routinely face high pitched transfer pricing assessments with mark-ups of 25 to 30 percent being asserted by tax officers at lower levels, as against mark-ups of 15-18 consistently concluded in APAs & MAPs across the years and resolved at the higher levels of appeal.

IAMAI Suggestions:

- Provide guidance to tax officers at lower levels to conclude assessments at more reasonable mark-ups to avoid further litigation. Expedite closure of APAs similar to the timelines introduced for MAPs.
- Expand the scope of dispute resolution schemes like "Vivad se Vishwaas scheme" to settle such disputes.
- High pitched assessments lead to avoidable litigation on this relatively standard industry issue for hundreds of captives in India on a Y-o-Y basis. This will help reduce the quantum of litigation and reduce pending appeals.

Exemption from maintenance of Transfer Pricing documentation and compliance under section 92E of Income-tax Act ('the IT Act'):

Issue at hand:

- Vide Finance Act 2020, section 139 the IT Act was amended to provide relief to non-residents from filing of income tax return, where their total income consisted only of income by way of royalty and/or fees for technical services, and appropriate taxes had been withheld by the Indian Payer. However, a parallel amendment has not been made to section 92D or 92E of the IT Act, so as to exempt the foreign companies from carrying out with the compliance mandated under aforesaid sections.

IAMAI Suggestions:

- As the details mandated under section 92D/ 92E are already available through documents furnished by the Indian Group entity of the foreign company, no additional information/ benefit is obtained by mandating the foreign company to carry out with the compliance requirements.
- Therefore, it is requested that necessary amendments, as made to section 139, be made to section 92D/ 92E of the IT Act.

Levy of interest under section 234B in case of Advance Pricing Agreement ('APA') issues:

Issue at hand:

- In cases where an APA is negotiated and resolved, when the pricing decided on date of resolution of APA exceeds the pricing as per the ITA, for excess tax payable interest under section 234B is also levied.

IAMAI Suggestions:

- In cases where as a result of the APA, if there is tax payable, it should be clarified that interest under section 234B should not be levied on the taxpayer for the incremental payment of taxes. The APA process takes time for negotiation and resolution. For ease of doing business for the taxpayer it is recommended that interest should not be levied as the delay in payment which is due to pendency of the APA which is a genuine reason.

Faceless assessment proceedings:

Issue at hand:

- While the scheme has provision for an in-person hearing subject to necessary approvals, Taxpayers have been unsuccessful in obtaining personal (virtual) hearing with the tax officer after introduction of e-assessment proceedings.

IAMAI Suggestions:

- In cases where tax adjustments are proposed by the tax officer as against the return of income filed, personal (virtual) hearing could be made mandatory to be offered to taxpayer. As an alternative, tax officers to provide reasons for not granting an opportunity for an in-person hearing.

Adjustment of refunds against demand stayed by the tax officer:

Issue at hand:

- Companies that are subject to Income Tax scrutiny year on year often have several ongoing litigations across years. Companies deposit the specified demand under protest say 20% and rest of the demand it is stayed until the disposal of appeal. However, any refunds for a different year is automatically adjusted against pending demand even though the demand has been stayed.

IAMAI Suggestions:

- Amend the provisions suitably to not adjust demands against pending refund when a formal stay has been granted. In several cases, litigations span over years and adjusting of demands against refunds adversely impacts the working capital requirements of the Company.

Rule 3(7)IV of the Income Tax Act: Valuation inrespect of gift, voucher or token

Issue at hand:

- The provision of Gift, Gift Vouchers or Token was allowed as a tax-free perquisite upto Rs 5000/ per annum for any Gift given by an employer to employee or their family on ceremonial occasions or otherwise. Digital Gift Vouchers play a major part in motivating and creating goodwill between the employer and employee. These Digital Gift Vouchers also are immediately spent creating demand in the economy. The value of Rs 5,000/ should be upgraded to Rs 15,000/ looking at the passage of time since this value was set.

IAMAI Suggestions:

- The value of Rs 5,000/ should be updated to Rs 15,000/ looking at the passage of time since this value was introduced.

Exemption for ESOPS:

Issue at hand:

- In Budget 2020, the relaxation by way of providing deferment of taxability of ESOPs in the hands of the employees at the time of sale/ 5 years from date of grant whichever is earlier has been proposed in the case of registered start-ups. To avail the benefit of the deferred tax on ESOP the employer has to be (i) an eligible startup referred to in section 80-IAC of the Income-Tax Act i.e. should be incorporated on or after April 1, 2016; (2) it should be notified by the Department of Promotion of Industry and Internal Trade (DPIIT) as a start-up and (3) should be certified by the inter-ministerial board (IMB); and (4) the turnover does not exceed Rs 100 crore.

IAMAI Suggestions:

- The provision for relaxation of ESOP taxation should be offered to all other Private companies not falling under the start-up definition of the Government.

Exemption/ Deduction under income tax on travel spending:

Issue at hand:

- In October 2020, government introduced leave travel concession (LTC) cash voucher scheme to boost consumption. Under the scheme, the central government employees can claim cash equivalent of the LTC amount, comprising leave encashment and fare[6]. Later the scheme was extended to employees of state governments, state-owned enterprises and the private sector. Under this scheme, the payment of cash allowances in lieu of LTC fare, with a maximum limit of INR 36,000 per person were exempted from tax provided the employee spends a sum equal to three times of the value of the deemed LTC fare on purchase of goods/services which carry a Goods and Services Tax (GST) rate of at least 12% from GST registered vendors/service providers through digital mode. This scheme promoted public spending and motivated people to buy from the GST registered supplier. Travel sector needs similar push to boost spending.

IAMAI Suggestions:

- Government should allow a a tax exemption for for next two years to all employees with a maximum limit of INR 50,000 per person provided the employee spends a sum equal to three times the allowable exemption amount on hotel accommodation, airfare or any other travel related booking including tour packages which carry GST rate of at least 5% from a GST registered hotel, airline or a travel agent.
- Alternatively, allow a deduction of INR 1,00,000 under Chapter VI of Income Tax Act towards the expenses on hotel accommodation, airfare or any other travel related booking including tour packages which carry GST rate of at least 5% from a GST registered hotel, airline or a travel agent.

[6]Date to claim LTC cash voucher scheme nears. All you need to know | Latest News India - Hindustan Times

‘Infrastructure status’ to fintech sector:

Issue at hand:

- Fintech has played a major role in promoting transparency, cashless economy and access to timely payments to underprivileged in remote corners of the country. It is one of the important ‘Shared Services’ that would help connect and promote digitization in Indian agriculture, Indian MSMEs and informal economy.

IAMAI Suggestions:

- It is imperative to provide the conducive environment to both new and existing fintech startups, in terms of easing access to funding at concessional rates and lower taxation by providing ‘Infrastructure Status with special provisions’ for the new-age yet important nation building industry such as Fintech.

Lower controlled MDR on UPI and RuPay debit card:

Issue at hand:

- While industry has been working on ZERO MDR but is facing serious issues to continue it further as they have incurred a loss of approx. Rs. 3800 crores for UPI and RuPay Debit from Jan 2020 till date. At this rate, industry which is already being questioned by its investors on viability will not be able to invest further on expansion and adoption of digital payments acceptance. Eventually, the industry will also be under pressure to maintain the existing infrastructure, with no revenue for servicing the clients.

IAMAI Suggestions:

- We would like to propose a revised lower controlled MDR on UPI and RuPay debit card.

Proposed MDR on UPI and RuPay debit cards

UPI	MDR	Max Cap per transaction
Merchant Category		
Small Merchants (with turnover up to INR 20 lakh during the previous financial year)	Not Exceeding 0.15%	INR 100
Other Merchants (with turnover up to INR 20 lakh during the previous financial year)	Not Exceeding 0.30%	
RuPay	**MDR**	**Max Cap per transaction**
Merchant Category		
Small Merchants (with turnover up to INR 20 lakh during the previous financial year)	Not Exceeding 0.15%	INR 150
Other Merchants (with turnover up to INR 20 lakh during the previous financial year)	Not Exceeding 0.60%	

Increase TDS limit for section 194B:

Issue at hand:

- The thresholds limit for payment made with respect to the distribution of prize money from winnings from lottery or crossword puzzle or any sort of game mentioned under Section 194B of the Income-tax Act, 1961 ("IT Act") is currently INR 10,000. Such limit was increased from INR 5,000 vide Finance Act 2010.
- Given consistent inflation in the Indian economy and the fact that the last increment was over a decade earlier, the limit needs to be reviewed to protect small winners from the burden and hassle of filing tax returns/ claiming refunds etc.

IAMAI Suggestions:

- IAMAI recommends to increase the thresholds under Section 194B of the IT Act to INR 50,000/- in the present context.

Stakeholder involvement and enough time for implementation:

Issue at hand:

- Recent amendments in tax withholding and compliance provisions affect a large set of taxpayers if not all. Such massive changes, which are sometimes only for gathering information and not for collection of revenue, need to have inputs from taxpayers before enacted into law.
- Further, the reporting or compliance required entails massive changes to be made by tax payers in their business operations including their ERP or digital systems or IT system.
- Enough time is not provided to the tax payers for incorporating all the changes sought to be made.
- Further, department's clarifications, guidance/ FAQs and rules are provided only at the very last minute thus depriving taxpayers an opportunity to have clarity on the changes to be implemented.

IAMAI Suggestions:

- Each new amendment in compliance provisions which impacts tax payers should be brought into law only after proper opportunity is provided for stakeholders to make suggestions and provide feedback.
- Enough time – at least 6-9 months from date of implementation of law as well as notification of rules – should be provided to tax payers before the provisions are implemented into law.

Extension of benefit of notification no. 21/2012 dated 13-06-2021 to payments for Software as a Service (SAAS):

Issue at hand:

- Under the powers conferred by Section 197A(1F) of the ITA, CBDT vide Notification no. 21/2012 dated 13-06-2012 has notified that no deduction of tax shall be made on payments made for acquisition of software from residents wherein the software acquired is in a subsequent transfer and the transferor has transferred the software without any modification and TDS has been done on the same either u/s 194J or u/s 195.

- Such exemption was provided by CBDT owing to difficulties faced by the business considering that resellers have low profit margin and imposition of withholding tax obligations would further lead to blockage of working capital.
- Software as a Services (SAAS) is on-demand availability of software on cloud (hosted by the service provider or third party), without direct/ active ownership, usage and management by the user.
- Owing to above advantages, worldwide user spending on SAAS has increased tremendously. Customers prefer SAAS over the on premise traditional software licensing / acquisition arrangement.
- Software as a Services (SAAS) is also distributed through reseller model similar to that followed for software distribution. These resellers do not modify the product / service offerings and they merely enable distribution of the services including administrative assistance such keeping the customers informed, dealing with the customers on day-to-day basis, collection of fees etc.

IAMAI Suggestions:

- It is requested that the benefit of notification no. 21/2012 to be extended to the transactions for procurement of software as a service (SAAS) by the customer, wherein the SAAS is procured in a subsequent transfer and the transferor has transferred the SAAS without any modification and TDS has been done on the same either u/s 194J or u/s 195.
- By extending the benefit of the notification there will not be any loss of revenue to exchequer as tax would already be deducted at first level by the original reseller. The subsequent parties in the distribution chain (viz. resellers / distributors) are resident taxpayers who will anyways be filing their income-tax returns and paying the due income-tax.
- Further, the customers are interested in using the software, regardless of the fact as to whether it is hosted on the cloud or on premise. Hence, in order to have level playing field for Software and SAAS distributor, this benefit shall be extended to SAAS distributors as well.

No TDS u/s 193 on 'Interest on Securities' earned by a business trust defined as per Section 10(23FC):

Issue at hand:

- As per section 10(23FC) (a) of the ITA, any income of a business trust by way of interest received or receivable from a special purpose vehicle ('SPV') shall be exempt.
- Further, Circular 1/2015 dated 21 January 2015 and the Memorandum to the Finance Act, 2014 with respect to the taxation regime of business trust states that the income by way of interest received by the business trust from SPV is accorded pass through treatment i.e., there is no taxation of such interest income in the hands of the trust and no withholding tax at the level of SPV.
- While section 194A(3)(xi) – "Interest other than Interest of securities" provides that tax withholding shall not apply in case of any income by way of interest referred to in section 10(23FC), similar exception is not provided in Section 193 of the Act, which results into unintended deduction of tax on exempt income and impacts cash flow of business trust.

IAMAI Suggestions:

- It is recommended that an exclusion similar to the one provided in section 194A(3)(xi) should be provided in section 193 – Interest on Securities with respect to non-applicability of withholding tax on any income by way of interest referred to in section 10(23FC).

- Generally, in order to meet the funding requirement of the 'Special Purpose Vehicle', the business trust subscribes to the debentures issued by such 'Special Purpose Vehicle'. While the interest income on the debentures is exempt in the hands of business trust as per clause (a) of section 10(23FC), TDS is deductible as no exclusion is provided in Section 193 of the Act (unlike Section 194A(3)(xi)).

INDIRECT TAXES

Simplifying procedure for obtaining Lower Deduction Certificate:

Issue at hand:

- In terms of section 24 (ix) of the CGST Act, every supplier who is supplying goods through e-commerce is required to mandatorily obtain a registration irrespective of the turnover achieved. In general, intra-state offline suppliers are eligible for a threshold exemption of Rs 40 lakhs.
- While offline and online suppliers of services have been granted a leeway vide exemption notification no. 65/ 2017 – Central Tax dated 15 November 2017, to the extent of a specified turnover threshold of Rs 20 lakh (Rs 10 lakh for specified states), the said benefit is not available to a supplier of goods. This also leads to disparity in the benefit on the threshold exemption for service providers when compared with the supplier of goods on an e-commerce platform.
- The requirement for suppliers of goods through an e-commerce to take registration mandatorily, irrespective of the turnover achieved is resulting in an increased compliance burden on such sellers and penalizes small sellers who want to increase their business. The lack of a level playing field for small sellers is arbitrary and negatively impacts SMEs. Further, most of these suppliers are usually small and if not for the fact that they are on the e-commerce platform, they would not have been required to obtain a registration under the GST laws, on account of the lower turnover threshold limits. This also adversely impacts small businesses, specifically homemakers who earn their livelihoods and are trying to improve their standard of living by selling their products online.

IAMAI Suggestions:

- The benefit of a turnover threshold should be extended for intra-state suppliers of goods who make their supplies through an e-commerce platform in order to enable them to be treated equitably.
- Necessary checks can be built in as follows:
  - Restricted to intra-state sales
  - Mandatory PAN and/ or Aadhaar verification
  - PAN based reporting by the e-commerce operator in GSTR-8

  It will enable small sellers to get market visibility and sell online, hence increasing their turnover. This also sets right the distortion in the offline vs online channel and services vs goods.

Restriction on composition scheme sellers from selling through ECO:

Issue at hand:

- As per the provisions of Section 10(2)(d) of the CGST Act, 2017, a person making supplies of goods through an e-commerce operator who is liable to collect tax at source, is not eligible to opt for the composition scheme. Due to the limitation imposed vide the provisions of Section 10(2)(d), a supplier registered under the composition scheme will not be allowed to supply online through an e-commerce liable for TCS.

- The intention of the composition scheme is to reduce the burden of taxes and compliance. However, the effect of the above section is limiting the composition scheme dealers to only effect intrastate transactions and being barred from effecting any other supplies.

IAMAI Suggestions:

- The suppliers registered under the composition scheme should be allowed to effect sales through an e-commerce platform which will benefit the dealers and general trade overall. This can be restricted to intra-state sales only.
- Also the restaurants registered under the composition scheme should also be allowed to supply through e-commerce platforms.
- In fact, the TCS mechanism can be continued as the 1% tax is anyway required to be deposited by the composition sellers in cash.

Registration of e-commerce warehouses, as Additional Places of Business by the sellers:

Issue at hand:

- The GST laws require a supplier to obtain registration from each place of business from where the supplier makes taxable supplies.
- In the e-commerce ecosystem, a seller listed on the e-commerce platform may be undertaking taxable supplies from various warehouses that are owned and/ or operated by an ECO and since the supplies are being made from these warehouses, the sellers are required to add the respective warehouses as additional places of business (APOB) under their existing registration.
- This is done by a process of amendment of "core fields" to their original registration. The following steps have to be followed for the same:

1. Filing application for additional place of business by providing the following documents.
   (i) Rent/Lease Agreement;
   (ii) Electricity Bill;
   (iii) Recent property tax payment receipt;
   (iv) NOC from landlord;
2. Thereafter, in case the jurisdictional officer has any queries, further responses have to be provided to the officer for closure. Once all outstanding items have been clarified the additional place of business registration is approved by the officer.

- While the registration process is entirely digitized and is on an online platform, there is a 3-4 week time lag between the time of filing an application for the addition to the date of grant of amendment by the authorities. The tax officials often raise queries on the rental agreement being entered into with the ECO and not the property owner. As a result, sellers have to hire tax consultants who clear these queries by making a physical representation at the tax office. Sellers incur professional charges of a chartered accountant which also consumes a lot of time and significant efforts to get clearance from tax office, increasing both the compliance burden and cost in the hands of the sellers.

IAMAI Suggestions:

- ECOs, on obtaining an authorization from the sellers, (currently registered in different states due to TCS requirements) should be enabled with the option of intimating addition/deletion of APOB of sellers operating on the marketplace.
- In other cases, the self-declaration by the E-Commerce platform shall be deemed to be full proof of APOB on behalf of the seller.

Simplification of the registration process for Additional Place of Business:

Issue at hand:

- The GST laws require a supplier to obtain registration for each place of business from where the supplier makes taxable supplies.
- Based on the business requirement, the supplier is also required to obtain additional place of business registration in a State where the supplier already has an existing registration. This additional place of business registration may be sought at a location that is not leased or rented to the supplier.
- The application for registration provides for a submission of the following proof for registration where the premises are not rented or leased:
  "(c) For premises not covered in (a) and (b) above a copy of the Consent Letter with any document in support of the ownership of the premises of the Consenter like Municipal Khata copy or Electricity Bill copy. For shared properties also, the same documents may be uploaded"
- However, more often than not, tax officials raise queries on the rental agreement and seek other documents for registration.
- Further, the GOI has also enabled for Aadhar based verification which will help in achieving overall compliance and ensuring protection of revenue reporting

IAMAI Suggestions:

- State where a supplier already has an existing registration, no documents should be required to be submitted for registration of an additional place of business in that State.
- Easing the registration process by reducing the additional cost and time involved in getting registration will go a long way in supporting their growth of businesses, especially when the Aadhar verification is already proposed.

Simplify the entire PPoB requirement:

Issue at hand:

- Sellers are required to have their own physical presence and obtain a PPoB registration in every state (maintain accounting books, records and related compliances), as a condition to sell in that state – this is a significant friction for online sellers, especially SMBs to scale and sell across states apart from the APoB constraints noted above including financial cost of yearly rentals (~12K/State) which is a big burden for small sellers.

IAMAI Suggestions:

- Simplification of PPoB process (i.e. replacing physical "principal place of business" with a "place of communication" in the State, simplifying the existing 12 documents required for registration.
- GOI has also enabled for Aadhar based PPoB verification which will help in achieving overall compliance and ensuring protection of revenue reporting.
- Eliminating the need for state specific PPOB requirement will facilitate sellers to get state level GST's on a single national place of business. This will enable quick onboarding of sellers selling through e-commerce marketplace using e-commerce operator warehouse services and scale their reach to customers, thereby increasing sales and also contributing more GST revenues to the Govt.

Arbitrary cancellation of registrations, on frivolous grounds:

Issue at hand:

- As per Section 29 of CGST Act – a proper officer has the powers to cancel the registration on account of various reasons.
- While assessees have been complying with all prescribed regulations, arbitrary cancellation of registrations by wide range of officers impedes legitimate businesses and is against 'ease of doing business' moto.

IAMAI Suggestions:

- Power to cancel registration be vested with jurisdictional Commissioner (in consultation with inputs from the jurisdiction officer).

Suspension of registration without opportunity of being heard:

Issue at hand:

- Rule 21A (2) - provides for suspension of registration without affording 'reasonable opportunity of being heard' if the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29 or under rule 21.
- Suspension of registration without opportunity of being heard is unjust and against the very principles of natural justice as sudden suspension will create significant challenges for assesses (regarding raising of invoices, e-way bills etc.)

IAMAI Suggestions:

- A reasonable opportunity of being heard should be provided to assessees (including but not limited to cases where registration is suspended on account of PPOBs operating out of minimal manpower/physical infrastructure) before suspension of registration, and route of suspension should be avoided where assessee can make prima facie case against the same.

Clarification on scope of "intermediary":

Issue at hand:

- Definition and scope of intermediary are widely interpreted by various authorities to include even principal to principal transactions. This is creating many issue for genuine taxpayers like unwanted litigation and denial refunds etc at ground level.

IAMAI Suggestions:

- We request government to issue an urgent clarification to exclude IT and ITeS services providers and service providers who provide service on a principal-to-principal basis from the definition of intermediary. Further, a clear guideline must be issued to define who qualifies as an intermediary, the condition/ test for an intermediary, etc.

Exemption for 1% TCS for exports transactions on e-commerce marketplace:

Issue at hand:

- Indian GST registered sellers exporting through eCommerce platforms suffer Tax Collection at Source ('TCS') of 1% under GST laws, since GST laws do not exclude zero rated export supply from TCS levy affecting their working capital. The Government should incentivize exports from India by providing necessary clarifications to exclude levy of TCS under GST laws on zero rated export sales made by online sellers.

IAMAI Suggestions:

- Clarifying that an e-commerce operator is not obliged to hold back TCS on goods exported by seller through the ECO would reduce the compliance burden and improve working capital of sellers and thereby incentivizing exports from India.

Parity /zero-rated GST on Air Courier mode for exports (Air Freight is already 0 rated):

Issue at hand:

- The current GST laws have an incidence of 18% IGST on air courier / express mode of shipment where the service recipient is an Indian seller. Sellers can claim refund of this post relation of export proceeds, but this increases MSMEs working capital costs. Further, to address key international logistics challenge for Indian MSMEs, where foreign entity will invoice Indian sellers. In this model, the logistics cost is increased to the extent of the GST component charged by Indian logistics entity to foreign entity. This is impacting the cost competitiveness of MSME Exporters from India.

IAMAI Suggestions:

- Clarification should be issued stating that the place of supply for courier service of export shipments shall be recipient based (and not performance based), in line with the FAQs on place of supply for transportation of goods services. This will bring in parity in place of supply for services of transportation of goods and courier services for export shipments. Having courier service charges being zero rated will ensure that cross border shipping costs remain competitive for India Sellers thus providing a boost to exports from India.

Rationalization of GST rates for e-books:

Issue at hand:

- Printed books sold in India are presently NIL rated. E-books where a printed version exists (sold by OIDAR supplier) to India customers is chargeable to 5% GST whereas e-books who print version is not available and Audible books (whether or not a printed version exists) to India customers is chargeable to 18% GST.

IAMAI Suggestions:

- We recommend a complete GST exemption should be extended to all digital products including audio books and platforms instead extending only to e-books for which print version is available. This will also bring in parity for e-books and printed books.
- Alternatively, other digital products including audio books and platforms which are currently taxed at 18% should be made at 5% GST which is at par with e-books for which print version is available.

Inclusion of overseas OIDAR supplies in GSTR-8:

Issue at hand:

- An ECO is required to collect and deposit TCS in each state where the supplier listed on its portal and furnish supplier wise TCS details in FORM GSTR-8 every month. Further, the deposit of TCS is linked to the GSTIN of the supplier making the supplies over the ECO platform.
- Certain ECOs have offshore suppliers of digital content listed on Indian marketplaces whose services are classifiable as Online Information Database Access and Retrieval Services ('OIDAR services'). Such services are taxable in the hands of the overseas suppliers when supplied to 'non-taxable online recipients'.
- As tax at source is being collected by ECO in respect of their supplies, such suppliers are treated on par with the domestic suppliers as far as the ECO is concerned.
- Given the design of the GST portal, the ECOs cannot disclose the supplies made by such OIDAR service providers in the GSTR-8 for TCS purposes.

  This leads to a situation where ECOs are unable to file returns for the TCS withheld for such suppliers and suppliers are unable to view their TCS credits.

IAMAI Suggestions:

- Clarification should be issued and system design should be updated to allow the inclusion of supplies by the OIDAR service providers in the GSTR-8 which will be in interest of both the ECO and the suppliers of OIDAR services.

- Such TCS should be allowed to be used by the overseas OIDAR service suppliers while they discharge their tax liabilities.
- Further, an appropriate extension for filing of GSTR-8 should be provided along with the waiver of interest and penalties owing to the above issue.
- Unlike the erstwhile VAT/ ST regime, the GST law provides for Tax Collection at Source, (TCS) by ECOs in respect of the taxable supplies made through it by sellers. This requires the ECO to register in each of the states in which sellers are located to be able to remit and report the TCS in the respective states and file GSTR-8.
- Additionally, the ECO is already responsible for providing visibility on all business-related activities carried out by the seller on the platform.
- This provides the ability for OIDAR supplies to be eligible for credit in electronic cash ledger and provides parity with domestic suppliers

Input tax credits to overseas OIDAR service providers:

Issue at hand:

- As per Section 16 of the CGST Act, 2017 every registered person shall, subject to such conditions and restrictions, be entitled to take credit of input tax charged on supplies which are used or intended to be used in the course or furtherance of his business.
- There is no specific provision under the GST law to allow input tax credit to the overseas OIDAR service providers. Also, there is no specific provision which restricts the ability of overseas OIDAR service provider to claim input tax credits.

IAMAI Suggestions:

- Credit eligibility should be decided regardless of whether the overseas OIDAR service provider has a fixed establishment or place of business in India or not.
- These credits should be allowed to be offset against overseas OIDAR service provider's output GST liability towards OIDAR services. Further, along with the credit of GST, even the TCS credit should be allowed in the case of B2B OIDAR supplies over an e-commerce platform.
- Since overseas OIDAR service provider are required to charge GST on the services provided to 'non-taxable online recipients' in India, they should also be allowed to claim eligible input tax credits on goods and/ or services procured on which GST has been paid.

Relax restriction on medical/ life insurance, catering and transportation:

Issue at hand:

- Prohibition/lack of clarity on availment of credit related to COVID related spends for employees, COVID related CSR activities, employee related insurance, catering and transportation services is discouraging the businesses from providing the above benefits to the employees.
- These more are relevant in COVID times where employers needs to provide safe working environments.

IAMAI Suggestions:

- Remove restrictions under clauses (i) and (iii) of 17(5)(b) of CGST Act for availing GST credits on employee related COVID spends, insurance, transportation and catering services.
- COVID has pushed companies to provide better facilities keeping in mind the well-being of employees and such expenses where GST is not available is credit, add on to the working capital cost.

Payment of GST on Reverse Charge using Input Tax Credit:

Issue at hand:

- Current requirement of payment of RCM liability in cash results in cash outflow for businesses which is returned as input credit. This unnecessarily leads to blockage of working capital, particularly in these trying times.

IAMAI Suggestions:

- Remove requirement of payment of GST under RCM only in cash under Rule 85(4) of CGST Rules by way of amending the said rule.
- Suitable amendments be made in CGST Act, SGST Act and relevant notifications to deem the services on which a person is liable to pay GST under RCM as output services, against which credit should be available to pay the reverse charge liability.
- This will relieve the pressure on working capital as taxpayers will be saved from cash outflow as well as possible refund scenario due to credit accumulation.

Option to pay tax on sponsorship services under forward charge:

Issue at hand:

- Presently, the GST laws require that GST on sponsorship services provided to body corporate or partnership is paid under reverse charge.
- In terms of Section 17(2) of the CGST Act, the registered person who uses inputs and input services to effect both taxable and exempt supplies (including supplies paid by the recipient under the reverse charge), then the amount of credit available will be restricted to credit attributable to effecting taxable supplies.
- Therefore, even though the tax is paid under reverse charge by the service recipient, the turnover relating to the sponsorship amount is subject to reversal of input tax credit (as it gets qualified as an exempt turnover) in the hands of the service provider.
- This causes loss of input credit to the service provider and hardship in undertaking reversal for inputs, input services as well as capital goods in some cases

IAMAI Suggestions:

- The Notification 13/2017-CT(Rate) dated 28 June 2017 should be amended to allow the service provider the option to pay tax under forward charge similar to the option made available to Goods Transport Agencies.

- This is important in order to mitigate the cumbersome process of reversal of credit in the hands of supplier

Issuance of Credit Notes in cases of bad debts:

Issue at hand:

- A debt becomes a bad debt when a reasonably prudent commercial person would conclude that there is no reasonable likelihood that the debt will be paid in whole or in part by the debtor or by anyone else. In such an instance, the Company writes off the debt in the books of account.
- There is no provision in GST laws for providing any relief with regard to GST paid on transactions which turn out to be bad debts (non-payment of consideration by the recipient of goods/services). Hence GST already paid on bad debts cannot be adjusted and becomes a cost to the service provider.
- In the current scenario, where the entire industry has been hit by COVID and there are increasing cases of non-recoveries, the instances of bad debts have increased multi-fold and the tax payers are forced to take major hit in their cash flow.

IAMAI Suggestions:

- A provision should be included in Section 34(1) of the CGST Act, allowing the re-claim of credit in relation to bad debts written off by the Company.
- This can be done by amending Section 34(1) of the CGST Act in the following manner:
- "34. (1) Where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the taxable value and/ or tax charged is not recovered by the supplier and is treated as bad-debts in the books of account of the supplier, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient a credit note containing such particulars as may be prescribed."

Non-availability of effective dispute resolution forum:

Issue at hand:

- Currently there are no effective dispute resolution bodies to address the litigation and issues relating to GST.
- The GST law prescribes that the advance ruling authority will handle cases relating to the clarity of the GST law while dispute resolution will be undertaken by the Tribunal.
- While the cabinet has approved creation of national bench of Goods and Services Tax Appellate Tribunal, a quasi-judicial body that will mediate in indirect tax disputes between states and centre, the same has not been made functional.

IAMAI Suggestions:

- An effective Dispute resolution body should be set up so that open GST issues can be addressed on a fast-track basis. This will help address existing pending litigation at the earliest.

MSME focused tax committee:

Issue at hand:

- MSMEs face several tax challenges especially in terms of tax compliance requirements in the early years of commencement of business. However, there is no forum that the MSME can approach with regard to the issues faced, clarity required under the laws.

IAMAI Suggestions:

- MSME focused tax committee should be formed so as to addresses direct and indirect tax issues faced by MSMEs on a fast-track basis. Given the renewed focus of the GoI on MSMEs and Aatmanirbhar Bharat initiative, a focused committee would help in growth of business of MSMEs.

Input tax credit against advances:

Issue at hand:

- GST allows credit only if service is received. As a result, in case of advances input tax credit cannot be claimed. It has been observed that seller report proforma invoices/ advance voucher as B2B transactions in GSTR 1 and subsequently on provision of service, issue a GST invoice which is not reported in GSTR 1.

IAMAI Suggestions:

- A provision should be included to allow Input tax credit on advances. As anyways the recipient would pay tax to the supplier and such supplier is required to pay tax to the Government once payment has been received, on principles of equity ITC should be allowed to the recipient as well

Input tax credit restriction on goods disposed as "gift" or "free sample":

Issue at hand:

- In today's world we can find many business expenditure which is actually beyond the contractual obligation agreed with customer. These expenses are basically incurred for customer appeasement, and/ or sales promotion, and are very much incurred for furthering the business.

IAMAI Suggestions:

- As mentioned above, any free gifts issued to a customer are genuine business expenditure, and the input credit on such items should not be denied to the business entity. Therefore, we request to issue suitable clarification to keep these transaction outside the scope of "gift" or "free sample" as per Section 17(5)(h) of the CGST Act, 2017.

Section 50 of CGST Act:

Issue at hand:

- Based on reading of proviso to Section 50(1), it could be understood that interest would be levied on the portion of tax paid by debiting electronic cash ledger, in case of supplies made during a tax period, declared in the return for said period and return for the said period filed after the due date prescribed under Section 39 of the CGST Act. In other words, the said proviso primarily prescribes for the relief of interest on that portion of output tax liability which would be payable by way of utilization of input tax credit, merely on account of delayed filing of returns.
- The amendment does not cover cases where liability pertaining to previous period is disclosed in subsequent tax periods and discharged through utilization of ITC.
- This creates disparity even though the intent of the amendment approved by the GST Council was to provide relaxation by levying interest only on the liability payable through cash.

IAMAI Suggestions:

- Suitable amendments should be made and relaxation should be provided even in case where liability pertains to previous periods and tax has been paid through credit.

Section 77 of the CGST Act:

Issue at hand:

- As per Section 77 of the CGST Act and corresponding section in the SGST Act, a registered person who has paid CGST & SGST/ UTGST instead of IGST and vice a versa, a relaxation has been granted from payment of interest and penalty on subsequent payment of the right tax. This provision only covers a scenario where CGST plus SGST/ UTGST is paid instead of IGST and vice a versa but does not cover instances where IGST is paid to the account of one State instead of another.

IAMAI Suggestions:

- The objective of Section 77 is to provide relaxation from payment of interest and penalty in case where full tax has been discharged but subsequently found that incorrect tax has been discharged. Essentially, in case of revenue neutral transactions, interest and penalty should not apply. This logic should be extended where IGST is paid to the account of one State instead of another as tax has been discharged but deposited in the wrong State. This being a revenue neutral situation, interest and penalty should not apply in these cases of tax wrongly collected and paid.

Reversal of credit in case of supply of capital goods – Section 18(6) of the CGST Act, 2017:

Issue at hand:

- In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed.

- For this purpose, there are two competing rules Rule 40(a) and Rule 44(1)(b) which prescribe to determine the credit that should be reversed.

IAMAI Suggestions:

- Law should provide clarity on the appropriate rule that should be adopted for reversal of ITC and both the rules should be aligned.

GST treatment on post sales discounts:

Issue at hand:

- GST treatment on post sales discounts is getting more confusing because of the divergent view taken by various Advance ruling authorities. Further, post the withdrawal of circular no. No. 92/11/2019-GST dated March 07, 2019, no further clarification was issued on this subject.

IAMAI Suggestions:

- Urgent clarification needs to be issued to address some aspects around post sale discount, including the following:
  a) No requirement to reverse ITC attributable financial/commercial credit notes. (Part of the clarification issued vide Circular No 92/22.2019)
  b) Reimbursement of additional discount by the supplier to the dealer not require to include in the value of supply as an additional consideration
  c) Clear guidelines to be issued to identify what kind of activity/obligation undertaken by the dealer would qualify as a service transaction.

Concept of payment "under protest" to be brought back to GST regime:

Issue at hand:

- Concept of payment "under protest" is an age-old concept and very well existed in central excise and pre GST regime. Taxpayers generally used to pay the tax "under protest" when they were not certain about the tax treatment, whenever there are two views emerging. However, current GST regulation doesn't have any provision to support the payment of GST "under protest".
- Further, FAQ's dated December 15, 2018 (3rd edition) issued by CBIC in question no 55 stated that payment under protest is not recognised in GST.

IAMAI Suggestions:

- Considering the fact that GST law is evolving and keeping in mind the divergent advance rulings, concept like payment "under protest" is an extremely important necessity for the taxpayer. Therefore, we request you to make necessary amendment to the GST law to bring the concept of payment "under protest.

Clarification on scope of "intermediary":

- Definition and scope of intermediary are widely interpreted by various authorities to include even principal to principal transactions. This creating many issue for genuine taxpayers like unwanted litigation and denial refunds etc at ground level.

Basic Customs Duty on high end mobile phones:

Issue at hand:

- A high Basic Customs Duty (BCD) on high-end mobile phones provides a duty arbitrage which helps grey market operations and results in loss to the exchequer. India currently has a duty arbitrage of over 40% (22% - BCD and 18% GST).

IAMAI Suggestions:

- BCD on high end mobile phones should be rationalised. The maximum BCD should be pegged at Rs 4,000.

Section 123(B)(4) From the Finance Act, 2021:

Issue at hand:

- Section 123(b)(4) of the Finance Act, 2021 provides for an amendment to Section 16 of the IGST Act, 2017 with the option for claiming refund of tax paid on supply of goods and/or services with payment of IGST originally covered under Section 16(3)(b), now being addressed under the newly inserted Section 16(4) . This shall come into force on a date as notified by the Central Government in the Gazette. The new Section 16(4) in the IGST Act restricts the availability of the rebate option to a class of persons engaged in the export of a class of goods or services as notified by the Government. The class of persons and the class of goods or services are yet to be notified.
- The amendment amounts to tacitly replacing the existing well-established and seamless rebate facility with the more costly and time-consuming ITC option for the notified sector. This is further complicated as the ITC option does not provide the ability to liquidate credits on procurements of capital goods. IT/ITeS/OIDAR services are constrained by large capital expenditures for their infrastructure and equipment. Limiting the ability of these providers to access input tax refund on such capital expenses would have a deleterious impact on the government's attempts to make India a global export hub as the higher input cost would be passed on to the final customers impacting their competitiveness.
- The Data Centre Policy 2020 issued by the Ministry of Electronics and Information Technology envisions India as a data centre hub for Asia and the world at large. According to DPIIT, the sector ranked 2nd in FDI inflows in 2020-21. To encourage further investments in building and expanding the required infrastructure to achieve the goal of becoming a global data centre hub, it is imperative to continue providing exporters of data hosting services with access to the rebate option for claiming input tax refunds. If such exporters and/or class of services are excluded from the notified list, investments in capital-intensive services such as data hosting, cloud storage, etc. would become more expensive thus reducing the competitive edge as compared to other geographies. Due to the reduction in the internal rate of return of businesses, investors are bound to be wary of setting up manufacturing and other infrastructural facilities in India which would be a blow to the objectives of Make in India.

- Restriction on the rebate option will lead to an escalation in disputes and audits, which will increase costs for both exporters and the government. MSMEs would be the worst hit because they cannot afford to employ multiple company secretaries or auditors.

IAMAI Suggestions:

- Section 123(b)(4) and the associated changes in Section 16 of the IGST Act should be deleted from Finance Act 2021 as the amendment has not yet been operationalized, and the GST Council has not brought the issue up at any of their meetings. This is a clear indication of the Council recognizing the practical difficulty in implementing such a broad restriction.

Centralised audit cell for departmental audits:

Issue at hand:

- Business operations by e-Commerce operators are generally managed from a centralised office with other locations merely acting as support offices or due to mandatory state-wise GST registration requirement as per GST Law. Multiple Audits / inquiries initiated by multiple states and centre jurisdictions from different states result into unwarranted administrative burden including compliance cost

IAMAI Suggestions:

- Jurisdiction for assessment of e-commerce operators should be with central authority.

GST On PoS devices:

Issue at hand:

- GoI vision of Digital India in general and promotion of Digital Payments in particular can be realised by promotion of acceptance infrastructure in India. PoS devices are important acceptance infrastructure and their proliferation will enable digital payments adoption.

IAMAI Suggestions:

- GST On PoS devices should be reduced from 18% to 5%.

GST on Business Correspondents:

Issue at hand:

- Business correspondents (BC) provide services like receipt and delivery of small-value remittances, these services include collection of small-value deposits, identification of borrowers, processing and submitting applications to banks, disbursal of small-value credit, and recovery of principal and interest.

IAMAI Suggestions:

- In order to truly promote financial inclusion, the current fee of 27% GST on BC agent fee should be reduced to NIL.

GST applicable on the card fees:

IAMAI Suggestions:

- In line with vision of Digital India, card fees and other charges, such as late payment, annual and renewal fees may be reduced to 5%, since it is the customers who are forced to bear the burden of high GST

Place of Supply (POS) provisions for e-commerce transactions:

Issue at hand:

- POS for customers to be clarified specifically in light of the centralised business model of e-commerce operators. In digital e-commerce transactions e.g. online ticketing etc. address of customer are not available and hence general POS rule for services are considered for GST compliance by the e-commerce operators, and POS is taken as the place where the e-commerce entity is located. For a customer who wishes to book train tickets, asking address before allowing him/her to proceed may not be necessary and it may also lead to poor user experience. Time to time e-commerce operators face state level enquiries for the same transactions.

IAMAI Suggestions:

- POS should be taken as the place where the e-commerce entity is located alternatively
- e-commerce entities should be mandated to take address of a customer before any transaction

Reserve Bank Of India (RBI)'s e-mandate:

Issue at hand:

- In an effort to enhance security, visibility, and customer autonomy the RBI in August 2019 issued a framework for processing of e-mandate for "recurring transactions" on all kinds of cards (debit, credit) Prepaid Payment Instruments (PPIs), including wallets. The circular came into effect from September 01, 2019, and it prohibits service providers from charging customers for availing the e-mandate facility for recurring transactions. RBI, in January 2020, extended the framework to Unified Payments Interface (UPI)-based transactions and, in December, it increased the cap from Rs 2,000 to 5,000 for all recurring payments. All these directions are subject to certain conditions, which essentially give consumers greater control over their transactions, ensuring their security without compromising on convenience. For instance, banks would have to send consumers a notification about a transaction before and after it has occurred, via SMS or email. Consumers were also to be provided a platform (by their issuing banks) to enable them to view all recurring mandates created on their cards and stop any recurring payment at any point in time.
- RBI's directions, however, make the participation of issuer banks optional. It is worth noting here that a transition to the e-mandate regime will require the development of a new technological infrastructure/ Application Programming Interface (API), at each level of service delivery, i.e., merchants, payment gateways & aggregators, acquirer banks, issuer banks, and card networks. Hence, making the payment ecosystem's transition to the new framework entirely dependent on Bank's readiness and implementation.
- Hence, if an issuing bank does not implement the new e-mandate, its customers will be denied the option of availing recurring online card transactions. In a country with more than 97 crore cards and approaching 1.5 crore card transactions daily, worth Rs 4,000 crore, this can create massive inconvenience to consumers and a setback to the Government of India's vision for a cashless economy. Moreover, it fractures and completely breaks down an existing working system of recurring e-mandates.

IAMAI Suggestions:

- RBI **framework** for processing of e-mandate for recurring transactions prohibits banks from charging any fees from the cardholders for availing the e-mandate facility. This disincentivise many banks from making the required technology investment to implement the framework. It is worth noting that card processing/handling fees are essential to the sustained growth of the digital payments ecosystem since it incentivises - (a) banks to issue cards and promote their usage, and (b) card schemes to manage and grow the card network. Therefore, keeping with the wider objective of ensuring greater penetration of digital payments, we suggest that the Government of India recommends the RBI to allow banks to charge their cardholders for availing the e-mandate facility.
- Alternatively, the Indian government may consider creating a pool/fund to compensate banks for the revenue foregone due to restrictions on levying fees for enabling e-mandate facility on cards for recurring transactions. This can be on the lines of the announcement made by the Hon'ble Finance Minister in **Budget 2021** to earmark Rs. 1,500 crore funds to provide financial incentives for endorsing digital transactions.

Rate of GST:

Issue at hand:

- The online gaming industry is witnessing significant growth around the world. In India as well, it has come a long way from its nascent beginning in late 2000s to becoming over a billion-dollar industry in 2020. The manner of operation of the companies engaged in the online gaming industry, is that, they generally collect a fixed amount from each player, pool of such amount collected is termed as 'stake fee'. Out of such stake fee, certain portion is deducted and retained by the online gaming platform/ company as 'platform fee'/ 'rake fee', and the balance amount is pooled under an escrow account, which is distributed as prize money to the winners. Currently, GST authorities are contending that, such entire amount collected by the online gaming companies i.e. rake fee plus the prize money pool, is subject to GST. Further, the rate of GST applicable is contended to be 28%. Hence, the industry is facing issues in sustaining their businesses in India.

IAMAI Suggestions:

- Treating the players' contribution towards the winners' kitty should not qualify as an actionable claim and, taxing the entire amount is unwarranted.
- Taxation on online gaming should closely align the interests of government and operators to put India at par with prevalent practices in numerous other countries like United Kingdom, Australia, Belgium, Italy, Estonia, USA, Sweden, Malaysia, etc. GST applicable on the platform fees retained by the online gaming companies should be reduced to 18%.

IAMAI suggestions for EduTech sector:

- The rate of Goods and Services Tax (GST) for e-learning be reduced from the existing 18%. It must be noted that many offline educational services are zero rated.

GST rates for Homestays:

IAMAI Suggestions:

- GST rates for Homestays continue to be at par with large resort and other hotels. However, homestays are devoid of resort like facilities and often the host resides on the premises with her family. In order to promote and support these microentrepreneurs, the GST for homestays and B&Bs should be brought down to 2-5%.

Withdrawal of TCS on sale of Foreign Tour Packages and foreign travel spending under Liberalised Remittance Scheme:

Issue at hand:

- Finance Act 2020 introduced 5% TCS under section 206C on 'sale of an overseas tour programme package by tour operators' and on 'foreign exchange remittances under LRS of RBI by authorised dealers (Banks)'. This was announced just before the start of the Covid-19 pandemic in India. Travel sector is going through a major crisis because of Covid-19. Post-covid, the sale of overseas tour packages has shrunk significantly, resulting in loss of significant business and jobs for numerous travel agents and tour operators in India. Increased travel cost because of the TCS has also contributed to decline.

IAMAI Suggestions:

- To provide relief to overseas tour packages business government should withdraw the TCS provisions on remittances under LRS and sale of overseas tour packages.

ABOUT IAMAI

The Internet and Mobile Association of India (IAMAI) is a young and vibrant association representing the entire gamut of digital businesses in India. It was established in 2004 by the leading online publishers but, in the last 16 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 and digital payments among others.

Sixteen years after its establishment, the association is still the only professional body representing the online industry. The association is registered under the Societies Act and is a recognised charity in Maharashtra. With a membership of nearly 350 Indian and overseas companies, the association is well placed to work towards charting a growth path for the digital industry in India.

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