



EMERGING TRENDS FOR TAXATION IN THE E-COMMERCE SECTOR AND ITS INTERPLAY WITH TRADITIONAL TAXATION SYSTEM: INDIAN CONTEXT

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ABSTRACT:

The hon'ble Delhi High Court had an influx of Petitions being filed by Uber India Systems Private Limited and Rickshaw driver's union, IBIBO group with Make My Trip, and several others regarding a central tax notification issued on 18-11-2021¹. Its clauses, namely 1(i) and 2(i) of the same, were being challenged. It was contended against the Union of India that the impugned notification in question is ultra vires to the constitution as well as sections 9(5) and 11 of the Central Goods and Service Tax Act 2017². This case happened in the capital of our country incited by a former state-issued tax notification on the supply of services dated 28-06-2017 which provided unconditional exemption from payment of GST in case of a supply of services by auto-rickshaw passengers or by any stage carriages other than air-conditioned ones, the new notification of 2021 took that exemption away for intermediary involved Rickshaws. This controversial case left lasting impressions on the attendees of the arguments because it was challenging as a case law that could potentially determine the face of e-commerce adjudication and governance in India with great minds butting heads at both ends of the conundrum.

E-commerce or electronic commerce is known for the electronic or online sale, purchase, and rent of products or services online. However, due to the fast-growing IT interception into the physical market, it became more and more difficult for conventional tax laws to keep tabs on tax evasions or the generation of malicious income through the same. Several tax laws under both income tax and GST impact E-commerce transactions. To avoid such non-taxation of transactions and get tax benefits, the central government is adding new sections to both the direct and indirect taxation regimes.

The normal trend of the existing taxation laws against the e-commerce sector is such that when adding the credit amount of sales of products, services, or both to an e-commerce participant as well as an e-commerce participant should make payment. E-commerce operators are requisitioned to deduct 1% TDS on the gross number of sales or services or both. The key cause for ambiguity in the regime is due to a distinction to be drawn between taxable transactions and narrowing down on who will be liable for paying tax on the then-generated income. And in the meanwhile, also protecting market competition and the interest of the consumer.

¹ The principal notification was published in the Gazette of India, Extraordinary, vide notification No. 12/2017 – Central Tax (Rate), dated the 28th June, 2017, vide number G.S.R. 691 (E), dated the 28th June, 2017 and last amended by notification No. 07/2021 – Central Tax (Rate), dated the 30th September, 2021 vide number G.S.R. 688(E), dated the 30th September, 2021. <https://taxguru.in/goods-and-service-tax/notify-exemptions-supply-services-cgst-act.html>

² Central Goods and Service Tax Act 2017, Central Goods and Service Tax Act 2017.

Provisions under the Income Tax Act 1961³ on e-commerce taxation were a new dawn in the conventional taxation laws primarily forming provisions in the Income Tax Act and GST regulations on e-commerce transactions. There is extensive bifurcation on equalization levy and resident and non-resident levy and levy on online advertising in the Act. One of the fundamental additions was to define E-commerce supply and E-commerce operators that were given life in the Finance Act of 2016. A particular review of all these additions shows us coping with ambiguity and lacunas which need to be reviewed and extensively researched so that the detriments to a smooth-running taxation system in an ever-changing and challenging economy can be met.

The method of research would be a doctrinal approach and extensive case study of the case Uber India v/s Union of India 2023 SCC Online Del 2216⁴ decided on 12-04-2023. Also, an extensive review of the Income Tax Act of 2016 and additional notifications published in GST formed to adopt E-commerce into taxable-jurisdiction.

Keywords: -

1. E-commerce- E-commerce (electronic commerce) is the activity of electronically buying or selling products on online services or over the Internet. E-commerce draws on technologies such as mobile commerce, electronic funds transfer, supply chain management, Internet marketing, online transaction processing, electronic data interchange (EDI), inventory management systems, and automated data collection systems. E-commerce is the largest sector of the electronics industry and is in turn driven by the technological advances of the semiconductor industry.
2. GST- The Goods and Services Tax (GST) is a successor to VAT used in India on the supply of goods and services. Both VAT and GST have the same taxation slabs. It is a comprehensive, multistage, destination-based tax: comprehensive because it has subsumed almost all the indirect taxes except a few state taxes. Multi-staged as it is, the GST is imposed at every step in the production process, but is meant to be refunded to all parties in the various stages of production other than the final consumer and as a destination-based tax, it is collected from point of consumption and not point of origin like previous taxes.
3. Income tax act- An income tax is a tax imposed on individuals or entities (taxpayers) in respect of the income or profits earned by them (commonly called taxable income). Income tax generally is computed as the product of a tax rate times the taxable income. Taxation rates may vary by type or characteristics of the taxpayer and the type of income.

INTRODUCTION:

“Uber, the world’s largest taxi company, owns no vehicles. Facebook, the world’s most popular media owner, creates no content. Alibaba, the most valuable retailer, has no inventory. And Airbnb, the world’s largest accommodation provider, owns no real estate.”⁵

In India, three new users sign up for the internet every second. E-commerce companies may create 12 million new jobs over the next ten years. The Indian e-commerce business is expected to reach sales of over \$100 billion by 2020. To seize this chance, e-commerce companies are developing their technologies at a quick pace. Less than 2% of India's overall consumption still comes from e-commerce, while 14% comes from retail, and the country's commerce practices have changed over the past few years. The remarkable expansion of the e-commerce business can be attributed in large part to the rapid acceptance of new technologies and the availability of internet connectivity through broadband, 4G/LTE, and other technologies.⁶

³ Income Tax Act 1961

⁴ Uber India v/s Union Of India 2023 SCC Online Del 2216

⁵ Tom Goodwin ,Study Paper on Taxation of E-Commerce under GST,chapter14 of the model GST law ,page1,2017, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/http://idtc-icai.s3.amazonaws.com/download/E-commerce-Research-paper-GST.pdf

⁶ Tom Goodwin, Study Paper on Taxation of E-Commerce under GST, chapter14 of the model GST law ,page-1-2,2017, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/http://idtc-icai.s3.amazonaws.com/download/E-commerce-Research-paper-GST.pdf

Tax laws are currently undergoing a major shift in India's e-commerce industry. The tax ecosystem is undergoing a fundamental transformation due to the numerous emerging phenomena brought about by the digital marketplace's rapid rise. This last change is driven by the ever-changing dynamics of trade and customer behavior, and it has a big impact on how e-commerce businesses navigate the intricate web of taxes. The purpose of this analysis is to look at the intricacies surrounding these new trends and how they interact with India's traditional tax system. The way that taxes in e-commerce interact with traditional tax systems demonstrates how committed the government is to adapting to the digital age while maintaining the values of fairness, compliance with rules, and effective revenue production.⁷

A major turning point in the Indian tax system was the implementation of the Goods and Services Tax (GST) in 2017. Value Added Tax (VAT), service tax, and central excise were among the, several indirect taxes that were combined to establish the Goods and Services Tax (GST), which significantly altered the tax system. Like their traditional counterparts, e-commerce businesses had to adapt to the recently enacted tax system. This meant having to collect and send in taxes, file the required paperwork, and adhere to the constantly changing rates of the Goods and Services Tax (GST). The integration of electronic commerce into the Goods and Services Tax (GST) system represented significant progress in simplifying tax compliance for virtual retailers and marketplaces.

The introduction of Tax Deducted at Source (TDS) on e-commerce transactions in 2020 was another noteworthy development that directly affected the e-commerce sector. This specific framework requires e-commerce providers to impose a Tax Deducted at Source (TDS) of 1% on payments made to vendors. This measure's installation was motivated by the desire to monitor high-value transactions in the e-commerce space and assure tax compliance, making it a crucial part of the tax structure.

Additionally, India has instituted an Equalisation Levy, which is sometimes known as the "Google Tax." When it was first launched in 2016, its focus was on digital advertising services provided by global e-commerce companies. Throughout time, the tax's purview has expanded to include a variety of digital services provided by e-commerce companies outside of the jurisdiction. This is a clear indication of India's commitment to taxing the money that global e-commerce companies make in India.

Traditional Taxation Models E-commerce

In 1996, the United Nations Committee on International Trade Law (UNCITRAL) approved model laws about digital complexity and electronic commerce. It was also mandated that every country create rules about electronic commerce and cybercrimes that fall under its purview. To safeguard personal data that belonged to both individuals and the government, the Personal Data Protection Act was passed in 2000. With the passage of this law, India became the twelfth nation in the world to enact such extensive protections. The "IT Act," provides the legal foundation for safeguarding e-commerce data and digital signatures. Further alterations to the previously described entity were made in 2008 and 2018 in reaction to social demands. The Act also specifies the authority and restrictions placed on intermediaries.⁸

Three parties are involved in an E-Commerce transaction: the buyer, the seller, and the E-Commerce operator—the agreement made in writing between the buyer and seller about the trade of goods or services. When assessing whether GST obligations apply, the commission that the E-Commerce operator charges the supplier in exchange for using the marketplace is two separate transactions.

The Goods and Services Tax (GST) that is levied on electronic commerce operators applies to both transactions. According to sections 9(5) of the Central Goods and Services Tax (CGST) Act 2017⁹ and section 5(5) of the

⁷ *Id*

⁸ Shahid Amin, Keshav Kansana & Jenifur Majid, *A Review Paper on E-Commerce* (2016).

⁹ Central Goods and Services Tax (CGST) Act 2017, sections 9(5)

Integrated Goods and Services Tax (IGST) Act 2017 (Table A)¹⁰, the E-Commerce Operator oversees remitting Goods and Services Tax (GST) on behalf of suppliers in specific transactions.¹¹

Technological developments in the area

The following factors have contributed to the complexity of tax law implementation:

The complex nature of business is done online through platforms like Internet-based businesses, etc. Among other things, the way that Internet-based businesses operate. The academic community is interested in and concerned about the taxation of aggregators, or operators in e-commerce. According to the provisions outlined in the CGST Act of 2017, E-commerce firms must register for Goods and Services Tax (GST), regardless of the value of the supplies they make. Any e-commerce company that is not physically present in India's taxable territory is considered a foreign e-commerce operator. People must designate a representative to act on their behalf to conduct business in India.

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Tax on E-commerce participants-

- **Participants in e-commerce who are residents**

The e-commerce operator is not required to deduct TDS (tax deducted at source) if the total revenue from the sale of goods or services in the previous fiscal year was less than Rs 5 lakh and the e-commerce participant has provided their PAN (Permanent Account Number) or Aadhaar.

However, if the party engaged in e-commerce does not provide their Permanent Account Number (PAN) or Aadhaar, withholding Tax Deducted at Source (TDS) at the rate of 5% is required by the provisions specified in Section 206AA¹⁵ of the Income Tax Act.¹⁶

- **Being a non-resident participant in e-commerce-**

People who wish to participate in e-commerce must be residents of India. The Tax Deducted at Source (TDS) policy does not apply to non-resident e-commerce participants.¹⁷

CASE STUDY

The Delhi High Court recently delivered a pivotal verdict in a legal battle involving prominent companies in the transportation and e-commerce sectors, notably Uber India Systems Private Limited and the Union of India. The core issue revolved around challenging certain clauses in GST notifications issued by the Union of India. These

¹⁰ Integrated Goods and Services Tax (IGST) Act 2017, section 5(5)

¹¹ *Id*

¹² Central Goods and Services Tax (CGST) Act 2017, sections 9(5)

¹³ Integrated Goods and Services Tax (IGST) Act 2017, section 5(5)

¹⁴ *Id*

¹⁵ Income Tax Act, Section 206AA

¹⁶ *Id. At 7*

¹⁷ *Id. At 7*

clauses effectively revoked exemptions that Electronic Commerce Operators (ECOs) had previously enjoyed for services like auto-rickshaw and bus rides facilitated through their platforms. Notably, petitioners, including the Pragati Heel Auto Rickshaw Driver Union and Uber India Systems Private Limited, contended that these clauses violated their fundamental constitutional rights, including the freedom to engage in any profession, the right to equality before the law, and the right to life and personal liberty.

The heart of the matter lies in the Central Goods and Service Tax Act, 2017 (CGST Act), which stipulates that ECOs are responsible for collecting and remitting taxes on services provided by individual suppliers through their platforms. Sections 9(5) and 52 of the CGST Act subjected services furnished by individual service providers via ECOs to GST, even if these providers were not individually liable for Goods and Services Tax (GST). The court ultimately ruled that the revocation of exemptions for services booked through ECOs was well within the legislative jurisdiction of the Respondents and remained consistent with constitutional rights. This landmark verdict bears significant implications for how tax laws apply to services offered by Electronic Commerce Operators (ECOs) in India's transport and e-commerce domains, reaffirming the existing statutory framework that treats ECOs as separate entities for tax purposes.¹⁸

CHALLENGES IN IMPLEMENTING EMERGING TAX TRENDS IN E-COMMERCE

Since the emergence of electronic commerce, businesses have seen a dramatic shift in the way they conduct business, with an increased reliance on digital platforms to facilitate and fulfill transactions. According to the World Trade Organisation (WTO), electronic commerce encompasses a variety of activities that entail the use of electronic means for the production, distribution, marketing, sale, and delivery of goods and services. Complex tax issues have arisen because of the shift from traditional brick-and-mortar business structures to digital platforms.

Within traditional business structures, the ability to impose taxes was dependent on the location of a corporate entity. However, in the age of digitalization, when businesses might not have a physical location or might relocate frequently online, tax authorities struggle to determine the best way to levy taxes. Given the dynamic nature of the global economy, governments and e-commerce companies alike recognize that digital enterprises must pay taxes and are not immune from them.

Many problems have arisen because of digitalization. Determining the jurisdiction for tax purposes is a substantial difficulty when there is no physical presence. Since digital organizations are dynamic, it is easy to move server locations, which makes it difficult to create a stable tax jurisdiction. 'Tax havens' are places with low tax rates where companies may decide to move to minimize their tax liabilities. This activity involves strategically moving profits and eroding tax bases; it is frequently referred to as "base erosion and profit shifting" (BEPS).¹⁹

The Income Tax Act of 1961 included the concept of Place of Effective Management (POEM) to determine a company's residential status. The idea behind "POEM" is to replace the traditional definition of "control and management" with the more sophisticated idea of "effective management and control." This policy approach aims to stop businesses from moving their management activities outside of India's borders to engage in tax evasion practices.

¹⁸ Arunima, Delhi High Court upholds constitutional validity of Centre notifications imposing GST on auto, buses booked through Uber, SCCOnline, (October 30/2023, 23:20) <https://www.sconline.com/blog/post/2023/04/18/delhi-high-court-dismisses-pleas-challenging-notifications-issued-by-union-of-india-imposing-gst-on-uber-ola-rides-in-auto-rickshaws-and-buses-legal-updates-research-awareness-news-law/>

¹⁹ DesignedReport_TaxingDigitalEconomyinIndia-TheWayForward.pdf, https://vidhilegalpolicy.in/wp-content/uploads/2020/06/DesignedReport_TaxingDigitalEconomyinIndia-TheWayForward.pdf (last visited Oct 29, 2023).

According to the Income Tax Act, a "business connection" is any relationship between a resident and a non-resident that is relevant to taxes. This concept's range includes online business transactions.

To bring the operations of foreign companies in India within the jurisdiction of Indian taxation, the notion of Significant Economic Presence (SEP) was introduced. This effort focuses on companies that are well-established in India, particularly on digital platforms with large user bases.

The Finance Act of 2016²⁰ gave rise to the concept of the Equalisation Levy, which aims to charge foreign e-commerce platforms that provide online advertising services to Indian businesses. This relates to business-to-business (B2B) transactions, which are exchanges that take place between businesses. As of right now, it applies only to internet advertising services and there is a six percent tax rate on the consideration paid.²¹

The taxation of electronic commerce involves several complex difficulties that call for the creation of new legal frameworks and tactics. These steps are crucial to maintaining the values of justice and equity in the tax system and ensuring that digital businesses contribute the proper amount to tax collections. The dynamic nature of India's digital economy is mirrored in the constantly shifting landscape of e-commerce taxation, which calls for the adoption of flexible tax laws.²²

The process or tactic used by courts to interpret and apply the law to settle legal disputes is known as the judicial approach.

The Indian judiciary has handled several significant cases concerning electronic commerce taxation. These cases have provided insightful analysis and important rulings on a range of tax-related issues about e-commerce. A few significant cases that highlight the judicial perspective are as follows:

CIT v. R D Agarwal & Co²³

The Supreme Court emphasized the subjective element of judging whether there²⁴ is a business link between a resident and a non-resident in the case of CIT v. R D Agarwal & Co., emphasizing that such a determination is dependent upon the particular facts of each case. This research emphasizes how important it is for a series of transactions to be marked by a sincere and intimate relationship between the individuals involved in establishing a commercial partnership. In the current case, the court decided that merely facilitating transactions between people who live in a jurisdiction and people who live outside of it does not inevitably result in the establishment of a business relationship. As a result, the proceeds from these kinds of transactions are not taxable inside the taxable region.

Volkswagen Finance Private Limited vs. Income Tax Officer International Taxation Ward, Mumbai concerned payment made to a well-known person for their attendance at an event held in Dubai. The Assessing Officer argued that India had to impose taxes on the payment. However, the Income Tax Appellate Tribunal (ITAT) issued a ruling in which it was said that even though the event took place in Dubai, the benefits were directed towards the Indian company. The incurred costs were related to the Indian company, leading to the identification of a business connection. As a result, the amount of money given to the celebrity was found to be taxable in India.

²⁰ The Finance Act of 2016, section 165A, extended by Finance act of 2020

²¹ DesignedReport_TaxingDigitalEconomyinIndia-TheWayForward.pdf, *supra* note 16.

²² *Id.*

²³ Electronic Commerce Taxation – Current trends, Law & Judicial approach, <https://taxguru.in/income-tax/electronic-commerce-taxation-current-trends-law-judicial-approach.html> (last visited Oct 29, 2023).

²⁴ DesignedReport_TaxingDigitalEconomyinIndia-TheWayForward.pdf, *supra* note 16.

CONCLUSION

The interplay between these emerging trends and traditional taxation systems signifies the government's efforts to strike a balance between fostering innovation and revenue collection, ensuring compliance, and maintaining transparency. The complexities of cross-border taxation, digital taxation, and data localization add layers of intricacy to the taxation landscape, demanding constant adaptation by e-commerce operators.

As the e-commerce sector continues to evolve, it is imperative for businesses to remain informed about the latest tax regulations and to engage with tax professionals who can guide compliance and mitigation of potential risks. The e-commerce taxation environment in India is expected to remain a subject of ongoing refinement, and staying up to date with these developments will be crucial for businesses to thrive and remain compliant in this ever-changing landscape.

RECOMMENDATIONS AND SUGGESTIONS

In the context of the digital economy, the tax authorities have complex challenges, particularly in identifying Permanent Establishments (PE) and allocating income to these businesses. Digital businesses sometimes operate internationally without having a physical presence in particular jurisdictions, which makes it difficult to set up traditional permanent offices. This behavior may lead to questions about how earnings are distributed and taxes. To address these challenges, long-term fixes must be considered. One such long-term fix is the renegotiation of tax treaties to include a similar nexus rule that specifies the conditions that must be met by a company for it to be considered to have a taxable presence in a particular jurisdiction. This goal can be accomplished by enacting a Multilateral Instrument (MLI), which can be ratified by many countries, or by forging diplomatic agreements with other countries. However, while putting new tax treaty amendments into effect, it is crucial to consider each country's budgetary and economic policies. Making more policy decisions is essential to creating a strong framework for taxing the digital economy. These choices should take into account several factors, including data localization laws, equalization charges, and significant economic presence. The principal aim of these initiatives is to institute a taxation framework that is both efficient and equitable for digital firms functioning in the global economy.²⁵

²⁵ DesignedReport_TaxingDigitalEconomyinIndia-TheWayForward.pdf, *supra* note 16.