Taxing the Digital Economy

An Overview
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• Qualified Chartered Accountant
• Partner with CNK
• Oversees direct tax advisory and business advisory Practices
• Advises clients on international tax, FEMA, business valuation and other associated matters.
• Books authored: Taxation of foreign entities in India, Structuring of Foreign Direct Investment in ecommerce companies, Guide to Domestic Transfer pricing, general Anti Avoidance Rules (GAAR) –past present and future
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About CNK
About CNK

- Mission: To provide “Knowledge Based Solutions” with personalized services
- 25 Partners, 500+ Strength
- Offices across India and Dubai
- Stellar leadership and experienced team
- Established quality assurance process
- Focus on building long term customer relationships
- Members of INAA an international association of firms with presence in over 50 countries.
What is the digital economy?

• Borderless

• Intangible commodities
  • Software
  • Content
  • Crypto
  • “Data”

• Instant

• Ephemeral
The Digital Conundrum

• Businesses and their customers are no longer bound by Geography

• Transactions without obvious gatekeepers (customs, immigration etc.)

• Companies can move bases easily

• IP can be transmitted across geographies

• Data is now a commodity

• How should such transactions be taxed?
Examples

A

B

C
Global trends

GTTS:
Global Tax transparency Standards

BEPS:
Base erosion and profit sharing
Direct Taxes
Indian Tax Framework

Direct Tax
- Residence Based
- Source Based

Indirect Tax
- Consumption Based
Residential Status

Section 6(3) of the income tax act, 1961

Pre April 2017
A company shall be said to be a resident of India if
• The company is incorporated in India; or
• during that year, the control and management of its affairs is situated wholly in India

Post 1st April 2017
A company shall be said to be a resident of India if
• It is an Indian company, or
• Its place of effective management (PoEM), at any time in that year, is in India
Place of effective Management

*a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance, made.*

Companies with turnover less than 50 cr exempt

Companies with Active Businesses outside India (ABOI) also exempt

Consequences or PoEM in India?
Permanent Establishment

- Section 9 of act: “Business Connection”
- Article 5 of International treaties

**Fixed Place PE**
Presence of office, place of business, equipment etc.

**Service PE**
Employees visiting India for periods of time to render services

**Agency PE**
Securing and concluding orders in India

**Installation PE**
Machinery installation and supervision
Virtual PE

Business connection expanded to include: Any significant Economic Presence (SEP)

- A transaction in respect of any goods, services or property, including provision of downloaded data or software, carried out by a non-resident in India if the aggregate of the payments arising from such transactions during the previous year exceeds the prescribed threshold.

- Systematic and continuous soliciting of business activities or engagements involving interaction with the prescribed number of users in India using digital processes.
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- Impact of proposed Data localization norms?
<table>
<thead>
<tr>
<th>Income Characterization</th>
<th>Royalty</th>
<th>Fee for technical Services</th>
<th>Other Business Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax Rate (no PE)</td>
<td>10% or rate as per DTAA</td>
<td></td>
<td>0%</td>
</tr>
<tr>
<td>Tax Rate (PE)</td>
<td>40% + Surcharge</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Examples</td>
<td></td>
<td></td>
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</tbody>
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Issues

• Software License Fee
• SAAS subscription
• Web Hosting
• Server Hosting charges
• Market support services
• Data Retrieval services
• Digital Downloads

• Withholding tax impact
• Tax Rate
• Tax credit availability
Other direct tax Issues

• Equalization Levy
• Angel Taxes
Indirect Taxes
Indirect Tax Framework

• Central Excise Duty
• Additional Excise Duty
• Additional Customs Duty
• Service Tax
• State VAT / Sales Tax
• Entertainment and Amusement Tax
• Luxury Tax
• Taxes on lottery, betting and gambling
• Taxes on advertisement
• Octroi and Entry Tax

Goods and Services Tax (GST)
Supply

“Sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business”

Includes import of goods/services

Key Elements

- Place of Supply
- Time of Supply
- Value of Supply
Issues Under GST

• Online Gaming
  Valuation, classification still issues

• Crypto
  Goods, Services, Actionable items?

• Import of Intellectual property
  Taxable? Time of taxation?
OIDAR

- Online Information Database access and Retrieval
- services provided through the medium of internet and received by the recipient online without having any physical interface with the supplier of such services

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

• Operators to Deduct 1% of total consideration
• Report and deposit with authorities
• To be claimed by merchants later
Questions?
Our value proposition

• **Experience** - We understand what it takes to plan, execute and effectively manage projects conducted across multiple geographies

• **Quality with Flexibility**: We pride ourselves on the high level of engagement our partners and managers have in customer projects – ensuring optimal quality assurance and knowledge transfer. We can minimize project implementation times by working within your organizational boundaries – or for economies of scale and scope

• **End-to-end support**: We can assist you across all aspects of your project – with an unmatched blend of information management skills, processing capacity, and business, regulatory and process expertise.
Thank you

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