

Taxation and Digitalization of the Economy

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Digital Economy in India



- Internet users 481 million in December 2017 –growth of 11.34% over December 2016



- Overall internet penetration: 35% of population in December 2017



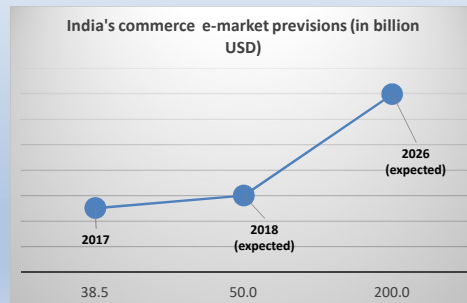
- Internet users expected to reach 500 million in June 2018

Source: Internet and Mobile Association of India

Digital Economy in India



- India's E-commerce market



Source : India Brand Equity Foundation

Digital Economy: Broader Direct Tax Challenges

- Issues of nexus, data and characterization go beyond the issue of putting end to BEPS.
- Whether existing international tax framework can determine where economic activities are carried out and value created for corporate tax purposes.
- Broader challenges relate to allocation of taxing rights amongst countries over income from cross border activities in digital age.
- No agreement reached in BEPS Action 1 on actual scale and impact of broader tax challenges.
- None of the potential options of Action 1 adopted as agreed international standards.
- Acknowledgement that countries can include any of these options in their domestic laws while respecting treaty obligations.

Need for Adopting an Option



- Digitalized businesses have significant *market presence* but little *physical presence*.
- Digitalized businesses have business models relying heavily on intangible property, data, user-participation and network effects.
- Avoidance of tax completely in source jurisdiction by such digitalized businesses



Need for Adopting an Option



- Unfair advantage over domestic competitors
- Rising tax burden over domestic enterprises and citizens to the detriment of economy as a whole
- Global consensus based solutions will take time or may not even be found!

EQUALISATION LEVY BY INDIA: INTENT & PURPOSE

- To ensure *tax neutrality* between specified services provided from within India and outside India and address tax challenges arising from digital economy
- To achieve these objectives with minimal disruption for enterprises, without creating multiple or excessive taxation, and with minimal costs of compliance and administration
- To ensure that options are available for enterprises to pay either tax on income from specified services on net basis under the existing laws (by adjusting their business model), or tax on specified services on gross payment

Equalization Levy in India

- **Tax on Specified services**
 - Till now, only service that has been specified: Online Advertising
 - Introduced by Chapter VIII of Finance Act, 2016: a self contained code unrelated to any other tax
 - Rate of tax: 6% of the gross payment
 - Charged on consideration for specified services received or receivable by a Non-resident
 - from a person resident in India and carrying on business and profession in India or a Non-resident having PE in India
- **No EQL if**
 - Recipient has PE in India & payment is effectively connected with PE
 - If aggregate payment from a person in a year is less than Rs. 100,000
 - B2C transactions

Equalization Levy in India

- **Exemption from income tax**
 - Income from specified services that are chargeable to EQL have been exempted under the Income-tax Act, 1961 by a specific amendment thereby avoiding multiple economic taxation
- **Collection of Equalisation Levy**
 - EQL to be deducted by the person making payment of more than Rs. 100,000 for specified services in a year to the recipient
- **Administrative Monitoring**
 - The statement furnished by the payer would be monitored to check for accuracy of tax and interest paid and an intimation would be issued
 - Centralized Computerized Processing of statements

'Significant Economic Presence' introduced in domestic law

- SEP would result if
 - Transactions carried out by a non-resident in India including download of data or software in India, during fiscal year exceed prescribed amount; or
 - Systematic and continuous soliciting of business activities or engaging in interaction with prescribed number of users, in India through digital means.

Review of basic principles for allocation of taxing rights



- BEPS Action Report measures primarily designed to target instances of double non taxation and do not target allocation of taxing rights.
- Current rules based on physical presence to determine nexus with a jurisdiction for tax purposes need change.
- Significant Economic Presence type criteria to be included in treaty definition of PE.

THANK YOU