
DIFFERENTIAL OR DISCRIMINATORY TREATMENT OF E-COMMERCE: IS IT JUSTIFIED?

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ABSTRACT

This research paper explores the intricate relationship between e-commerce and taxation, focusing on the challenges posed by the digital environment and cross-border transactions. E-commerce, facilitated by the internet, has transformed the buying and selling of goods and services, giving rise to tax compliance concerns due to the limited human intervention involved. The paper delves into the growth of e-commerce, its impact on revenue, and the adoption of various models for transactions. The complexities of taxing e-commerce transactions have led to issues of tax evasion and avoidance, particularly in cross-border scenarios.

The study investigates the responses of India's Goods and Services Tax (GST) law and the European Union's Value Added Tax (VAT) Directive to address the challenges of cross-border e-commerce taxation. Both frameworks exhibit distinct approaches to taxing e-commerce, reflecting the difficulties in tracking and attributing transactions to specific tax jurisdictions. The analysis encompasses regulations for e-commerce operators, tax liability for digital platforms, and the classification of transactions under these legislations.

Furthermore, the research examines optimal strategies for moving forward in addressing e-commerce taxation challenges. It explores recommendations from the OECD, emphasizing joint and several liabilities for digital platforms, enhanced compliance measures, electronic invoicing, and simplified registration. The complexity of e-commerce taxation necessitates innovative solutions to combat tax fraud and evasion effectively.

In conclusion, the paper underscores the necessity of differentiating e-commerce transactions from traditional commerce for VAT/GST purposes. The digital nature of e-commerce demands specialized approaches to taxation due to the unique challenges it presents, ensuring fairness, revenue generation, and effective tax collection.

INTRODUCTION

Electronic Commerce (Hereafter termed as e-commerce) needs the help of internet. Both buying and selling of goods and services via internet could be broadly termed as e-commerce. Using of internet for organizing ownership transfers or the rights in the usage of goods or services are also associated with e-commerce. The growth of e-commerce was humongous due to the increase of usage of mobile phones and internet penetration. According to a study report made by Associated Chambers of Commerce and Industry of India (Hereafter termed as ASSOCHAM) and Forrester in the year 2016, it was seen that the e-commerce growth rate was likely to jump by 51% in the year 2020 considering the revenue produced from e-commerce would likely to increase from 30 billion dollars to 120 billion dollars in the year 2020.¹ There are a number of models used in selling or buying of goods and services through e-commerce. For example such as direct sale model, marketplace model, inventory model etc. These models are adopted to make the supply and supply chain more effective while reducing all other necessary costs involved in making a supply.

Taxation is the sovereign function of the state where traditional principles of taxation are followed. However the coming of e-commerce has posed an inseparable challenge to the taxation aspects mainly because of the little human intervention that the e-commerce transactions have. The growth of digital environment gave birth to enforcement, application and principal problems in the field of taxation. The Organization for Economic Co-operation and Development (Hereafter termed as OECD) has taken up the issue of taxation of e-commerce in order to provide guidance for different legislations to come up with a suitable taxation legislation which would make the state benefit from e-commerce revenue. They desired to tax e-commerce transactions using traditional international taxation principles such as neutrality, efficiency etc.²

It is important to tax e-commerce just like the regular commerce for a few reasons. Firstly it is for the need for revenue by both the central and state governments. The failure to impose VAT/GST on e-commerce transactions would lead to revenue losses. Secondly, business can be set up in states where there is no VAT/GST imposed on such e-commerce purchases and can cause bigger problems and loss for tax authorities. Thirdly, it will be unfair to not tax e-

¹ Sumit Dutt Majumder, *GST and E-Commerce*, 28(2) NATIONAL LAW SCHOOL OF INDIA REVIEW 123, 127 (2016).

² Organization for Economic Co-operation and Development, *TAXATION AND ELECTRONIC COMMERCE: IMPLEMENTING THE OTTAWA TAXATION FRAMEWORK CONDITIONS*, 21 (2001).

commerce and tax regular commerce because it can have an unfair tax advantage over main street vendors. Finally it can also affect the consumer's tax liability regarding the levying of VAT/GST on how they are buying rather on the amount of money they have paid for such purchases.³

For the last 30 years the problem of taxation of e-commerce has been troubling the policymakers and government alike. The need to ensure a level playing field for the economic operators and the need to impose VAT/GST on e-commerce have been taken up by the respected authorities since the early 1990s.⁴ In the recent years, the cross-border e-commerce has been troubling the tax authorities a lot along with compliance cost reductions for business and national revenue protection. Digitalization has greatly impacted Business to Consumer transactions (Hereafter termed as B2C). According to OECD Report, 2019 B2C e-commerce sales worth 2 trillion dollars are happening which could rise to 4.5 trillion dollars in which cross-border B2C e-commerce denotes to 1 trillion dollars.⁵ Cross-border Business to Business transactions can be collected via reverse charge mechanism. However such applicability will not be useful for B2C transactions pressing challenges upon tax administration.⁶ Digital platforms too play an important role in the development of e-commerce which could be seen from the report of developed by International Post Corporation, 2017 which indicates that 57% of the goods are purchased from digital platforms.⁷

Apart from this e-commerce tax fraud and tax evasion cases too climbed up causing huge revenue loses for the government. So it is a serious area to look into. Many jurisdictions have formulated complex tax legislations for fairer tax collections. But the more complex they get the more chances of tax abuse, practical complication and less compliance.⁸ So there is no quick fix but rather make the government benefit from as much as revenue produced out of e-commerce by giving them a differential or discriminatory treatment.

The researcher in this research paper focuses on answering the issue whether the discriminatory

³ Subhajit Basu, *International Taxation of E-commerce: Persistent Problems and Possible Developments*, 1(1) JOURNAL OF INFORMATION, LAW AND TECHNOLOGY 1, 11 (2008).

⁴ Marta Papis *et al*, *VAT and electronic commerce: the new rules as a means for simplification, combatting fraud and creating a more level playing field?*, 20(1) ERA FORUM 201, 202 (2019).

⁵ Organization for Economic Co-operation and Development, *THE ROLE OF DIGITAL PLATFORMS IN THE COLLECTION OF VAT/GST ON ONLINE SALES*, 12 (2019).

⁶ *Id* at 12.

⁷ *Supra* note 5, at 12.

⁸ *Supra* note 4, at 219.

or differential treatment of e-commerce under VAT/GST is justified or not. For this purpose the research paper is divided in three chapters and a concluding part. The first chapter talks about the tax abuse instances of e-commerce and cross-border e-commerce transactions. The second chapter deals with the GST/VAT legislations of India and Europe to get an idea about their working on the cross-border e-commerce transactions. The third chapter talks about the optimal solutions to the challenges posed by e-commerce and cross-border e-commerce transactions. And the researcher's concluding remarks are shared in the concluding part.

RESEARCH METHODOLOGY

AIMS AND OBJECTIVES

The aim of this research paper is to understand the impact of e-commerce on the taxation aspects of VAT/GST and also to understand how various countries responded to the challenges posed by the cross-border e-commerce transactions. The objective of this research paper is to find out whether the discriminatory or differential treatment of e-commerce is justified or not.

SCOPE AND LIMITATION

The research paper's scope mainly focuses on the Indian laws as well as European laws of taxation along with other international materials and reports that supplement guidelines for different countries with regard to the taxation of e-commerce. This research paper mainly focuses on the substantive laws rather than looking into the procedural aspects of it.

RESEARCH QUESTIONS

1. What is e-commerce?
2. What is the need to bring the e-commerce transactions under the ambit of tax?
3. What are the challenges posed by cross-border e-commerce transactions in collecting VAT/GST?
4. How are cross-border e-commerce transactions being brought under the ambit of tax by GST law in India and EU VAT Directive?
5. What are the possible ways to curb down e-commerce tax fraud and tax evasion cases?

CITATION STYLE

Bluebook 20th Edition has been followed in this research paper.

SOURCES

The researcher looked into both primary and secondary sources to get an overall understanding of the issues posed by e-commerce transactions.

CHAPTER-1 TAX AVOIDANCE AND TAX EVASION VIA E-COMMERCE PLATFORMS

There are concerns regarding tax compliance with regard to e-commerce. The importance issues that lead to such concerns are tax avoidance and tax evasion caused due to e-commerce effect. Transactions can be hidden and there are difficulties in identifying parties to the transactions in e-commerce transactions. As a result there are endless opportunities for both tax evasion and tax avoidance to take place. There have been instances where certain businesses are carried out in tax haven places.

For example in Europe, both Amazon and Ebay are used as tax haven marketplaces for the sellers based in China.⁹ The sellers from china using Amazon or Ebay as marketplaces do not pay the respective VAT using fake identification numbers. This resulted them an unfair tax advantage over other tax abiding sellers.¹⁰ The EU Commission, Germany and United Kingdom held the marketplace operators liable for tax fraud for an amount of five billion dollars.¹¹ Both in United Kingdom and Germany, there are around thousands of vendors from china withholding the pay of VAT by using e-commerce platforms like Amazon. As a result there were many campaigns organized by domestic vendors against such tax fraud vendors during the period 2014-2016.¹² According to a UK Government Agency, the UK taxpayers had lost around nearly 2 billion pounds during the year 2015-16 due to VAT fraud.¹³ After this the countries have taken up this issue seriously.

⁹ Wolfgang Kerler, *How Amazon and Ebay Became a Tax Haven for Chinese Sellers*, THE VERGE, available at <https://www.theverge.com/2018/9/4/17796118/amazon-ebay-chinese-sellers-tax-fraud-haven> (Last visited on September 19, 2020).

¹⁰ *Id.*

¹¹ *Supra* note 9.

¹² *Supra* note 9.

¹³ *Supra* note 9.

One of the biggest e-commerce tax fraud cases happen via China based E-Commerce giant Alibaba. Due to increase in pressure from the government authorities they purged around 2 lakh tax avoiding vendors during the year 2019.¹⁴ This happened because of the crackdown happened in countries like Germany, UK and India after finding out there were huge money loss occurred due to tax fraud.¹⁵ This has been because of increased scrutiny from the tax administrations to stop the sellers based in China using their platforms to avoid local taxes. One such issue is them shipping goods as gifts.¹⁶ India has exempted gifts of value up to 5000 Rupees from the ambit of Indian Tax Legislations. However if shipment of goods take place as gifts then they are allowed to enter India as a tax free product although it was meant for a sale that is commercial in nature and thus falls outside the scope of taxing legislations.¹⁷ In the same year other e-commerce giants from China like Shein, AliExpress and Club factory came under the surveillance of the Indian taxing authorities.¹⁸ It has been found out that these e-commerce platforms were transferring purchases as gifts to India and hence skipping their liability to pay both custom duties and GST.¹⁹ Due to this the Indian counterpart i.e. the Flipkart has to suffer a lot because the e-commerce companies from China were able to sell their products at a very cheaper rate as compared e-commerce companies from India. It has been found out that orders that are initiated from Indians daily on such online retail platforms amounted to 2 lakh orders and those amounts of orders escape from the ambit of tax.²⁰ The Indian tax authorities have been more vigilant after this.²¹ Both courier and postal services along with custom authorities were asked to thoroughly scan the shipment of goods from China by the order of Department of Industrial Policy and Promotion. However there was a decrease in such illegal sale by 40% after such increased scrutiny from the government's side.²²

According to National Association of Software and Service Companies, a large number of

¹⁴ Benjamin Parkin, *Alibaba purges 200,000 Tax-Avoiding Vendors as Nations Crack Down*, BLOOMBERGTAX, available at <https://news.bloombergtax.com/daily-tax-report-international/alibaba-purges-200-000-tax-avoiding-vendors-as-nations-crack-down> (Last visited on September 19, 2020).

¹⁵ *Id.*

¹⁶ *Supra* note 14.

¹⁷ *Supra* note 14.

¹⁸ BI India Bureau, *India is cracking down on Chinese e-commerce firms like Aliexpress, Club Factory and Shein for tax and duty evasion*, available at <https://www.businessinsider.in/aliexpress-club-factory-shein-under-government-scanner-in-india/articleshow/68736854.cms> (Last visited on September 19, 2020).

¹⁹ *Id.*

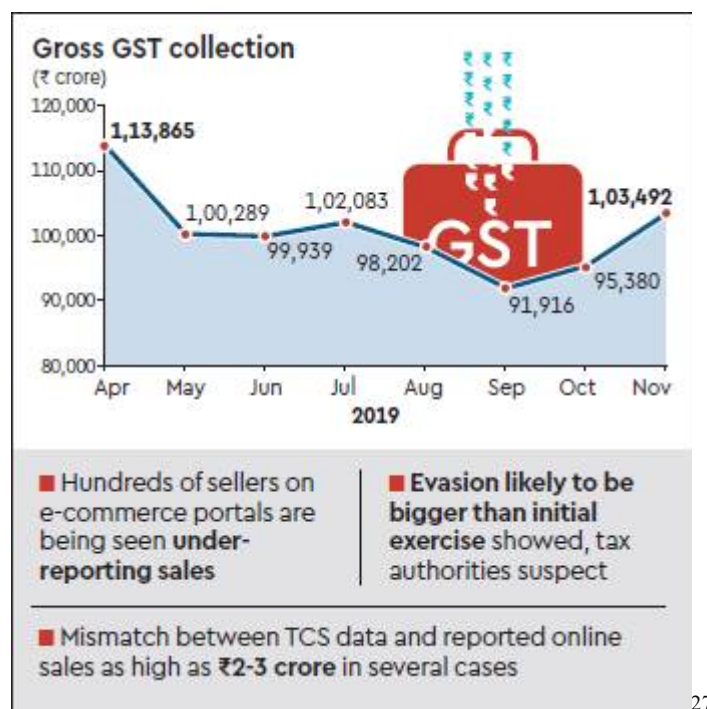
²⁰ *Supra* note 18.

²¹ *Supra* note 18.

²² *Supra* note 18.

entities numbering around 235 million involve in online transactions.²³ Direct or indirect transactions are carried out by these entities via e-commerce companies or platforms. These transactions are required to be brought under the ambit of taxation.²⁴ This is necessary not only for revenue purposes but to find out the method of transactions happening in supply chain and also to detect new taxpayers and underreporting cases.²⁵

According to official reports tax frauds worth Rupees 90,000 crore take place every year and the GST system prevalent in India is only able to detect 10-15% of such tax frauds.²⁶ There were underreporting of sales by sellers selling through Amazon and Flipkart which was determined by looking at the TCS data provided by them. The below mentioned graph can describe more about it:



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From this it is evident that cross border e-commerce transactions are prone to tax abuses. As a result there is revenue loss. A number of transactions under such methods are not found because

²³ Hitesh Bansal, *Counter stroke on dark side of e-commerce (Tax Evasion)*, available at <https://taxguru.in/income-tax/counter-stroke-dark-side-e-commerce-tax-evasion.html> (Last visited on September 19, 2020).

²⁴ To include such transactions under TDS net under Income Tax Act, 1961 and also under TCS net under Central Goods and Services Act, 2017.

²⁵ *Supra* note 23.

²⁶ Sumit Jha, *GST evasion? Rampant under-reporting of online sales detected*, available at <https://www.financialexpress.com/economy/gst-evasion-rampant-under-reporting-of-online-sales-detected/1789257/> (Last visited on September 19, 2020).

²⁷ *Id.*

of less human intervention. There is no quick fix for this. But the governments all across the world are trying hard to make such transactions within the ambit of their taxing legislations in order to have a level playing field and to have less revenue loss for the tax administrations. So it can be said that the cross-border e-commerce has been troubling the tax authorities a lot with compliance cost reductions for business and national revenue protection.

CHAPTER-2 INDIAN GST LAW AND EU VAT DIRECTIVE ON CROSS-BORDER E-COMMERCE TRANSACTIONS

This chapter mainly focuses on the GST law in India and European Union's 2017 VAT Directive e-commerce Package in order to get an idea about their way of dealing with the challenges posed by cross-border e-commerce transactions.

GST LAW OF INDIA

GST is an indirect tax. It was passed in the Indian Parliament on 29th of March, 2017 and came into effect on 1st of July, 2014. The intention behind this particular act was to provide one indirect tax for India and has subsumed about 10 of the earliest tax regimes that existed in India both at the central and state level. It is a destination based tax. Both central and state GSTs are applicable for intra state sales and the integrated GST is applicable for inter-state sales.

Section 2(44) of CGST Act, 2017 gives the definition of e-commerce.²⁸ Section 2(45) of CGST Act, 2017 gives the definition for E-Commerce Operator (Hereafter termed as ECO).²⁹ Section 9(5) of CGST, Act talks about the ECO liability to pay GST in cases where such supply of services is made via ECO.³⁰ At the same time if this is a case with the supply of goods then the supplier of such goods are liable to pay GST. Compulsory registration is required for e-commerce which could be seen from Section 24(ix) and (x) of the CGST Act, 2017 irrespective of threshold exemption. However government later notified Section 9(5) services to enjoy threshold exemption.³¹ Composition Levy Scheme is not applicable to sellers supplying goods

²⁸ Section 2(44), CENTRAL GOODS AND SERVICES TAX ACT, 2017. According to this section e-commerce means the usage of digital or electronic network for the transfer of goods or services or both plus the inclusion of products that are digitalized in nature.

²⁹ Section 2(45), CENTRAL GOODS AND SERVICES TAX ACT, 2017. According to this section e-commerce operator means "any person who owns, operates or manages digital or electronic facility or platform for electronic commerce".

³⁰ The government notified services for this section are Motor Cab services, Hotels and Accommodation services and housekeeping services.

³¹ Notification No. 65/2017-Central Tax as amended *vide* Notification No. 6/2019-Central Tax.

via ECO who is eligible for TCS under Section 52 of CGST Act, 2017.³²

The Section 52 of CGST Act, 2017 talks about Tax Collected at Source.³³ A separate registration is required for this purpose. This section was introduced to prevent underreporting of sales by e-commerce sellers. This section applies when sellers make ECO to collect the consideration on their behalf. In such cases, the ECO has to deduct 1% of amount from the consideration as TCS and pay it to the taxing authorities. This section is also applicable to foreign e-commerce operators. For this purpose they will have to obtain registration in India. If the physical presence cannot be made possible by such e-commerce operators then they will have to appoint an agent on their behalf.³⁴

Tax jurisdiction in cross border transactions is determined on the basis of place of supply concept. Countries can adopt either origin principle or destination principles for this purpose. In the case of India, a destination based approach has been adopted via GST. This could be seen from Sections 10³⁵, 11³⁶ and 13(2)³⁷ of IGST Act, 2017.

Now let's look into the working of OIDAR services. Section 2(17) of IGST Act, 2017 defines it.³⁸ The place of supply for tax jurisdiction is the location of the service recipient if any two of the seven factors mentioned under Section 13(12) are satisfied.³⁹ There are three situations in OIDAR services. First is the situation where both the supplier and recipient of services are located in India. In such cases it is taxable in India. Second is the B2B transaction situation where supplier is an outsider and the recipient is a registered person or a business entity. In such cases reverse charge mechanism applies and as a result the business entity has to pay GST. And then there is B2C transactions where Section 14(1) of IGST Act, 2017 applies. In this case the supplier is located outside India in a territory where tax cannot be imposed and the recipient is an individual or an unregistered person. Hence the outside supplier is made liable to pay GST. If an intermediary is involved in transaction between non-taxable supplier and

³² Section 10(2)(d), CENTRAL GOODS AND SERVICES TAX ACT, 2017.

³³ Section 52, CENTRAL GOODS AND SERVICES TAX ACT, 2017.

³⁴ Section 9(5), CENTRAL GOODS AND SERVICES TAX ACT, 2017.

³⁵ Section 10, INTEGRATED GOODS AND SERVICES TAX ACT, 2017. (Place of supply of non-imported or non-exported goods).

³⁶ Section 11, INTEGRATED GOODS AND SERVICES TAX ACT, 2017. (Place of supply of imported or exported goods).

³⁷ Section 13(2), INTEGRATED GOODS AND SERVICES TAX ACT, 2017. (Place of supply in case of normal services)

³⁸ Section 2(17), INTEGRATED GOODS AND SERVICES TAX ACT, 2017. According to this section OIDAR means internet driven category of services which is transferred and received to the recipient with having minimal human intervention.

³⁹ Section 13(12), INTEGRATED GOODS AND SERVICES TAX ACT, 2017.

unregistered individual then the intermediary is held liable for paying GST treating the supply between the non-taxable supplier and intermediary as a deemed supply⁴⁰ and then supplying such services to the unregistered individual with some exceptions. If the intermediary satisfies the conditions laid down under Section 14(1), then they should not be held liable to pay GST.⁴¹

So a question arises to why OIDAR services of such kind are treated differently? The government has given two reasons for it. They are as follows:

- Unfair tax advantage to the suppliers outside India and their services will be left outside the ambit of tax;
- Due to problems relating to compliance verification.⁴²

Apart from this, C2B e-commerce transactions are also covered under IGST Act, 2017 where reverse charge mechanism applies along with intermediary liability in which case the ECO will be held liable to pay GST.

EU VAT DIRECTIVE

The EU adopted the new rules to reduce tax fraud, to have a level playing field, to eliminate distortions and reduce compliance costs. Three kinds of transactions are mainly affected due to the coming up of the new rules. They are B2C telecommunication, broadcasting and electronically supplied services (Hereafter termed as B2C TBE services), distance sales of goods that are taking place within the community and the new rules for B2C importation which is likely to fuse with “*distance sales of goods imported from third territories or third countries*”.⁴³

Article 58(2) of the VAT directive is the new addition.⁴⁴ According to this article a threshold of EUR 10000 has been set up above which the new rule will apply and the place of supply will be the place of the recipient. If the threshold limit cannot be surpassed then the general

⁴⁰ Section 14, INTEGRATED GOODS AND SERVICES TAX ACT, 2017.

⁴¹ Section 14(1), INTEGRATED GOODS AND SERVICES TAX ACT, 2017. There are 4 exceptions under this sections like invoice or customer bill requirement, the involvement of intermediary should be limited etc.

⁴² Central Board of Excise & Customs, *Online Information Data Base Access and Retrieval (OIDAR): GST*, available at <https://www.cbic.gov.in/resources/htdocs-cbec/gst/OIDAR.pdf> (Last visited on September 20, 2020).

⁴³ *Supra* note 4, at 206.

⁴⁴ Article 58(2)(c), VAT DIRECTIVE.

rule laid under Article 45 of the VAT directive will apply in which the place of supply will be the place of the supplier's business.⁴⁵ Apart from this the newly added rule discriminates between businesses established in EU and businesses not established in EU.⁴⁶ In addition to it another rule that will be applying for B2C TBE services is Article 24b of VAT Directive which also provides a threshold limit below which the businesses can rely on a piece of evidence regarding the customer's location for the establishment of place of supply purposes. Article 358(a)(1) is another rule which extends the applicability of Mini One Stop Shop to non-EU businesses as well.

Article 33 of VAT Directive is another exception to the general rule of Article 32 which will affect the intra-community sales. According to that article the place of supply of goods is the place where the transmission of goods ends.⁴⁷ Apart from this there are different threshold limits regulating the concept of place of supply. It created a lot of administration burden and difficulties in registration. This was solved by the e-commerce package in which from 2021 the threshold limit that will be used for the place of supply purposes of intra community sale of goods purposes will be the same as the threshold limit for B2C TBE services.

There were many fraud activities happened in e-commerce transactions by abusing the gift exemption provision. As a result, from 2021 this exemption will be abolished.⁴⁸

Apart from this new article 33(b) and (c) was introduced to reduce the distortion between EU businesses and non-EU businesses and to reduce compliance cost. This article determines whether the transaction is determined as an importation of goods or the distance sales of goods imported from third countries. Article 143(1)(ca) has been introduced to avoid double taxations which can happen arise out from the above transactions. Article 369 includes some special arrangements for declaration and payment of import VAT which provides for payment liability, record keeping liability etc.

Article 14(a) is yet another rule which talks about the e-commerce platform's liability. Other rules in this regard are Article 66a and 242a which talks about record keeping obligations of the e-commerce digital platforms. It is to be noted that these article will only come into force from 2021. These provisions correspond to the OECD guidelines, 2019 which talked about full

⁴⁵ Article 58(2)(c), VAT DIRECTIVE.

⁴⁶ *Supra* note 4, at 207.

⁴⁷ Article 33, VAT DIRECTIVE.

⁴⁸ *Supra* note 4, at 211.

VAT/GST liability.⁴⁹ It is to be noted that these provisions do not apply to the distance sales of goods imported through third territories or third countries.⁵⁰ Hence it would increase non-compliances from the part of e-commerce platforms because they would not be able to adhere to VAT purposes.⁵¹ Other than this there are further issues mentioned with regard to the liability of digital platforms specifying some exceptions to it which is in similar lines with OECD guidelines, 2019.

So from the working of these two legislations it can be seen that e-commerce and e-commerce cross-border transactions are treated differently from the regular commerce transactions. This is because of the difficulty in tracing the necessary ingredients for taxation that is done through digital environment.

CHAPTER-3 OPTIMAL WAY TO MOVE FORWARD

From the discussions above it could be said that e-commerce and e-commerce cross-border transactions are treated differently because of their complex nature. Even after having a decent tax legislative framework, India and Europe are not able to tackle down tax evasion and tax fraud. As the researcher explained earlier there is no quick fix for it. The only thing government can do is to look for new sources of revenue via e-commerce. Cross-border e-commerce has the potential to increase the tax base in the country of production as well as the country of consumption.⁵² This could mean more consumption taxes and lesser income taxes.⁵³ Having said the government only tries to maximize their revenue. Unfair situations could arise because of not so worthy VAT/GST collection procedures. Making digital platforms liable under such transactions are not enough. A strong compliance obligation from other actors involved in such transactions is also needed for the VAT/GST collection purposes.

OECD Guidelines of 2019 has suggested some measures for the reduction of tax fraud and tax evasion and to increase compliance mechanism. One such measure is the Joint and Several liability of the digital platforms.⁵⁴ There are two variations for it. First one is the forward looking variation where the tax authorities bring to the notice of digital platforms regarding the

⁴⁹ *Supra* note 5.

⁵⁰ *Supra* note 4, at 219.

⁵¹ *Id* at 219.

⁵² Subhajit Basu, *supra* note 3, at 18.

⁵³ Subhajit Basu, *Id.*, at 18.

⁵⁴ *Supra* note 5, at 62.

non-compliant suppliers and give some time to correct it or to take appropriate steps to prevent non-compliance. If the digital platforms fail to take necessary steps then they would be held jointly and severally liable for the future behavior of such underlying suppliers.⁵⁵ Second variation is based on past liabilities of the underlying sellers. If digital platforms have not taken any steps to prevent such activities then they can be held jointly and severally liable for such past actions by the underlying suppliers.⁵⁶ There are various considerations to be taken into account while implementing this method.⁵⁷

There are also chances for non-compliance behavior from the side of fulfillment houses. In such cases, compulsory registration, obligations for record keeping and even joint and several liability can also be considered to bring them under the tax surveillance.

There are a lot of under-reporting cases with regard to sales happened in India. Technology based solutions such as electronic invoicing should be introduced to solve this issue. Country like Mexico has brought 4.2 million non-compliant businesses under the ambit of tax after the introduction of electronic invoicing.⁵⁸ OECD has also suggested for simplified registration and a high international administrative cooperation.⁵⁹

Apart from this, the intermediaries should be assumed to be elected for liability burden provided it should get the approval from the taxing authorities.⁶⁰ In such cases the intermediaries should be held responsible only to what he has agreed to stand for.⁶¹ In case of non-resident intermediary, a fiscal guarantee is required to ensure proper compliance.⁶²

⁵⁵ *Id.*, at 62-63.

⁵⁶ *Supra* note 5, at 63.

⁵⁷ The following are the considerations:

(1) JSL imposes only assisting functions and not collection of VAT/GST; (2) due diligence need; (3) builds on the assumption that to ensure level playing field the interest of the platforms should be taken into consideration; (4) enforcing this method across all the e-commerce market; (5) disproportionate requirements should be avoided; (6) effective in the giving surveillance to fulfillment houses; (7) gets updated with the latest VAT/GST identification numbers; (8) tax authorities have to work to find out non-compliances; (8) clear communication system is needed; (9) time compliance is important.

⁵⁸ Organization for Economic Co-operation and Development, TECHNOLOGY TOOLS TO TACKLE TAX EVASION AND TAX FRAUD, 19 (2017).

⁵⁹ *Supra* note 5.

⁶⁰ Organization for Economic Co-operation and Development, ELECTRONIC COMMERCE: FACILITATING COLLECTION OF CONSUMPTION TAXES ON BUSINESS-TO-CONSUMER CROSS-BORDER E-COMMERCE TRANSACTIONS, 15 (2005).

⁶¹ *Id.*, at 15

⁶² *Supra* note 60, at 16.

CONCLUSION

E-commerce and cross-border e-commerce transactions are very complex in nature. These transactions have minimal human intervention as a result tracking of physical presence for taxation purpose is very difficult. The growth of e-commerce was tremendous. There are many sellers or companies using digital platforms as marketplaces in doing their businesses. Hence the transactions carried out in these businesses are to be brought under the ambit of VAT/GST in order to have a level playing field and also to capture revenue for the government's functioning. As a result many of the international reports and materials on e-commerce have suggested for taxing of e-commerce using traditional taxation principles. OECD has been working efficiently in this regard since the early 1990s.

Day by day the technology is developing and as a result new methods of transactions through internet are also developing. It creates inseparable challenges to the taxing authorities. As a result enormous tax abuses occur in the field of e-commerce. E-commerce tax abuses are still prevalent even after adopting complex and fairer legislative frameworks. This is because of the reason that complex procedures tend to not attract the participants involved in e-commerce transactions especially with cross-border e-commerce transactions. So there is no quick fix to it. The only thing government can do is to look for new sources of revenue via e-commerce by discriminatory methods by having effective monitoring mechanism and stringent controls over such transactions.

So it is necessary to discriminate or differentiate e-commerce transactions from other regular commerce transactions for VAT/GST purposes because this is the only way the tax authorities can ensure a level playing field along with efficient revenue collection.

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