

## Pre Budget Submission

18/6/2019

The Internet and Mobile Association of India [IAMAI] on behalf of its members would like to make the following submission for consideration of the Ministry of Finance for the Union Budget.

### *Reform in the CKYC Infrastructure*

**Issue:** Banks that contribute to the CKYC database by uploading relevant customer data are charged INR 0.80 for creation of record and INR 1.15 for updating of record. This is inconsistent with the commercial rationale as banks creating and updating customer database are in effect reducing on-boarding costs for other lenders and as such should ordinarily be compensated for that through a fee. Charging institutions to upload their own data will only restrict realisation of the vision behind initiating the CKYC database.

#### **Suggested Solution**

- A special budget be allocated for CKYC initiative and absolve banks from paying to upload or update records.
- Banks and other financial institutions be incentivised to contribute to the CKYC database.

### *FDI Limit of Insurance Distributors*

**Issue:** The FDI limit for insurance companies should be treated differently than insurance distributors. Presently distributors are clubbed with insurance companies and the FDI rate is capped at 49%. RBI has allowed foreign investment up to 100% under the automatic route in 'Other Financial Services' which are regulated by any financial sector regulator viz. RBI, SEBI, IRDAI, PFRDA and NHB. However, the IRDAI has not implemented the same restricting insurance distributors from availing the benefits.

#### **Suggested Solution**

- 100% FDI be allowed in insurance distribution services and the IRDAI be suitably instructed to implement the provision.

### **DIRECT TAX**

#### *Angel Tax*

**Issue:** The DPIIT and CBDT has taken proactive initiatives to resolve the Angel Tax issue and this is reflected in the notification issued on February 2019. A recent reporting by the DPIIT

Secretary Sri Ramesh Abhishek reveals that 541 start-ups have been given relief from Angel Tax by CBDT. The same report also states that 36 other applications awaiting relief are being worked upon by Invest India to “address their deficiencies”.

Formal registration and accreditation of start-ups is a painstaking process, and the speed of recognition is woefully slow. The tech sector presently is facing an investment freeze due to Angel Tax scares and is virtually at a standstill, and any resolution needs to be fast and broad-based to be effective.

While the new initiative helps address challenges for new start-ups, other challenges still remain:

- Start-ups who have already received notices continue face investigations by the IT officials.
- While provisions under Section 56(2) have been amended, the challenge under Section 68 is not addressed. Start-ups are facing IT Notices not only under Section 56(2), but are also receiving notices under Section 68 for cash reserves from investments raised in previous periods.

#### **Suggested Solution**

- Provisions under Section 68 of the Income Tax Act be suitably amended to recognize start-ups and investments raised by such start-ups in periods before the new regulations.
- A special Committee be set-up to Fast-Track all hearings of Start-ups presently facing notices either under Section 56(2) or Section 68.
- Identification of valid start-ups be streamlined to ensure faster recognition.

#### *Amendments to Profit Attribution to PE*

**Issue:** The issue of profit attribution to PE, especially for the digital services sector, is an extremely critical issue for the emerging Indian digital ecosystem.

The CBDT initiated a public consultation on the proposal for amendment of Rules of Profit attribution and Permanent Establishment Registration. the CBDT discussion paper identifies digital services as multidimensional business models and posits that “user data and activities contribute to the profits of multidimensional enterprises”. Consequently, the committee decided “that for such enterprises, users should also be taken into account for the purpose of attribution of profits, as the fourth factor for apportionment, in addition to the other three factors of sales, manpower and assets”.

Digital services are like any other service and should be treated at par with all such services. Users are critical for any business and particularly for services sector. Treating users as complementary assets selectively for digital services is discriminatory, creates artificial distinctions based on platforms and is completely antithetical to the vision and purpose of Digital India initiative.

Using user-base as a metric for tax assessment for PE may set a dangerous precedence that, if replicated for taxation of domestic digital service providers, can seriously impede the emerging tech sector.

### **Suggested Solution**

- The special condition of users for digital services be done away with in the formula for profit attribution.
- All provisions of profit attribution and taxation of digital services be synced to global practices to ensure ease of doing business in India.
- Greater parity between domestic and foreign service providers should be provided so as to allow the emerging tech sector to mature.

### *Increase in Limits for basic exemptions under Income tax*

**Issue:** Certain employee benefits have been historically provided basic exemption from the individual's perquisite valuation on the grounds that they are essentially work place benefits that support the organisation and their employees to function. These basic exemptions were last prescribed in 2001 and there has been no adjustment to the exemption values since then.

The benefits are usually administered through prepaid instruments like:

- **Gift Prepaid Cards:** The exemption value of Rs. 5000 per year is insignificant to take care of any gifts that an employee may be provided on festival occasions in a year. Prepaid electronic gift cards are the preferred means by which organisations provide gifts to their employees especially during Diwali.
- **Meal Prepaid Cards:** The exemption value of Rs. 50 per meal was wholesome in 2001 but it is insignificant in 2019 to provide a similar wholesome meal now. The canteen has become a less of a fixture in offices due to rising cost of real estate. Organisations prefer to provide prepaid electronic meal cards which provide access to commercial eating outlets outside offices and yet meet their social obligations to their workforce.

The unchanged exemption limit from perquisite valuation, works as a disincentive in the adoption of digital payment methods in organisations, as the transparency that it brings is off-set by the employees' reluctance to have tax incidence on a meal, that he expects the employer to provide to them when they come to work.

## **Suggested Solution**

IAMAI would like to suggest the following changes to ensure increase of Digital Payment adoption as well as support businesses in their ease of doing business in the country.

- **Recommendation for Gift:** As per proviso to Section 17 (2) (viii) of the Act, Rule 3 (7) (iv), the value of perquisite is taken as nil where the aggregate value of such gifts is below Rs. 5,000. It is suggested that such limit be revised to Rs. 15,000 per annum.
- **Recommendation for Meal:** As per proviso to Section 17 (2) (viii) of the Act, Rule 3 (7) (iii), a limit of Rs. 50 per meal has been prescribed up to which the said benefit is not taxable in the hands of the employee. It is suggested that the value of limit per meal be enhanced from Rs. 50 to Rs. 150 per meal.

## *Promoting P2P lending*

**Issue:** Currently, the money earned through investing on peer-to-peer (P2P) lending platforms is taxed under income tax. As with every form of loan, lenders on P2P lending platforms receive repayment in EMIs. The interest income component of the EMI that is received by lenders gets added to the lenders total income and is taxable as per the income tax rules/slabs applicable to the lender.

## **Suggested Solution**

- Interest earnings on P2P lending be deemed tax free. This will ensure greater inflow of required capital to MSMEs and allow P2P platforms to emerge as an alternative mechanism for funding.
- P2P lending to MSMEs be institutionalized and be made at par with tax free bonds to encourage channelizing investments in this sector.

## *Permanent Account Number for non-Resident (206AA)*

**Issue:** Under Section 206AA, non-residents are mandated to obtain PAN in order to avail withholding tax rates, or else the tax is deducted at a higher rate of 20%. Many non-residents may have one-off transactions with Indian parties, and obtaining PAN in such cases is an administrative burden. For cases where the tax is to borne by the Indian party, the overall cost of the Indian party is increased due to non-availability of PAN by the non-resident party.

This provision adds to tax related challenges to Ease of Doing Business for foreign parties with India.

## **Suggested Solution**

- Provisions of Section 206AA be relaxed for non-resident individuals and corporate bodies.

## **GST**

### *Level Playing Field for digital services*

**Issue:** The GST has several provisions that adversely affect digital businesses because the present GST mechanism does not provide level playing field to digital service providers.

- TCS: TCS on e-commerce is an onerous burden, with no such imposition on offline counterparts. Mandatory registration under GST (over-riding the minimum income threshold requirement) if sellers engage in e-commerce transactions is a big deterrent for SMSEs to onboard digital platforms. If small sellers are disincentivized to on-board e-commerce platforms, small Indian e-commerce services/ start-ups will become uncompetitive.
- GST Rates: Digital services are charged flat at 18%. For services like Edutech or Healthtech that provide online content or access to services (eg: online study courses under Edutech or online consultations under Healthtech), the offline services are often tax free or taxed at lower rates, but the digital platforms have to pay 18% tax. This not only adversely affects businesses, but also restricts digital services from reaching their true potential for empowering the marginalized.

### **Suggested Solution**

- TCS for e-commerce be removed. Digital aggregators like online marketplaces should be treated as intermediaries and be absolved of onerous liabilities of filing taxes on behalf of actual service providers availing the services of the digital platforms.
- Services like e-health or edutech that provide content should be taxed at par with offline counterparts.

### *The issue of Multiple Registration*

**Issue:** Digital businesses like emerging start-ups are small enterprises servicing the entire country from single location taking advantage of digital tools. It is not feasible for such businesses to operate offices or take registration in all states and Union Territories to do business in India. Multiple registration and filing compliance create undue burden on such emerging businesses and give advantage to larger enterprises with bigger organisations over emerging businesses.

### **Suggested Solution**

- Digital service providers, especially smaller start-ups be allowed single registration to service all states.
- Digital service providers be allowed to file taxes under IGST for services provided across States.

### *GST Concessions for selective payment tools*

**Issue:** As per our understanding, the GSTC has decided to extend GST concessions on digital payments be given on the B2C transactions made through RuPay (Debit Card) and UPI-Unified Payment Interface, BHIM, USSD and BHIM-Aadhaar. Restricting such cashback/ incentives to the users of select few instruments will distort the market and is anti-competitive.

#### **Suggested Solution**

- IAMA requests that the benefit of cashback/ incentives should be extended to the all digital payment modes including the Bharat QR code. This will give additional fillip to the digital payment transactions in the country.

### *Encouraging higher adoption of POS machines for digital transaction*

**Issue:** India has low POS penetration, as recognised by RBI itself. One of the major factors limiting POS penetration is the high costs involved. By industry estimates, the cost of a point-of-sale (POS) terminal in India ranges between INR 8,000 - 12,000. Countervailing duties and taxes account for about 20 percent of the price. In addition, the annual operating cost is INR 3,000 - 4,000 per terminal, including paper and servicing expenses. If digital payments are to be truly encouraged, the cost of POS need to be reduced.

#### **Suggested Solution**

- Taxes on POS machines and their components be reduced, for both domestically manufactured as well as imported machines/component.

### *Abolish GST on MDR fees*

**Issue:** There is a transaction cost in the form of Merchant Discount Rate (MDR) involved while using PoS infrastructure. This 'cost' is transmitted to all other players in the value chain, aggregators, acquirers, networks, issuers, technology providers etc. There is also the cost of obtaining and servicing customers, cost of credit, risk of fraud, brand building, promotions, loyalty awards etc. to provide user comfort in using the product and to incentivise usage. As per the report of Committee on Deepening Digital Payments, there is very little demand to acquire merchants. It also reads that, since merchant acquiring is a difficult business, it would help if incentives were made available to make the business more attractive.

#### **Suggested Solution**

- It is suggested to abolish the GST charged on the MDR fee (during all or any transaction) which merchants pay to the banks/ acquirers that has installed the point of sale terminal (PoS) or online payment gateway, to encourage both banks/ acquirers and sellers/ merchants to adopt Digital Payments.

## *Taxation on Digital Gaming*

**Issue:** Digital Gaming is one of the fastest emerging services. Few Online Fantasy Sports Gaming (OFSG) operators are already in the 'Large Taxpayer' category and if the Government provides conducive policies for the upcoming new age industry, the industry has the potential to generate a cumulative revenue of Rs. 10000 Crores in the next 5 years to the exchequer.

Some State Tax Authorities are questioning whether GST should be applicable on the entire 'Contest Entry Amount', which includes users' contribution to 'Prize Pool'. In this regard, OFSG industry has also sought clarification from GST Council on the applicability of tax.

We would like to posit that the amounts paid by the users / players to enter a contest is not a bet / wager. The very definition of wager states that it is for 'risking' a specific amount for an 'uncertain outcome' and it does not apply for users registering to play a game on online platforms. The amount paid by each player is a contribution towards the prize money / kitty. The player is merely paying for entering an event / contest. The uncertainty over who would be the winner does not make this contribution a wager amongst the contestants.

There is a distinction between the mobile application and a totalisator. A totalisator is traditionally engaged where bets are placed. However, in mobile gaming the mobile application does not act as a totalisator. The prize money in the case of mobile applications are typically predetermined and mentioned on the users' dashboard. The mobile application does not calculate the odds per winner and the prize money is not dependent on the amount paid by players.

### **Suggested Solution**

- The amount that is paid out as prize money/winnings is not towards the supply by the mobile application owner. The value of supply by the mobile application owner is limited to the commission that is earned at the time of players registering for a contest. Treating the players' contribution towards the winners' kitty should not qualify as an actionable claim and, taxing the entire amount is unwarranted, unjust and beyond the provisions of Rule 31A(3).
- The online gaming platform only earns a commission for permitting players / users to access the mobile application and enter in contests. Any amounts beyond that are not meant as earning for the online gaming platform but are to be distributed as prize money to players. Considering the amounts paid by players into the winning prize kitty are not in the form of betting or an actionable claim, the same should not be subject to GST under any circumstances. Accordingly, the value of supply should be limited to the earning of the online gaming platform in the form of commissions earned from the players registering for a contest.