

Business Standard

Digital industry demands removal of tax anomalies

The upfront collection of tax by e-commerce operators would create a cash-flow crunch for the suppliers: Report

Indivjal Dhasmana | New Delhi December 11, 2017 Last Updated at 01:55 IST



Representative Image

A body representing the internet and mobile industry has demanded reduction in goods and services tax (GST) rates on digital goods and services from 18 per cent to 12 per cent or even lower as the GST Council meets next month.

In a recent report, the Internet and Mobile Association of India (IAMAI) wanted removing up to one per cent tax collected at source (TCS) under the GST on e-commerce companies even as the government has deferred its imposition.

The report, prepared by the association, along with Nishith Desai Associates, also wants scrapping the equalisation levy or bringing it through a mechanism that would enable tax credit to non-residents in their home countries.

The report, released by Economic Affairs Secretary Subhash Garg, said tax predictability and clarity were required for meeting the government's goal of achieving a \$1-trillion digital economy.

It said the goal could be achieved by 2022, ahead of 2024, as suggested by the government with the “right” kind of policies. It also said most tech services, including Online Information Database Access and Retrieval Services (OIDAR) and IP transactions, were taxable at 18 per cent under the GST.

This is so since that is either the prescribed rate or the residuary rate. Only few such services and transactions are currently taxed at 12 per cent, it said, adding that this should change universally for digital transactions, which should ideally be taxed at 12 per cent or at a lower rate.

“What we have sought to address is the differential (unfair) taxation of digital goods and services, which is counter-productive to creating an ecosystem for the growth of the digital economy. Further, higher taxes and transaction costs are also counter-productive for the same reasons,” Ananth Malathi of Nishith Desai Associates said.

The report said although the government had deferred the applicability of TCS obligation for e-commerce operators indefinitely, unless repealed, this would act as a significant burden on the digital economy as the suppliers were likely to be discouraged from selling online.

Under Section 52 of the GST Act, e-commerce operators have to collect and pay the GST (by way of TCS) on behalf of suppliers at the prescribed rate not exceeding 1 per cent of the net value of taxable supplies of goods or services made through it.

It said the upfront collection of tax by e-commerce operators would create a cash-flow crunch for the suppliers.

The report said the definition of e-commerce for TCS was so broad that it included all forms of e-commerce business models beyond the conventional online shopping platforms. It includes the aggregator model, followed by app-based cab aggregators, app-based household service aggregators, accommodation aggregators, etc.

It said the GST Act placed a significant compliance burden on e-commerce operators, which in most cases are start-ups. Each operator has to pay TCS in the first 10 days of a month (for the previous month). These details furnished by the operator have to match the details of outward supplies furnished by the supplier and discrepancies, if any, would require correction.

Additionally, the mandatory registration of vendors supplying through e-commerce companies effectively discourages the marketplace model of doing business, in which the customer selects and places an order on the vendor and the role of the e-commerce company is merely to provide the platform that acts as an online marketplace.

The vendors, whose supplies are negligible or who are part-time, would be reluctant to subject themselves to the onerous registration requirements under the GST and would rather prefer not to do business through the e-commerce company, the report said.

It also said that the equalisation levy, introduced by the government through the Finance Act, 2016, was an example of unilateral measures taken to tax multinational corporations which do not have a local presence in India.

The levy is a 6 per cent tax on consideration received or receivable for online advertisement. The report fears that the government might expand the scope of the levy to include other services as well such as cloud computing, website design hosting and maintenance, and digital platforms for sales of goods and services.

The levy applies to transactions that have an aggregate consideration of more than Rs 1 lakh (approximately \$1,500) in a financial year. Further, the transactions must be between an Indian resident or a non-resident having a permanent establishment in India and a non-resident service provider not having a permanent establishment in India.

The report suggested that the levy be integrated into the Income-Tax Act or made part of the GST framework to enable non-resident service providers to claim credit. As an alternative, it suggested the levy might be

scrapped and India should work collaboratively with its tax treaty partners to create an interoperable tax system that provides certainty.

Digital Dilemma

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- The report, prepared by the association, wants scrapping the equalisation levy or bringing it through a mechanism that would enable tax credit to non-residents in their home countries
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