

## THE RELEVANCE OF TAXATION IN THE INTERNET AND E-COMMERCE

By CA. A.C. Gangaiah, FCA

The Internet industry is one of the fast growing industries in the electronic media enabling the public to use communication facilities and other information at the cheapest cost ever not seen. The internet facility given by internet industry to its subscribers or giving facility of browsing at the browsing centers of internet industry is providing an access to internet. The industry neither gives any property to the subscribers whether visible or not.

The internet service provider requires the registration with Department of Tele Communications and facility offered by Servers situated outside for internet connections. At present there is facility of Indian servers providing internet connection with the facility of access to foreign servers. The Internet facility given at the browsing centers is providing the facility like telephone/fax. The Internet service is to be considered as an extension of telephone having more facilities than telephone or fax.

The internet facility is provided by dialup packs, through cable or through wireless or through wifi facility. In the case of dialup packs, the customer reaches the local server of Internet provider through telephone exchange. The service provider provides cable from the customer premises to the local server. The local server of service provider is linked with the prime server of the service provider.

The service provider uses the facility provided by telephone or other service provider to connect the customer to local server, local server to prime server and prime server to international gate way. The usage of cable owned by other cable operators is called inter connectivity. Payment for the usage of internet or inter connectivity does not attract the provisions of TDS. Providing internet facility or interconnectivity is a product of technology and not providing technical or professional services.

The Internet facility is not subject to sales tax because there is no transfer of property to the subscribers or to the users of browsing centers from the Internet providing company. The Internet is not the property / goods of the industry. The conferring right to use does not arise. The dialup packs sold by the service provider can not be taxed because the intention of sale or purchase of dialup packs is for service of internet and not procure any goods by the purchaser of internet dialup packs. Sales Tax Appellate Tribunal in the case of Tata Internet Services Limited T. A. No. 882/2005 dt 24-3-2005 held that service provider confers right to service and not

right to use the goods.

The taxation authorities are questioning the works contract involved in internal decoration of the centers and asking the industry whether appropriate sales tax is deducted or not. The questioning of sales tax authorities is within the powers of sales tax laws.

The internet industry in respect of internal decoration has to deduct the sales tax as per the sales tax laws of the concerned State and remit the same to the State. Internet Industry may supply connection by using the instruments and cables to the place of subscribers. The instruments and cables remain the property of the internet industry and used for the facility to be given. The user of Internet through his computer, to which the facility is connected, uses neither the cables nor the instrument for his choice.

The only use of the instruments and cables is for industry to supply Internet facility and the user is not to be allowed to use or to repair or maintain such connections. The following conditions may be incorporated in the agreements entered or to be entered with the customers for giving clear information to sales tax authorities not to propose sales tax.

1. The charges to be levied for a particular period do not have any relationship with the instruments to be kept at the customer's premises for Internet facility. The charge depends upon the technical matters in providing Internet facility but neither depends upon the value of the instruments nor confers the right to use the instruments to be kept at the premises of the customer.
2. The agreement if any to be entered by the company with customers is to specify that the amount given is fixed charge for services to be rendered in addition to monthly charges and the instruments will be taken back by the company in the event of non-fulfilling the conditions in the agreement or non-payment of monthly charges for specified period.
3. The amount received is neither the sale proceeds nor the amount received from the customer in respect of conferring the right to use the instruments at his premises. The condition is essential to prove that the ownership remains with the company and not passed to the customer.
4. The agreement is to specify that the customer even for repairs should not operate the instruments in his premises. The repairs and maintenance is

the function / duty of the company and to be undertaken by the company's authorised persons on the intimation of the customer.

The conditions in the agreement make the customer not to claim depreciation under Income tax Act on the instruments in his premises specifying the lumpsum payment is for instruments in his premises. In the event of allowing the customer knowingly or unknowingly to claim depreciation on the instruments in his premises, the company will not be allowed to claim depreciation if the taxation authorities come to know the same.

In the event of specific clause in the agreement, it is clearly possible for the customer to claim entire amount as the business expenditure in the year of payment because the user is not acquiring any property by paying lump sum payment and the company can claim the depreciation on its asset without any litigation from taxation authorities. The entire revenue received from the customer is for providing Internet service, the business of the company. Hence it is taxable as business income of internet providing company.

#### TAX ON THE WEB SITES OR .COMS

The Internet industry is developed with the web sites and .coms, available to the users of Internet with or without the payment. The facility of permitting the access to paid web site or paid .com against payment (even though the web site or .com is not in possession of the customer) is nothing other than conferring right to use the web site or .Com for a particular period or for number of hours. The revenue received for conferring right of access is not subject to sales tax. The income from the advertisement or any other income on the web sites or .Coms without conferring right to use web site or .Coms does not attract sales tax.

The web site or the information provided in .com can be classified as goods as per the sales tax laws. The conferring the right to use the goods against the consideration is taxable in sales tax laws. The amount received from the customers of web site or .com is for conferring right to use the web site or .com. The sales tax can be imposed on the amount received as the consideration received for conferring right to use web site or .com. The passing on the right to use web site or .com to the customer is a taxable point and not at the actual usage of the customer.

The amount received from the customer outside the State for usage of web site or .Com is not taxable under State Sales Tax laws because there is no movement of goods from one state to another state in pursuance of the contract of right to use the goods. Any amount of concession given or discount offered in any scheme to

the customer can be claimed as deduction from taxable turnover.

The entire revenue received from the customer is for providing access to web site or .Coms, the business of the company. Any other income received in connection with the paid web site or .Coms or income generated (such as advertisement income) out of other web sites is also business income. Hence it is taxable as business income of company owning Web site or .Com. under the head `Profits and Gains from Business or Profession.

#### TAX ON THE BUSINESS OF E-COMMERCE

In the Internet industry, the other development is E-commerce. The system provides for the purchase of the goods against payment or the sellers to sell the goods against the commission through placing the information in the Internet to the E-Commerce Company. The sale by the E-Commerce Company is taxable as second sale if the industry purchases the goods in the same State and sells at the different price.

In the event of the goods falling in the Schedule of VAT, the tax is to be paid under VAT system. The E-Commerce Company if uses its own trade mark or logo in A.P., the company is deemed to be first seller and the sale is taxed as if it is first sale. The tax paid on the purchase of the goods can be claimed as set off against the tax imposed on the sale. If the goods move from One State to other state and the buyer and E-commerce Company are in different states, the sale is taxable under CST Act.

If the industry procures the goods and sends the goods to the customer at the same price, the company can claim exemption of the sale from levy of sales tax as accommodation sale. The company is to prove that the goods are purchased for particular customer at his request, not held in stock of the industry and passed to the customer at the same price.

The E-commerce Company may purchase the goods in the name of the customer (the invoice in the name of the customer) and may deliver the goods to the customer. The company may charge for the amount paid to the seller of the goods and the charges for such service. The company had not become the owner of the goods and had not transferred the property in the goods to the customer. Hence the charging of the amount to the customer cannot be taken as sale. The transaction between the customer and E-commerce Company is in the nature of a principle and an agent.

In the case the company procures the goods from other state or from other country by importing the goods and sells the same to the customer, the sale is liable as

first sale. The company, if endorses the documents in respect of the goods to be received from other countries by import in the name of the customer and the customer takes the delivery of the goods, the sale of the goods is not liable to sales tax.

The E-Commerce company if procures the goods from outside the state and sells in transit to the Registered dealers, the sale in transit is exempt provided the purchaser provides the 'C' form and the company procures E1 form from the original seller. The export sale or the sale of goods to the exporter / export house for the purpose of export is exempt from tax under CST Act.

The amount received in respect of the service of providing professional or technical services or the service of providing human resource or providing the source of material or service of providing source of any services or providing the buyer to the seller of the goods or any other service not involving the transfer of property in the goods is not liable to sales tax because there is no transfer of property in the goods.

It is advisable for the E-Commerce company to procure

the goods from the ultimate seller for the customer and in the name of the customer (invoice should be in the name of customer) and to charge the fees for its services in addition to the amount paid to ultimate seller. This type of transaction does not attract sales tax. The commission if any received from the ultimate seller for this service is to be shown as the revenue of the company.

If the E-Commerce Company wants a margin on the products, is not interested to show the purchase bills and desires to charge the amount at its discretion, the transaction attracts sales tax. This type of transactions results in the purchase and the resale of the products.

The entire revenue received by the E-Commerce Company whether it is for providing goods or services to the buyer or for providing buyer to the seller of the goods or any other income in connection with E-Commerce either from the customer or from the ultimate seller/buyer of the products or from the professional or technician in the case of services is in respect of the business of the company. Hence it is taxable as business income of E-Commerce providing company.

### **For the Attention of the Senior Members**

Our President CA. Ved Jain has once again emphasized the need to ensure that all the members, especially senior members, become computer savvy and be able to use the latest technology to synchronize with the dynamic working methodology. The President has expressed his desire that all the members should become proficient in the use of computers by the end of this year without dependency of any kind. In this direction, we have been organizing the program 'Senior Members - Introduction to IT' every month but the attendance has been disappointing.

We will be conducting a programme of 20 hours duration to provide hands-on training/ mentoring and support in assisting the delegates to use computers. The course contents will be "Introduction to Computers, MS Word, MS Excel, MS Power Point, MS Outlook, MS Access, Internet and other topics", the details of which will be given in the newsletter of ensuing months. The Institute would provide the POU's, concise background material along with a set of Computer Based Training CDs, to distribute it to the delegates of these programmes. This programme we are planning to conduct in the month of November/ December 2008. The Senior and other members are requested to attend in large numbers and register their interest with the branch well in advance so that we can make the necessary arrangements.

### **International Study Tour**

We are finalizing the program of International Study Tour of **SRI LANKA & MALDIVES** to be conducted in the 2nd week of November. The tour itinerary and the price details will be given in the newsletter of September Month. Interested members are requested to keep their passports ready / renewed. Members or their family members who do not have passport and applying now are requested to apply immediately as it is learnt that the processing of passports is taking considerable time in view of large number of applications.

Members are requested to register their interest with the Branch by email to [hyderabad@icai.org](mailto:hyderabad@icai.org) or [bchakrapani@yahoo.com](mailto:bchakrapani@yahoo.com) or over phone to me at 98490-25872

**B.Chakrapani**  
Chairman.

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*Announcement*