

**To Chairman  
Central Board of Direct Taxes.**

**Presentation on  
Digital Tax =**

**International Taxation for  
Digitalised Economy**

By  
Rashmin Sanghvi & Associates  
8<sup>th</sup> March, 2019.

# Short Forms

COM	:	Country of Market
COR	:	Country of Residence
COS	:	Country of Source
DC	:	Digital Corporation
Digital Tax	:	Tax to be imposed on Digital Corporations.
EQL	:	Equalisation Levy
PCD	:	Public Consultation Document published by OECD in Feb, 2019
SEP	:	Significant Economic Presence
WHT	:	Withholding Tax = TDS

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# COR – COS conflict

- COR – COS conflict in allocation of Tax base is very old conflict –  
Where COS have lost out.
- We need a proposal that is fair to all countries,  
and is simple in administration as well as compliance.

# OECD Favours COR

- OECD Model (for Double Tax Avoidance Treaties) is in favour of COR at the cost of COS.
- UN Model is only slightly better.
- E-commerce Taxation is not rocket science.  
Its Resolution took twenty years (from 1998 to 2019) - because of the COS - COR conflict in tax base allocation.

# COR

- We may consider following countries as traditional supporters of maximum tax base allocation to COR:

U.S., U.K., Germany & France. **G4.**

- Now for E-commerce Taxation, US alone is COR.
- China is Indifferent.

# COS

- For Digital tax U.K., Germany & France – call them **G3** are COS.
- Even **EU** – is mainly COS.
- Now EU wants a tax system that allocates more tax base for COS.
- US opposes it.

# Tax War

- Consider EU's penalty of Euro 13 Bn. on North Ireland – Apple Corporation.
- It is a **Tax War** between –

**USA                      &                      EU**



# COS

- India, Brazil, Australia & several other countries are & have been COS.
- Their voice is not counted.
- In fact, many developing country tax officers do not even understand that they are losers.

# U.S. Position

- U.S. has no hesitation in stating that it wants a tax allocation method that favours COR. Loss to COS is fine with USA.
- US does not sign MLI. Unilaterally passes its own FATCA, GILTI & BEAT.
- And yet tells others that no one should make unilateral laws.

# U.S. Position

- Within USA, for sales tax on interstate trade SEP has been accepted as the nexus.
- And yet in international taxation, USA rejects SEP.
- This is Double Standard.
- This is a fact of life.

# U.S. Position

- US is against any significant change in existing taxation system because –
- The US MNCs will demand set off against US (COR) taxes for –  
Any tax that they have to pay in COM.
- Does it mean that COMs should continue suffering tax losses for ever?

# COS' opportunity

- God has played the dice in such a manner that the G4 are divided.
- USA & EU are on the opposite sides.
- This is the situation when COS countries whose voices have been ignored, must take the opportunity and demand for a fair Tax Base Allocation.

# Fair Taxation System – Digital Tax

- Take Indian Equalisation Levy (EQL) to its logical conclusions.
- To avoid sentimental resistance against Indian EQL, call it Digital Tax or withholding tax (WHT) system comparable to Royalty, or call it **Digital Tax**.
- Impose Digital Tax for **Revenue Realisation** from COM.
- Digital Tax will be part of domestic tax law. Add a sub-section to Section 9 after Royalty and FTS.
- **It will cover B to B and B to C.**

# Fair Taxation System - Digital Tax

- In the treaty there will be one more article similar to Royalty.
- Tax paid in COM will be available for set off against COR taxes for Elimination of Double Taxes. Article 23.

# Digital Tax

- **Businesses** to be covered under Digital Tax may be **prescribed** under domestic law & may be bilaterally agreed under treaties.
- Internet technology will keep growing. Business models will keep changing. **Defining** “Digital Tax” or “Digital Commerce” or “Digitalised Economy” will be difficult. **Prescribing** business by notification will make the **law dynamic**.



# Digital Tax rate

- **Tax Rates** may be prescribed under domestic law & agreed bilaterally under treaties.
- The Tax Rate may be in a range of 5% to 8%. Ideally, a 5% rate will avoid a lot of resistance.
- Rates for WHT & for final tax liability may be same.

# Two Thresholds

- Non-Resident Digital Corporation will be liable to tax only if its Revenue Realisation exceeds a **threshold** – say Rs. One crore.
- Every payer from COM will deduct WHT at source provided that its payment exceeds a threshold – say, Rs. One Lakh.
- **Home consumers not liable for TDS.**
- This will be **final tax**. Assessing Officer cannot raise an issue that ‘the DC’s profits are more & hence should pay more tax’.

# Compliance Responsibility on Digital Corporation

- Final compliance responsibility shall rest with the Digital Corporation.
- DC to file tax return. Submit audited accounts only for COM Revenue, TDS and balance paid as Advance tax or Self Assessment Tax.
- Assessment to be carried out on Digital Corporation.

# Enforcement of WHT

- The Non-Resident Digital Corporation will make **Revenue Collection Arrangements** in COM – so that – all the revenue will be received only in bank accounts specified within COM. Digital Corporation may select such scheduled banks as it likes.
- All payers will pay DC's revenue in Indian bank accounts after deducting Digital tax at prescribed rate.

# Enforcement of WHT

- Banks will inform monthly collections to Income-tax department. DC will file monthly returns of Revenue Received & WHT deducted.
- Short fall between WHT & tax payable will be paid by DC as advance tax & self assessment tax.
- With this system in place Digital Tax can be levied on **“B to B”** and **“B to C”**.

# Nexus & Allocation

- In any international tax system, we are concerned with Nexus & Profit Attribution.
- Instead of attributing profits, Tax Base Allocation is simpler.
- **Market is Nexus.**

**Revenue Realisation** from COM constitutes **Tax Base** allocated to COM

- This system eliminates a lot of subjective computations.
- Eliminates tax planning and simplifies everything.

# FAIR Tax Base Allocation

- A fair proposal for allocation of Tax Base between COR & other countries:
- Without Market (**demand**) there is no sale, no business and no profit.
- Without **Supply**, there is no business, no profit.
- Both are equally important.
- Tax base must be shared equally between COR and Country of Market – COM.

# Tax Base Allocation

Supply side

-----

COR & COS

50%

Demand side

-----

COM

50%



# Country of Market

- OECD, UN & US models of treaties concern themselves entirely with the –  
Functions, Assets, Employees & Risk –  
all taken by the suppliers of goods & services/  
tax payers (Supply Side).
- All the considerations completely ignore the fact that for business COM (Demand Side) is necessary.
- COM contributes to the economy and is entitled to tax base allocation.

# Country of Market

- COM deserves tax base allocation just because it contributes market. **Market is the nexus.**
- For establishing nexus for COM, there is no need to look at functions, etc. conducted by the Supplier of Goods & Services.
- Supplier's functions etc. are important for allocation of tax base between COR & COS (Supply side).
- For, COM (Demand Side), market is the SEP/PE.

# COR # COS # COM

**COR** is the country where the Digital Corporation is Tax Resident.

**COS** is the country where the Digital Corporation conducts some functions, holds assets, employs people or takes risks – without being tax resident in that country.

**COM** is the country that provides market without being COR or COS.

# OECD PCD

- OECD's Public Consultation Document of February, 2019 is - Unfair to COM; & too complex for all.
- There are too many subjective assumptions & calculations.
- These will cause litigation.
- **Such system will not help either the Tax Payer or the Tax Collector.**

# OECD PCD

- The PCD needs to be rejected on the grounds of:
  - (i) being a potential cause for extreme litigation;
  - and (ii) Being unfair for COM.
- 5% WHT on simplified SEP (Revenue Realisation) is free from controversies, simple for compliance & administration; and is fair to COM as well as COR & COS.
- For an honest Digital Corporation, once double tax is eliminated, it does not matter whether it pays tax to COR and COM; or wholly to COR.

# Option to claim loss

- Domestic law to provide for Simplified SEP definition – which will include Market & Database – Section 9(1) to be modified.
- Similarly, OECD and UN models to expand Article 5 by including Market and Database as PE.
- Market in COM is SEP = Nexus.  
Revenue collected is Tax Base.  
Final tax @ 5% of Tax Base.
- Do not give Treaty reliefs to any assessee that is resident of a **Tax Haven** country.

# Option to claim loss

- Non-resident DCs may be given option to file tax returns & establish that they are liable to tax lower than Digital Tax or 'Nil' tax.
- Subject to conditions given below.

# Option to claim loss

- The fact that MNCs do not disclose their true taxable profits has been well established by the fact that –
- Globally Governments had to resort to
  - BEPS
  - GILTI
  - GAAR
  - BEAT
  - Information
  - FATCA
  - Exchange Agreements.



# Myth

Once & for all discard the myth that

when a Digital Corporation  
submits published audited  
figures of profits;

the tax officers of COM should accept them.

# Conditions for Option to file return

- Only those DCs may have the option to submit a tax return who can establish to the satisfaction of the COM tax commissioner that –
- Entire DC group does not resort to any tax avoidance arrangements.
- If the DC has a single associated enterprise in any tax haven; it will be presumed that it is avoiding taxes & will not have the option to file return.
- It will simply pay Digital Tax @ 5% (or such rate as may be selected).

# Formulary Apportionment

- For the same reason, even Formulary Apportionment is not acceptable.
- The Digital Corporation may either pay Digital Tax; or file an honest return; and convince the COM tax officer that no tax planning has taken place.

# Taxation for Database

- U.S. & U.K. have alleged that Digital Corporations controlling databases have permitted abuse of data.
- Hence **Data Security & Privacy laws** are being incorporated around the world including India.
- Under these laws, a DC collecting data base of a country's people will be required to collect & store data in that country only.

# Data Security & Privacy

- Income-tax department can work with internet regulators.
- The person in charge of Indian data will be treated as Indian PE / SEP.
- That person will raise invoices on users of data exclusively from India.

# WHT on Data Revenue

- Digital tax will be levied on gross amounts received by the SEP.
- This should be available for set off against COR tax liabilities.
- Return filing etc. responsibilities for Data will be similar to the responsibilities for digitalised businesses discussed earlier.

# Several departments to Cooperate

- CBDT, CBEC, RBI and Internet Regulator may co-operate.
- Establish a fool proof **payment system**.
- No payment on account of digital charges can be made directly to any foreign location.
- All payment must be made to banks located within India; net of WHT.

# Conclusion

- A Digital tax system imposing a 5% tax on Revenue Received by Digitalised business will be **simple to comply with & simple to administer.**
- It will minimise all tax avoidance chances.
- It will be fair to COR, COS & COM.



**Many Thanks to  
Chairman  
Shri Pramod Kumar Mody**

CA Rashmin Sanghvi.

CA Naresh Ajwani

CA Rutvik Sanghvi

Rashmin Sanghvi & Associates