

## **Taxation in relation to E-Commerce**

The rapid growth of e-commerce, especially the sale of goods and services over the internet, has fuelled a debate about the taxation regimes to be used. The shift from a physically oriented commercial environment to a knowledge-based electronic environment poses serious and substantial issues in relation to taxation and taxation regimes. Tax administrations throughout the world face the alarming task of protecting their revenue base without hindering either the development of new technologies or the involvement of the business community in the evolving and growing e-market place. Concerns of governments centre on the impact of e-commerce on the state and local revenue. Whereas states can impose a tax on residents' purchases from out-of-state vendors, they cannot impose an obligation on those vendors to collect the tax unless the vendor has a substantial presence, or nexus, in the state. These problems will be greater for developing countries. The shrinking of the tax base will have a disproportionate effect and further endanger the already delicate economy of the developing world.

### **TRANSACTION TAXES AND ELECTRONIC COMMERCE**

The first sale within a state is subject to sales tax. Sales made across two states are subject to central sales tax. This system is relatively simple and leaves less room for dispute on jurisdiction issues such as those relating to "substantial nexus" in the US. No attempt has been made to exempt internet sales from sales tax and it is felt that this is unrealistic given that states receive a large amount of revenue from sales tax and such a measure would require their consent. E-Commerce sites do however face a problem due to the lack of a central system for dissemination of information on changes in sales tax laws, rates and exemptions in different states. A 5% service tax applies to "online information and database retrieval services". This relates not only to direct access to databases (e.g., reservations, credit card authorizations, etc) but also access to web based information. This would be the first measure by the government to specifically tax an internet related transaction. Despite the technology neutral language used, this would in a sense go against a basic principle in the USA's Internet Tax Freedom Act, that services provided in relation to the internet which have no equivalent in the offline world would not be specifically taxed. Another change is the levy of a 5% service tax on credit card services which makes B2C sales more expensive.

### **TAXATION OF REMOTE BUSINESSES**

The Indian Government's High Powered Committee on Electronic Commerce and Taxation has concluded that the presence of a server of a foreign corporation in India at a fixed place for a sufficient period of time and forming part of the core business function could lead to the presence of a permanent establishment of the foreign corporation in India. This is in line with the

current approach of the Indian tax authorities, who have adopted a strict view in dealing with taxation of e-commerce income earned by remote businesses. However, no clear policy has been actually announced by the Government. Two instances have come to light relating to American Express (credit cards) and the Computer Reservation System (CRS) companies (travel bookings). The Amex case was an opinion given by the Advance Ruling Authority regarding payments made to Amex for access to its database abroad. The authority ruled that the payments would constitute a royalty for use of Amex's system and software and be subject to tax under the India-USA Double Taxation Avoidance Agreement. This ruling is only binding on the applicant but would serve as a precursor of things to come in the future. The CRS companies were involved in a dispute with the tax authorities, who claimed that payments made to the CRS companies for travel agents to access their databases abroad would constitute business income. The authorities also argued that the local marketing companies would be considered as dependent agents.