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# FUTURE STANDARDS AND REGULATIONS OF INTERNATIONAL TAXATION FOR SUSTAINABLE ICT SOLUTIONS

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### ***Abstract***

The Taxation laws regarding ICT Solutions are based on concepts of a local geography, such as controlling premises and physical equipment or employing staff in the jurisdiction.

The concept of Taxation of ICT companies is particularly complex and uncertain and there is no consensus at the international level on this topic.

This presentation delves into the standards and necessary regulatory pre-requisites to further the innovation and proper regulation of the ICT companies, predominantly the ones based on cloud computing.

Furthermore, the paper advocates for the dichotomy of implementing the standard of reverse charge mechanism (RCM) as well as the Forward Charge Mechanisms (FCM) basis of taxation and availment of Input Tax Credit (ITC).

## Introduction + Background

ICT companies, predominantly the ones dealing with the cloud service providers operate on a global scale because they are purely information services intertwined with the hardware established in a particular jurisdiction.

The Taxation laws in India as well as the entire world, are majorly based on concepts of a particular local geography, such as controlling premises and physical equipment or employing staff or providing the services.

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### NECESSITY FOR THE STANDARDS OF TAXATION OF THE ICT SOLUTIONS AROUND THE GLOBE

The majority of the cases involving the ICT solutions in the form of standard cloud services which delve deeply into only one aspect of the remote control software is limited in scope and the income can be directly classified as “income from business profits”.

However, in the instances where the ICT solution service providers provides multiple services integrated into one single service leads to an interpretation complexity.

### CLOUD COMPUTING AND ICT SOLUTIONS : INTERPRETATIONAL COMPLEXITIES

ICT Companies are not just new business models entering the traditional business solutions, rather they are fundamental spokes in the wheels of acceleration of the digitalization of all the previous businesses and thereby, the entire economy.

The pace of change along with the novelty has resulted in a paradigm wherein the regulation of ICT solutions is not only difficult but impossible to fit into the traditional regulatory mechanism of taxation.

## FUTURE STANDARDS OF THE ICT SOLUTIONS TOWARDS SUSTAINABLE DEVELOPMENT

### **Software as a Service ('SaaS')**

The SaaS which integrates another service within its own code does not allow for the end user to use the integrated service. Thus, the question of intellectual property remains aloof enough to be classifiable as a “business income” under Article 7 of the OECD.

However, the treaties between bilateral countries especially the developing countries provide the definition of royalties as “the provision of technical services or technical assistance”, thereby including the payment of royalties within its ambit. Article 12 A of the UN Model clarifies this interpretation.

The IaaS allows for the ICT solution provider to provide the storage space as well as the computing resources to the consumer / end user. The complexity arises wherein we seek to quantify the IaaS activity as a “Service” or as “good” since physical objects in the form of servers, rental spaces etc. are involved in the scenario.

The contemporaneous understanding of the literature in this regard is that the IaaS ICT solution providers should classify their monetary benefit as “business income” rather than “royalties” as the providing of the storage space cannot be classifiable as intellectual property or industrial secret etc.

### **Platform as a Service ('PaaS')**

The analysis provided for the SaaS can be utilised for the PaaS. Under this paradigm the ICT service provider allows for the user to connect with a platform and programming tools for the creation and utilisation of third party applications.

The PaaS utilisation of the platform does not require the transfer of a copyright license or any other intellectual property right transfer rather only provides for the underlying infrastructure and operating and storage systems.





# INDIRECT TAX STANDARDS FOR PRODUCTION AND DISTRIBUTION OF GOODS AND SERVICES I.E., ICT TECHNOLOGIES

- The Goods and Services Tax (GST) was brought into force in India in 2017. It is a tax that is collected at all stages of the processes of production and distribution of goods and services.
- The individual taxable person in the supply chain is responsible for collecting the tax on its outputs (supplies) and remitting the difference between the GST imposed on its taxed outputs and the GST imposed on its taxed inputs.
- Cumulation of the GST is prevented by allowing businesses to deduct the tax they incur on their inputs from the tax they collect on their outputs called as the Input Tax Credit (ITC) available for the companies.





- The ICT solutions implemented in recent times have exacerbated these challenges, especially in the applicability and implementation of GST and the levy of GST.
- It is extremely complex to implement and impose GST and Customs on the activities wherein the consumer / service recipient resides relies on ways such as place of supply of the service, place of the permanent establishment / actual and real location of the supplier, residence / actual place of performance of the service, place of establishment/actual location of the supplier, residence / actual location of the consumer, location of tangible property location of the consumer, location of tangible property from where the activities take place etc.
- This leads to a pressure on the domestic customers and international cross-border suppliers



## CONCLUSION and RECOMMENDATIONS

- Despite the clarification regarding the nature of classification of various ICT solutions by the OECD, UN as well as the Harmonic System Nomenclature, the current existing analysis is an oversimplification of the actual ICT solutions provided by the companies and entities leading to a distortion in the nature of taxation on the specific activities.
- This leads to a distortion or the wrongful levy of the GST and customs duty on the supply of the ICT solutions which overlooks the exact correct characterisation of the digital supplies. Furthermore, the RCM standard for the collection and disbursement of the revenue to the governments is based on the principle of registration and self-assessment declaration which is effective with the large scale huge MNC's but is not effective with the small-scale local suppliers who still rely on the Forward Charge Mechanisms (FCM) basis of taxation and availment of ITC.
- The proposal of standardisation in the form of collection of the tax and subsequent disbursement by the intermediaries remains to be explored by the governments across the globe.

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**Brief Bio:** With over four years of experience in intellectual property and technology law, Vagish has developed a robust expertise in advising on IP laws, IT regulations, data privacy, and technology matters. Currently serving as an Associate Advocate at Singh and Singh Law Firm in New Delhi, Vagish handles IP and technology litigation, focusing on SEP, patents, trademarks, designs, and copyright before the Delhi High Court and the Supreme Court of India. He is a registered patent agent in India.



**Thank you!**

