

# **ASSOCIATION OF COMPETITIVE TELECOM OPERATORS**

*Pre - Budget proposals  
for  
Union Budget (2018-19)  
to  
Ministry of Finance  
(Department of Revenue)*

*1<sup>st</sup> December 2017  
New Delhi*

# Introduction

- ❖ ACTO is an industry association, registered under Societies Registration Act, 1860.
- ❖ Our members provide enterprise data services to multi-sited corporations, Indian BPO/KPO, outsourcing and ITES sector operating global networks under appropriate telecom licenses accorded by Government of India.
- ❖ ACTO is committed to further India's pro-competitive policies and to partner closely with Ministry of Communications & Information Technology, Ministry of Finance and other Ministries , Government Bodies to enhance the stakeholder's engagement with the specific needs of the enterprise segment.
- ❖ Our members:



# Very High Level of Taxes/Levies in Telecom Sector

## Unsustainably High Level of Tax Incidence

**Telecom is one of the highest taxed sectors of the Indian economy – cumulative tax incidence of ~33% of revenues. Globally, no other country has such high tax burden on its telecom sector.**

- License Fees of 8% of revenue
  - Spectrum Usage Charges of 5.5% on average
  - Microwave spectrum levy of 1.5%
  - GST of 18% of revenue
- Source: GSMA/ITU

**Sample comparative tax rates**

Country / Region	Tax (%)
European Union	20
South Africa	24
Sri Lanka	20
Thailand	29
China	22
USA	17

## Direct Tax Issues

**1.Issue** - Finance Act 2012 brought in a retrospective amendment by introducing Explanation 5 and Explanation 6 to Sec 9(1)(vi).

Rationale/ justification – Expansion of the meaning of the term “process”, which is now deemed to include transmission by satellite, cable, optic fibre, or any other similar technology may result in inclusion of telecom charges for private leased-line circuits, telecom connectivity services, etc. within the purview of royalty that would result in significant litigation for the telecom operators in India. Further, application of the above provisions from a retrospective date could lead to re-opening of settled matters/ cases, resulting into long drawn litigation on account of completed transactions.

The said amendment is also being interpreted to have overriding and contradicting effect on the definition of “Royalty” as contained in the Double Taxation Avoidance Agreements.

**Recommendation** – Retrospective amendments (introduced w.e.f June 1, 1976) to the definition of royalty, brought in by Finance Act, 2012, be withdrawn. Also, definition of Royalty should be amended to exclude from its ambit, payments for standard telecom services. A specific amendment should be brought in to clarify supremacy of the term “Royalty” as contained in Double Taxation Avoidance Agreements.

## Direct Tax Issues

**2. Issue** – Section 276B of the Act - Clarification w.r.t initiation of prosecution proceedings where Tax and Interest has been paid in full.

**Rationale/ justification** – Prosecution proceedings under section 276B of the Act, for default in payment of taxes, should not be initiated where the assessee has made good the default by making depositing the amount (along with requisite interest) and also in cases where the assessee are not repetitive defaulters. This shall encourage the compliance of law in a time bound manner and avoid litigations.

**Recommendation** – Prosecution proceedings should not be initiated where Tax and Interest has been paid in full.

## Direct Tax Issues

**3. Issue** – Applicability of withholding tax provisions on year-end accruals.

**Rationale/ justification** – Withholding tax obligations arise at the time of payment or credit to the account of the payee, whichever is earlier. Though there are judicial precedents in favour of the taxpayers, at present tax authorities disallow entire year-end accruals (even where the parties are not identified), resulting in creation of demands and protracted litigation.

**Recommendation** – It should be clarified that withholding tax provisions should not be applicable to year-end provisions where the recipients are not identified. Recommended amendments would put an end to past litigation and also eliminate the risk of any future litigation on this issue.

## Direct Tax Issues

**4. Issue** – Consequences of non-disposal of rectification application and stay application filed by an assessee

**Rationale/ justification** – In most of the cases, rectification and stay applications filed by the assessee remain undisposed due to which the assessee is refrained from taking further action and the environment of uncertainty is developed. The assessee is sometimes required to pay demand on issues which otherwise have been decided in his favour in earlier years. It causes financial hardship to the assessee.

**Recommendation** – It may be clarified (by way of appropriate amendment to the relevant provisions) that where the rectification and stay applications remain undisposed by the tax officer for period of six months from filing, the rectification / stay application shall be deemed to be accepted.

## Rationalization of Taxes

**5. Issue** – Reduction in Dividend Distribution Tax ('DDT') rate.

**Rationale/ justification** – Increased DDT rate reduces the dividend distribution ability of the domestic companies and the uncertainty with respect to its credit in overseas jurisdiction impacts the non-resident shareholders adversely.

**Recommendation** – DDT rate should be reduced to 10% from current rate of 15%.



## Indirect Tax Issues – Rationalization of GST Rate

### 1. Issue – Rate of GST- Reduction in rate of GST

**Rationale/ justification** -Telecom service is an essential service & an integral part of digital India and it is availed by the masses.While telecom services are essential services, it does not receive the benefits of that category. Telecom has been allotted a higher standard rate of tax of 18% GST.

Internationally - Singapore has a GST rate of only 7% on Telecom Services, Malaysia of 6% and Australia of 10% which are far lower than the rate of 18%.

Increase in tax rate has direct impact on affordability of the services and as the subscriber is price sensitive i.e. consumers tend to spend a fixed amount irrespective of the tariff. Increased rate of tax therefore it has direct impact on operator's revenue and contribution to exchequer

**Recommendation** – it is suggested that standard rate of 12% be fixed for telecom services or Telecom specific regulatory fees i.e. License fee including USO and SUC may be subsumed in the present rate .

## Indirect Tax Issues

**2. Issue** – Credit of Education Cess ('E Cess'), Secondary and Higher Education Cess ('SHE Cess') and Krishi Kalyan Cess ('KKC')

**Rationale/ justification** – Transition provisions of CGST Act and the Transition Rules finalized by the GST Council are silent on transition of credit of E Cess, SHE Cess and KKC carried forward in the service tax returns.

In case said credits are not allowed to be transitioned to GST regime, it would lead to increased costs to taxpayers as well as loss of credit that can be availed.

**Recommendation** – Clarification should be issued to allow assesses to carry forward credit of E Cess, SHE Cess and KKC under GST regime.

## Indirect Tax Issues

### 3. Issue – Ease of doing business and centralized assessment

**Rationale/ justification** – Telecom companies were centrally registered at one location for pan India operations under Service tax regime. GST regime necessitates registration and compliances in all States. Centralised registration meant that assessments and audits were also centralised and accordingly telecom operators had to face only one set of tax authorities.

State wise assessment/audit under GST implies facing 36 sets of tax authorities. Compliance burden increases manifold. Further, assessment / audit by Central authorities in some states and State authorities in other States would lead to further sets of complications and issues.

Taxation of telecom services is a complex subject and requires special skills and knowledge for assessment. Under Service tax regime, separate jurisdiction in Commissionerates was created for telecom companies to meet this objective. This will severely compromise ease of doing business for telecom companies. Centralised assessment/audit of telecom operators will significantly reduce issues in assessments/audits of telecom operators and will result in greater ease of doing business.

**Recommendation** – Submission of state wise information and centralized assessment of telecom companies be done. Centralized assessment by only one set of authorities centrally at one location on behalf of all 36 tax authorities

## Indirect Tax Issues

**4. Issue** –Proportioning of the consolidated value of leased circuits installed in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such circuit.

**Rationale/ justification** – Place of supply rules under the IGST Act provides that the place of supply in case of leased circuit will be the place where the leased circuit is installed. In case a leased circuit is installed in more than one state and a consolidated amount is charged for the same, the place of supply are each state where the circuit is installed in proportion to the value for services separately collected or determined in terms of the contract.

The said provision would lead to credit loss to the company in a situation where the company is not registered in all the states where the leased circuits are installed. The same would lead to a credit loss and increased cost for the taxpayers.

**Recommendation** – The provision should be modified to provide that POS should be the registered location of the assessee.

## Indirect Tax Issues

**5. Issue** – Reversal of Input tax credit in case payment is not made within 180 days.

**Rationale/ justification** – As per the GST provisions, taxpayers are required to reverse input tax credit on inward supplies when payment is not made within 180 days from the date of invoice. Further, such amount is payable along with interest.

Interest should be charged only when credit availed on the strength of invoice which has not been paid beyond 180 days, has been utilized. The availment is automatic on the matching concept and shall become part of the electronic credit register.

Non-payment to the vendor is purely a commercial decision. Levy of punitive interest is not justified.

**Recommendation** – Clarification should be issued which provides that interest is charged only when credit availed on the strength of the invoice is utilized even when the invoice is unpaid.

## Indirect Tax Issues

**6. Issue** – No adjustment of refund from the demand already stayed by the AO.

**Rationale/ justification** – Generally, all big corporate entities may have pending litigations where stay has been granted upon payment of partial demand. Even after payment of partial demand, the balance demand appears on the system resulting in non-granting of refund for other assessment years.

**Recommendation** – A provision be introduced to provide that where any stay has been granted till the disposal of appeal, the refunds arising to the assesses for any other assessment year or any other matter (say TDS matters) should not be adjusted against stayed demand.

## Indirect Tax Issues

**7. Issue**– In terms of section 17(5)(h) of the CGST Act input tax credit is not admissible on goods lost, stolen, destroyed, written off or disposed off by way of gift or free samples.

**Rationale/ justification** – Where goods were procured with the intent to make taxable supplies, the credit thereof should not be denied where such goods are lost, destroyed or written off. As long as the goods are not diverted for personal use, denial of credit is unjustified.

**Recommendation** – Section 17(5)(h) should be deleted.

**8. Issue** – Requirement or matching of credit note issued relating to outward supplies.

**Rationale/ justification** – In terms of section 43 of the CGST Act, the credit notes issued by the provider of taxable supply has to be accepted and matched with the recipient of the supply i.e. the recipient is also required to reduce their input tax credit before the adjustment is made available to the supplier.

In most instances where credit note is issued, the recipient of goods or service may not have claimed input tax credit on the original invoice. In such circumstances, acceptance of a credit note may not be feasible. Such a provision would lead to operational inefficiency.

**Recommendation** – Credit note adjustment should be permitted even if the recipient has not accepted or matched the credit note.



Thank you !!

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