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GST issues with respect to Indian media and entertainment industry

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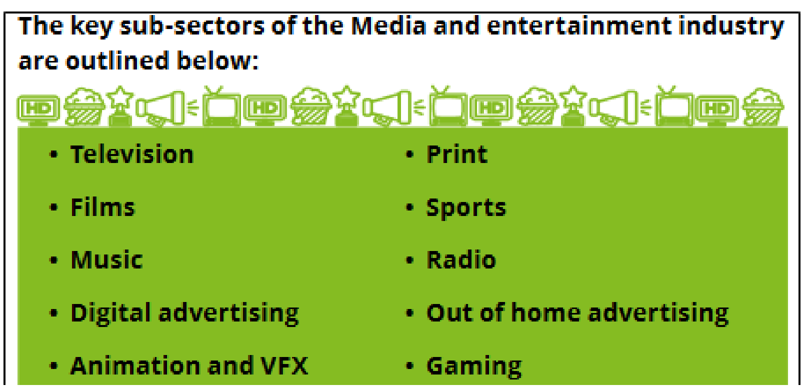
Abstract
The Indian Media and Entertainment Industry is a sunrise sector with a rapid growth curve. In 2015, the industry grew at 11.76% with a market size of USD 19 billion (INR 1,281 billion). Overall, the industry is expected to grow at Compound Annual Growth Rate (CAGR) of 13.98% till 2018. By 2025, the industry is expected to attain a market size of USD 100 billion (INR 6,743 billion). India is globally the fifth largest media and entertainment market. One of the most-awaited financial reforms, the goods and service tax (GST) bill, was recently passed in the Parliament. There is a lot of speculation about how GST will affect the common man, industries and everyone involved in the process?.
The GST is a single uniform tax on goods and services, right from the manufacturer to the consumer. Credits of input taxes paid at each stage will be available in the subsequent stage of value addition, which makes GST essentially a tax only on value addition at each stage. The final consumer will bear only the GST charged by the last dealer in the supply chain, with set-off benefits at all the previous stages. After the announcement, it was speculated that goods will get cheaper and services will get expensive. The proposed GST module sounds flawless on paper, but in actuality, its efficiency is still unknown. Also, a major fear with the GST module is that it would allow local municipalities to decide the tax rate on movies. But on a general note, the bill would most likely do a lot more good than harm, as it would basically empower both the centre and the states to levy GST.

Keywords: entertainment industry, credits of input taxes, Indian media, impact on consumers

Introduction

When Rajya Sabha passed the Constitutional Amendment Bill paving the way for the Goods and Services Tax (GST), the largest ever tax reform in the country in August, 2016 it was regarded as a game changer for the economy by industry experts. It's a known fact that the government has to pass few hurdles to make this a reality, but overall the reaction has been positive. When it comes to media and entertainment industry, same thought was reiterated by M Venkaiah Naidu, Minister of Information and Broadcasting at CII Big Summit 2016. He even said the media and entertainment industry needed to outline a firm roadmap to ensure the convergence of networks, devices and content, the core elements of the digital entertainment process.

Other important part is that distinction between service tax and VAT will go away. Frank D'Souza, Senior Tax Partner at PwC explains, "There are certain transactions in rights to distribute or right to use a copy mark. There has been a debate whether that's a transaction in goods or services. This is relevant because if this is a transaction in goods then VAT would apply and if it's in service, service tax will apply. There have been situations where service authority says it's liable to service tax and VAT authorities will contend for VAT. With GST that debate will be resolved because then the classification is immaterial. Whether it's services or goods same tax will apply. It will reduce the taxation in fact. All these kinds of litigation will go away."



Source:https://www2.deloitte.com/content/dam/Deloitte/in/Documents/tax/in-tax-media-and-entertainment-noexp.pdf

Fig 1: Sectors of Media and Entertainment Industry

The much talked about Goods and Services Tax Bill will come up for discussion in the Rajya Sabha tomorrow, making it the fourth serious attempt by the Modi Government at the Centre to push through the bill. If passed, GST will create history; with policy makers claiming it to be a game-changer for the Indian economy. So, how will things change post GST for India's media and entertainment market which is the 5th largest in the world? Here is what will change:-

Impact on consumers

In the current scheme of affairs, consumers pay a service tax ranging between 14.5-15% for all broadcast services like Television (Cable + DTH), films as well as digital content. Apart from this an entertainment tax ranging between 8-12% is further levied increasing the average tax to as much as 25%. Once GST comes into play, consumers will have to pay a single tax the likely rate for which will be anywhere between 18-20%. Hence the overall rate of tax on consumers will reduce significantly.

Impact on production houses and theatre chains

As per the current law, film producers are expected to pay exorbitant amounts of money as service tax for processes like theatrical rights, satellite rights etc. Once GST comes to play, all taxes will come under one umbrella making it much simpler for film producers. The bill will also prove to be a boon for theatre chains like PVR that currently has to deal with different tax processes in all different states in the country. This further means that since the tax cost will reduce, profits for companies like PVR will shoot up. The hassle of dealing with different state governments with varied rules too will be done away with.

Not all rosy

Though on paper the GST sounds like a dream, there is a major hiccup in store for the media industry (Fig-1) in the form of entertainment taxes that the Government has allowed local bodies like municipalities to impose on movies. The Government has allowed this in order to safeguard the interests of the local bodies giving them the freedom to choose the rate that they want to impose.

A move that has made the industry exceedingly worried. Uday Pimprikar, Tax Partner at EY says, 'The whole purpose of the GST to serve as a single tax gets defeated with this allowance. The Govt. has to find a way to legislate the rate of entertainment tax imposed by local bodies in order to maintain uniformity. The best case scenario would be if the Government subsumes this tax under GST Bill itself.'

The current Indirect tax regime in India provides for a complex tax environment due to multiplicity of taxes, elaborate compliance obligations and tax cascading.

In the ensuing paragraphs, we have sought to identify the key aspects of the Model GST Law as may be relevant for the Entertainment and Media industry.

Industry will now also need to pay state GST

As per the structure of the GST law, each intra-State supply would attract Central GST as well as State GST. For inter-State supply, IGST would be applicable. The draft Model GST Law contains provisions to determine the place of supply in each case.

Currently, service tax being a central levy, an option of centralized registration is available, and hence the place of supply of services is not very relevant. However, considering that states will also charge SGST, and considering the absence of a centralized registration option, determination of place of supply becomes crucial.

Video streaming services provided by an entity located outside India to subscribers (private individuals) may become taxable under reverse charge, if the payment exceeds a threshold limit, which is not specified in the draft law. However, there is no clarity on how this scheme would be operationalized.

Key action points

- Update customer database to ensure correct raising of invoice
- Revamp IT system to be in line with place of supply for various transactions
- File representation for continuation of centralized registration option for CGST

Valuation

Presently, the value of taxable services is the gross amount charged by service provider. Normally, the area of dispute by the tax authorities relates to the probable addition of reimbursements to the value of taxable services.

Under the GST regime, the entire concept of taxing services is proposed to be changed. Transaction Value would be considered for payment of tax, with various inclusions defined under the GST Valuation Rules. In case the proper officer has reason to doubt the truth or accuracy of the value declared, he has the power to examine transaction value put to tax. This would mean an additional burden on the taxpayers, as it would involve satisfying the tax authorities of the truth or accuracy of the transaction value.

In other words, the new Valuation concept for services would require in-depth preparation of backup documentation by the taxpayer. This is not warranted under the current service tax law.

Key action points

- There is a need for representation that since the services are not comparable to one another, the concept of market value will lead to challenges for service providers, and should be done away with.
- Service providers have to be mindful while setting prices for services provided by them, and would need to take the prevailing market prices into consideration.
- Representation for dilution of the valuation provisions as they apply to services.

Discounts

Post-supply discounts will not be included in the transaction value if it is established as per the agreement and is known at, or before, the time of supply. Year-end discounts and discounts offered on achieving a target will also be excluded if they could be specifically linked to relevant invoices against which discount has been offered.

Key action points

- The agreements to be revisited to recognize discounts in advance in order to avail the benefit of excluding post-supply discounts from the transaction value.
- IT systems to be revamped in order to track invoices pursuant to which discounts are provided.

Barter and Exchange

Barters and exchanges are quite common transactions in the entertainment and media sector. The term supply under GST law specifically includes barter and exchange. However, there are no specific provisions to determine the value of barter and exchange, which will lead to practical difficulties.

Key action points

- The valuation of transactions under the barter system has to be done meticulously by the service providers. The value should be comparable to same or similar services provided by other service providers in the market.

Free services

Presently, as per the definition of the term ‘service’, only those activities which have a consideration are liable to service tax.

The Model GST Law proposes to also tax services by a taxable person to another person in the course of furtherance of business, without any consideration. This proposal could have far-reaching implications, as identification and value attribution for such supplies could be challenging. For example, viewing of news channels for limited period of time, free music downloads, free subscription for limited period, etc. could be subject to GST.

Key action points

- The industry should represent that instances of free supply of services, which would be taxable, should be specified in the GST legislation.

Input service distributor concept (‘ISD’)

ISD concept has been proposed for transfer of credit of input services between two or more locations. ISD can transfer credit of all types of GST (CSGT, SGST or IGST). Further, ISD can be any supplier of goods or services. Considering the possibility of multiple registration state-wise, ISD could be used as a tool to ensure optimal utilisation of head office-related credit, hence resulting in actual reduction in cost.

Key action points

- Locations to be identified where there may be accumulated credit and insufficient output
  Liability ISD registration may be taken in such State to distribute credit to other locations
- Revamp IT systems for such changes.

Impact on ongoing contracts

Specific transition provision has been stipulated vide Section 160 for periodic supplies as under: ‘160. Notwithstanding anything contained in section 12 and 13, no tax shall be payable on the supply of goods and/or services made on or after the appointed day if the consideration for the said supply has been received prior to the appointed day and the duty or tax payable thereon has already been paid under the earlier law’

Also, there is no provision for treatment of supplies prior to GST law where, either the invoice has not been raised, or payment has not been received, or tax has not been paid prior to enactment of the GST law. This could result in dual taxation both, under the previous regime as well as under the GST regime.

Coverage of the transition provision needs to be analysed to check whether implications for all possible transactions during the transition period are clear. Accordingly, necessary representation would need to be filed for clarity in transition provisions.

Key action points

- To analyse tax liability for all ongoing projects (likely to overlap with GST implementation) in line with transition provision
- Transition planning for timing of supplies, advances and payment of tax
- Representation to be filed to provide less ambiguity on transition provision for ongoing contracts.

Key action points

- Representation to be filed for a more liberal credit regime
- Representation on the premise that placing the responsibility on the company for non-compliance by vendors will cause unnecessary hardship to the companies.

Territory

The GST Act extends to the whole of India. Currently under the service tax law, J&K has been excluded. In other words, J&K is included under the GST Act. Hence, service providers would now not be required to bifurcate their services between J&K and the rest of India.

Conclusion

To conclude, the proposed GST module sounds flawless on paper, but in actuality, its efficiency is still unknown. Also, a major fear with the GST module is that it would allow local municipalities to decide the tax rate on movies. But on a general note, the bill would most likely do a lot more good than harm, as it would basically empower both the centre and the states to levy GST.

This can’t be done now as the centre cannot impose any sort of tax on goods beyond the manufacturing process, while the state cannot tax services. GST would include central excise duty, additional excise duty, service tax, countervailing or customs, etc. as well as State level indirect taxes like VAT/sales tax, entertainment tax, luxury tax, octroi, entry tax, etc.

Once the bill is rolled-out, there will only be a single national level GST and a state level GST spanning the entire value chain for all goods and services with some exceptions.

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