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IMPLICATIONS OF THE SHARING ECONOMY ON INDIAN TAX POLICIES

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Abstract: Within a span of a few short years, there has been a fundamental transformation in the number of industries due to the rise of the sharing economy. The reason behind such a revolution is the increasing dependence of the younger generation on digital platforms, which has been made possible due to continuous technological advancements enabling date collection and the successful implementation of "innovative business models". This has led to a shift in the consumers' preferences from a "traditional ownership based-notion" to a more "flexible on-demand access to assets and services".[1]

Sharing economy is a new model of economics which utilizes online platforms, such as, Airbnb, Uber, Couchsurfing etc., in order to share resources, time, assets as well as talents possessed by individuals at a scale not previously possible. Due to its sudden emergence, many unforeseen challenges are introduced for the policy makers, incumbent businesses, regulators as well as consumers. The fact that this economy is functioning through the use of online platforms, it makes the job of the regulator very difficult, to evaluate it within the traditional economic framework of taxation as well as legal legislations. Questions are being raised with respect to the existing VAT/GST structures and whether they are sufficiently equipped to capture such a reality and protect the revenue as well as minimise any "economic distortions". There is no definitive, single approach to such questions and hence, the tax authorities have devised and designed a comprehensive strategy as a response to this kind of growth.

In this paper, the current and future situation of the sharing economy with respect to India's tax regimes will be examined along with the investigation of underlying social, economic, political and technological factors leading to its rise. Moreover, the challenges faced by the authorities shall be identified and whether the implementation of the recommendations made, have worked in their favour or not.

***Index Terms* – Sharing economy, tax policies, digital platforms, OECD.**

INTRODUCTION

The growth of advanced technology has digitalised the economy sector, which in turn, has transformed the way a person consumes and supplies goods and services. Such a facilitation of the rapidly global growing economy started after the 2008 economic crisis. The emergence of a 'sharing economy' happened at a significant scale and speed, especially with employment opportunities for all, signalling towards a paradigm shift from "*ownership*" to the "*temporary access-based use of human or physical resources and/or assets*".[2] As a socio-economic model, the notion of "*sharing assets*" is not new, however, the recent growth in technological developments has helped towards the expansion of this kind of economy. This was done by increasing an individual's accessibility to these resources and the capability of that individual to transact with others and also, by introducing a reduction in the transaction costs along with information asymmetries.

The prominent role played by digital platforms in such kind of an economy has been acknowledged by the 2019 OECD Report on the "*Role of Digital Platforms in the Collection of VAT/GST on Online Sales*"[3]. According to this report, tax authorities are provided with practical guidance with respect to the design and implementation of solutions for the effective collection of VAT/GST on sales, which are made on digital platforms. However, the recognition of certain characteristics was done which required further analysis and evaluation.

[1] OECD, The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration (OECD Publishing, Paris 2021)
[2] OECD, The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration (OECD Publishing, Paris 2021)
[3] OECD, *The Role of Digital Platforms in the Collection of VAT/GST on Online Sales (OECD Publishing, Paris 2019)*

The growth of the sharing economy activity has been exponential in nature and the commercial reality has been revolutionised in a number of sectors, especially in accommodation and transportation, wherein short-term rentals and ride-sourcing is done respectively. Especially in a country like India, where the government is pushing towards digitisation at the local and central levels, there are new start-ups being registered on a weekly basis, offering new services and products using online platforms. This new kind of reality may not come under the ambit of the traditional administrative practices and tax rules, which might have a big impact on the revenue generated from VAT/GST, the design of existing policies, along with their competition from traditional business activities.

WHAT IS A SHARING ECONOMY?

If you are thinking of working for Uber as a driver or putting a room for rent on Airbnb to earn additional income, then you shall be entering, what we call, is a sharing economy.

The concept of "sharing" is not new, as throughout the history of humanity, it is known that the practice of trade (such as bartering) preceded the invention of money. And as stated above, digitalisation of economy has brought this concept forward, wherein opportunities are created for individuals to benefit from underutilised resources. In the United States, the growth of the sharing economy is estimated from *"$14 billion in 2014 to $335 billion by 2025*", based on the rapid growth of mediums like Airbnb and Uber, as indicative.[4]

But what exactly is sharing economy?

Essentially, it is an economy which "*facilitates sharing of goods and services over an online platform*".[5] It may take place in two forms; commercial and charity. The former allows suppliers and consumers to get in touch for obtaining the goods and services and as per the latter, these "*goods and services are provided for free or for subscription or individuals are directly put in touch with such a model's beneficiaries*".[6] There are many alternate names for this notion, such as access, collaborative, gig, community-based and peer economy.

The sharing economy is closer to becoming a phenomenon now and its limits are increasingly becoming blurred. However, several criticisms such as the one pertaining to lack of regulation, cannot go unnoticed. The services provided by homeowners or drivers, who are not licensed, are not government regulated, so its quality may wane. Furthermore, due to the lack of regulation, the registration fees, etc. is not paid to the relevant authorities, giving rise to comparatively low prices for good and services supplied by these unlicenced individuals. Some other downfalls may include an unstable income, lack of incentives to suppliers, an uncertain future, and so on. However, there are many advantages of having such an economic model such as increased independence and flexibility when making use of goods and services, a more sustainable use of resources, building of community trust and most importantly, the rise in economic benefits.[7]

THE CURRENT SITUATION: PROBLEMS FACED

The main focus behind this paper is to address the tax-based criticism of a shared economy. Firstly, this whole anatomy of digital platforms follows a "*Double Irish/ Dutch Sandwich structure*", which came into being for the specific purpose of tax avoidance in host countries. In case of Uber, a ride's total fare is credited to Uber BV (the Dutch company) and another one of its subsidiary electronically collects this fare. The driver, who is availing the use of Uber to earn money, is given 80% of this fare. Since the transfer of revenue is online, the host country, where the services are being rendered, is not able to generate revenue. Furthermore, out of the 20% retained, another Dutch company, Uber International C.V., sends out royalty payments to the US office as per the "*Intangible Property License Agreement*". Such payments are neither taxed in Netherlands, nor in the US as it is earned in the former, along with the host country having no revenue generation. Hence, Uber does not pay any tax in the host country due to the revenue transfer and the licensing agreement.[8]

Similarly, Airbnb follows a system, wherein all the generated income by way of commissions from hosts is transferred to the parent company, in Ireland. However, the main difference would be the presence of a GST liability in India, which is shifted to the registered homeowners. The payment of GST is done according to their tariff by them, in case of GSTIN registered homeowners and the unregistered ones, pay to the authorities after collecting taxes from their customers.

Secondly, the shared economy model benefits the individuals, who want to earn an additional income from goods, which are unused. According to the data collected, "*private vehicles go unused for 95 per cent of their lifetime*".[9] Coupling with the fact that there exists fewer requirements for driving under Ola or Uber, as compared to a taxi company, it leads to a greater supply of rides

[4] Niam Yaraghi & Shamika Ravi, 'The Current and Future State of the Sharing Economy' [2017] BI 3
[5] Juho Hamari, 'The Sharing Economy: Why People Participate in Collaborative Consumption' [2016] J Ass. Info. Sci. Tech. 67
[6] ibid.
[7] Hannah Neuburger, 'The Ever-Growing Sharing Economy: Pros and Cons' (EU Startups, 25 February 2019) <https://www.eu-startups.com/2019/02/the-ever-growing-sharing-economy-pros-and-cons/ > accessed 14 October 2022
[8] Sathyvelu Kunashegaran, 'How Uber, Google, Facebook and Other Tech Giants Avoid Paying Billions in Tax?' (Medium, 30 April 2017) <https://medium.com/thebettermagazine/how-uber-google-facebook-and-other-tech-giants-avoid-paying-billions-in-tax-365b7c8b7dbc> accessed 13 October 2022
[9] Niam Yaraghi & Shamika Ravi, 'The Current and Future State of the Sharing Economy' [2017] BI 3

undertaken by the registered driver. Moreover, as indicated by the rates of Airbnb, there is a fall in the prices of such shared services, being 30-60% cheaper than the rates of hotels around the world.[10]

In Uber, a driver could get himself registered and use the platform to earn money by getting rides, after paying a small proportion to the parent company, i.e., 20%. Concerning the income of the said driver, there is a shift of tax liability from the company on the driver, as he is "*an independent contractor*" rather than an employee.[11] Such a system was subject to litigation involving Uber India, which dodged its responsibility by being a mere facilitator for the parent Dutch company and contended to not be held liable for tax deduction on its registered drivers, who are independent contractors, as per Section 194C of the Income Tax Act, 1961[12] (hereinafter referred to as "IT Act").[13] However, ITAT, Mumbai stayed the tax demand.[14]

When it comes to Airbnb, such a conundrum becomes more pronounced for the registered owner of the house. Even though, he shall be considered as an independent contractor, there still exists some confusion with respect to his rental income being treated as income generated from the property or as a business income, as per Section 22[15] and Section 29[16] of the IT Act respectively, in which the latter is subject to deductions. To an extent, this issue has been resolved in the case of *Raj Dadarkar & Associates* v. *Assistant Commissioner of Income Tax*, wherein the Supreme Court held that "*any rent from letting out properties is usually income from house property, but if letting out properties is itself the business of the assessee, then it can be business income*". [17] Although, the issue seems to be resolved, such an interpretation leaves a lacuna pertaining to those assessees, who are "salaried employees", but periodically put an extra room up for lease, when it's of no use to them. Hence, it can be concurred that the result of a shared economic model leads to uncertainty with respect to the "who and how" to tax such individuals using these apps.

TAX POLICIES AND IMPLEMENTATION

In order to tackle these issues, the government has undertaken certain unilateral measures. Firstly, there are many challenges faced with respect to traditional taxation laws still prevalent in countries around the world, due to the advent of the phenomenon of shared economy. The OECD has come up with the "*Base Erosion and Profit Sharing Action Plans*"[18] in the year 2015, to counter this issue and this was adopted by India.

In furtherance, the case of *Income Tax Officer* v. *Right Florists Pvt. Ltd.*[19] can be looked at, wherein the requirement of physical presence was needed in India for the test of Permanent Establishment to be met, "*without which the income in the hands of a non-resident cannot be taxed and the focus was shifted to Significant Economic Presence in India*". Hence, one could argue for the establishment of a significant economic presence in the "*absence of an actual physical workplace*", through an online platform's activities along with its interactions with the assessing state's economy.

Thereafter, a new doctrine was implemented by way of the Finance Act, 2018, amending Section 9 of the IT Act[20], so as to bring a non-resident into tax purview, if a transaction is made with respect to goods and services, including software download, etc. and the prescribed thresholds for payment are met. Such an explanation of "*Business Connection*", which is based on "*Significant Economic Presence*", further extends to any advertising, soliciting, thereby constituting an interaction with the assessing state's users.

Even though such a move was quite welcoming, it does not come without its woes. The reason behind this would be the traditional definition of "*permanent establishment*" not being able to persist in an online setup along with the need for tackling base erosion. Enumerated in the IT Act, "*it is subject to all the international treaties*". Hence, there exists one criticism for India, i.e., it will be hard for this country to have its meaning of Significant Economic Presence as the accepted one in all its international treaties, and the prevailing meaning of Permanent Establishment, as mentioned in the respective treaty, shall be applied, in case of a conflict. Thus, Significant Economic Presence cannot be regarded as the functioning norm responsible for governing India's international tax treaties, without there being any acceptance of the OECD model of Significant Economic Presence as adopted by India. Furthermore, there is a need to clearly define and differentiate the phrasing of the amended provision, which includes "*any goods and services*", "*any transaction*", "*continuous solicitation*", etc.[21]

A much more robust system of taxing digital platforms for their fees for providing advertising services, such as those including Facebook and Google, is the "*Equalization Levy*". It is omnipresent as it is not mentioned in the IT Act. In a case like this, "*6% of the amount payable as consideration*" to such platforms, if it is more than a lakh rupees in one year, shall be deducted by the resident

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[10] ibid.
[11] Brian O'Keefe & Marty Jones, 'How Uber Plays the Tax Shell Game', (Fortune, 22 October 2015) <https://fortune.com/2015/10/22/uber-tax-shell/> accessed 13 October 2022
[12] Income Tax Act, 1961, s 194C.
[13] Deepshiksha Sikarwar, 'ITAT gives partial reprieve to Uber in tax demand case' (The Economic Times, 10 October 2018) <https://economictimes.indiatimes.com/news/economy/policy/itat-gives-partial-reprieve-to-uber-in-tax-demand-case/articleshow/66155341.cms> accessed 14 October 2022
[14] ibid.
[15] Income Tax Act, 1961, s 22.
[16] Income Tax Act, 1961, s 29.
[17] [2017] 394 ITR 592
[18] OECD, Base Erosion and Profit-Sharing Action Plans (OECD Publishing, Paris 2013)
[19] [2013] 154 TTJ 142 (KOL).
[20] Income Tax Act, 1961, s 9.
[21] Income Tax Act, 1961, s 9.

or non-resident having a Permanent Establishment. However, one cannot stop platforms like Google and Facebook from hiking their prices and thereby, shifting the ultimate burden of tax on the resident availing these advertising services.[22] Hence, the proposition of prevention of wrongful gain could easily be circumvented.

In order to tax these digital platforms, a circular was released by the RBI, mandating a local server's provision under the guise of protection of data of entities having access to such platforms. According to this mandate, an online entity, having no Permanent Establishment in India, could be taxed as the "*local server*", amounting to one. Since the notion of Permanent Establishment keeps evolving, "*a local server which constitutes as essential business activity could result in effective taxation of these online platforms*".[23]

CONCLUSION

We are being moved towards an economy, wherein physical assets are used to provide services, in a shared arrangement. A robust appetite is showed by people for all types of services provided under this shared economic model, which include automotive and transportation, delivery, hospitality and dining, labour, retail, short-term loans and consumer goods. While talking about the future implications of this crowd-based capitalism model, one can say that it is expected to penetrate into many more sectors and there are multiple reasons behind its growth, such as flexibility, low entry barrier for workers, diffusion of smartphones, lax regulations along with operational efficiency.

The inherent objective behind the regulation of such sectors is to "*encourage competition, eventually leading to lower costs*", better goods and services and innovation. Even though, political parties have not come up with an approach to regulate this type of economy, there are some recommendations which could help in the future implementation of laws. Regulators, being inherently reactive, are very slow to respond to changes and hence, play a catch-up role.

The more stringent the guidelines, the higher the regulatory capacity for monitoring and enforcing these guidelines.

Next, there should be a change in regulation only when the requirement is immediate, such as market failure, thus, there is no such need for change in regulation for this economic model. Moreover, there should be further transparency, from a regulatory perspective, with respect to sharing along with the use of individual data.[24] Lastly, politicians, as well as, the press should be held accountable for using incorrect terms and fuelling the wrong kinds of debates.

Technology has played a big role in assisting the sharing economy to move towards this present situation, and the momentum will only accelerate when entities get more digitally linked. These sharing platforms act as an alternative to pollution, excess and waste, however, the main question posed is whether they do more harm than good, time will only tell. For it to thrive and become truly inclusive, it must be linked to financial, digital and cultural inclusion.

[22] Shreesh Chadha, 'Implications of Shared Economy on Tax Regimes' (*Tax Guru*, 5 June 2019) <https://taxguru.in/income-tax/implications-shared-economy-tax-regimes.html> accessed 10 October 2022

[23] Deepshiksha Sikarwar, 'ITAT gives partial reprieve to Uber in tax demand case' (The Economic Times, 10 October 2018) <https://economictimes.indiatimes.com/news/economy/policy/localisation-heat-data-bank-here-may-help-government-debit-taxes/articleshow/67120911.cms> accessed 15 October 2022

[24] Liran Einav et al, 'Peer-to-Peer Markets' [2016] Ann. Rev. Eco., 8.