



E-Commerce & Regulatory Implications in India

E-Commerce is a type of business model, or segment of a larger business model, that enables a firm or individual to conduct business over an electronic network, typically the internet. Electronic commerce operates in all four of the major market segments: business to business, (B2B) and business to consumer, (B2C) consumer to consumer (C2C) and consumer to business (C2B). It can be thought of as a more advanced form of mail-order purchasing through a catalog (investopedia.com).

In the simplest terms, E-Commerce involves buying and selling of products and services by a business or customers using the internet as the common platform. It has allowed companies to establish a wider market presence and as a result providing an efficient distribution chain of their products and services. E-commerce can generally be categorized into the following models:

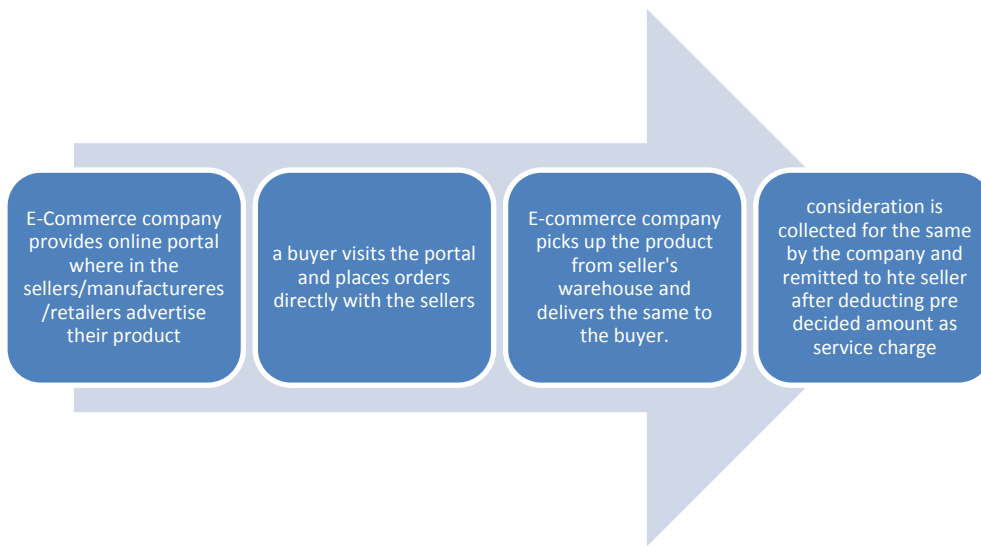
- B2B: The product here is sold to an intermediate buyer who then finally sells it to the customer.
- B2C: In this model, the business sells its products directly to the customer. The customer chooses the product from the business's web portal and the business provides the same. Here there is no intermediary between the seller and the customer.
- C2C: In this type of model, the web portal helps a consumer to sell their personal assets by publishing/advertising information about the same on such a website and then helps them find potential buyers for the same. (OLX is one example)
- B2G: This is a variant of B2B model. Such websites are used by government to trade and exchange information with various business organizations
- G2B: Government uses B2G model website to approach business organizations. Such websites support auctions, tenders and application submission functionalities.
- G2C: Government uses G2C model website to approach citizen in general. Such websites support auctions of vehicles, machinery or any other material.

India, E-Commerce & Regulatory Implications

An analysis of internet users in India shows that e-commerce is said to rise rapidly in the coming years. With the coming in of the new government, there has been a change in the business environment. In 2014, investors aggressively funded the E-Commerce sector due to strong growth prospects. E-commerce saw more diverse sectors like real estate, grocery, and health care entering their market. Thus, with the growing dependency on e-commerce, the government has made numerous changes to the taxing and legal framework with regard to e-commerce.

Market place model of E-commerce and Regulatory implications:

A market place e-commerce model is a type of e-commerce site where product information is provided by third party sites and the transaction between the buyer and seller takes place on the third party website. India bars foreign direct investment (FDI) in any e-commerce venture that sells products directly to consumers (as this may constitute Multi Brand retail sales) but allows 100% foreign capital in the market place model, which involves online retailers setting themselves up as platforms for other retailers to sell products. The E-commerce model works as follows:



In India, e-commerce players are rapidly moving towards a marketplace model for various reasons such as better inventory management, wide range of inventory, lower logistics support, cost efficient, better reach, market awareness etc.

E Commerce & TAX

Taxation under E-commerce depends on the model adopted by the company to carry on its business on the web portal, either a direct sale or indirect sale by linking the customer & the seller

(Market Place). Sales tax OR VAT is a tax which is levied on sale of goods, constitution of India empowers state to levy tax on sale or purchase of goods.

Type of Sales

- a) *Interstate Sale* : When sale or purchase is made from one state to another it is governed by Central Sales Tax Act 1956, the rate applicable for particular goods will be taxed according.
- b) *Intrastate Sale*: If buyer and seller are situated in the same state, the taxation will be as per the Local Sales tax as per the state law.
- c) *Export Sale*: Any export sale made is exempt from Sales tax.

The Taxation of E-Commerce will depend on the business model adopted by the Company:

1. Business to Customer

In this type of business model, the E-Commerce Company sells goods directly to customer. In this case Sales Tax is charged on sale of goods.

2. Customer to Customer (Market Place)

In this case the company (websites) doesn't sell goods directly but they bring buyer and seller together and in turn charges a commission (Service Charge). This commission in turn is a service fee and service tax has to be collected from the E-commerce company. Hence there is no Sales Tax in this type of transaction.

FDI rules and regulations for E-commerce

- 100% FDI is allowed under the automatic route (i.e. no FIPB approval is required) for companies engaged in B2B e-commerce. (Whole sale trade)
- 100% FDI is allowed in companies which engage in single brand B2B trading by means of e-commerce. E-commerce activities refer to the activity of buying and selling by a company through the e-commerce platform. Such companies would engage only in Business to Business (B2B) e-commerce and not in retail trading, inter-alia implying that existing restrictions on FDI in domestic trading would be applicable to e-commerce as well. Automatic up to 49%. Government route beyond 49%, In respect of proposals involving FDI beyond 51%, sourcing of 30% of the value of goods purchased, will be done from India, preferably from MSMEs, village and cottage industries, artisans and craftsmen in all sectors.
- 51% FDI is allowed in companies which engage in multi brand B2B trading.

- No FDI is allowed in companies which engage in multi brand retail trading by means of e-commerce. Retail trading, in any form, by means of e-commerce, would not be permissible for companies with FDI, engaged in the activity of single brand retail trading. Therefore Single brand trading (100%) or multi brand (51%) FDI is allowed only in B2B Model.

These restrictions are related to sale of goods and not services.

E-Commerce & VAT issues in Karnataka

In October 2014, the sales tax authorities said that the 'market place' argument used by e-commerce entities to side-step foreign direct investment norms would no longer pass muster with the tax authorities who were keen to protect their value added tax revenue. Amazon has been one of the e-commerce firms who has already been faced with the tax challenge

The stand taken by e-commerce firms is that since they do not hold ownership titles to the products but only provide a platform for the buyer and seller to transact, it is clearly a market place model and thus should not be charged with VAT.

The state however contends that these market places should be treated as trading outlets of e-commerce firms. And since these e-commerce firms are not paying VAT, the sellers have been directed not to store their products at the warehouses provided by the e-commerce firms. Karnataka VAT authorities are under the impression that, e-commerce companies carry out the business of supply and distributions and therefore would fall under the categories of '**dealers**'. They also contend that these companies are either commission/consignment agents of the dealers.

The definitions under Sec. 2(12) of 'dealers' and 'commission agents' from the Karnataka VAT act, is as follows:

'Dealer' means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration, and includes-

a commission agent, a broker or del credere agent or an auctioneer or any other mercantile agent by whatever name called, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal;

The authorities thus feel that they (e-commerce companies) are under an obligation to register their premises and undertake compliance like maintenance of statutory records and filing of returns.

Clearly, e-commerce companies are service providers. E-commerce transactions, as explained above, are not involved in sale of goods at all. The primary object of the companies is to offer online portals where the buyer and the seller meet and the buyer places an order for goods advertised on the portal. The invoice is raised by the seller on the buyer directly. No invoice whatsoever is issued by the e-commerce company on the buyer in respect of sale of goods.

Further, if e-commerce companies are made to pay VAT, then they would be considered owners of the goods leading to violation of FDI norms on multi brand & single brand retail, if they had any foreign equity holding. And currently foreign investment is allowed in multi brand retailing and single brand retailing with conditions.

However, given the controversy and possibly a potential misuse of the norms prescribed, some guideline/clarification from the regulator should certainly help.*

**[Note: This article was written before the DIPP definitions for FDI in e-commerce were announced a couple of days back]*