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Travel Industry's Regulatory Virus

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As India aspires to become a $5 trillion economy, dependencies are high on its growth sectors. One such sector is travel and tourism, identified as an integral pillar of GoI's 'Make in India' initiative, and a significant job creator.

According to the World Travel and Tourism Council (WTTC), tourism generated $240 billion, or 9.2% of India's GDP, in 2018, and supported 42.67 million jobs — 8.1% of its total employment. It was also the third largest foreign exchange earner. GoI seems to understand this, and is focusing on creating and fostering tourism in different areas such as medical, rural, lighthouse and spiritual tourism.

But the tourism sector remains stunted due to certain onerous taxes and regulations that apply to only those who are located, and operate from, a 'permanent establishment' in India. Surprisingly, businesses that offer similar services but are located abroad, aren't bound by these regulations and compliances, and customers have the option to procure the same services at much lesser costs — due to no goods and services tax (GST), permanent account number (PAN) and know your customer (KYC) requirements —from overseas operators.
The Covid-19 pandemic may indeed be hitting India's tourism sector hard. But the regulations deal a long-term blow to India-based companies, encouraging forex outflow and revenue losses for government.

Budget 2020 has two provisions: Section 194-O of the Income-Tax Act, which specifies the applicability of tax deducted at source (TDS) on ecommerce transactions; and an amendment to Section 206C widening the scope of TDS and tax collected at source (TCS).

Under 194-O, TDS of 1% would negatively impact the working capital of online travel agencies (OTAs) and bring down growth, especially in the air ticketing business where all travel agents are bound by international payment settlement procedure laid down by the International Air Transport Association (IATA) and its settlement mechanism through the billing settlement plan (BSP) or global distribution system (GDS)/central reservation system (CRS) companies.

These do not allow deduction of TDS upfront. So, OTAs will have to pay TDS from their own pocket and later recover it from airlines. This puts an undue working capital burden, due to TDS liability of an average of four months. Ideally, this should be withdrawn. The only other option left with GoI is to issue an instruction for IATA, BSP and CRS/GDS companies to include upfront TDS deductions in their respective settlement mechanism.

Under Section 206C(1G)(b) of the I-T Act, a seller of an overseas tour programme package shall collect TCS at 5% with PAN, and 10% without PAN. This can be the final nail in the coffin for the industry, as it will not only inconvenience the salaried class for whom TDS is already deducted on their earnings, but will also create unfair advantage to foreign travel agents and suppliers who may remain outside GoI's administrative reach. TCS should be made applicable only for those who don't provide PAN, and can be at a higher rate.

The 'Statement on Developmental and Regulatory Policies 2018' states that individuals making remittances under the liberalised remittance scheme (LRS) are required to submit their PAN to their respective authorised dealer (AD) or bank at the time of remittance. While this applies to ADs, it indirectly compels domestic travel agents to collect PAN, which many customers are allergic to, making them move to foreign portals for the booking.

No PAN, GST applicability for foreign operators leads to a serious absence of a level playing field, resulting in revenue losses for Indian businesses and government. Either foreign players need to be brought under similar compliances, or domestic OTAs should be allowed to charge customers in foreign currency. The lack of a level playing field and difficulties in ease of doing business are hurting India-based operators.

A digital platform that can efficiently operate from a single office is forced to open 37 offices, 37 GST registrations and 37 TCSs to offer services across India. This results in increased costs, multiple accounts and 111returns a month, over and above the annual GST return for each state. Added to this are the multiple investigations on the same transaction by different states.

The simplest solution for this is a centralised registration mechanism on the lines of ‘One Nation One Tax’ and ‘Digital India’. There would be no loss to state governments as operators would be charged integrated GST (IGST) from their centralised location, and revenue would accrue to the state where the place of supply would be.