

Annexure 1

Analysis of approaches adopted by various jurisdictions

Country	Taxation of E-commerce
Australia	<ul style="list-style-type: none"> ▪ No specific provisions that deal with tax treatment of E-commerce transactions as it is not considered feasible to develop a unilateral policy on taxation of E-commerce. ▪ Website and its software cannot constitute a PE as it is not a tangible property. However, where a Server is rented to or owned by an enterprise operating the website, it can be a PE in most circumstances ▪ Preparatory or auxiliary activity would not be subjected to tax ▪ Services provided over the Internet through server located in Australia are not likely to be considered as preparatory or auxiliary in nature and hence are likely to be taxed in Australia.
Canada	<ul style="list-style-type: none"> ▪ No specific provisions that deal with tax treatment of E-commerce transactions ▪ No proposal to create special law for E-commerce until international consensus has developed ▪ Non-resident corporations conducting E-commerce on the Internet may be taxed if they are “carrying on” business in Canada. “Carrying on” is defined to mean a place where the contract is entered into or a place where acceptance is received ▪ Transfer pricing for E-commerce transaction to be on arm’s length basis
France	<ul style="list-style-type: none"> ▪ No specific provisions that deal with tax treatment of E-commerce transactions ▪ Maintenance of computer equipment not sufficient to constitute a PE in France ▪ Existence of various anti-tax haven provisions in French Tax Law which may have impact on E-business model
Germany	<ul style="list-style-type: none"> ▪ No specific provisions that deal with tax treatment of E-commerce transactions ▪ Mere existence of computer server in Germany does not constitute a PE in Germany ▪ The Tax authorities are considering to amend the law in respect of following: <ul style="list-style-type: none"> - Widening the definition of “PE” - Levy of withholding tax on consideration for the goods or services in the country of their consumption - Allowing of tax credit by Germany in cases where the income is taxed in the country of consumption
Ireland	<ul style="list-style-type: none"> ▪ No specific provisions that deal with tax treatment of E-commerce transactions ▪ Company developing software qualifies for reduced corporation tax of 10%

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	<ul style="list-style-type: none"> ▪ Limited tax breaks available for individuals setting up E-business on investments up to Irish Pounds Twenty Five Thousand per annum
Netherlands	<ul style="list-style-type: none"> ▪ No specific provisions that deal with tax treatment of E-commerce transactions ▪ Website without any physical presence in Netherlands does not constitute a PE (as per traditional rules) ▪ Special tax deduction for companies engaged in Research & Development regarding internet technology <p>Extra credit facility (extending up to 40% of project cost) available for companies involved in developing electronic services. No repayment required if the project is not successful</p>
Singapore	<ul style="list-style-type: none"> ▪ No specific provisions that deal with tax treatment of E-commerce transactions ▪ Guidelines issued by the inland tax authorities for taxation of E-commerce <ul style="list-style-type: none"> - Principle of “Operations test” to be used to determine country of taxability <ul style="list-style-type: none"> - Company with its business operations in Singapore <ol style="list-style-type: none"> 1. sets up a website in Singapore <ul style="list-style-type: none"> ▪ income taxable in Singapore 2. sets up a website in a foreign Country: <ul style="list-style-type: none"> ▪ Tangible and intangible products to be taxed in Singapore if the fulfillment of business obligations of its E-commerce activities are largely done from Singapore. 3. sets up a website and branch in a foreign Country <ul style="list-style-type: none"> ▪ Only income derived from Singapore is taxable in Singapore. - Company with its business operations outside Singapore <ol style="list-style-type: none"> 1. sets up a website in Singapore <ul style="list-style-type: none"> ▪ Tangible and intangible products will not be taxed in Singapore as substantial part of the business activities are carried outside Singapore. 2. sets up a website and branch in Singapore. <ul style="list-style-type: none"> ▪ if only a website is set up, income will not be taxed in Singapore as it would not be sourced in Singapore ▪ if branch is set up, profits will be taxed ▪ Permanent Establishment <ul style="list-style-type: none"> - Mere existence of ‘Computer Server’ cannot constitute PE . - Under the Income Tax Act, a PE is created when a business is wholly or partly carried on in Singapore. A Server will not fall within this definition
Sweden	<ul style="list-style-type: none"> ▪ No specific provisions that deal with tax treatment of E-commerce transactions.

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	<ul style="list-style-type: none"> ▪ Mere presence of computer server does not constitute a PE in Sweden
Switzerland	<ul style="list-style-type: none"> ▪ No specific provisions that deal with tax treatment of E-commerce transactions. Since, Switzerland is a member country of OECD, it is likely that it would follow OECD recommendations. ▪ E-companies resident in Switzerland which mainly distribute software abroad but do not perform Research & development in Internet technology in Switzerland can apply for “administration status” and be taxed at 11-12% as against normal tax rate of 25%
United Kingdom	<ul style="list-style-type: none"> ▪ No specific provisions that deal with tax treatment of E-commerce transactions ▪ Few of the changes contemplated in direct taxes are: <ul style="list-style-type: none"> - Amendment proposed to tax international services in the country of their use - Transfer pricing for E-commerce shall continue to be at arm’s length. - At present a “computer server” or a “web site” does not constitute a PE. However, the application of this concept to web-sites and servers is being considered - It is also being considered whether any clarifications or changes are required in the definition of the term “residence” - Offering of discounts to tax payers filing their returns over the Internet is being considered - Enhancement of first year capital allowances for E-business; - New Research & Development Tax Credit to be introduced for E-business - Reform proposed in the taxation of intellectual property for E-business.
United States of America	<ul style="list-style-type: none"> ▪ The US stand on amendment to tax laws in respect of E-commerce transactions can be summarized as under: <ul style="list-style-type: none"> - The US would seek to apply existing international tax principles, appropriately modified, to E-commerce - The US would not take an aggressive stand on taxable presence - New software regulations might be introduced to cover other digitized material - US is in favour of following the principle of neutrality as regards taxation of E-commerce transactions - In taxing income from E-commerce, the US favours residence based approach ▪ In certain cases, deduction on account of software expenditure is allowed even to a tax payer not engaged in business activity ▪ Webbased companies can avail of research and development tax credits for the cost of developing software for internal use as an alternative to deduction of the expenditure ▪ The presence of a computer server belonging to a foreign vendor is normally not deemed to constitute a PE. ▪ US will not discriminate between physical and electronic transactions while proposing to tax E-commerce transactions

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