

Annexure 5

Analysis of various categories of E-commerce transactions

Sr. No.	Category of E-commerce transaction	TAG recommendations	Our recommendations	Remarks
1	Electronic order processing of tangible products.	Treated as business profits taxable under article 7	Should be taxable under the head 'Profits and gains from business and profession'	Though the type of transaction, involves internet technology, the use of technical devices is only a medium and the consideration pertains to the products and not the manner in which the same is made available.
2	Electronic ordering and downloading of digital products.	Majority in favour of treatment as business profits. Minority considers this as royalty if a copyright right is used by customer to acquire the digital information.	<p>If the user is entitled to all rights vested in the vendor, it would tantamount to sale of a product and hence, should be treated as 'Business Profits'.</p> <p>However, if the consideration entitles the user to only 'right to use' it should be treated as 'royalty'</p>	

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3	Electronic ordering and downloading of digital products for the purpose of copyright exploitation.	The payment qualifies as royalty.	The consideration entitles the user to 'right to use'. Hence, it should be treated as 'royalty'.	—
4	Updates and add-ons.	Majority in favour of treatment as business profits. Minority, in case of electronic delivery, considers this as royalty, if a copyright right is used by customer to acquire the digital information.	This is generally in the nature of either after sales services or upgradation of existing product. Hence, this should be treated as business profits.	—
5	Limited duration software and other digital information licenses.	<p>Product provided on tangible medium:</p> <p>Business profits;</p> <p>Royalty only if definition includes "use of industrial, commercial or scientific equipment" and following conditions are met:</p> <ul style="list-style-type: none"> ▪ Provided on tangible medium; ▪ Returned to supplier at the end of its period of use; and ▪ Used for business purposes. 	Should be taxable under the head 'Profits and gains from business and profession'.	<p>Under the existing definition of the term "royalty", the transaction should have been characterised as royalty income. However, as recommended there is an urgent need to adopt OECD commentary as amended in June 2000, which provides for business profit treatment for payment for acquisition of copy of the copyrighted product.</p> <p>In view of same, we recommend that such transaction should be characterised as business profits.</p>

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		<p>Downloaded products:</p> <p>Majority in favour of treatment as business profits. Minority considers this as royalty if a copyright right is used by customer to acquire the digital information.</p>		
6	Single use software or other digital product.	Contracts for service. Majority in favour of treatment as business profits. Minority, in case of electronic delivery, considers this as royalty, if a copyright right is used by customer to acquire the digital information.	Should be taxable under the head 'Profits and gains from business and profession'	—
7	Application Hosting – separate license.	Gives rise to business profits. Service income as opposed to rental payments. Possible to consider as services of technical nature. Need to further discuss.	Consideration for 'application hosting' should be treated as 'business income' and if the same includes any other services involving use of technical skills, the same should be treated as 'fees for technical services'	<p>Application hosting involves conferring of rights to use the software hosted on the server. Thus, the use of technology involved is merely incidental and the purpose of use of software should be taken into account for deciding the nature of income.</p> <p>In an event that definition of "fees for technical services" is amended to contain concept of "make available", such provision of services may also be treated as business profits.</p>

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8	Application Hosting – bundled contract.	Should constitute business profits. Possible to consider as services of technical nature. Need to further discuss.	As discussed above, bundled fee for access of software, should be treated as ‘business profits’. Additional fees for technical support for hardware and software should be treated as ‘fees for technical services’	
9	Application Service Provider.	Should constitute business profits. Possible to consider as services of technical nature. Need to further discuss.	Merely, a right to access the software remotely should not be considered as technical service. Hence, it should be treated as 'business profits'	It is pertinent to note that the user obtains only a license to use a software application. An application service provider merely provides to the customer an access to a software application hosted on computer servers owned and operated by the provider. The software automates a particular back-office business function for the customer. Thus, no know-how or knowledge is made available to the customer.
10	ASP License fees.	Should constitute business profits. May involve use of copyright rights, however, such use would be minimal and hence not considered relevant.	Such fees are paid as percentage of fees collected from the customers and should be treated as ‘business profits’	—

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11	Web Site hosting.	Should constitute business profits. Possible to consider as services of technical nature. Need to further discuss.	Should be treated as 'business profits'	These services are merely in the nature of 'rental of cyber slot' and the mere use of technology is not sufficient to treat the same as 'fees for technical services'
12	Software Maintenance.	Should constitute business profits. Possible to consider as services of technical nature. Need to further discuss.	Should be treated as 'Fees for technical services'.	
13	Data warehousing.	Should constitute business profits. Possible to consider as services of technical nature. Need to further discuss. May be treated as Royalty, if definition includes "use of industrial, commercial or scientific equipment".	Should be treated as 'business profits'	The above services do not extend any technical knowledge or any right to use the software but just extend the space to database of the user. Hence, the consideration paid towards the use of space is merely in the nature of rent. The argument is further strengthened by the fact that the fees are based on the passage of time.

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14	Customer support over computer network.	Should constitute business profits. May be treated as royalty, if services involve provision of know-how. Possible to consider as services of technical nature. Need to further discuss.	Involves use of technical skill and knowledge and hence, should be treated as 'Fees for technical services'	In an event that definition of "fees for technical services" is amended to contain concept of "make available", such provision of services should also be treated as business profits.
15	Data retrieval.	Majority in favour of treatment as business profits. Minority considers this as royalty, if a copyright right is used by customer to acquire the digital information. Possible to consider as services of technical nature. Need to further discuss.	Should be treated as 'business profits'	Retrieval of data available through the software does not involve any element of technical support on the part of the service provider. The services merely enable the user to browse and retrieve the information from the host's database as per his requirements. Hence, the payment is in nature of subscription
16	Delivery of exclusive or other high-value data.	Should constitute business profits. Possible to treat as royalty since payment is made for right to reproduce valuable data.	Should be treated as 'business profits'	Though the users from different groups of sectors / industry etc. are provided with tailor-made information as per their requirements, the information provided to all the users within the same group of industry / sectors is identical. In such case, the payments are in nature of subscription

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17	Advertising	Should constitute business profits.	Should be treated as 'business profits'	—
18	Electronic access to professional advice.	Should constitute business profits. Possible to consider as services of technical or consultancy nature. Need to further discuss.	Should ordinarily be treated as professional income.	However, if the definition of fees for technical services include the words 'consultancy' too, it should be treated as fees for technical services.
19	Technical information.	Should constitute royalty since it involves supply of know-how.	Should be treated as 'royalty'	—
20	Information delivery.	Should constitute business profits. Minority considers this as royalty, if a copyright right is used by customer to acquire the digital information.	Should be treated as 'business profits'	The principal value to customers is the convenience of receiving widely available information in a custom-packaged format tailored to their specific needs.
21	Subscription based interactive website access.	Constitute payment for services. Any payment made to the owner of the copyright in the digital content by the provider for the right to display the content to subscriber would constitute royalty.	Should be treated as 'royalty'	—
22	Online shopping portals.	Should constitute business profits.	Should constitute business profits.	—
23	Online auctions.	Should constitute business profits.	Should constitute business profits.	—

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24	Sales referral programs.	Should constitute business profits.	Should constitute business profits.	—
25	Content acquisition transactions.	Royalty – where operator pays content provider for right to display copyrighted material; Business profits – where operator pays for creation of new content and becomes owner thereof.	Same as OECD recommendations	—
26	Streamed web based broadcasting	Should constitute business profits.	Should constitute business profits.	It is merely a manner of electronic display of the audio-visuals etc. and hence, should be given the same treatment
27	Carriage fees	Should constitute business profits.	Should constitute business profits.	—

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