

# Business Standard

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## 'Non-imposition of tax is a beneficial treatment'

**In the US, states have successfully introduced tax on e-commerce and the US Supreme Court hasn't set aside these laws**

**M S Ananth August 10, 2014** Last Updated at 21:13 IST

Economics, law and arithmetic are fundamental to tax laws. A value-added-tax (VAT) is a consumption-based one. Globally, it is accepted e-commerce taxation should be where consumers reside.

The Organisation for Economic Cooperation and Development (OECD) has recognised this and identified key principles:

- \* Neutrality: tax should not affect consumer behaviour;
- \* Efficiency in administration of tax law;
- \* Certainty and simplicity in application and administration (different states should not compete to garner more tax);
- \* Effectiveness and fairness of law.

Schedule 7 of the Constitution provides for matters in respect of which central and state governments have the power to tax.

The central government can tax inter-state sales, while state governments can tax transactions that originate or conclude in that state. Generally, the power of the Centre trumps those of states.

In the US, states have successfully introduced tax on e-commerce and the US Supreme Court hasn't set aside these laws. There is precedent and economic justification for imposition of tax on e-commerce.

Additionally, non-imposition of tax on e-commerce is beneficial treatment to that sector. States have limited options.

A tax might be imposed on the entry of goods or on local sales; these are limited by Entries 52-58 of List II, Schedule 7 of the Constitution.

The test for validity of an entry tax law, a balance between the right to carry on trade and impose taxes, is pending in the Supreme Court. Currently, 24 states have an entry tax.

It is likely there will be issues relating to tax administration, too, as companies engaged in e-commerce might not have offices in every state.

Also, there are issues relating to clarity on the nature of the transaction - sale, royalty, licence, etc. Recent reports suggest a few states are exploring tax on e-commerce, based on entry tax model.

Apart from OECD's principles, it is important VAT does not violate the Constitution, particularly the right to carry on trade throughout India, as well as trade itself.

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