




# Monthly Policy Brief

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# 01 New Guidelines Address Concerns Over India's E-commerce Tax Rule

The Central Board of Direct Taxes (CBDT), under the Ministry of Finance, has issued guidelines under sub-section (4) of section 194-O of the Income Tax Act 1961. The guidelines clarify the deduction of 1% income tax on the gross amount of sale of goods or services by e-commerce companies in a multiple-operator model framework, such as the Open Network for Digital Commerce (ONDC).

The issued new guidelines are aimed at addressing concerns around the E-Commerce Tax Rule (ECTR). The released guideline for the framework clarifies the scope of the rule, streamlines tax collection procedures, and attempts to alleviate compliance obligations for e-commerce platforms and sellers. Key points include:

- **Multiple-operator model:** Section 194-O mandates tax to be deducted by E-commerce operators (ECOs) in any transaction through their platform. In the case of multiple operators, the burden of tax deduction now depends on whether the seller-side ECO is the end seller or a facilitator.
- **Purchase>Returns and Adjustments:** The guidelines give an insight into the adjustment process for purchase-returns. It mandates that if tax has already been deducted prior to the purchase-return, the adjustment can be made against the following transaction with the same seller in the same financial year.
- **Calculating the gross amount:** The "gross amount" includes the value of the goods or services, along with any fees charged by the ECOs, such as convenience fees, commission charges, and logistics fees. However, it excludes taxes like GST or state levies.
- **Discounts and TDS:** If a seller offers a discount, the TDS is calculated on the discounted price. However, if the buyer-side ECO offers a discount, the TDS is calculated on the full price of the goods or services.

## Our Take - Why is this Important?

The new ECTR guidelines show a positive step towards addressing industry concerns and building a more conducive regulatory environment for e-commerce

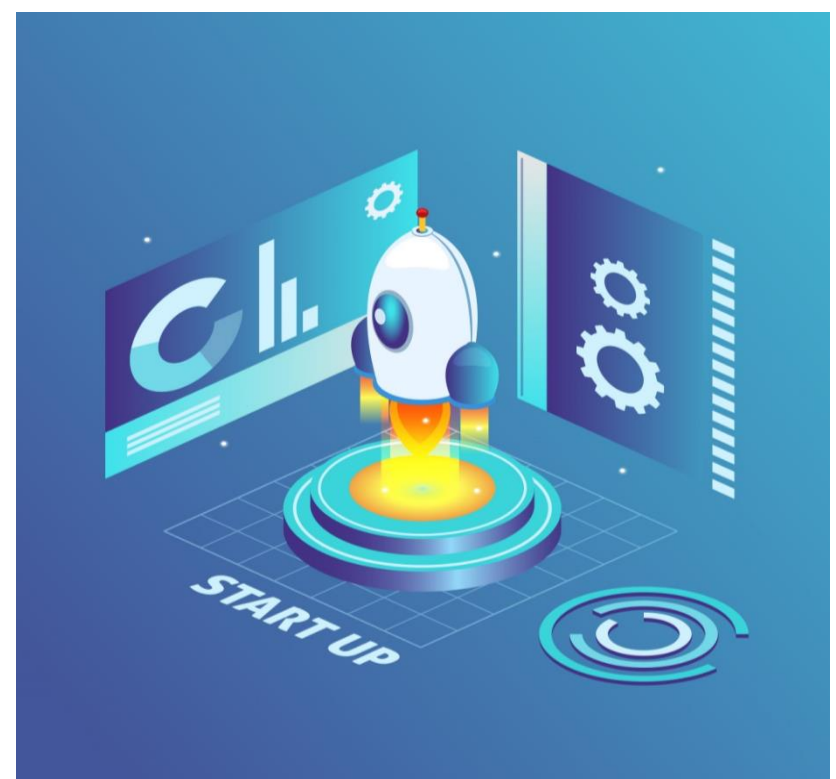
growth in India. However, some potential challenges can be::

- **Complexity:** The guidelines highlight the complexity in the tax procedure while
- **Inequality:** The guidelines highlight discounts by the buyer-side ECO would not make part of the gross amount while the seller-side ECO discounts are included.

The guidelines, issued due to representations from multiple stakeholders to the Ministry of Finance, does a good job clarifying the complex tax structure. The guidelines:

- **Increased Clarity:** provide enhanced clarity on the structure and source of tax deduction. This will help streamline the tax collection process.
- **Transparency & Compliance:** increase the transparency in the tax system of India and ensures higher tax compliance in the

In conclusion, the revised guidelines for ECTR offers a mixed bag. While they highlight the complexity in the taxing set up of India, it also simplifies the compliance and understanding. Moreover, streamlining procedures and offering adequate support is a clear-cut way to ensure a healthy and vibrant e-commerce ecosystem in India.



## 02 Telecom Act 2023

*A Primus Perspective*

The introduction of the Telecommunications Bill of 2023 heralds a major reform in India's telecom sector, signaling a transformative shift in the regulatory paradigm. This landmark legislation is set to overhaul the existing norms, specifically targeting the management of telecom towers and the streamlining of Right-of-Way (ROW) processes. These reforms are crucial in an era where telecommunications technology is rapidly advancing, especially with the impending nationwide rollout of 5G networks. The bill's introduction is timely, as it seeks to address the burgeoning need for a more robust and efficient telecom infrastructure while tackling the complexities introduced by new technologies.

### Regulation of Telecom Towers in the 5G Era

With the current count of telecom towers in India exceeding 7.5 lakh, and an anticipated doubling due to the onset of 5G technology, there is an urgent need for a well-structured regulatory framework. The unchecked growth in the number of telecom towers raises concerns about radiation exposure and the efficient use of resources.

### Learning from Global Practices

A closer look at international standards, notably Singapore's method of handling telecom towers, offers insight into the success of government-led regulation in this domain. Singapore's model efficiently controls tower proliferation while concurrently addressing health concerns related to radiation exposure. This approach serves as an effective blueprint that India could consider adopting, demonstrating how strategic government intervention can lead to a more optimized and safer telecom infrastructure.

### The Indian Scenario

In India, the prevalent practice of telecom operators erecting their exclusive towers has led to an unsustainable surge in the number of towers. This situation underscores the need for specific regulations in the Telecommunications Bill of 2023. The introduction of clear regulatory guidelines is crucial, demanding stringent norms for the commissioning and management of telecom towers. Equally important is promoting shared infrastructure use, which can significantly reduce the unnecessary proliferation of towers. Finally, it's essential to strike a balance between safety and growth. The expansion of telecom infrastructure must align with public health standards, ensuring that the technological advancement does not come at the cost of public well-being.



## 03

# Telecom Act 2023

### *A Primus Perspective*

#### Addressing the Right-of-Way (ROW) Challenges

The bill's approach to the Right-of-Way (ROW) for telecom infrastructure is another critical aspect that requires attention. The current absence of a centralized regulatory framework for ROW leads to delays and inconsistencies, particularly impacting rural connectivity.

#### The Need for a Unified Approach

The absence of uniform Right-of-Way (ROW) processes significantly widens the digital divide, an issue that gains urgency considering the substantial investment earmarked for rural digital connectivity. The introduction of the bill offers a critical opportunity to develop and implement a standardized set of ROW guidelines. This step is crucial in fostering ensuring that the benefits of technological advancement reach all corners of the country equally.

#### Adopting the Time-to-Serve Model

A 'Time-to-Serve' framework, as seen in other global contexts, could be instrumental in expediting service delivery. This model mandates a time-bound response to ROW requests, which is critical for the timely implementation of rural connectivity projects.

#### Enhancing Rural Connectivity - Bharatnet

The rebranding of the Bharatnet project as 'Bharat Nidi' is a significant move by India to close the rural-urban digital divide.

However, the success of this ambitious project hinges on its ability to motivate telecom operators to share and augment their existing dark fibre networks. To facilitate this, the bill proposes a strategy centred on offering attractive incentives to telecom operators. An essential aspect of this strategy is the empowerment of rural youth by ensuring that the digital divide does not impede the growth and development of India's future leaders in rural areas.

The Telecommunications Bill of 2023 has the potential to significantly enhance India's telecom infrastructure, aligning it with the demands of the digital age. By addressing the twin challenges of telecom tower regulation and streamlining ROW processes, the bill can pave the way for sustainable and equitable growth in the telecom sector.



# 04 Press and Registration of Periodicals Bill, 2023

*Ushering in a new era for the*

The Press and Registration of Books Act was enacted in the year 1867 with the aim to keep a record of all publications being circulated in the country during the British rule. The objective of the act was to regulate printing presses and newspaper for the preservation of copies of books and periodicals containing news published across the country. The act had been in effect since then with limited modifications catering to the current and evolving needs. Further, the act was drafted with a mindset to regulate the content and impose severe penalties for non-compliances including imprisonment. Also, the processes outlined through the act were manual, cumbersome and led to frequent delays at multiple levels of the government.

In order to overcome the challenges of manual effort and with an aim to enhance ease of doing business, the government initiated working on “Press and Registration of Periodicals Bill 2023” that shall replace the colonial era act. The Bill was recently passed by both the houses of the parliament. The Bill shall cater to the needs of the present while incorporating the technological advancements into the processes to make it easier for publishing houses to operate.

### The act aims:

- To increase Ease of Doing Business by simplifying procedures and compliances for the print industry including newspapers, journals and periodicals
- To incorporate technology as an enabler to bring in transparency and automation to increase speed of processing
- To decriminalise all minor violations
- To provide clarity on various aspects that arose with the evolving media landscape

### Our Take - Why is this Important?

The Press and Registration of Books Act, 1867 was one of the oldest acts enacted during the colonial era of our country and had not seen major revisions in the past 150+ years while the country itself has been able to redefine itself to keep in tow with the evolving landscape both in terms of policy and technology.

The new Press and Registration of Periodicals Bill, 2023 that repeals the existing act of 1867 brings in the

necessary change that shall enable the government to function in a much more efficient manner and at the same time bring in transparency of process and policy. Enabling the citizens to submit an online application without having to undertake multiple visits to government offices, helps in improving the ease of doing business for the publishers. Further, a technology based digital process has the potential to improve transparency as the new technologies allow users the capabilities and access to track the exact status of the application in real time and any actions required. The Bill also provides for a time bound action to be undertaken by the responsible government stakeholders that shall further bring down the processing times for various applications.

The decriminalisation of minor offences undertaken with inclusion of financial penalties shall ensure that the required compliances, in terms of obtaining a registration and submitting annual statements, are adhered to by the publishers. The constitution of an Appellate authority (Press and Registration Appellate Board) shall further empower the publishers to voice any concerns regarding the actions taken by the designated authorities.

However, the essence of the Bill shall be in the rules to be proposed for implementation of the act’s provisions and shall define the success of the new act. The clear distinction between news and other written material needs to be spelled out in the rules as that will govern the registration requirements. The technology interventions should focus on making the process anonymous in order to limit the interactions between various parties to the online portal which shall further enhance the transparency and EoDB.



# 05 Draft CCI (Determination of Turnover or Income) Regulations, 2023

## *A global clause for penalising anti-competition*

CCI proposed the Draft CCI (Determination of Turnover or Income) Regulations, 2023 which provide for the determination of turnover of enterprises. It becomes especially important as the Competition (Amendment) Act, 2023 had provided that penalties would now be levied on 'global turnover basis' and that regulations (reference to this newly released Draft) would specify as to **how turnover should be determined**.

**Key points from reading both the 2023 amendment and the new turnover draft: -**

- ❖ When a company is found to be abusing its dominant position in the market or indulging in anti-competitive practice, CCI can impose a penalty of up to 10 percent of its global average turnover (of all its products and services) for the last three preceding financial years.
- ❖ Turnover or income, as the case may be, includes the total value of sales or revenue or receipts, and other operating income, as per the audited financial statements maintained by such enterprise.
- ❖ The turnover or income shall exclude indirect taxes, trade discounts, and intra-group sales, if any.

**Determination Process: -**

- ❖ In case an enterprise is required to prepare a consolidated financial statement under Section 129 of the Companies Act, 2013 or under any law, turnover or income shall be derived based on such audited consolidated financial statements.
- ❖ In case audited financial statements are not available, turnover shall be the amount certified by the statutory auditor of the enterprise and supported by an affidavit by any of the persons authorised to sign financial statements of the enterprise.
- ❖ In case of an enterprise where statutory auditor is not appointed, turnover shall be the amount certified by a Chartered Accountant and supported by an affidavit by any of the persons authorised to sign financial statements of the enterprise.
- ❖ Turnover or income in foreign currency shall be converted into INR, which shall be the average of the foreign currency reference rates as published by the RBI, for each of the relevant financial year.

### Our Take

- Multi-product / service conglomerates with global operations, such as Big Tech firms, might now be saddled with higher penalties compared to their Indian counterparts for engaging in similar anti-competitive conduct. Many firms had also expressed this concern resulting into some industry pushback when the 2023 amendment was released; however, no concrete moderations fructified.
- The change in penalties might not prevent the Big techs and the multinational corporations from establishing their presence in the country, but it will certainly cause them to reassess the associated risks and the measures required to manage these risks.
- *Global cue:* While the European Union (EU) is empowered to levy a penalty on the company's global turnover, it is only used as an external limit. As a quick comparison, the starting point of the fine for violation of anti-trust law in the EU is up to 30 percent of the company's annual sales of only the product concerned.



## 06 Advisory on Deepfakes to Social Media Platforms by MeitY

The Oxford Dictionary defines Deepfake as “a video or audio of a person in which their face, body, or voice, has been digitally altered so that they appear to be someone else, typically used maliciously or to spread false information.”

Deepfakes, especially in the time of readily available Artificial Intelligence software, pose a serious threat by enabling the creation and spread of manipulated videos/audios that appear authentic.

On December 26, 2023, The Ministry of Electronics and Information Technology (MeitY) recently released an advisory directing all online intermediaries to ensure compliance with existing IT rules. The rules aim to curb the spread of misinformation, especially AI-enabled deepfakes representing a grave threat to user safety and trust online.

### Key Highlights of the Advisory:

- The advisory mandates clear communication to users regarding prohibited content under Rule 3(1)(b) of the IT rules in their terms of service and privacy policies.
- It stresses on prompt removal of false information, impersonation, doctored images/videos, and material threatening national security, by the intermediaries.
- Intermediaries must inform users of legal consequences like IPC provisions for violations at regular intervals.
- The advisory follows stakeholder consultations conducted by the IT ministry over the past month regarding tackling online misinformation and deepfakes.

### Our Take - Why is this Important?

According to Sensity AI, an organization working on detecting deepfakes online, the number of deepfakes on the internet is doubling every 6 months. On top of that according to another survey, 71% of online citizens are unaware or incapable of distinguishing between what is real and what is a deepfake.

Hence, the recent advisory issued by the Ministry of Electronics and Information Technology (MeitY) directing intermediaries to comply with the existing IT Rules, especially provisions regarding misinformation, is a timely and welcome move.

In India as well we are beginning to see various instances of deepfakes being used to spread misinformation and infringe on personal liberties. One such popular instance involving actress Rashmika Mandana also stirred a big controversy. Globally, deepfakes have already been used to manipulate election processes, enable revenge porn, and malign images.

This advisory represents the first step in acknowledging intermediaries' responsibility in combating the problem at scale before the usage becomes mainstream. Rule 3(1)(b) of IT Rules prohibits misinformation, but mere informing users may not suffice anymore. On a closer reading of the advisory, it seems as if we are soon approaching a time where every user could be greeted by a check box acknowledging awareness of Indian laws, every time they post something online.

For Instance, Facebook Instagram could mandate users check a box that they will not share deepfakes or misinformation prohibited under Rule 3(1)(b) of IT Rules, before allowing user to make any uploads.

In our opinion, this advisory surely demonstrates the urgency of concrete action, but success would need government and online platforms to prioritize public awareness. Just like censorship, regulations on right to expression must not be arbitrarily expanded at the cost of reasonable individual liberties.

Currently, India does not even have a legal definition for deepfakes, but that is set to change with the government planning to release comprehensive rules in the coming weeks which will define and regulate deepfakes, as per a recent HT report.

Overall, this advisory highlights the critical threat uncontrolled deepfakes pose to the internet. Its effective implementation could inspire confidence of trust and safety among all online users.

## 07 Draft Framework for Recognising SROs for Regulated Entities (REs) of the RBI

### A path to improved industry standards

The Reserve Bank of India (RBI) released a 'Draft Omnibus Framework for Recognising Self-Regulatory Organisations (SROs) for its Regulated Entities (REs).' The draft framework aims to establish better industry standards for self-regulation and addresses challenges in regulating the rapidly growing sector effectively. The RBI is seeking comments from stakeholders on the draft till Jan. 25, 2024. Important to note that existing SROs already recognized by the Reserve Bank shall continue to be governed by the terms and conditions under which they were recognized, unless this framework is specifically extended to such SROs.

#### Key Points

- ❖ Objectives of SROs: Main goals include promoting compliance culture, representing members in various engagements, sharing sector-specific information with RBI, and fostering innovation and research within the sector.
- ❖ SRO Responsibilities Towards Members: These include promoting best business practices, establishing a fair membership fee structure, disseminating information, offering dispute resolution, and educating members and the public about the sector.
- ❖ Code of Conduct: SROs should frame and implement a comprehensive code of conduct for members, establishing minimum benchmarks and conventions for professional market conduct.
- ❖ Protection of Interests: SROs are expected to protect the interests of customers, depositors, participants, acting as allies to the RBI in ensuring compliance, sector development, stakeholder protection, fostering innovation.
- ❖ SRO Responsibilities Towards the Regulator (RBI): SROs must keep RBI informed about sector developments, violations by members, submit annual reports, and participate in periodic interactions with RBI.
- ❖ Eligibility Criteria for SRO Applicants: Applicants must be not-for-profit entities with adequate net worth and infrastructure, represent the sector, have competent and reputable directors, and be fit for SRO recognition.

- ❖ Governance Framework for SROs: They must operate with transparency and professionalism, have adequate governance provisions in their Articles of Association, ensure board members meet 'fit and proper' criteria, and comply with relevant Acts and RBI guidelines.
- ❖ Application Process for SRO Recognition: Applicants must submit a detailed application including their Memorandum and Articles of Association, details of the board and management, and a roadmap for achieving membership criteria.
- ❖ Conditions for SRO Recognition: Recognition is contingent on the accuracy of information provided, adherence to the framework, and maintaining terms of recognition. RBI may revoke recognition if the SRO's functioning is detrimental to public interest.
- ❖ Membership Criteria for SROs: Membership should represent the sector holistically and meet criteria set by RBI. membership criteria of the SRO shall be as prescribed by the Reserve Bank at the time of inviting the application for each category/ class of REs. Failure to meet membership requirements may lead to revocation of recognition.

#### Our Take - Why is this Important?

By empowering industry bodies to set their own best practices, the RBI unlocks a cascade of benefits. The positives include an agile adaptation to new technologies, a stronger focus on fair conduct, and a more responsive ecosystem that safeguards consumers. This win-win approach empowers both regulators and regulated entities, paving the way for a vibrant and responsible financial future for India.

It reimagines a financial sector where industry players actively shape ethical standards, fuel innovation, and champion consumer protection - all while easing regulatory burdens. Especially for the fintech sector, the SRO framework commits to the industry players' long standing demand.





**PASSION**

for providing solutions to help clients achieve their goals

**RESPECT**

for all and alternate viewpoints

**INTEGRITY**

of thoughts and actions

**MASTERY**

of our chosen subject to drive innovative and insightful solutions

**US**

representing the Primus collective, where each individual matters

**STEWARDSHIP**

for building a better tomorrow

# About Primus Partners

Primus Partners has been set up to partner with clients in 'navigating' India, by experts with decades of experience in doing so for large global firms. Set up on the principle of 'Idea Realization', it brings to bear 'experience in action'. 'Idea Realization'— a unique approach to examine futuristic ideas required for the growth of an organization or a sector or geography, from the perspective of assured on ground implementability. Our core strength comes from our founding partners, who are goal-oriented, with extensive hands-on experience and subject-matter expertise, which is well recognized in the industry. Our core founders form a diverse cohort of leaders from both genders with experience across industries (Public Sector, Healthcare, Transport, Education, etc.), and with varied specialization (engineers, lawyers, tax professionals, management, etc.).



**BENGALURU**

91 Springboard  
Business Hub 175, 176  
Bannerghatta Rd,  
Dollars Colony,  
Bengaluru – 560076



**CHANDIGARH**

2nd Floor, Netsmartz,  
Plot No. 10, Rajiv  
Gandhi Chandigarh  
Technology Park,  
Chandigarh – 160019



**DELHI**

15, Tolstoy Rd  
Atul Grove Road, Janpath  
Connaught Place,  
New Delhi – 110001



**KOLKATA**

Siddhartha Apartments  
4th Floor, 188/2,  
Block J, New Alipore,  
Kolkata - 700053



**MUMBAI**

601, 6th floor,  
Raheja Centre,  
Nariman Point,  
Mumbai - 400021