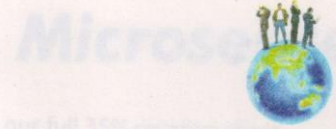


Microsense

Seamless connectivity



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To,

15th September 2014

The Telecom Regulatory Authority of India (TRAI)
Delhi

Dear Sirs,

Microsense Private Limited is a Class A ISP issued License by the DOT under the guidelines dated 24/8/2007. Accordingly, we would like to submit our feedback, suggestions and views as below with reference to the TRAI Consultation Paper No 09/2014 dated 31st July 2014.

1. Align with the initiative of the Government of India's plan of Goods and Services Tax (GST)

Government of India is keen to introduce the Goods and Services Tax (GST), a wonderful idea and a breath of fresh air.

A nationwide GST is intended to usher in a uniform market for goods and services, cut business costs and boost government revenues

The DOT needs to seriously consider how they can align with this initiative of the Government of India for GST. We seriously suggest that they form a committee without delay to look into the matter and the committee may be charged to work expeditiously and in a time bound manner to arrive at conclusions after thorough deliberations.

Other taxation departments in the Government of India are already seized with the complexities of the many points being debated in this paper. Capital Gains Tax, Dividend Tax, Income Tax on Interest Income, and Service Tax on the Services to name just a few. The levy tax on the very same services. Also it stands to reason that these departments have great expertise on each of the individual subjects that have been mentioned above. They also have a great deal of experience and infrastructure to administer these taxes.

The DOT could argue that there are reasons why it needs to independently legislate on these subjects and could argue why it is necessary to have a separate administrative machinery administering these revenue collection activities.

However, we would like to state that such arguments are against the concept of "less government is more governance". They also simply ignore the rationale behind reforms such as GST which are meant to usher in a uniform market of goods and services, make the government and business more efficient and more remunerative for both.

For example converting the License Fee as “additional Service Tax” could have phenomenal benefits for all stake holders including the DOT. Each of the Service Providers is already paying Service Tax. They simply have to pay an additional Service Tax to the Service Tax Department. The Service Tax Department already has the administration reach to administer the tax and check whether they are being paid properly and in time and to levy fines and penalties. Why then should the DOT replicate the same administration? The need for Lean Government needs emphasis and cannot be brushed aside. It should not be seen as Inter Departmental Rivalry. What is best and most efficient should be done.

Further the vexing matter of cascading effect will automatically be taken care if this tax is made “Special DOT Service Tax” (to give it a name). This is already part and parcel of the Service Tax regime.

If the revenue collections in this regard should come to the DOT for doing more good work (such as the USO Fund etc.), then it is simply an arrangement between one central government department and another central government department.

(In the case of GST, there is the Centre and multiple states, but even they are reaching consensus on much more difficult matters). So the DOT can easily arrange the collections should come back to it.

That this is a License Fee and has a long history behind it should not stand in the way of meaningful reforms.

In any case it is our forceful contention that the TRAI and the DOT should convene experts to look into the matter of aligning with the GST, at least partially and largely if not fully.

2. On the matter of whether License Fee or License Tax is to be charged on ISP service the following are our views.
 - a. It is acknowledged by one and all ISP penetration is very low and we are way behind Broad Band Targets. Even the Chairman of TRAI has said so a few days ago.
 - b. It is common sense that imposition of more tax would only make the position worse. In the end analysis, such Fees and Taxes would get passed on to the end consumer. We don't think it is anybody's argument that the consumer should pay more.
 - c. There have been some arguments how some people take undue advantage of the provision that Pure Internet Services are exempted and are therefore getting undue arbitrage on other services. This cannot be a serious argument. For example the Central government in its wisdom decides to levy higher excise duty on cigarettes and lesser excise duty on edible oils. Sometimes they have quite complex definitions; the recent Finance Bill decided that for VOIP equipment the Basic Customs Duty should be 10% (earlier it was 0%) whereas for other equipment in the very similar category it would continue to be 0% and for parts of VOIP equipment it would be zero percent as well.
It is the role of the importers/manufacturers to comply with these laws. If they mis-declare the goods and try and pay less duty they are punishable.
It is the role of the administrators to administer the law.

Similarly it is very much possible for DOT and TRAI to have clear definitions so that whatever is intended is carried out.

It would not be correct to argue that we want to exempt “Pure Internet Services” but clear defined laws are difficult to formulate so we should levy tax on Pure Internet Services.

This can be taken care of by proper and exhaustive definitions.

3. If License Fee or Tax is imposed on Pure Internet Services, then it should be imposed on Cyber Cafes and other Channels of providing Internet Service as well. There are many operators at hotels and airports operating as “cyber Cafes” without any ISP License. (Some of these are even 100% foreign owned entities). Cyber Cafes are required to register (in some states) with Police stations but there is no clarity whether they need be an ISP License holder. There is also no clarity whether the Cyber Café should be a Franchisee or Agent of a registered ISP.

The end result is that whereas the ISP has to comply with very strict security norms, the Cyber Café becomes a weak link with very loose regulations.

Thus there is a need to have a regulation that requires a Cyber Café to be a Franchisee or Agent of an ISP.

In the interest of uniformity of law, this aspects needs to be clarified and suitably regulated.

4. With respect to the following questions:

Specifically, how should the income earned by TSPs from the following heads be treated? Please give reasons in support of your views. 55

(a) Income from dividend;

(b) Income from interest;

(c) Gains on account of profit on assets and securities;

(d) Income from property rent;

(e) Income from rent/ lease of passive infrastructure (towers, dark fibre, etc.);

(f) Income from sale of equipment including

handsets;

(g) Other income on account of insurance claims, consultancy fees, foreign exchange gains etc.;

Our views are as follows:

1. First of all there is a need for the TRAI to state the License Fee or License Tax should be liveable only on income arising out of licensed services.

Based on this policy statement it becomes possible to discuss and resolve disputes whether a particular income is arising out of licensed services or not.

It may not be possible to make an exhaustive list of all kinds of incomes that a licensee may get, which is why a Policy statement such as the above is very essential.


2. After making such a policy statement, the TRAI can go ahead and specify specific kinds of income and say whether Fee/Tax should be leviable or not.

Our views on the specific list provided is as follows:

- a. Income from dividend;
 - i. If the dividend is obtained from shares which have not been procured from income from ISP services, no License Fee/Tax should be paid
 - ii. If the dividend is obtained from shares which were procured from income from ISP services, then the License Fee on such income has already been paid and the company has procures these shares from income AFTER having paid License Fee/Tax, why should company pay License Fee again and again till death? License Fee/Tax is payable only once not multiple times.
- b. Income from interest;
 - i. If the interest is obtained from investments shares which have not been made from income from ISP services, no License Fee/Tax should be paid
 - ii. If the interest is obtained from investments which were made from income from ISP services, then the License Fee on such income has already been paid and the company has procured these investment from income AFTER having paid License Fee/Tax, why should company pay License Fee again and again till death? License Fee/Tax is payable only once not multiple times.
- c. Gains on account of profit on assets and securities;
 - i. If the asset/security have not been procured from income from ISP services, no License Fee/Tax should be paid
 - ii. Even otherwise:
 1. Since License Fee is already paid, why pay again and again
 2. Also only revenue income should be considered. Not capital gains and such like
- d. Income from property rent;
 - i. If the property has not been procured from Income from ISP services, no License Fee/Tax is payable.
 - ii. Even otherwise, since Licensee fee is already paid, why pay again and again?
- e. Income from rent/ lease of passive infrastructure (towers, dark fibre, etc.);
TRAJ may take a call
- f. Income from sale of equipment including handsets;
License Fee/Tax should not be levied. This is not a licensed service.
- g. Other income on account of insurance claims, consultancy fees, foreign exchange gains etc.;
License Fee/Tax should not be levied. This is not a licensed service.

Thank you

For Microsense Private Limited,



S. Kailsanathan

Director