

---

**VIRTUAL CPE SEMINAR**



# **DIGITAL TAX - NOT JUST A CLICK AWAY**

**Korah & Korah  
Chartered Accountants**



# Session Structure

**Digital Economy & its Challenges**



**Equalization Levy**



**TDS Provisions**



**GST Provisions**

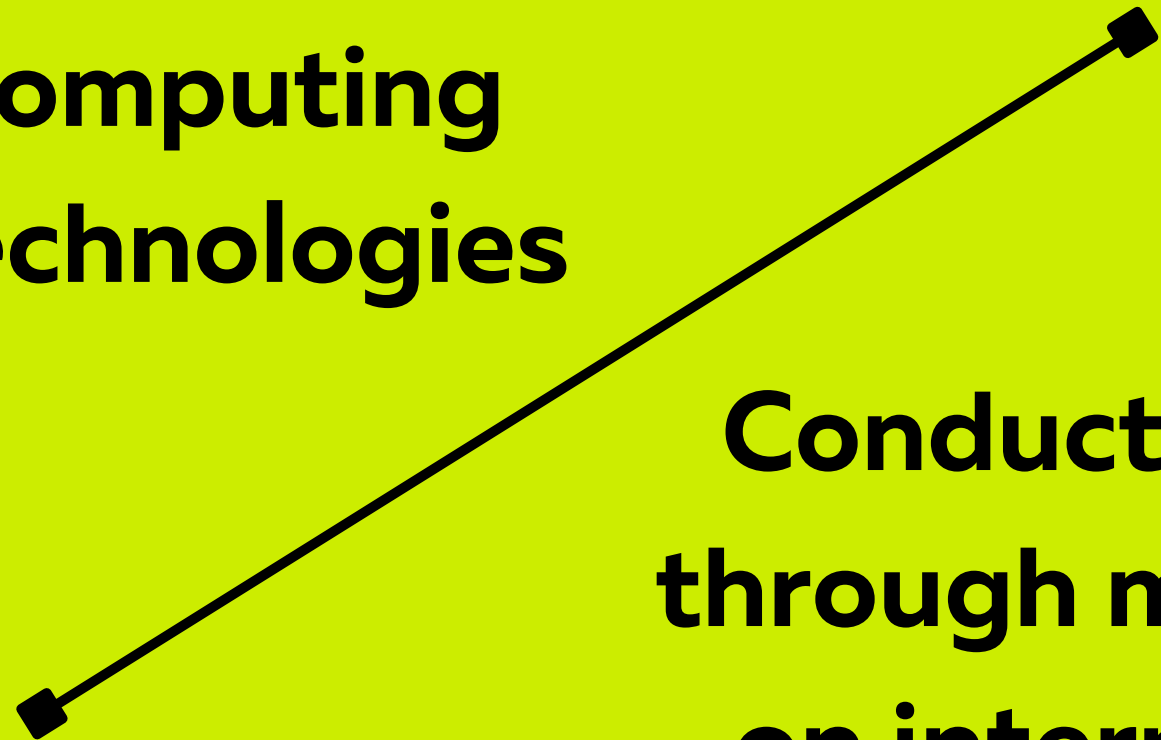
**Today's Scenario**



**Significant Economic Presence**



**The economy that is  
based on digital  
computing  
technologies**



**Conducting business  
through markets based  
on internet & WWW**



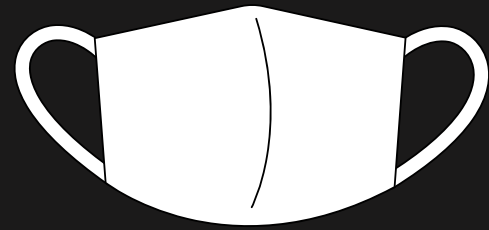
**Hyperconnectivity  
between people,  
organizations and  
machines**

**1**

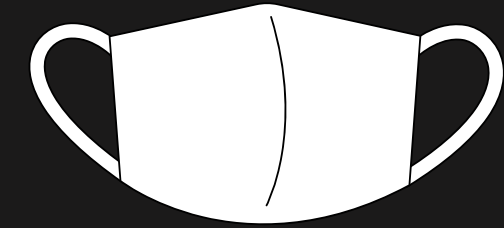
**What is a  
Digital  
Economy?**

# Some Statistics - Still behind China

**Before**



**After**



**577 Million Internet Users**  
(36.8% of Population)

**624 Million Internet Users**  
(45% of Population)

**370 Million Social Media Users**  
(11.1% of Population)

**448 Million Social Media Users**  
(32.3% of Population)

# Change due to COVID-19

01

Social Media Websites



Target Advertising

02

Work from Home



Computing Power

“ Physically Absent but Fiscally Present ”

1 Second = 127 Devices

# The Challenges

## Where?

In the absence of any physical presence, there is a **lack of nexus** between the income recipient and the ultimate parent company



## How Much?

Categorization of income from transactions involving data for tax purposes and how to determine the **quantum of income?**



# EQUALIZATION LEVY

EL 2.0

G20 Forum



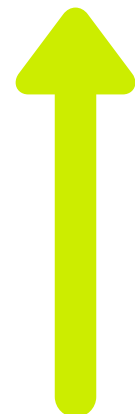
OECD



15 Action Plans  
for BEPS

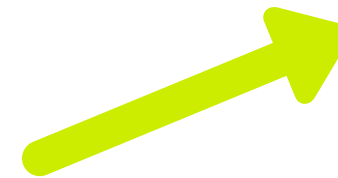


Action 1 - "Tax Challenges  
arising from digitization"



EL 1.0

FA 2016 - EL @ 6% on payments to  
NRs for specified online services



EL @ 2% on payments to  
NR E-comms

FA 2020 -



FA 2021 -  
Certain clarifications

## EL 1.0 - with effect from 1st July 2016

- \* @ 6%
- \* charge on specified services  online **ads** / digital **adv** space
- \* on the amount of consideration received or receivable by a **NR** from  a **resident** + having business income in India
- \* not chargeable  a **NR** having a PE in India

  
\*\*aggregate **< 1 Lakh**;

\*\*NR having PE in India and specified services **connected to PE**;

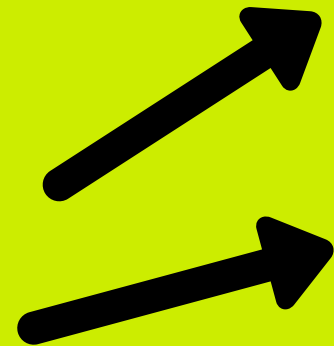
\*\*payment not for **business purposes**

# EL 2.0 - with effect from 1st April 2020

\* @ 2%

\* on the amount of consideration received or receivable by an e-com.

from e-com supply of goods/services to



a resident

any person who buys using IP address in India



a NR under specified circumstances

\* not chargeable



\*\*aggregate < 2 Crores;

\*\*NR having PE in India and specified services connected to PE;

\*\*already levied under EL 1.0



sale of ads or sale of data

targets a resident/any person using Indian IP address

# Some other points relating to EL 2.0

✦ Does not include consideration is taxable as **royalty or FTS**

## FA 2021 Clarifications

✦ "Online sale of goods/provision of services"  
-acceptance of **offer for sale, placing a PO**

✦ Income of such e-com. operator is exempt under S.10(5) from **1st April 2020**

Payment,  
interest  
& penalty  
provisions

- EL chargeable irrespective of whether goods/services are **owned/provided/facilitated**
- Disallowance under **S.40(a)(ia)**.
- Need to furnish a statement in **FORM 1** within 30th June of next year

# Case Studies

- 1 Apple Inc. running iphone ads to target Indian users on Alibaba platform and pays INR 3 Crs - **Yes, EL**
- 2 Alibaba buys data from Facebook India for INR 1 Cr and sells it to Apple Inc. for INR 6 Crs - **Yes, EL on INR 6 Crs**
- 3 Amazon Music providing services to Indian customers - **No, EL**
- 4 Only order placed online for goods through platform, rest all functions done offline - **EL** only on the consideration from **online service**
- 5 NR e-com. sells good to a resident for INR 100 which is listed on its platform by another resident from whom commission of INR 30 is received - **EL on INR 130**

# Challenges to EL 1.0 & 2.0

1

Non-availability of credit to NR e-com. in its country of residence. It is more of a sunk cost!

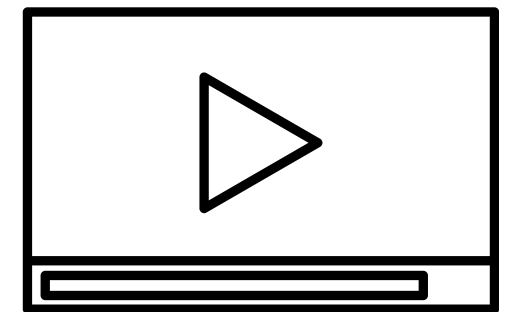
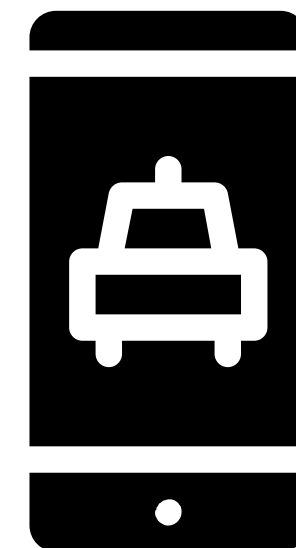
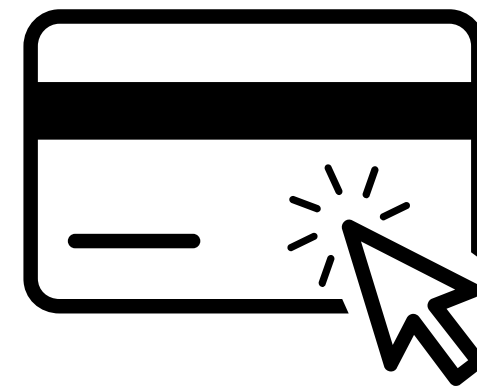
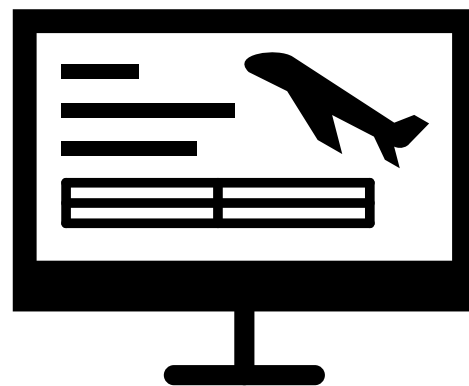
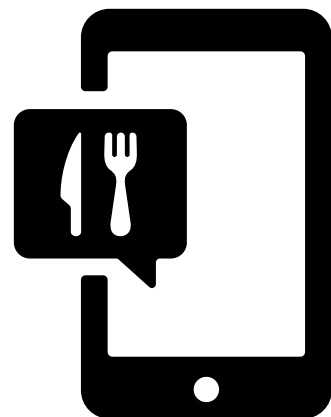
2

Quite difficult to track the IP address of each customer

3

No clarity as to whether sale of goods/services is to be grossed-up or not

**FY 19-20 - INR 1136.5 Crs**  
**FY 2020-21 - INR 1492.7 Crs**



# TDS under 194-O - with effect from 1st Oct 2020

**Scope?** When the sale of goods/provision of services by an **e-com. participant** (resident) is facilitated through any digital / e-facility or any platform of an **e-com. operator** (resident/NR)

**When?** At the time of credit or payment to e.com participant whichever is **earlier**

**Rate?** **@ 1%** (0.75% from Oct'20 to Mar'21) of the **gross amount** of such sales or services or both

**No Deduction?** When such e.com participant is an individual/HUF + gross amount  $\leq$  INR 5 Lakhs + PAN/Aadhaar furnished

## More points for clarification

- 1 Payments made directly to e.com participants shall be deemed to be amount credited / paid by e.com operator - **customers directly paying to Ola / Swiggy**
- 2 No TDS under any section if the transaction attracts 194-O - **ClearTax making payment to CA's (no 194J)**
- 3 If no PAN furnished, then rate shall be **5%** under S. 206AA
- 4 The e.com participant shall be a **resident**

# Case Study

To pay - 4,45,00,000  
after deducting  
10% commission  
(after 194-O)

To pay - 4,50,00,000 after deducting  
10% commission (before 194-O)

**194-O applicable on  
5,00,00,000 (deemed)  
i.e. 5,00,000**

**Samsung India Ltd.**

(If Samsung Japan -  
Business Conn)

through  
sale of 1000 TVs at  
50,000 each

**Reliance Digital**

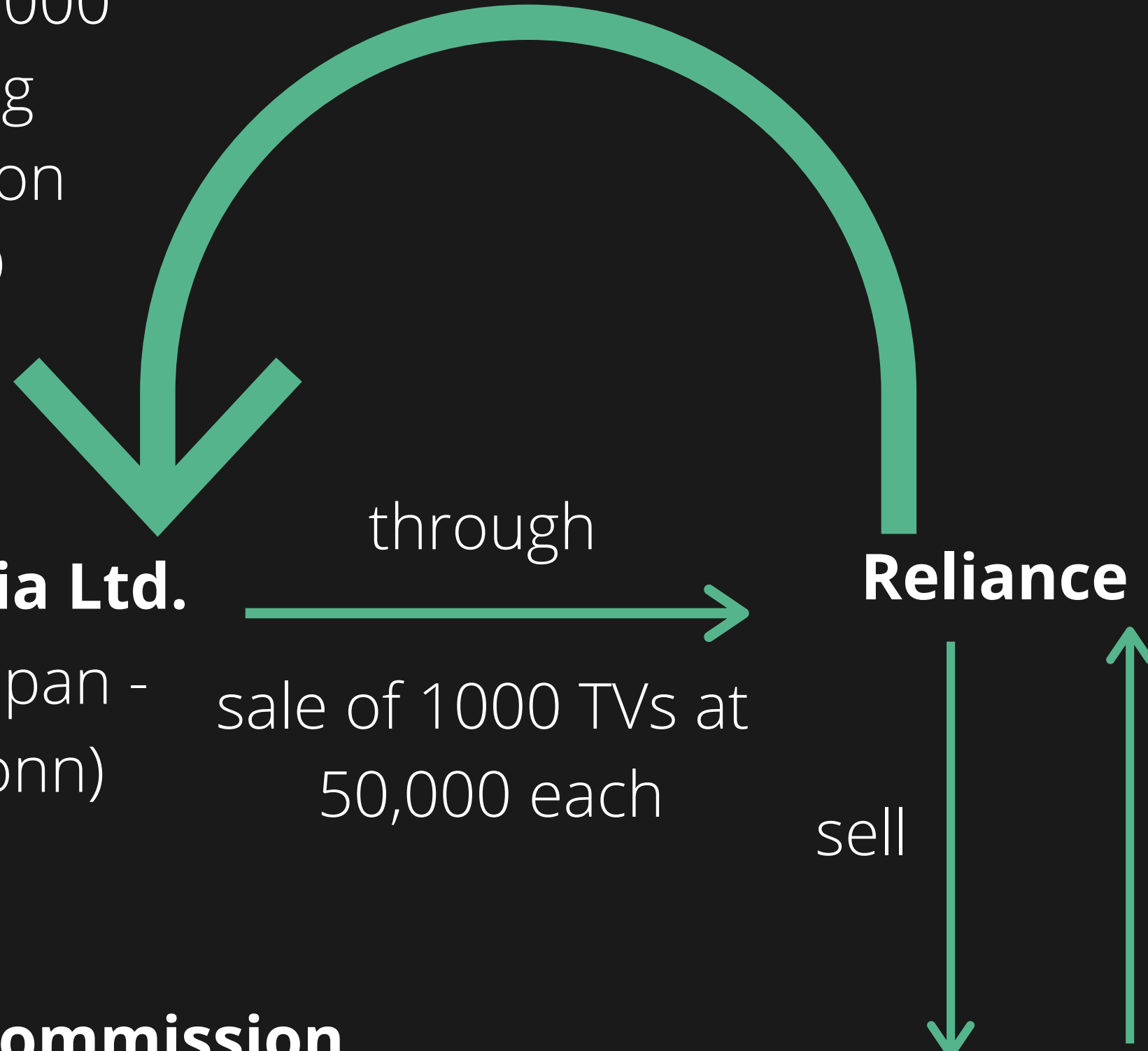
(If Alibaba - then  
EL also)

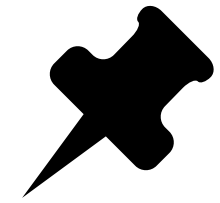
sell

paid 5,00,00,000

**No 194H on commission  
payment**

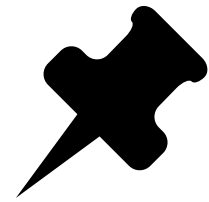
**Customers**



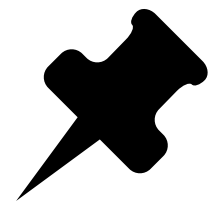


Liability to pay GST under RCM by e.com operator under S.9(5) of CGST Act, 2017

## **GST Provisions**



Taxability and POS Rules for OIDARS providers under S.14 of IGST Act, 2017



Tax to be collected (TCS) by e.com operator on supplies through it before making payments to e.com participants under S.52 of CGST Act, 2017

## RCM Liability u/s 9(5)

GST to be paid by e.com operators when services are supplied through it on RCM basis

If e.com operator in an NR - physical presence / appoint a person

Transportation of passengers by cabs/motor-cycles

UBER

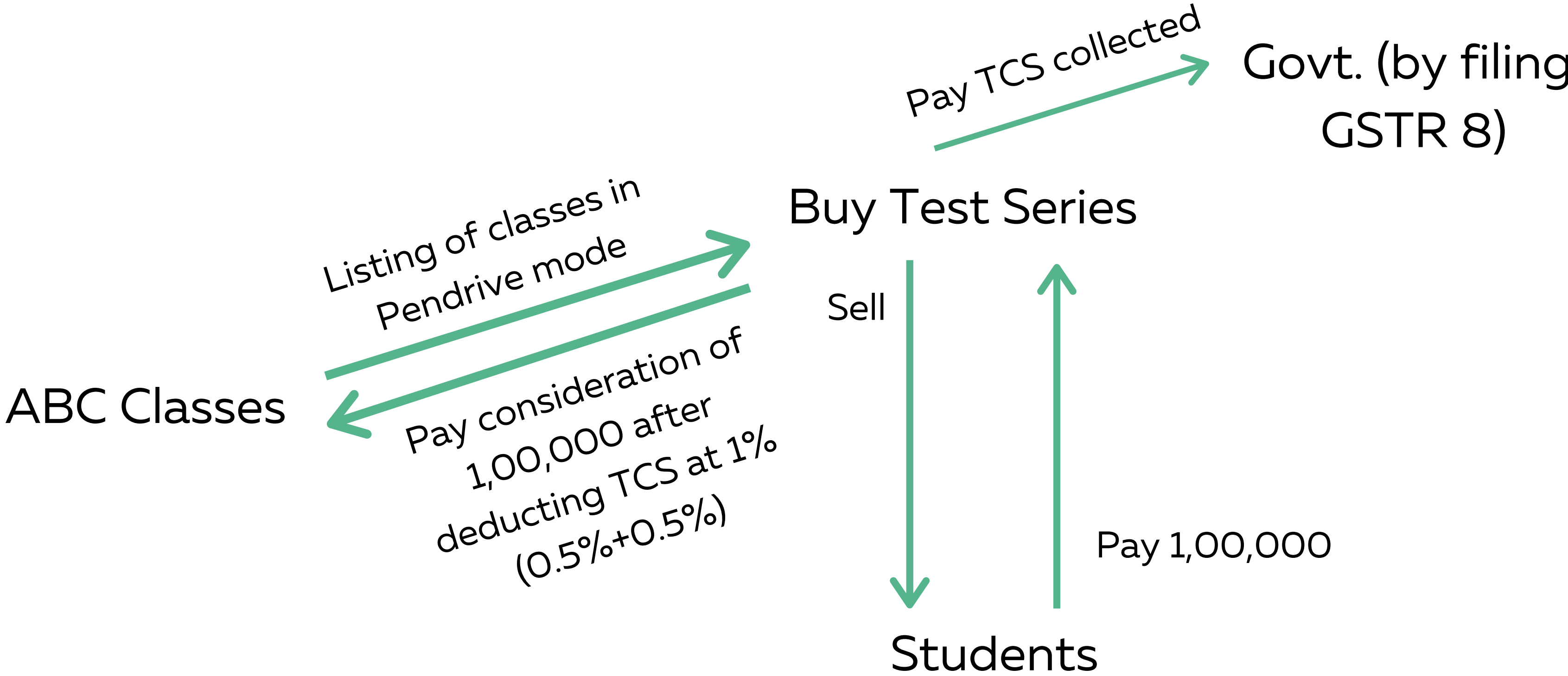
Providing accommodation in hotels/clubs etc.  
(only if such hotels are unregistered)



Services by way of housekeeping/carpentering etc.  
(only if such services are unregistered).



# TCS u/s 52



# Some points relating to TCS

- 1 The e.com. operator should not be an agent
- 2 TCS shall be on the "net value" of "taxable supplies"
- 3 The e-com. operator should get the consideration from the end-customer
- 4 Sale of goods/services from own website - not attracting TCS
- 5 Applies to NR e-com. operators also
- 6 Credit available to the e.com participants / suppliers

# OIDARS - S.14 of IGST ACT, 2017

Services whose delivery is mediated by IT where there is automatic supply | Minimal human interference | impossible without IT

## Includes:

Ads  
Cloud services  
e-books  
online gaming

## Excludes:

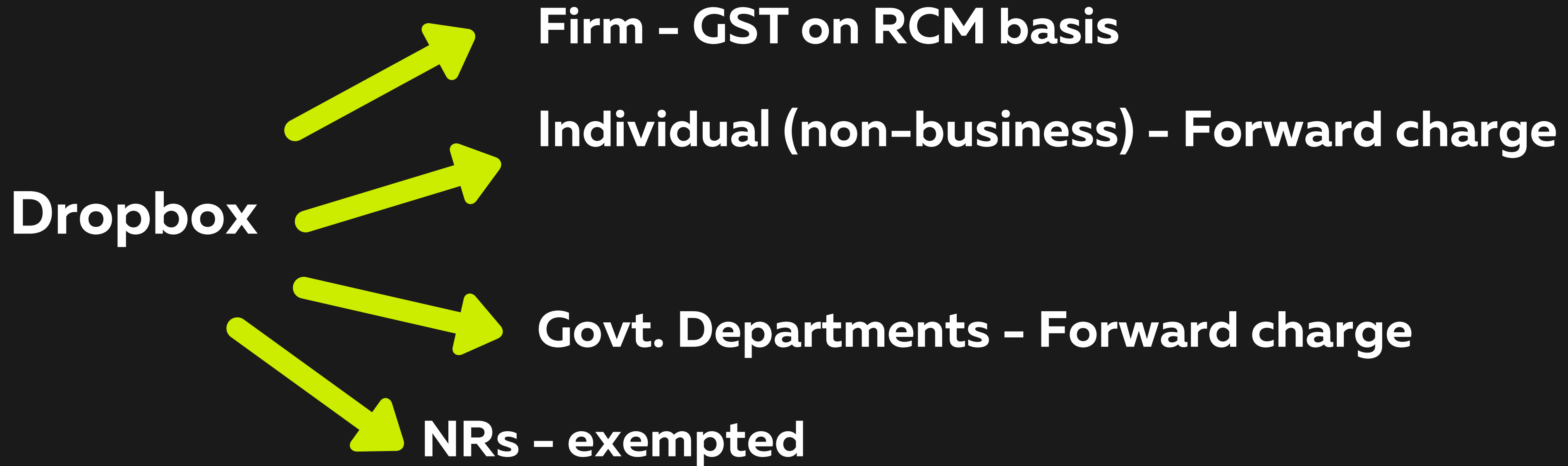
Mailed PDFs  
CA/lawyer services through mail  
Supply of goods  
Transfer of movies

POS



location of **recipient**  
(deeming provisions)

## Case Study - OIDARS



# Significant Economic Presence

01

S.9 – Income deemed to accrue or arise in India

02

Business Connection in India under Expl.2

03

SEP – FA 2018 inserted Expl. 2A (Deemed BC)

## 2 categories for SEP

Transactions in relation to the provision of goods/services/property including download of data/software by an NR in India

Soliciting of business activities/interaction with Indian users through digital means

FA 2018 – no limits were prescribed (less relevant)

## SEP - EXPL. 2A REPLACED BY FA 2020

Transactions in relation to the provision of goods/services/property including download of data/software by an NR in India



"By an NR with **any person in India**" & aggregate payments arising from such transactions > **INR 2 Crs.**

Soliciting of business activities/interaction with Indian users through digital means



"Digital Means" - **deleted** & aggregate no: of users > **3 Lakhs**

CBDT notification dated 3rd May 2021 - limits

# Today's Scenario

**Explained: US investigation into digital services tax, and what is the case against India?**

**What is a global minimum tax and what will it mean?**

**Amazon, Facebook Lobby Groups Urge Digital-Tax End, OECD Deal**

# Relevance of Internal Audit

**Need for surprise audits**  **As tax authorities demand more data**

**Whether FORM-1 of EL has been filed on time?**

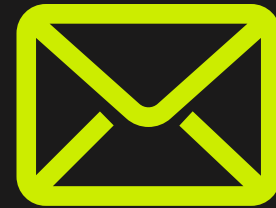
Indicate the high & low risks that the  
Boards and Senior Executives should be aware

**Checks in place to find if e.comm  
operators are meeting compliance requirements**

# Thank You!



**9846010400**



**[deepak.korah@korahandkorah.com](mailto:deepak.korah@korahandkorah.com)**



**<https://www.korahandkorah.com/>**