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# Cross Border Transactions in International Trade Law

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ABHISHEK NEMA<sup>1</sup>

## ABSTRACT

*Cross Border transactions in International Trade Law refer to commercial transactions that involve the movement of goods, services, capital or technology across national borders. These Transactions are governed by International trade agreements, such as the World Trade Organization (WTO) and regional trade agreements, as well as national laws. The main objectives of international trade law are to promote free and fair trade, ensure market access, reduce trade barriers, and provide a level playing field for all participants. Key issues in cross-border transactions include tariffs, quotas, intellectual property rights, and dispute resolution mechanisms. Ensuring the smooth and efficient operation of cross-border transactions is critical for the growth and development of the global economy.*

**Keywords:** *International Trade law, World Trade Organization, Cross-Border Transactions.*

## I. INTRODUCTION

In this fast growing world, when we talk about "cross-border transaction services," we refer to those that pertain to a financial transaction that takes place between more than one country. The Foreign Exchange Management Act of 1999 and the Income Tax Act of 1961 are the two primary pieces of legislation in India that appear to be concerned when a person (Indian Resident or foreign Resident) engages in cross-border activities. A person entering into a cross-border transaction must thus deal with both of the aforementioned Acts.

The Organization for Economic Cooperation and Development (OCDE) defines international commerce as the exchange of commodities and services between two or more countries. Net trade (the value of exports minus the value of imports) is calculated as a percentage of GDP, and both imports and exports are measured by their annual growth rate.

The value of services given by foreign affiliates created outside of an economy's home country are included in the booming cross-border trade in services that has been documented in recent decades. Transportation, tourism, communications, building, finance, insurance, technology, and data are all examples of services.

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<sup>1</sup> Author is a student at Narsee Monjee Institute of Management studies, India.

The WTO often releases predictions about future trends in international commerce. Copper prices are seen as a leading economic indicator and are used in part to inform these projections. Many international business deals include a currency exchange rate, making it another market-based indicator that may be used to foresee changes in international commerce.

### (A) Research Questions

1. What the legal implications and challenges are of cross border transactions in international trade law?
2. What is the role of international trade agreements in regulating cross border transactions in international trade law.

## II. DIFFERENT TYPES OF CROSS BORDER TRANSACTIONS

- **Cross-Border Financing:**<sup>2</sup> In this context, "cross-border financing" refers to any type of financial transaction that occurs between different countries. Loans, letters of credit or bankers' acceptances, bank guarantees, depositary receipts, etc., all qualify as examples of cross-border finance.
- **Buying or Selling Products & Services:**<sup>3</sup> The act of purchasing or selling goods or services is referred to here. Infrastructure, permanent settlement, product or service production outside of one's authority area, cross-border trade, linking local resources to external supply, and so on and so forth may differ between the two.

*The Bombay High Court, applying the law, determined in the Vodafone Case (2012)<sup>4</sup> that the company was required to withhold taxes on the sale of shares to parties located outside of India. Subsequently, however, the Supreme Court used economic consideration and ruled that "Vodafone cannot be forced to pay taxes in the event of a transaction that happened outside India and included assets which are not based in India."*

- **Combined research/ shared services:** Combined research and shared services: in today's trendy company models, it's hip to have a central hub where many departments' research efforts converge. Business organisations are banding together to launch industry-wide research initiatives. If the shared service centers are dispersed across borders in various countries, this arrangement type raises concerns in international

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<sup>2</sup> William R. Folks, Jr., The Analysis of Short- Term Cross- Border Financing Decisions, Vol. 5, No.3 (Autumn, 1976) pp. 19-27 (9 pages),1976

<sup>3</sup> Philip Kotler and Sidney J. Levy, Buying is Marketing too, Vol.37, No.1, Journal of Marketing, pp. 54-59 (6 pages),1973

<sup>4</sup> Vodafone International Holdings B.V. vs. Union of India, (2012) 1 S.C.R. 573

trade. They're great for sending the monotonous tasks to be done in a cheaper country. As a result of globalisation, businesses now need to use Business Outsourcing Solutions to transform their ancillary activities into a strategic resource for bolstering their primary competencies, reducing expenses, increasing profits, guaranteeing product quality, and cementing client loyalty.

### **III. KEY CHALLENGES**

When making a cross-border payment, you must account for differences in time zones as well as currencies. Delays, fees, and uncertainty in receiving money all increase as a result of having to go through many compliance checks.

Problems with cross-border payments' swiftness, expense, and opacity can be mitigated by creative solutions and collaborative efforts.

#### **1. Cost**

Fees for international wire transfers might differ from one market or service provider to the next and from the size of the transfer to the country to which it is being sent. Fees are typically between

0.32 and 2.40 percent of the total value of the transaction. Managing settlement in several currencies can be complicated, which can drive up the cost to the supplier. The procedure of maintaining KYC/AMC requirements and partnerships is one factor driving to high expenses. These expenses, and the overall transaction costs for clients, might be reduced with standardised legislation and new technology.

#### **2. Speed**

Real-time domestic payments have been enabled in several nations. However, international transfers are notoriously time-consuming because of all the necessary checks and balances and the number of intermediaries involved. Inadequate remittance information and anti-money laundering/fraud checks are the most typical causes of delay. There are a variety of methods used by institutions to reduce potential dangers. It is possible to expedite the payment processing time with the use of digitalization and standardization to share information across borders.

#### **3. A failure to establish uniform rules**

- The regulatory requirements of the sending country, the receiving country, and any other countries the payment passes through all factor into the process of making a cross-border transfer. Consumers and private information are safeguarded against fraud and unlawful activity by varying systems and regulatory agencies in every nation. The Reserve Bank

of India (RBI) oversees and publishes recommendations for AML, KYC, restrictions, etc., in international transactions originating from India. The Monetary Authority of Singapore (MAS) regulates international currency transfers. The SEPA system and associated regulations, such as PSD2, are in place across Europe.

- Furthermore, AML and KYC have stringent regulatory and compliance requirements for financial institutions. The volume of international payments may not be sufficient to warrant the higher compliance cost that would result from this. In order to level the playing field, the AML and KYC process should be standardized.

#### **4. Differences in customer service quality can be attributed to factors such as location.**

- Problems with communication and understanding between persons of different cultures are another obstacle to international financial transactions. The importance of ensuring a positive customer experience might range from nation to country. As a result, companies providing these services need to take into account cultural peculiarities in the operating area and tailor their solutions accordingly. As a means of better serving their clientele, several FinTechs have begun to provide their services in more than one language.
- Before engaging in a cross-border transaction, you may want to think about the following: We ask that you rule in advance. Meeting all of the requirements set forth by the law. Agreement between Governments. The Laws of the Land Have Changed (A Suitable Alternative Exit Strategy) Select between establishing a Liaison Office, a Branch Office, or a Wholly Owned Subsidiary. Taxes both imposed directly and indirectly. Foreign exchange rates. Taxation abroad and the application of foreign law generally. Tax strategies for businesses. Calculations involving money and counting. Problems with Remittances and Foreign Exchange.<sup>5</sup>

#### **IV. RECOGNIZING THE INDIAN POINT OF VIEW**

- When conducting international business in India, two laws—the Income Tax Act of 1961 and the Foreign Exchange Management Act of 1999—are of primary importance. India has the world's biggest population and the greatest economy. India's local and international investors have a lot to gain from the country's continuous development record and plenty of highly trained man force. Steps have been done to streamline processes in the areas of investment, commerce, the financial sector, and exchange

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<sup>5</sup> Online.hsb.edu, <https://online.hbs.edu/blog/post/challenges-of-international-business> (last visited Jan 26, 2023).

control. To encourage investment, India has created a hospitable, open, and appealing business climate. The Indian tax system is managed by the Ministry of Finance's Department of Revenue. The Indian Income Tax Act, 1961 governs the taxability of income in India. In instances involving nations with whom the Indian government has signed a double taxation avoidance agreement (DTAA), the Indian Income Tax Act, 1961, as read in conjunction with the DTAA, will be used to establish taxability.<sup>6</sup>

- A taxpayer can select for the more favorable ACT or DTAA under section 90(2) of the Act. Companies based overseas that do business in India are subject to the country's personal income tax. Income received, accrued, or presumed to have originated in India is taxable to non-resident corporations under Sect. 5 (2) of the Indian Income Tax Act, 1961 ("ITA").<sup>7</sup> According to Section 9 of the Indian Taxation Act (ITA), "income" includes both actual and presumed earnings from any source outside of India. A "Company Connection" exists if there is a link between the assessee's business and an Indian activity that helps the assessee make money. This definition is quite wide, making a non-resident entity liable to Indian taxation on virtually all of its activities.
- It must be interpreted in light of the DTAA's that India has signed with the other nations involved. The purpose of the DTAA's is to limit the ability of a state to tax a non-resident corporation for profits earned in the state. If a foreign entity ("assessee") stands to benefit from a DTAA, then the terms of the DTAA will be given effect under Indian tax law (Sect. 90 (2) ITA).
- Before beginning any activity or making any investments in India, a foreign firm may submit a request for an advance ruling. Such advance judgements are binding on the requesting and responding parties as well as the relevant tax authorities, and they aid in the reduction of disputes and tax obligations.<sup>8</sup>

## **V. STATE BANK OF INDIA VS. JET AIRWAYS (INDIA) LTD**

- After 2 years and 3 separate courts, the lawsuit concludes with the National Company Law Tribunal (NCLT) approving a settlement plan for Jet Airways' turnaround. A total of three petitions were filed to begin Corporate Insolvency Proceedings (CIRP) against Jet Airways, the corporate debtor in this case, because of the substantial amount of money

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<sup>6</sup> [incometaxindia.gov.in](https://incometaxindia.gov.in), <https://incometaxindia.gov.in/pages/acts/foreign-exchange-management-act.aspx>, (last visited Jan 26, 2023).

<sup>7</sup> Income tax act, 1961 of 1961, acts of parliament, amended by finance act, 2022

<sup>8</sup> Indrapal S. Sidhu, Taxation of foreign income and foreign investments, Vol. 21, Journal of Indian Law Institute, pp.559-574 (16 pages), 1979

owed. At the initial hearing, the NCLT bench learned that bankruptcy proceedings against Jet Airways had been initiated a month earlier in a Dutch district court. The Council concluded that having two separate hearings for the identical matter would cause unnecessary delays and confusion.

- The argument advanced is that the conditions for the Government of India to enter into reciprocal agreements with foreign nations are laid forth in Sections 234 and 235 of the Code on Recognition of Orders of Foreign Jurisdictions. The Court, however, concluded that an agreement had not been made with the relevant Dutch authorities.
- Since Jet Airways's home base and primary holdings are in India, the Bench concluded that NCLT possessed the requisite jurisdiction over the case. As of their ruling on June 20th, 2019 the Bench has pronounced the District Court of Netherlands proceedings to be null and invalid. NCLT approved Jet Airways' request to begin corporate insolvency procedures in India. Both the Indian government and the Dutch government began bankruptcy procedures against Jet Airways at the same time.<sup>9</sup>
- The Dutch Trustees contested the NCLT Bench's decisions before the NCLAT because they involved unapproved parts of the Dutch procedure. After the NCLAT considered the appeal, it directed the 'Resolution Professional' appointed on behalf of Jet Airways to negotiate with the Dutch Trustee to determine whether or not a combined 'Corporate Insolvency Resolution Process' was possible. The parties settled on a model and submitted it to NCLAT for review and approval. The model on order dated September 26 was then approved by NCLAT. In addition, the bank let Dutch judicial officials to sit in on Jet Airways meetings. According to the protocol, "the Indian Proceedings are the main insolvency proceedings, and the Dutch Proceedings are the non-main insolvency proceedings," meaning that Indian law applies to the foreign assets located in the Netherlands. This is because the Company is an Indian company with its Centre of main interest in India.
- NCLAT allowed Dutch authorities to sit on the creditors' committee without giving them any voting power. For the insolvency procedures to progress smoothly, the Resolution Professionals and the creditor's committee have been asked to work with the Dutch trustees and engage into such cooperation agreements. Each party had signed up to the "cross-border insolvency protocol" at the NCLAT's urging. This protocol would allow the Insolvency Professional and the Dutch Trustees to pool the claim within their purview

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<sup>9</sup> Jet Airways (India) Ltd. v. State Bank of India, 2019 SCC Online NCLAT 1216

and assess any additional relevant processes in light of the gathered data.

- It has been requested that the NCLT Mumbai Bench provide final approval of the resolution plan. On June 22, 2021, the Bench issued an order accepting most of the "windup plan" and providing the consortium with 90 days to obtain the necessary regulatory approvals and approval from the Directorate General of Civil Aviation (DGCA), who had previously ordered the establishment of a Monitoring board to oversee the entire process. The first international bankruptcy case in India under the Insolvency and Bankruptcy Code, 2016 has already been resolved.

## **VI. STEPS FOR ERADICATING CHALLENGES**

- In accordance with the new RBI regulation, India has begun to welcome international payments. As a result, non-resident Indians (NRIs) no longer have to transfer money to Indian accounts before paying their bills; instead, they may use the new government payment platform BBPS, or Bharat Bill Pay System. The Reserve Bank of India (RBI) and the Indian Banks Association (IBA) collaborated to create this payment gateway. The National Payments Corporation of India (NPCI) is the owner of this system. According to Dixit Jain, this will make it easier for non-resident Indians to pay electronically and without delay. He currently serves as the Managing Director of Tax Experts DMCC, a Dubai-based tax advice business. What Kinds of Payments Can Be Made Using BBPS Paying Electricity Bills Using BBPS is Popular Among NRIs. Payments for water use and telephone costs incurred by their households.<sup>10</sup>

### **Pluses of Using BBPS**

The Bharat Bill pay System is a convenient monetary hub that non-resident Indians (NRIs) can access whenever they choose, from wherever they are. It will acknowledge payments made by debit and credit cards, as well as the Unified Payments Interface (UPI) and the National Electronic Funds Transfer (NEFT). Additionally, non-resident aliens have a number of digital payment options to choose from, including the web, POS terminals, mobile devices, and MPOS systems.

Traditional banking alternatives such as teller machines, bank representatives, and business correspondents.<sup>11</sup>

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<sup>10</sup> Rbi.org.in, [https://www.rbi.org.in/Scripts/BS\\_PressReleaseDisplay.aspx?prid=52688](https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=52688), (last visited on Jan 28, 2023)

<sup>11</sup> Rbi.org.in, <https://www.rbi.org.in/Scripts/PublicationsView.aspx?id=21082>, (last visited on Jan 29<sup>th</sup> 2023).



**Some more details for NRIs**

The Governor of the Reserve Bank of India, Shaktikanta Das, has stated that the majority of the beneficiaries of this new payment system will be those 65 and up. It processes over 80 million monthly transactions and has over 20,000 billers. Indian citizens were the only ones who could use it up until now. But BBPs will start to accept cross-border payments also to alleviate the transaction hurdles NRIs encounter, stated Brijesh Meti, a tax adviser based in India. And BBPS system would not charge anything for the transactions, since Nirmala Sitharaman, the Finance Minister of India, does not consider this period is acceptable for charging additional money for any digital payments.

**VII. CONCLUSION**

From the enactment of GATT till the establishment of WTO, the world economy has evolved and Since 1992, from the foreign markets to domestic market has evolved in India. Foreign investors have made India their new home, and the country consistently ranks in the top three for attracting FDI. However, due to the many threats associated with such investments, the money really has to go somewhere else. The unpredictability of India's legal and regulatory climate has led to an outflow of investment capital. The study argues that both businesses and governments hold the answer to reducing these types of threats. However, government plays a crucial part because of its ability to reduce risk with absolute certainty. India, as a growing country, requires such investment to achieve its vision of being a successful, self-sufficient nation.

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