

Recent Trends and Developments Affecting the IT Services and E- Commerce Sector Between the U.S. and India

Joan C. Arnold – Pepper Hamilton LLP

Daksha Baxi – Khaitan & Co

Valérie Demont – Pepper Hamilton LLP

G.T. Thomas Phillippe – Khaitan & Co

Pepper Hamilton LLP
Attorneys at Law

Webinar | April 2016



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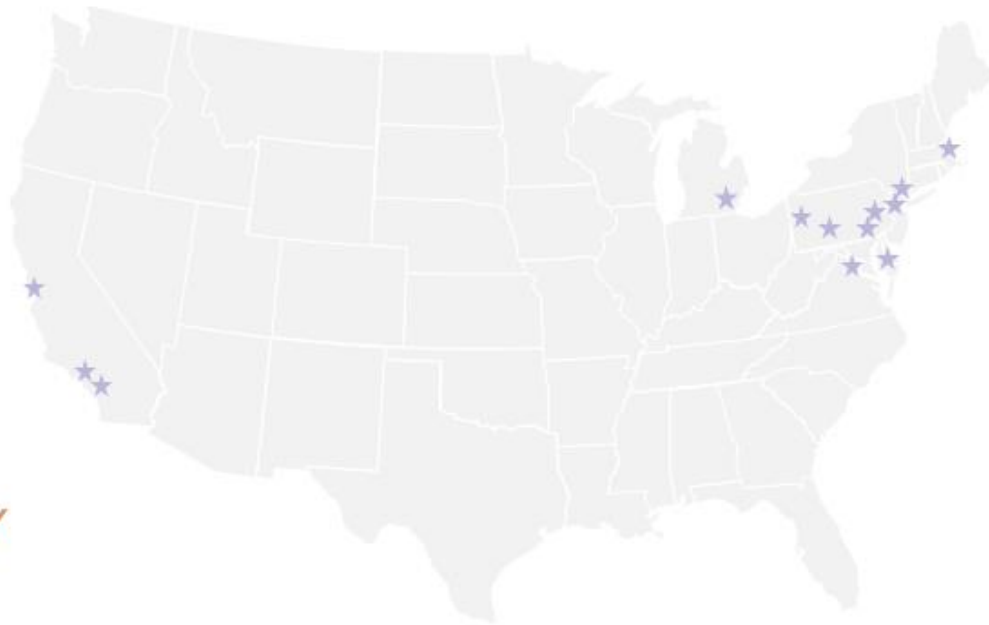
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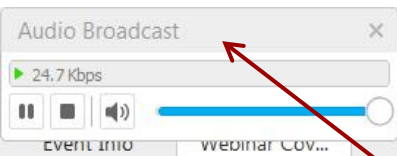
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The screenshot shows the right-hand side of the webinar interface. At the top, there are icons for 'Participants', 'Chat', and 'Q&A'. Below these is a 'Participants' list showing 'Brian Dolan (Host)' and 'Webinar Guest (me)'. There is a 'Speaking:' section and a 'Q&A' section with a dropdown menu set to 'All (0)'. At the bottom, there is an 'Ask:' dropdown menu set to 'All Panelists', a text input field with a placeholder 'Select a panelist in the Ask menu first and then type your question here. There is a 256-character limit.', and a 'Send' button.

Audio

The screenshot shows the Cisco WebEx Event Center interface. At the top, there is a menu bar with 'File', 'Edit', 'View', 'Communicate', 'Participant', 'Event', and 'Help'. Below the menu bar, there are tabs for 'Event Info' and 'Webinar Cov...'. The main content area is divided into two sections. The top section contains a video player with a red text overlay: 'If you cannot stream audio, click phone icon and a phone number will be sent to you'. A red arrow points from this text to a phone icon in the bottom right corner of the video player. The bottom section contains a large graphic for 'Pepper Hamilton Web' celebrating 125 years (1890-2015) as 'Pepper Hamilton LLP Attorneys at Law'. On the right side of the interface, there is a 'Participants' panel showing 'Speaking:' with 'Brian Dolan (Host)' and 'Attendees:' with 'Webinar Guest (me)'. Below the participants panel is a 'Q&A' panel with a dropdown menu set to 'All (0)'. At the bottom of the Q&A panel, there is a text input field with a dropdown menu set to 'All Panelists' and a 'Send' button. The bottom right corner of the interface shows a 'Connected' status with a green dot.

File Edit View Communicate Participant Event Help

Event Info Webinar Cov... x

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Audio Connection x

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Speaking:

- Panelists: 1
 - Brian Dolan (Host)
- Attendees:
 - Webinar Guest (me)

Q&A

All (0)

Ask: All Panelists

Select a panelist in the Ask menu first and then type your question here. There is a 256-character limit.

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Event Info Webinar Cov... x

01

Participants Chat Q&A

Participants

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Ask: All Panelists

Type question here... Send

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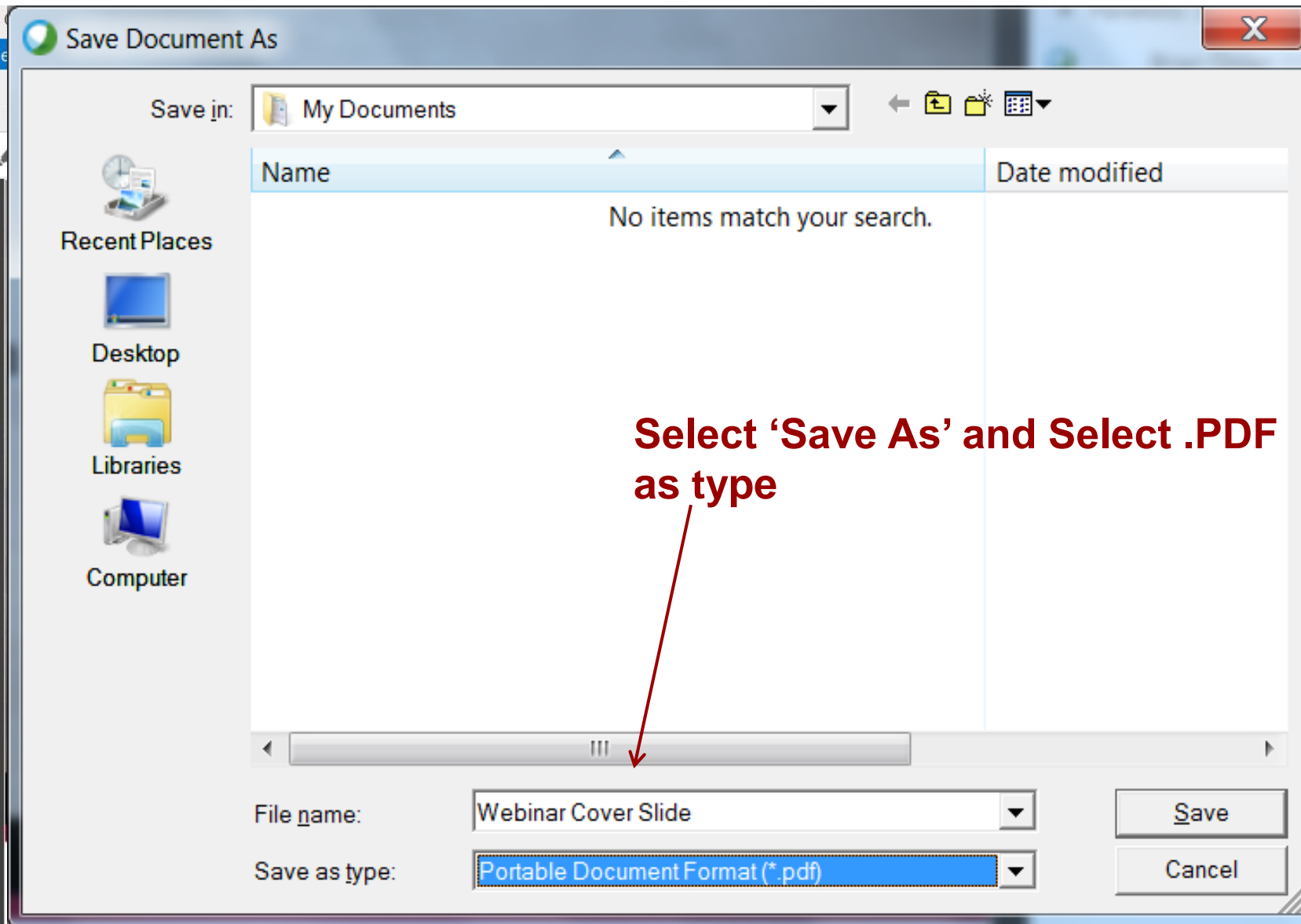
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Joan C. Arnold

Partner | Pepper Hamilton LLP

+1.215.981.4362

arnoldj@pepperlaw.com

- ▶ Chair of the Tax Practice Group for Pepper Hamilton LLP, and focuses her practice on federal and international income tax
- ▶ Has more than 35 years of significant experience in domestic and cross border M&A, and corporate international tax counseling, including substantial tax experience in the private equity arena
- ▶ President of the American College of Tax Counsel, vice chair of the Tax Section of the American Bar Association, vice president and a member of the executive committee of the U.S. Branch of the International Fiscal Association, and on the executive committee of the George Washington/IRS Annual International Tax Institute
- ▶ Member of the firm's Executive Committee.



Daksha Baxi

Executive Director | Khaitan & Co

+91 22 6636 5000

daksha.baxi@khaitanco.com

- ▶ Focus areas for Khaitan & Co include Direct Tax Advisory, Structuring of Inbound / Outbound Investments & Exit Strategies, India Entry Strategies For Not-For-Profit Organisations, Educational Institutions and Philanthropic Organisations and Asset protection & Tax-efficient Wealth Management
- ▶ Chartered Accountant, Institute of Chartered Accountants of India (1976)
- ▶ Honours Graduate (Economics), Manchester Metropolitan University (1973)
- ▶ Fellow member of the Institute of Chartered Accountants in England and Wales;
- ▶ Fellow member of the Institute of Chartered Accountants of India
- ▶ Member of Society of Trust and Estate Practitioners.



Valérie Demont

Partner | Pepper Hamilton LLP

+1.212.808.2745

demontv@pepperlaw.com

- ▶ Chair of Pepper Hamilton LLP's U.S.-India Practice Group
- ▶ Focuses her practice primarily on U.S. and cross-border mergers and acquisitions, capital markets, corporate finance and securities matters
- ▶ Has been involved in numerous mergers, acquisitions, joint ventures and dispositions for corporations and private equity funds in the U.S., Europe, Canada and Asia
- ▶ Also represents U.S. and non-U.S. issuers and underwriters in a wide range of primary and secondary capital markets transactions involving equity, debt, convertible and hybrid securities.



G.T. Thomas Phillippe

Partner | Khaitan & Co

+91 11 4151 5454

thomas.phillippe@khaitanco.com

- ▶ Focus areas for Khaitan & Co include Mergers & Acquisitions (Domestic and Cross-border), Private Equity (including in listed companies) & Venture Capital, Domestic and Cross-border Joint Ventures, Takeovers, Foreign Investment Law and Corporate & Commercial Law Advisory
- ▶ B.A., LL.B. (Hons), National University of Juridical Sciences, Kolkata (2005)
- ▶ Bar Council of Maharashtra & Goa





Agenda

1. Start-Up India - India's newly adopted regime for start-ups and what it means for foreign investors and IT and e-commerce providers in India
2. Latest trends in the IT services and E-commerce sectors, including industry consolidation trends and valuation issues
3. Latest trends and developments affecting Venture Capital and Private Equity funding in the IT services and E-commerce sectors in India
4. Tax developments affecting start-ups
5. Latest trends in transfer pricing and permanent establishment issues.



Start-up India | Key initiatives

What is a 'start-up'? | Defined and recognised

- Private company, registered partnership or LLP
- Up to five years from the date of its incorporation/registration
- Turnover in any financial year has not exceeded INR 250 million
- Working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property.

Certificate of an eligible business will be granted by the Inter-Ministerial Board of Certification, applications need to be supported by a recommendation/letter of support by a recognised Incubator, a letter of funding or a published patent.

Labour law compliances eased

- Self certification system for 3 years from the establishment
- No government inspection in the first year of operation



Start-up India | Key initiatives

Start-ups Intellectual Property Protection Scheme

- Empanelled facilitators to provide general advisory and assistance to start-ups on their intellectual property rights and registration applications pro bono

Relaxation for start-ups under Public Procurement Policy

- 20% procurement from MSEs of the total procurement by Government mandatory from 1 April 2015
- For such procurement, track-record and turnover criteria relaxed for start-ups

Start-up Investment Fund announced

- For the next fiscal year, the government has increased the overall funding to startups from INR 400 million to INR 2 billion
- Proposal to open 25 new technology-business incubators



Recent FDI liberalisation

E-commerce means buying and selling of goods and services including digital products over digital & electronic network

- 100% FDI permitted in ‘marketplace model’ of e-commerce; not permitted in ‘inventory based’ model
- Marketplace entity can provide support services viz. warehousing, logistics, order fulfilment, call centre, payment collection etc., however no ownership of inventory permitted
- Sourcing restriction of 25% from a single vendor or its group companies – meaning of “25% of the sales”?
- Marketplace entities cannot directly or indirectly influence price – discounting?
- Services: subject to conditionalities, sale of services through e-commerce under automatic route



Other industry trends



Diversification

- Synergy may or may not be the criterion
- Extension of existing services - Ola and Uber foray into delivery services
- Distressed assets and remodelling - The Yebhi case



Forward and backward integration

- Snapdeal's eKart and Freecharge and Flipkart's GoJavas, FX Mart
- Cost optimisation is the key



Omni-channel strategy

- Agile delivery, product management and cross-channel integration
- Future Group operates Croma and eZone



Investor driven consolidation

- Flipkart-Myntra, linked to Amazon's arrival in India
- Alibaba acquiring entities competing with rival, Amazon
- OYO Rooms acquiring ZoRooms



The nextgen unicorns



Hyperlocal



Online payments



Budget Stay



LENDINGKART



Fintech





PE/VC funding in e-commerce sector

- **What drives valuation?** The troublesome issue
- **Recent trends of value corrections, even mark-downs :** Snapdeal, Flipkart, Will this have a spill-over effect?
- **Frequency:** In spite of cash-burning models, frequency of investment rounds decreases
- **Consolidation:** Venture capital funds will also be looking at merging their existing portfolio companies with better performing ones to secure exits
- **Control deals:** More PEs looking to do control deals, although not many control deals have closed; funds also consider greater post-deal involvement; recent troubles with promoters in a number of PE deals, eg. housing.com
- **Direct deals:** LPs are directly investing - CCPIB, PSB Investments



Initiative to boost growth | Start-up

Tax incentives for eligible '*start-up*' companies include:

- 100% tax holiday for 3 years out of a block of 5 years
 - start-ups certified by 'Inter-Ministerial Board of Certification' are eligible
- Measure to mobilise significant investment in start ups on larger scale :
 - Long term capital gains exemption accorded to:
 - The rollover capital gains tax exemption available to Individuals / Hindu Undivided Families (HUF) in respect of sale of residential property, also available if gains are invested in shares of start-ups OR
 - Invested in a start up fund (to be notified)



Permanent Establishment Traps

Secondment of employees	Service PE, Fixed place PE
Sales, Marketing, Distribution activity	Agency PE
EPC & Infrastructure	Installation PE
Liaison office	Generally does not constitute a PE, however, nature of activities to be examined
Branch office	Fixed place PE
Outsourcing arrangement	Fixed place PE, Agency PE, Service PE

Determination of PE is vital –Mixed question of facts & law...’periodic review’ desirable

Attribution of profits to PE on arms’ length basis



Recent Developments

Transfer Pricing (TP)

- Indian TP Regulations mandate transactions between related parties to be on arms' length basis
- Safe harbour rules have been notified, however, not generally implemented due to high margins prescribed therein
- A respectable number of Advance Pricing Agreements (APA) entered into by Indian authorities
 - Most APAs entered in relation to outsourcing, but some pertaining to development of IP

Place of Effective Management (POEM) Rules

- Applicability deferred by a year to 1 April 2016, relevant to examine impact on residential status
- Transition mechanism proposed to be introduced: to deal with computation of income, recovery of taxes, etc.



Taxation of income from 'Patents'

Concessional regime for Patents developed and registered in India

Income from worldwide royalties of 'eligible taxpayer' taxed @10%

Eligible taxpayer:

- Indian Resident
- Patentee of the patents registered under the Patents Act

Consistent with BEPS Action 5 – nexus approach

Promotion of R&D activities and innovation in India

No Minimum Alternate Tax



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