

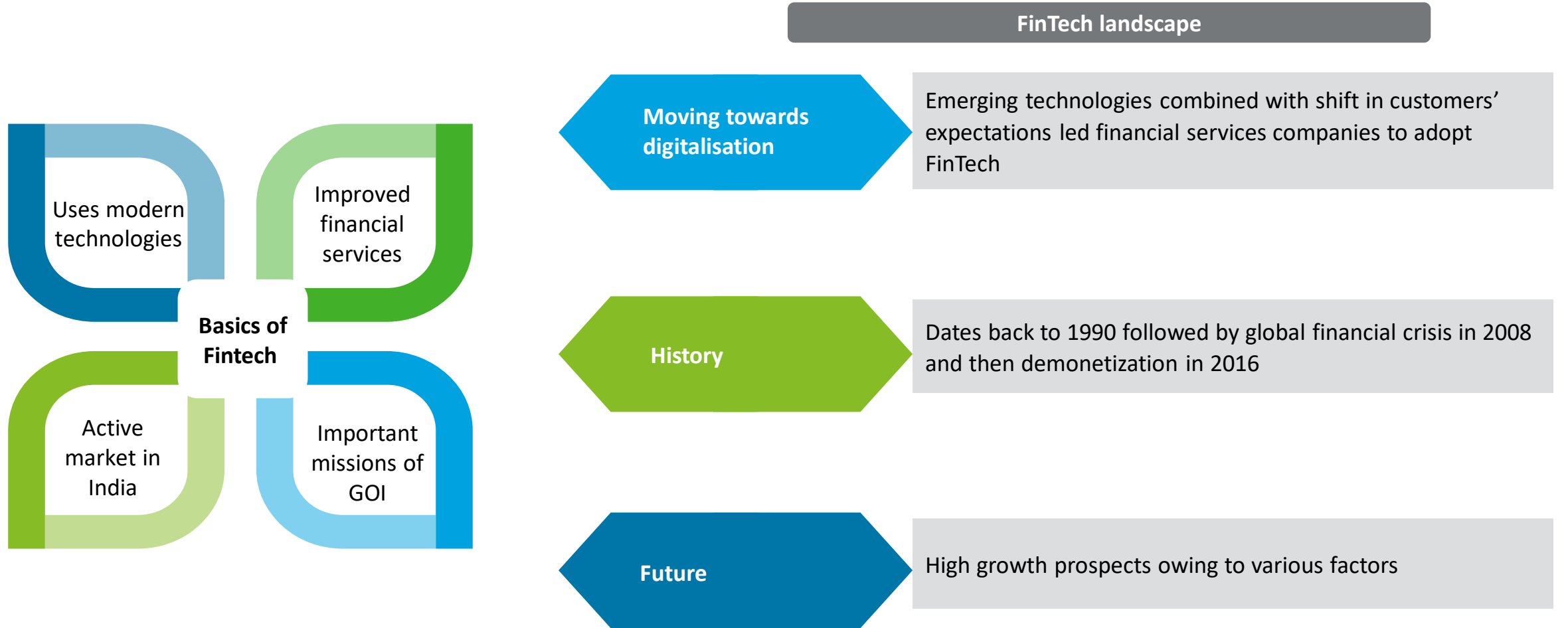
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FinTax hour
Fintech

14 December 2022

Financial technology

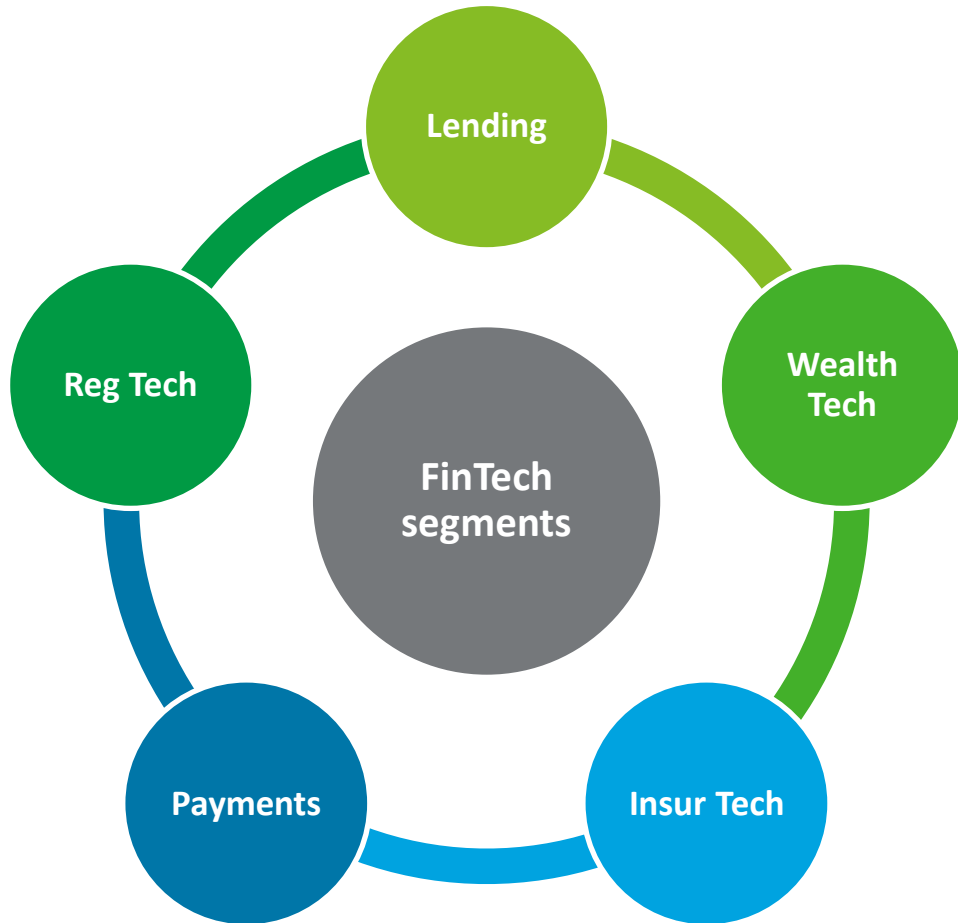
Forging a new future



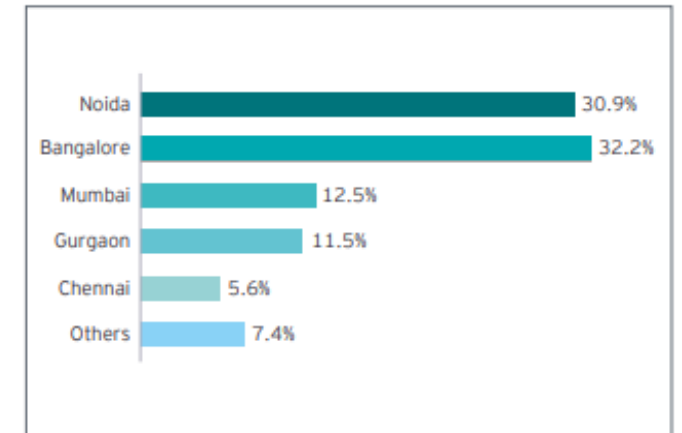
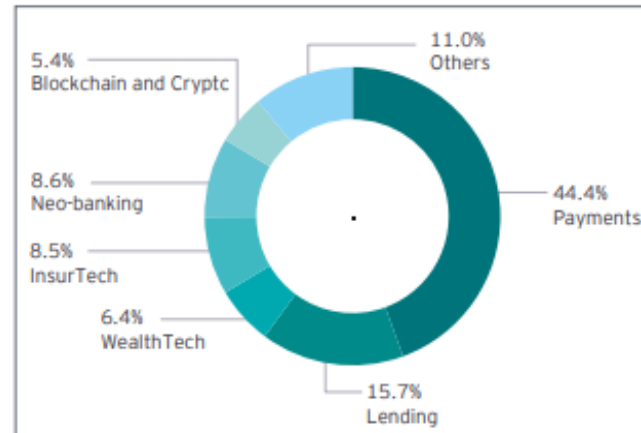
Growth trajectory of FinTech companies is upward sloping

Financial technology

Forging a new future



Funding in Fintech Companies 2022



Source: Tracxn, Media reports as of June 2022

RBI Guidelines on Digital Lending and Tax Impact

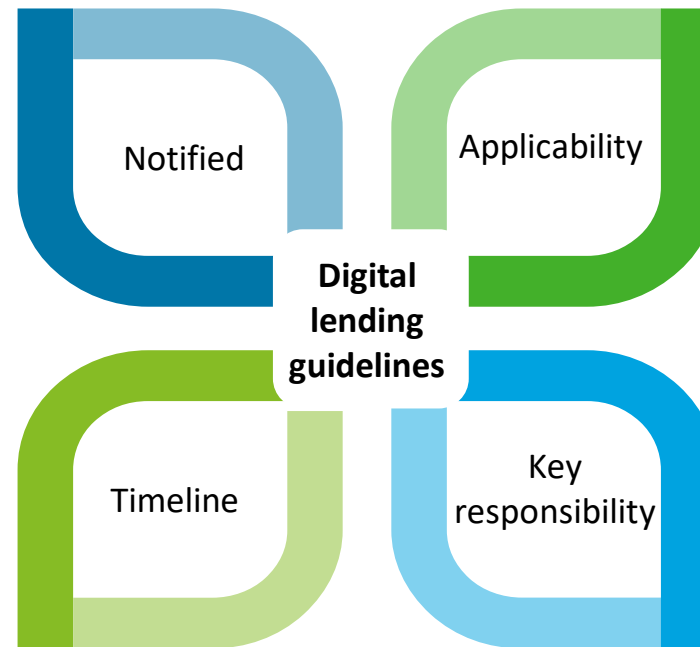
RBI's modified digital lending norms

Overview and key insights

Notified by Reserve Bank of India on 02 September 2022

Applicable to Regulated Entities [REs] such as:

- Commercial Banks
- Co-operative Banks
- Non-Banking Financial Companies (including Housing Finance Companies)



- 1) **Till 30 November 2022:** For existing digital loans
- 2) **02 September 2022:** For new customers and existing customers availing fresh loans

REs accountable for outsourcing arrangements with:

- Lending Service Provider [LSP]
- Digital Lending App [DLA]

New RBI digital lending guidelines

Key highlights of the newly introduced norms



Direct disbursement and repayment

Passthrough/ third party account prohibited for repayment

Direct disbursement of loan to borrowers [except in case mandated under regulatory statute]



Collecting Fees and charges

REs to pay fees, charges, etc. to LSPs

LSPs cannot charge from borrower

Penal interest to be charged on outstanding loan



Key Fact Statement [KFS]

REs to provide KFS to borrower in standardized format containing details – Annual Percentage Rate [APR], recovery mechanism, grievance redressal officer, cooling off period, etc.

Fees, charges, etc. not in KFS cannot be charged



Borrower's creditworthiness

Explicit consent required before increasing credit limit

To assess creditworthiness – age, occupation and income to be considered



Grievance Redressal Mechanism

Appointment of nodal officer for resolving complaints of borrowers

Complaint not resolved within 30 days to be registered over Compliant Management System under the Reserve Bank – Integrated Ombudsman Scheme



Cooling off Period

Exit Window wherein borrower repays the loan along with proportionate APR without penalty

Pre-payment to continue even after look-up period

RBI Digital Lending Guidelines – GST focus areas

The recent guidelines necessitate the need for a re-look at the existing digital lending models and re-visit the tax impact

Invoicing requirements changes

Eligibility to claim exemption on income earned and titled as “interest” whether interest or business promotion fee

Ambiguity in identifying provider and recipient of supply

Identifying Time of Supply

RBI Digital Lending Guidelines – Income-tax focus areas

Characterisation of income and consequent withholding tax implications

Creation of Significant Economic Presence due to digital presence

Applicability of equalisation levy provisions

Permanent establishment implications due to storage of data on server located within India

Transfer pricing implications in view of limited functions, assets and risk assumed

Polling question 1



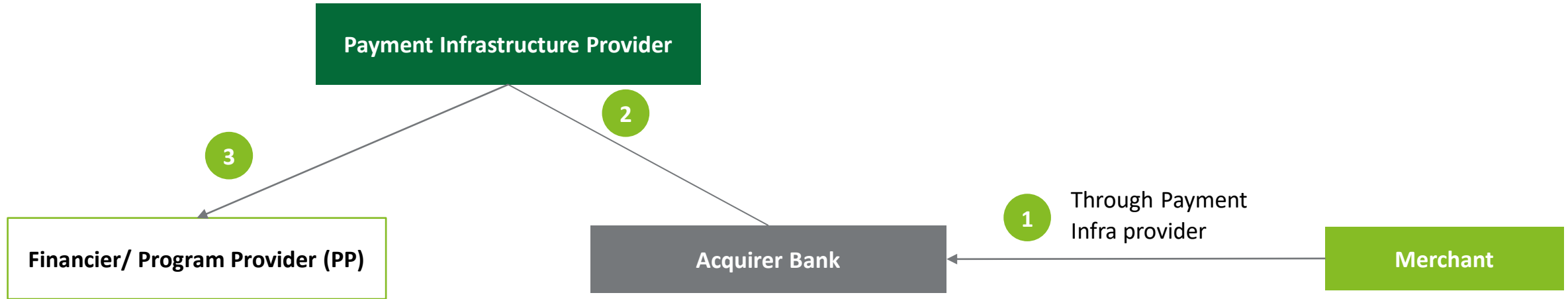
Can data stored on servers in India cause Permanent Establishment risks for foreign entity?

- Yes, it can
- No, it can be an auxiliary activity
- Maybe



Buy Now Pay Later (BNPL): Tax implications

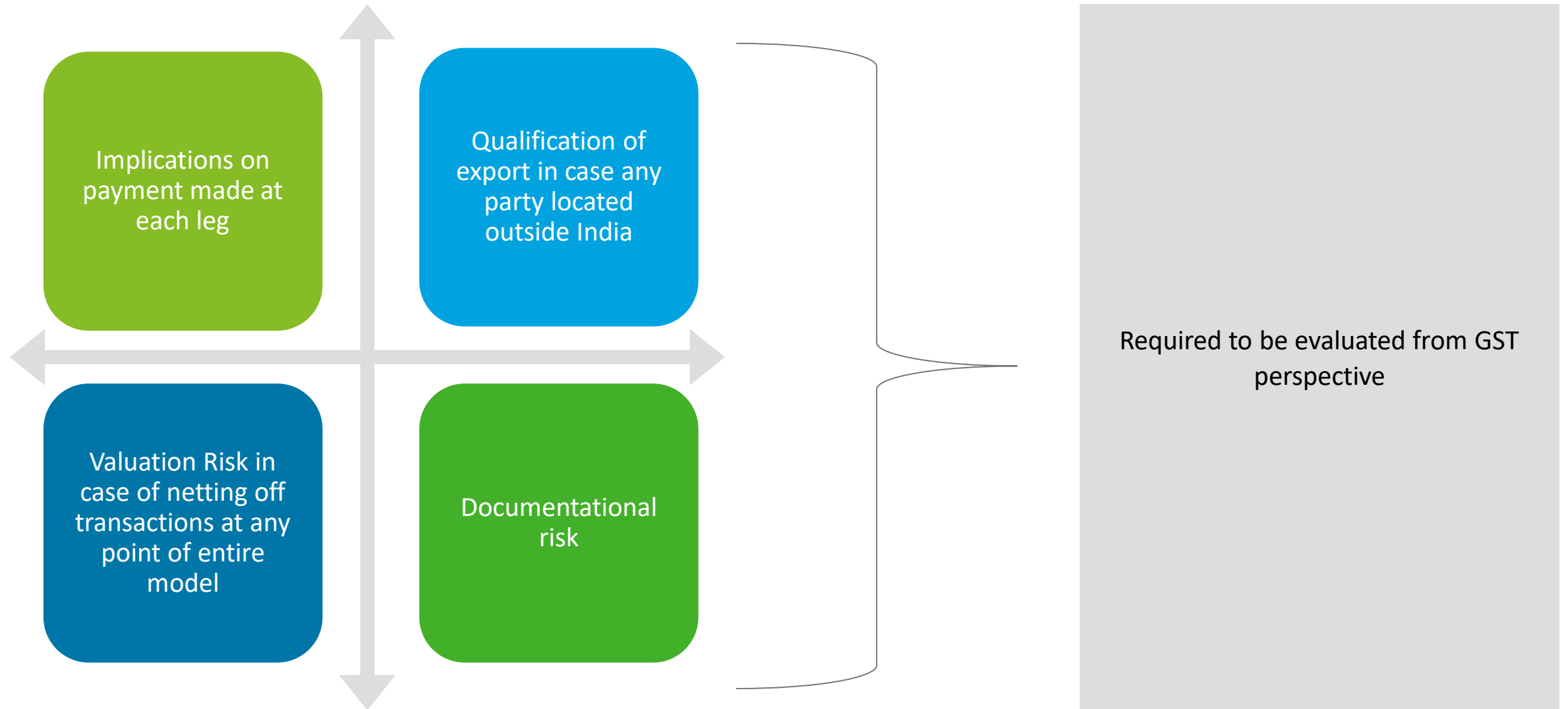
Buy Now Pay Later – Overview of framework



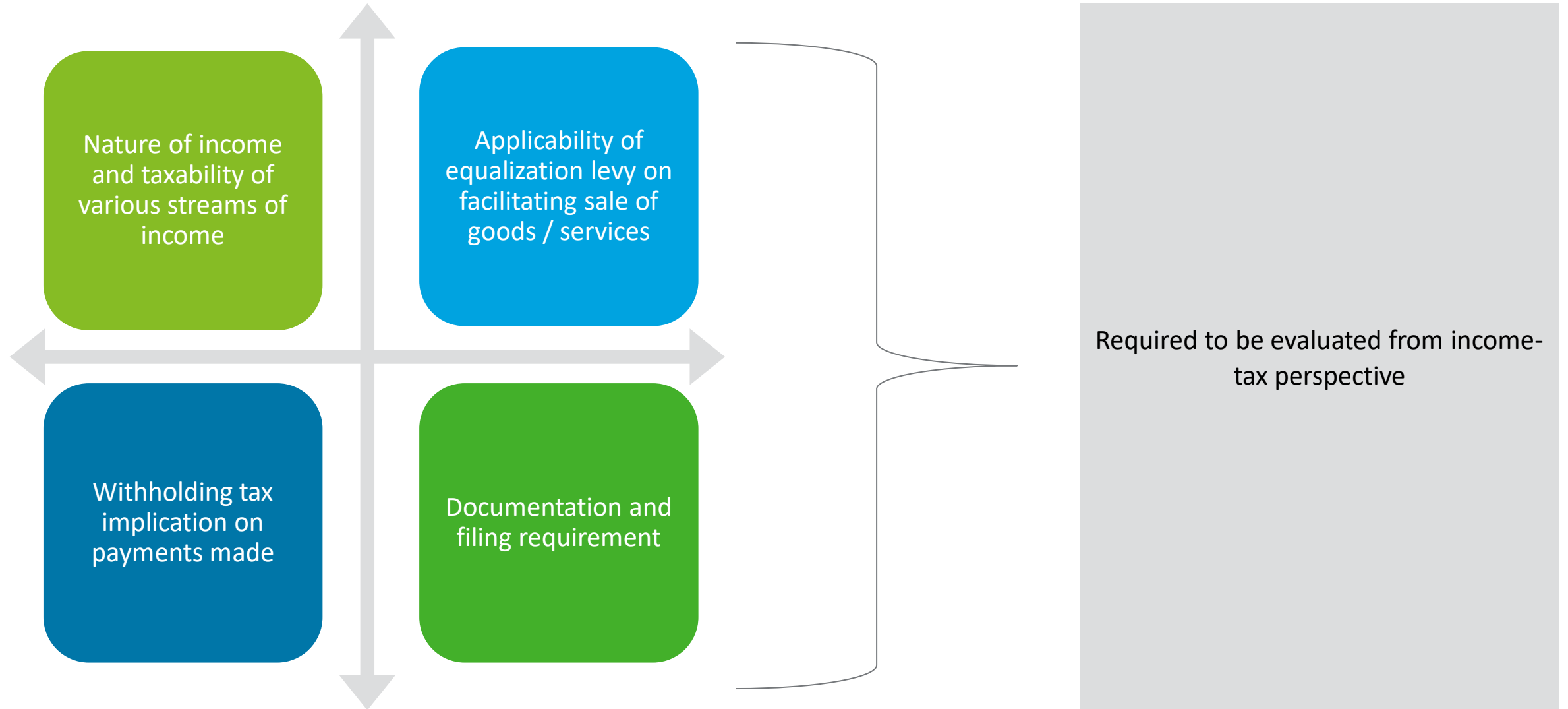
Roles and Transaction Flow:

Party/Revenue streams	Roles/Transactions
Merchant	Merchant will supply goods or services under BNPL model to cardholders
Financier/Program Provider	PP will fund the entire transaction and shall pay the amount to Acquirer Bank. The fund will flow from PP to Acquirer Bank and ultimately to Merchant
Acquirer Bank	Acquirer bank shall pay back the funds to Merchant

Evaluation of models: Indirect tax implications



Evaluation of models: Direct tax implications



Polling question 2

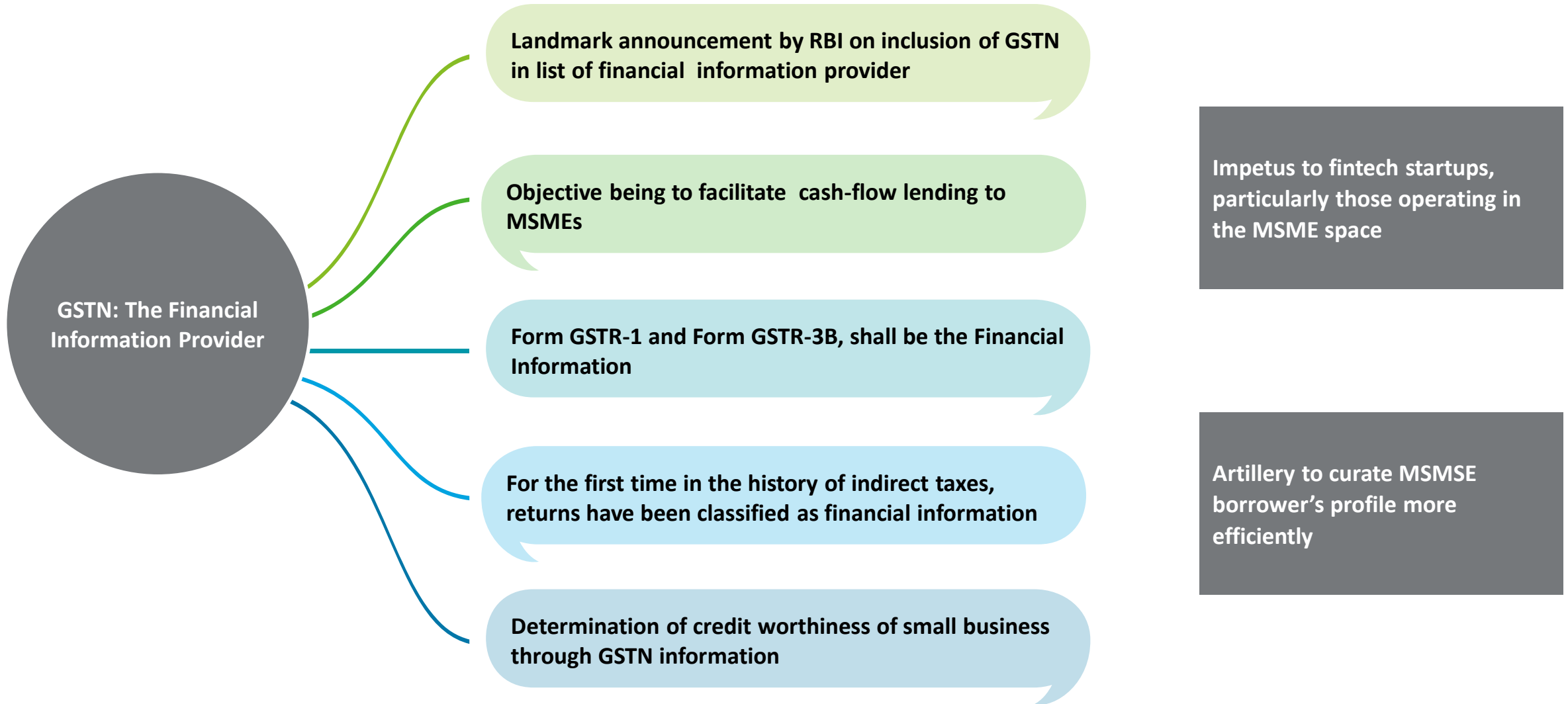


Is it high time for separate GST laws for the fintech sector, just like e-commerce?

- Yes
- No
- Maybe
- Not sure



Magnified Integration of Fintech and GST



Magnified Integration of Fintech and GST

Fintech leveraging on GST data trove

GST Data Generation	Use Case for Fintech Players*
Purchase Data - Inward supply information about goods and services	<ul style="list-style-type: none">• Used by fintech players providing online trade receivables discounting platforms to verify invoice information by verifying the GSTN records of buyer• Verification of data from Form GSTR 2A/2B, authentication of e-invoices helps establish the credibility of the debtor and gives an extra level of comfort to the lender
Sales data – E-way bills, Outward supply of goods and services, aggregate turnover, HSN- wise classification	<ul style="list-style-type: none">• Analyse creditworthiness of individuals and institutions• Data from E-way bills further aid to authenticate existence of an actual transaction in case of supply of goods
Demographic data - State-wise wise bifurcated information and breakup of data	Data significant to fintech players targeting to spread the reach of financial services to rural population
Public Data - Compliance status and GST registration details	Already available as a solution offered by Fintech players to their customers to authenticate vendor GSTN details

Food for thought: Future of Fintech also dwells on integration with ICEGATE portal which will catalyze export trade finance

Fintech space

Relevant GST issues and developments

Payment aggregators: whether qualify for GST exemption

- Exemption from payment of GST available to an acquiring bank in card-based transaction where settlement size \leq INR 2000
- Key issue for determination remains whether a payment aggregator qualifies as an acquirer bank as per exemption entry under GST

Payment of GST at the time of settlement Vs invoicing

- In most cases, payment aggregator fees are deducted at the time of settlement in the merchant accounts.
- Under GST, such deduction amounts to advance collection of fees and GST is liable to paid at the point of deduction.
- There may be cases wherein the date of deduction from settlement and invoice date fall in difference months leading to gap in payment of GST. Assimilation of data on advance deduction is critical for GST compliances to circumvent interest implications.

GST on POS devices

- One of the key issues for fintech space remains is the levy of GST @18% on POS device
- A reduction in tax rate from 18% to 5% has been a matter of representation for Budget 2023-24

Fintech space

Relevant GST issues and developments

Overseas based fintech operators in India: Challenges

- In some cases, fintech operators with infrastructure set-up in India rely on overseas group companies on technical know-how
- IPs are generally owned by overseas group companies
- Determine GST implications on such use of software wherein the IP is owned by overseas group entities is highly critical
- Deemed to be a supply even in the absence of consideration as per Section 7 read with Schedule I to the CGST Act.

Genpact Ruling

- Writ Petition allowed by Hon'ble Punjab and Haryana High Court allowing GST refund treating supply of BPO services (IT support, software maintenance, bookkeeping etc.) as export of services and not intermediary under GST
- The definition of “intermediary” under the service tax regime and GST is similar.
- Circular no. 159/15/2021-GST dated 20 Sep 2021 clarifies that sub-contracting for a service is not an “intermediary” service.
- The following three conditions must be satisfied to qualify as an intermediary:
 - Existence of principal-agent relationship
 - Involvement in arrangement or facilitation of provision of service between two other parties
 - Intermediary not to perform the main service
- Principles of consistency: Revenue authorities cannot deviate from the view taken in service tax regime when there is no change in the definition of intermediary in the GST regime

Other GST issues

- Invoicing format issues for fintech operators with global ERP set-up pose challenges in issuing invoices as per Indian regulations

Polling question 3



How far can GSTN boost fintech to create more products and add more solutions on credit availability to SME/MSME applicants?

- Highly significant
- Not much: Data can be curated using borrower's consent from the GST returns filed online
- Neutral



ESOP taxation

ESOP Trust taxation

- Receipt of shares by the ESOP Trust may be taxable as income from other sources under section 56(2)(x)
- On allotment of shares to employees, the ESOP Trust may be liable for capital gains tax

Employee taxation

- Taxation of ESOPs is split into :
 - On exercise: Tax on perquisite as salary
 - On sale: Capital gains
- Tax deferment in the hands of employees of specified start-ups



Taxability of conversion of CCPS to equity shares

Applicability of section 56(2)(viib) on conversion of CCPS into equity shares.

Facts

- The resident corporate taxpayer earned commission in real estate business in domestic market through e-platform.
- During the year, the taxpayer converted CCPS into equity shares of Rs.100 each along with premium of Rs.1500 per share.
- The taxpayer valuation report shows Rs.1540 per share adopting DCF method. Contrary to projections, the assessee suffered losses.
- Applying net book value method under Rule 11UA(2), the AO worked out value of Rs.102.77 per share and taxed differential amount as income under section 56(2)(viib).

Decision

- Conversion of CCPS into equity shares at premium involves constructive receipt of money during the year and attracts the provisions of section 56(2)(viib).
- Taxpayer is required to discharge the onus of furnishing an acceptable valuation report.
- The valuation report is not mere empty formality rather the same should be based on valid assumptions and supported by realistic data. The valuation furnished lacks all these features.
- The matter remanded back to the assessing officer to provide another opportunity to the taxpayer to justify valuation of shares.

FATCA CRS

Entity classification and compliance obligation



Indian landscape

- **Section 285BA, Rules 114F to 114H** - obligation of reporting tax information by prescribed reporting financial institution (RFI) of accounts held by reporting persons.
- **Definition of RFI** - Custodian Institution, Depository Institution, Investment entity, Specified Insurance Company
- **Form 61B** Account Type: “BP - Prepaid Card Account”
- Recent amendment to definition of “non-reporting financial institution” (CBDT Notification dated 7 October 2022)
- OECD’s final guidance on Crypto-Asset Reporting Framework and Common Reporting Standard amendments
 - Modernisation of the CRS
 - Enhanced due diligence and reporting
 - Definitional changes

Polling question 4



Are you required to comply with FATCA/CRS reporting regime?

- Yes
- No
- Maybe
- Not sure



We look forward to seeing you in the next **FinTax hour** webinar!

Pre-budget expectations: FS industry

Date: 18 January 2023

Time: 11:30 a.m. IST

[Click here](#) to register

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