



ICAO

*International Civil Aviation Organization***Seventh Meeting of the Common aeRonautical Virtual Private Network Operations Group (CRV OG/7)**

Bangkok, Thailand, 20 – 22 January 2020

Agenda Item 2: Review and update the AMHS/ATN Implementation Status table and the APAC CRV Implementation Table

PROGRESS OF CRV IMPLEMENTATION IN INDIA

(Presented by Airport Authority of India)

SUMMARY

This paper provides information on the latest progress of CRV implementation in India.

1. INTRODUCTION

1.1 India being one of the Pioneer States is committed for implementation of CRV in Asia/Pacific region at the earliest. This paper presents the efforts' India has made so far to move towards the CRV environment.

2. DISCUSSION

2.1 Presently India is having an AMHS system at Mumbai connected to various BBIS and BIS states for exchanging AMHS data and Voice on IPLS circuits. CRV is currently planned to connect Mumbai. The details of circuits connected to Mumbai are as indicated in **Annexure-I**.

2.2 India further plan to have two CRV nodes one at Mumbai and other at Delhi to cater to the new AMHS planned at Mumbai and Disaster Recovery site at Delhi. The node at Delhi will be operationalized in due course after new AMHS and disaster recovery site at Delhi is up and running.

2.3 Being one of the BBIS states, India have been closely monitoring the progress of other BBIS states Singapore, Thailand and China and BIS states for aligning the implementation of the CRV with them for effective utilization of the network.

2.4 All necessary approval for going ahead with the contract with M/s PCCW were taken quite sometimes back. However due to the ongoing POC at that time it was decided to defer immediate signing of contract.

2.5 There were following two issues that were encountered during the discussion phase:

2.5.1 Issue pertaining to place of arbitration. The issue has been resolved after taking necessary approvals and place of arbitration has been agreed to be that in London.

2.5.2 Issue pertaining to Withholdings tax is still open.

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2.6 In the meantime, India (AAI) has shared **High Level questionnaire with M/s PCCW for assessment/comment to plan, design and implement CRV in India** along with bandwidth and media redundancy requirement after successful completion of the PoC.

2.7 In response to the high level questionnaire, the draft service order along with agreement proposal for CRV implementation in India has been received from M/s PCCW GLOBAL LTD in 2019.

2.8 During the processing for signing of the agreement with M/s PCCW, Fin & Account section of AAI has sought some clarification on the issues like, the wording of Article 19.1 of Terms and Conditions (TAXES, FEES AND DUTIES) of the agreement which is Contradictory in nature with respect to taxes.

2.9 Stalemate is on the issue related to **“Withholding Tax” applicable on the payments that will be made by AAI in India to M/s PCCW**. It is relevant to note that India has recently signed a treaty for avoidance of double taxation with Hong Kong, which has come into effect in India with effect from 01.04.2019. In terms of the said treaty, it is possible for PCCW to seek credit in respect of taxes paid in India against its tax liability in Hong Kong. Details in this regard are as per **Annexure-II** attached to this paper.

2.10 India is very keen to sign the service order with immediate effect. A side line meeting with M/s PCCW has been scheduled during the CRV OG/7 meeting to find a solution and move on with signing of the service order and agreement.

3. ACTION BY THE MEETING

3.1 The meeting is invited to:

- a) Note the information contained in this paper;
- b) Urge PCCW for suitable resolution as appropriate; and
- c) Urge other states to inform the meeting of any similar issues encountered during signing of the agreement with M/S PCCW.

Annexure-I**INTERNATIONAL LEASED CIRCUITS DATA/SPEECH**

S. No	BETWEEN STATIONS	SPEED	TYPE OF CIRCUIT	VOICE/DATA	BBIS/BIS/AFTN/DSC
1	MUMBAI-KARACHI*	128KBPS	Serial Async/AFTN	VOICE	DSC
2	MUMBAI-KARACHI	64KBPS	X400 over TP0 IPS AMHS	DATA	BIS
3	MUMBAI-BEIJING	64KBPS	X400 over X.25 ATN TP4 AMHS	DATA	BBIS
4	MUMBAI-SINGAPORE	64KBPS	X400 over X.25 ATN TP4 AMHS	DATA	BBIS
5	MUMBAI-BANGKOK	64KBPS	X400 over X.25 ATN TP4 AMHS	DATA	BBIS
6	MUMBAI-COLOMBO	64KBPS	X400 over TP0 IPS AMHS	DATA	BIS
7	MUMBAI-KATHMANDU	64KBPS	X400 over TP0 IPS AMHS	DATA	BIS
8	MUMBAI-DHAKA	64KBPS	X400 over TP0 IPS AMHS	DATA	BIS
9	MUMBAI-MUSCAT	64KBPS	TCP-IP/AFTN	VOICE/DATA	AFTN
10	MUMBAI-YANGON	2MBPS	2 MBPS E1	VOICE/DATA	
11	DELHI - LAHORE	64KBPS	DSC	VOICE	DSC
12	CHENNAI-KUALALUMPUR	64KBPS	TCP-IP/AFTN	VOICE/DATA	AFTN
13	AMRITSAR - LAHORE	64KBPS	DSC	VOICE	DSC
14	MUMBAI-PARO		AMHS Over VPN/Broadband	DATA	BIS
15	MUMBAI-NAIROBI		AFTN Over VPN/Broadband	DATA	AFTN

Annexure-II

Sr. No.	Clarification Sought from AAI vide mail dated: 16.08.2019	Reply Received from M/s PCCW Global, Hong Kong vide mail dated 08.10.2019
1	<p>AAI has sought views from its tax consultant regarding Indian tax implications of payments made by AAI to PCCW under the proposed contract. They have broadly stated that the tax authorities are likely to hold that payments are subject to income-tax in India, being in the nature of Royalty / Fees for Technical Services, @ 10% under the provisions of Article 12 / 13 of the India-HongKong Tax Treaty (being more favourable than the rate of 10% plus applicable surcharge & cess under the provisions of the Income-tax Act).</p> <p>In this connection, you are requested to kindly confirm that PCCW does not have a Permanent Establishment in India (Attached as Annexure-I, PE Undertaking), both under the provisions of the Income-tax Act as well as the India-HongKong Tax Treaty.</p>	<p>We are in the process of applying for the 2019 tax resident certificate for PCCW Global Limited. It will take about a month for the Hong Kong Inland Revenue Department (“HK IRD”) to issue the certificate;</p> <p>Draft PE Undertaking submitted by PCCW</p>
2	<p>Our Tax Consultants have also pointed out that some minor changes are required to bring about clarity on certain tax related matters. However, before suggesting any changes they have highlighted that the wording of Article 19.1 is contradictory and the same needs to be resolved.</p> <p>In this connection, we would like to state as follows:</p> <p>3 The first part of Article 19.1 states that taxes payable in Hong Kong and in India are to the account of PCCW. However, the second part of Article 19.1 states that the AAI shall be liable to pay various taxes levied in any jurisdiction (including withholding tax – which is in the nature of income-tax).</p> <p>4 It is relevant to note that India has recently signed a treaty for avoidance of double taxation with Hong Kong, which has come into effect in India with effect from 01.04.2019. In terms of the said treaty, it is possible for PCCW to seek credit in respect of taxes paid in India against its tax liability in Hong Kong.</p> <p>5 If applicable tax was to be deducted from the payment to be made by AAI, PCCW would be able to obtain tax credit in Hong Kong against such tax withheld in India, i.e., PCCW will be able to reduce the tax paid in India from its Hong Kong tax liability. Therefore, there will be no loss to PCCW, if applicable tax is withheld by AAI at the time of making payment. At the same time AAI will be saved from making this payment of tax on behalf of</p>	<p>PCCW Will add the service agreement details to Annexures I and II once the service agreement is confirmed.</p> <p>For Annexure III, please note that we will not be able to provide the certified statement as requested in bullet points 5 and 6 since the HK IRD will not issue such statements.</p> <p>Alternatively, we can provide a declaration at end of September each year during the duration of the agreement to confirm that PCCW Global Limited has not claimed any tax credit with the HKIRD for taxes withheld by the India tax authorities.</p> <p>For your information, PCCW Global Limited is in loss position and it is expected that it will not be eligible for claiming offshore tax credits in the near future.</p> <p>Annexure-III for undertaking in connection with taxes payable in India is to be submitted.</p> <p>Form 10F is to be submitted.</p>

	<p>PCCW. The statutory certificate evidencing that such tax has been deducted and deposited with the government authorities will be provided to PCCW within a few days of releasing the payment, and PCCW could use the said certificate to obtain tax credit in Hong Kong. In view of the above, we would request you to kindly consider agreeing to AAI deducting tax at the applicable rate on payments to PCCW, as the same will not result in any loss to PCCW. If this alternative is acceptable, minor modifications can be made in the draft contract to incorporate such understanding.</p> <p>6 If the above is not acceptable to PCCW, then AAI will make the payment ‘net of tax’ to PCCW and pay income-tax in India on behalf of PCCW. In such event, PCCW should seek ‘tax credit’ for taxes paid in India by AAI against its Hong Kong tax liability and refund such ‘tax credit’ back to AAI as and when the same is obtained. Kindly note that this is a standard and mandatory practice followed at AAI for all international contracts which are ‘net of tax’. The standard format of such an undertaking to be issued by PCCW is attached (attached as Annexure-III) for your perusal. If this alternative is acceptable, minor modifications can be made in the draft contract to incorporate such understanding (if so desired).</p> <p>7 Due to the inherent complications of following the option mentioned in (d) above, we suggest that you agree to follow the option mentioned in (c) above, i.e., agree to AAI deducting tax at the applicable rate on payments to PCCW.</p> <p>Please note that AAI shall also require certain basic documents relating to PCCW in order to make the payments [such as No PE declaration, TAX RESIDENCY CERTIFICATE, Indian PAN with updated name of your Company (if available), Form 10 F (attached as annexure-II) etc.]</p>	<p>PCCW will be able to issue the above declarations once we received the tax resident certificate from the HK IRD.</p>
	<p>Following justification was asked from M/s PCCW vide mail dated 02.12.2019 as suggested by Taxation Cell:</p>	<p>Response to this queries of AAI was received from PCCW on 04.12.2019 and stated that:</p>
	<p>The fact as intimated that PCCW Global limited is in loss position and it is expected that it will not be eligible for claiming offshore tax credits in the near future.</p> <p>It is requested to provide the justification /reason for yours non-eligibility to claim tax credit for off shore taxes deducted because as per general understanding, even if a company is in loss position, it can claim refund for tax deducted from its receipts.</p>	<p>As mentioned, PCCW Global Limited is not eligible to claim WHT credit against its tax payable. Meanwhile, since our service fee charge will be tax exclusive amount, there will also be no Hong Kong Profits Tax deduction claim for WHT.</p>