

Tax Alert | Delivering Clarity

30 October 2020

CBDT notifies Equalisation levy (Amendment) Rules, 2020

The Central Board of Direct Taxes has issued a notification dated 28 October 2020, to notify Equalisation Levy (Amendment) Rules, 2020.

Background:

- Equalisation levy (EQL) has its genesis from Base Erosion and Profit Shifting (BEPS) Action Plan 1, of the OECD as one of the measures to tax highly digitised businesses that earn revenue from a country without any physical presence in such country. EQL was introduced in India vide the Finance Act 2016 (FA 2016) to tax certain specified services.
- The Central Board of Direct Taxes (CBDT) had issued Equalisation levy Rules, 2016¹ (Rules) to lay down the procedural framework for compliances and appeal process to be followed for EQL.
- The Finance Act 2020 (FA 2020) expanded the scope of EQL², to include levy on consideration received or receivable by an 'e-commerce operator' from 'e-commerce supply or services'.

'E-commerce operator' has been defined to mean a non-resident who owns, operates or manages digital or electronic facility or platform for online sale of goods or online provision of services or both.

'E-commerce supply or services' means:

- Online sales of goods owned by the e-commerce operator; or
 - Online provision of services provided by the e-commerce operator; or
 - Online sale of goods or provision of services or both, facilitated by the e-commerce operator; or
 - Any combination of the above.
- The CBDT has now issued notification³ dated 28 October 2020 (Notification), to notify the Equalisation levy (Amendment), Rules 2020 (Amendment Rules) to include the EQL on e-commerce transactions.

Key changes in Rules:

- The words 'or e-commerce supply or services' have been added after the words 'specified services' in the following rules:

¹ <https://www.incometaxindia.gov.in/communications/notification/notification382016.pdf>

² Refer our previous alert:

<https://www2.deloitte.com/content/dam/Deloitte/in/Documents/tax/Global%20Business%20Tax%20Alert/in-tax-gbt-alert-equalisation-levy-on-e-commerce-supply-or-services-noexp.pdf>

³ https://www.taxsutra.com/sites/taxsutra.com/files/webform/CBDT%20notification_9.pdf

| Rule No. | Brief description in relation to the rule |
|--|---|
| Rule No. 5 (relating to statement of specified services or e-commerce supply or services) | The taxpayer or e-commerce operator is required to furnish a statement of specified services or e-commerce supply or services in Form No. 1. |
| Rule No. 6 (relating to time limit to be specified in the notice calling for statement of specified services or e-commerce supply or services) | Where taxpayer or e-commerce operator fails to furnish within the specified time limit the statement of specified services or e-commerce supply or services in Form No. 1, then the Assessing Officer (AO) can issue a notice requiring the taxpayer or e-commerce operator to furnish such statement within 30 days from the date of service of such notice. |

- The word assessee i.e. taxpayer has been substituted with 'assessee or e-commerce operator' as the case may be' in the following Rules and forms:

| Rule No. | Brief description in relation to the rule |
|--|---|
| Rule No. 4 (relating to payment of EQL) | The rule provides for the manner in which the taxpayer or e-commerce operator is required to pay EQL. |
| Rule No. 5 (relating to statement of specified services or e-commerce supply or services) | Refer table above. |
| Rule No. 6 (relating to time limit to be specified in the notice calling for statement of specified services or e-commerce supply or services) | Refer table above. |
| Rule No. 7 (relating to notice of demand) | Where any levy, interest or penalty is payable in consequence of any order, the AO is required to serve upon the taxpayer or e-commerce operator a notice of demand in Form No. 2 specifying the sum payable. Further, an intimation is also treated as a notice of demand. |
| Rule No. 8(2) [relating to appeal to Commissioner of Income-tax (Appeals) [CIT(A)] in Form No. 3] | The taxpayer or e-commerce operator shall file an appeal before the CIT(A) in Form No. 3 electronically (either under a digital signature or through an electronic verification code). The form of appeal shall be verified by the person who is authorised to verify the statement under Rule No. 5, as applicable to the taxpayer or e-commerce operator. |
| Rule No. 9 (relating to appeal to the Appellate Tribunal in Form No. 4) | The taxpayer or e-commerce operator shall file an appeal before the Appellate Tribunal in Form No. 4. |

- Rule No. 2 (relating to definitions under the Rules):

The term 'electronic verification code' has now been defined for the purposes of the Rules to mean a code generated for the purpose of electronic verification of the person furnishing the statement of specified services as per the data structure and standards laid down by the Principal Director- General of Income-tax (Systems) [PD-GIT(Sys)] or Director General of Income-tax (Systems) [DGIT(Sys)], as the case may be.

- Rule No. 3 (relating to rounding off of consideration):

Rule No. 3 has been amended to replace the words 'the amount of consideration for specified services and' with 'the amount of consideration'. Thus, the amount of consideration, the amount of EQL, interest and penalty and the amount of refund due are required to be rounded off, as specified in the said rule.

- Rule No. 4 (relating to payment of EQL):

The Amendment Rules substitute Rule No. 4 to provide that, the taxpayer or e-commerce operator who are required to deduct and pay EQL, shall pay the amount of EQL by remitting it to the Reserve Bank of India or in any branch of the State Bank of India (SBI) or of any authorised bank, accompanied by an EQL challan.

- Rule No. 5 (relating to statement of specified services or e-commerce supply or services):

The Amendment Rules substitute Rule No. 5 to, inter alia,

- Provide that the taxpayer or e-commerce operator should furnish a statement of specified services or e-commerce supply or services in Form No. 1 electronically (either under a digital signature or through an electronic verification code). The statement in Form No. 1 is required to be furnished on or before 30 June immediately following the relevant financial year (FY).
- Enable the taxpayer or e-commerce operator to file a revised statement.
- Include DGIT(Sys) in addition to the PD-GIT(Sys) for various acts (such as laying down the procedure for electronic filing of Form No. 1) which could be conducted under Rule No. 5, to ensure secure capture and transmission of data.

- Rule No. 8 (relating to form of appeal to the CIT(A)):

DGIT(Sys) has been included in addition to the PD-GIT(Sys) for various acts (such as laying down the procedure for electronic filing of Form No. 3) which could be conducted under Rule No. 8, to ensure secure capture and transmission of data.

- The notification also substitutes the following forms

- Form No. 1 relating to statement of specified services or e-commerce supply or services.
- Form No. 3 relating to appeal to the CIT(A) designation of the Commissioner (Appeals).
- Form No. 4 relating to form of appeal to the Appellate Tribunal.

Comments:

- E-commerce transactions have now been included in the Equalisation levy Rules, 2016, thus applying the procedural aspects of EQL on e-commerce transactions.
- The provision to enable the taxpayers or e-commerce operators, as the case may be, to file revised statement is a welcome move.



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