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Equalisation levy on e-commerce supply or services

The India Finance Act 2020 has been enacted after it received the assent of the President on 27 March 2020. Finance Act, 2020 has widened the scope of equalisation levy to include e-commerce supply or services by an e-commerce operator. The definition of the terms 'e-commerce operator' and 'e-commerce supply or services' is fairly wide in scope and may cover various digital transactions and services.

This provision was not part of the provisions of the Finance Bill, 2020 when the Finance Minister introduced it on 1 February 2020, but was included on 23 March 2020 when it was approved by the Lower House of the Parliament.

It may be noted that the provisions of equalisation levy are not part of the income-tax law; this levy is under a separate provision of law.

Background:

Taking a cue from the G20 / OECD Base Erosion and Profit Shifting (BEPS) Action 1 dealing with digital economy, India introduced an equalisation levy in 2016. Broadly speaking, the equalisation levy at the rate of 6 percent was on non-resident companies engaged in online advertisement and related activities.

The scope of the said provisions has now been expanded to include equalisation levy of 2 percent on consideration received or receivable by an 'e-commerce operator' from 'e-commerce supply or services', and is effective from 1 April 2020. The key highlights related to this levy are summarised below.

Key highlights:

Equalisation levy on e-commerce transactions

- The scope of equalisation levy has been expanded from 1 April 2020 to include e-commerce transactions.
- Equalisation levy of 2 percent shall be chargeable on consideration received or receivable by an '**e-commerce operator**' from '**e-commerce supply or services**' made or provided or facilitated by it:
 - To a person resident in India; or
 - To a non-resident in '**specified circumstances**'; or
 - To a person who buys such goods or services or both using internet protocol address located in India.
- '**e-commerce operator**' means 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:
 - i. online sales of goods owned by the e-commerce operator; or
 - ii. online provision of services provided by the e-commerce operator; or

- iii. online sale of goods or provision of services or both, facilitated by the e-commerce operator; or
- iv. any combination of the above.

- **'specified circumstances'** means:

- i. sale of advertisement, which targets a customer, who is resident in India or a customer who accesses the advertisement through internet protocol address located in India; and
- ii. sale of data, collected from a person who is resident in India or from a person who uses internet protocol address located in India.

Exclusions from the scope of equalisation levy

Equalisation levy shall not be charged:

- i. where the e-commerce operator has a permanent establishment in India and such e-commerce supply or services is effectively connected with such permanent establishment;
- ii. where the equalisation levy is leviable on online advertisement and related activities; or
- iii. sales, turnover or gross receipts, of the e-commerce operator from the e-commerce supply or services made or provided or facilitated is less than INR 20 million) during the financial year.

Exemption from income-tax

The income-tax law has been amended to provide for exemption arising from any income arising from any e-commerce supply or services made or provided or facilitated on or after 1 April 2021¹, and chargeable to equalisation.

Who needs to comply and related timelines

The equalisation levy is to be paid by the non-resident e-commerce operator quarterly within the following due dates:

Date of ending of the quarter	Due date
30 June	7 July
30 September	7 October
31 December	7 January
31 March	31 March

Consequences of delay in payment or non-compliance

- **Interest:** Delayed payment carries simple interest at the rate of 1 percent for every month or part of a month
- **Penalty:** Failure to pay equalisation levy attracts penalty equal to the amount of equalisation levy

Impact:

The equalisation levy on e-commerce transactions will have a significant impact on non-resident providers of digital supply or services, especially given the fact that the definition of the terms 'e-commerce operator' and 'e-commerce supply or services' is fairly wide in scope. For example, taxpayers may need to evaluate whether IT services provided by a non-resident parent / group company to an Indian subsidiary could attract equalisation levy. It is also pertinent to note that e-commerce supply or services by one non-resident to another non-resident could also attract

¹ The date should ideally be 1 April 2020 – presumably this will be modified and / or clarified shortly

equalisation levy in the specified circumstances (i.e. sale of advertisement / data having nexus with India).

Multinational enterprises earning income from India will need to evaluate the impact of the equalisation levy on their businesses. It is important to note that as the provisions of equalisation levy are not part of the income-tax law, the tax treaty benefits may not be available in relation to such levy. Additional guidance is expected from the Government on the provisions.

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