EQUALISATION LEVY

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Recently USA cautioned India that its 6% equalisation levy, popularly known as Google Tax, on foreign online advertising platforms may impede its overseas trade and increase the risk of retaliation from countries where Indian companies are doing business. This Tax is becoming a bone of contention between India and USA.

What is Equalisation Tax?

Equalisation Levy was introduced in India in 2016, with the intention of taxing the digital transactions i.e. the income accruing to foreign e-commerce companies from India. This covers income from advertising also which is aimed at taxing business to business transactions.

Over the last decade, Information Technology has gone through an exponential expansion phase in India and globally. This has led to an increase in the supply and procurement of digital services. We have seen recently during country wide lockdown due to Covid-19 that the dependence on information technology has increased many folds. This has given rise to various new business models, where there is a heavy reliance on digital and telecommunication networks.

Government of India could sense this increase of the importance of IT sector as well as of social networking platforms much earlier and quite rightly thought it as an opportunity to increase its tax collection and therefore introduced Equalization tax in 2016. This tax was given effect to one of the recommendations of the BEPS (Base Erosion and Profit Shifting) Action Plan.

Applicability

In fact, Equalization Levy is a direct tax, which is withheld at the time of payment by the service recipient. Following the two conditions are required to be met to be liable to equalisation levy –

- The payment should be made to a non-resident service provider;
- The annual payment made to one service provider exceeds Rs. 1,00,000.00 in one financial year.

The following services were covered for levying equalization levy –

- Online advertisement;
- Any provision for digital advertising space or facilities/ service for the purpose of online advertisement;
- It was also mentioned during the introduction of the levy that as and when any other services are notified, these will be included with the aforesaid services.

Later, Finance Bill, 2020 proposes to expand the scope of the "equalisation levy" to include consideration received by e-commerce operators from e-commerce supply or services, and taxed at a rate of 2%.

Currently the applicable rate of tax is 6% of the gross consideration to be paid.

It can be understood with an example. Suppose Hari has advertised for his product on FB to expand his business. He has to pay Rs. 2,00,000 in FY 2020-21 to FB for the advertising services availed. FB will bill Rohan for an amount of Rs. 2,12,765.90, i.e Rs.200000.00 + (200000*6/94). Hari will deduct TDS at the rate of 6% of Rs. 2,12,765.9 = Rs. 12,765.9 and pay the balance of Rs. 2,00,000 (Rs. 2,12,765.9 – Rs. 12,765.9) to FB. Later on, Hari will deposit this levy into Government kitty by the due date of next month and file annual return.

Return

Due date of furnishing Equalisation Levy Statement (Form-1) is on or before 30th June of Financial Year ended. This is the annual statement.

From the above example, let us assume Hari will make the payment on 15th February'2021. He would deposit the tax with the authorities by 7th March, 2021 and would file the statement (i.e. Form -1) on or before 30th June, 2021 in normal circumstances.

Penalty

- In case there is a delay in payment, interest is charged at 1% of the outstanding levy for every month or part thereof is delayed.
- In case there is non-compliance on behalf of the service recipient, the compliance procedure for the Equalisation Levy is the responsibility of the service recipient.
- If Equalisation Levy is not deducted then penalty will be equal to the amount of levy failed to be deducted (along with interest and depositing of the principal levy outstanding).
- In case of Equalisation Levy deducted but not deposited, penalty equal to INR 1,000.00 per day subject to the maximum of the levy failed to be deducted (along with interest and depositing of the principal levy outstanding) has to be levied.
- Moreover, there is a provision of disallowance of such expenditure in the hands of the payer, unless the defect is rectified.
- For failure of filing statement of compliance there is a provision of penalty of Rs. 100.00 per day for each day the non-compliance continues.
- If a false statement has been filed then the person may be subjected to imprisonment of a term up to 3 years and a fine.

Till date the Government of India has shown no sign of taking this levy back and it is trying to convince USA strategically.