

# Equalisation Levy

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# Background

- ▶ Many companies who are providing services in cyberspace register themselves in a country wherein the Tax rates are low and pay very low taxes on their global income.
- ▶ Like in India The revenue of Google in FY 2014-15 was around 4,000 crores, which has led to this levy.
- ▶ Hence the Equalisation levy would result in increased revenue to Government. Till now it was not Taxed.
- ▶ Equalisation levy mainly because of Google.
- ▶ Major share of online ads relates to Google.

# Others

- ▶ Facebook
  - ▶ Apple
  - ▶ Amazon
  - ▶ All these companies do not pay taxes in India.
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- ▶ Equalisation Levy is nothing but Taxing Cross-Border E-Commerce Transactions.

# BEPS

- ▶ Multinational company shifts its income or profit to another country which could be a tax haven.
- ▶ Idea where companies operating in foreign countries can swap profit from operations in one country to a tax haven country.
- ▶ A tax haven is a country or area where income taxed is placed at a lower rate. Companies opt to profit shift to avoid large tax rates and retain more of their earnings.
- ▶ As a result, the country which helps the multinational company generate its revenues does not get any tax or there is tax erosion due to the shifting of income or profits by the company.
- ▶ Essential to reform international taxation rules and ensure that multinational enterprises pay a fair share of tax to the countries where they operate.

# E-Commerce

- ▶ E Commerce Market in the country is expected to grow to several bill in another 5 years.
- ▶ Based on the OECD/G20 guidelines to over come the issue of BEPS
- ▶ (Base Erosion and Profit Shifting by countries).
- ▶ It is essential to overcome the loss of revenue to the country.
- ▶ Hence introduced Equilisation Levy
- ▶ E-commerce operator is 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

# Why this levy

- ▶ Information Technology has acquired importance in India and globally.
- ▶ This has led to an increase in the supply and procurement of digital services.
- ▶ Resulted in new business models, where there is a heavy reliance on digital and telecommunication networks.
- ▶ Inadequacy of physical presence in the existing tax treaties and the possibility of taxing such payments as royalty or fee for technical services creates tax disputes.

The government introduced vide Budget 2016, the equalisation levy to give effect to one of the recommendations of the BEPS (Base Erosion and Profit Shifting) Action Plan.

# Person Responsible

- ▶ Any Person who is a Resident
- ▶ Carrying on Business or Profession
- ▶ A Non Resident having PE (Permanent Establishment) in India
- ▶ TDS on any amount payable paid or payable to a Non Resident relating to providing Specified Service.

# Applicability

- ▶ Sec.165A of the Income Tax Act 1961:
  - ❑ Service provider/Seller of goods is Non Resident E-Commerce Operator (E-commerce supply or services)
  - ❑ Service Recipient/ Buyer of goods is a Resident in India.
  - ❑ Sales/Turnover/gross receipts of E- commerce operator exceeding Rs 2 crore During P.Y.

# Covered

- ▶ Sec.165
- ▶ Online advertisement
- ▶ Any provision for digital advertising space or facilities service for the purpose of online advertisement.
- ▶ Sec.165A

Online sale 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 activities listed in clause above

# Rate of Tax

- ▶ The applicable rate of tax is 6% of the gross consideration to be received or receivable under Section 165.
- ▶ The applicable rate of tax is 2% of the gross consideration to be received or receivable under Section 165A

# Not Applicable

- ▶ If the service provider is a non-resident having PE in India.
- ▶ The service provider is a resident in India.
- ▶ The amount of consideration is less than Rs 1 lakh (Sec.165)
- ▶ Sales, Turnover or Gross Receipt is less than Rs.2 Crore during the previous (Sec.165A)

# Permanent Establishment in E-Commerce

- ▶ 1. Existence of a Website in India
- ▶ 2. A fixed place fixed place where business is carried on.
- ▶ 3. If the entity owns server and it is located in India
- ▶ 4. Server consists of Data and Programmes is stored on the server.

# Impact

- ▶ Impact on a wide range of businesses and business models, even if such businesses are not operating in a typical e-commerce model.
- ▶ Any foreign company providing services/goods in India through a digital platform could be within the scope of the levy.
- ▶ In a situation where an Indian buyer places an order for the purchase of goods through offline/physical mode with a non-resident e-commerce operator.

## Contd..

- ▶ The goods are also delivered by the non-resident physically to the Indian buyer.
- ▶ The Indian buyer merely makes an online payment for the same.
- ▶ This definition of 'online sale of goods', a mere payment that is made through an online mode can be subject to the transaction to equalization levy.

# Example

- ❖ Mr. X (resident Indian) orders goods worth \$2000 from Amazon.com, and those goods are owned by Mr. Y (US resident) then Amazon.com needs to pay the Equalization Levy on \$2000, even if Amazon.com earns only \$10 as commission.
- ❖ If Mr. A (resident Indian) orders goods worth Rs. 75,000 from Amazon. In, and those goods are owned by Mr. C (resident Indian)
- ❖ Then Amazon. In needs to pay the Equalization Levy only on commission income earned.

# Collection and Recovery

- ❑ Deduct Equalisation Levy from the amount payable to a Non Resident relating to specified service.
- ❑ Rates as per prevailing rates (Sec.165 and Sec.165A)
- ❑ Deposit of Money
  - ❖ Relating to TDS u/s.165
  - ❖ Shall be paid to the credit of Central Government on or before 7th of the following month.

# Deposit of Tax

- ▶ Relating to Sec.165A
- ▶ Quarterly Basis as follows:

- |                                 |                    |
|---------------------------------|--------------------|
| ❑ Quarter Ending 30th June      | Before 7th July    |
| ❑ Quarter Ending 30th September | Before 7th October |
| ❑ Quarter Ending 31st December  | Before 7th January |
| ❑ Quarter Ending 31st March     | Before 31st March  |

# Consequence of Default

- ❑ This levy of equalization would be in the same manner as TDS, like the person making the payment for advertisement will require to deduct Equalisation levy @ 6% on the total amount of consideration and deposit the same to the account of Central Govt.
- ❑ In case of failure to do so, these expenditures will not be allowed to claim for Income Tax Purpose.
- ❑ Consequences of Delayed Payments :
- ❑ Interest is charged at 1% of the outstanding levy for every month or part thereof is delayed.

# Penalty and Prosecution

- ❖ Failure to deduct tax (Sec.166)
- ❖ In addition to payment of equalization levy
  - ❑ Interest
  - ❑ Penalty equal to the amount of equalization levy
- ❖ Fail to Pay
  - ❑ Interest
  - ❑ Penalty of R.1000 per day
  - ❑ Maximum penalty restricted to amount of equalization levy

# Furnishing of Statement

- ▶ Form No.I
- ▶ Due Date: 30th June of following the financial year
- ▶ Revised Statement may be furnished within 2 years
- ▶ Failure to furnish the statement
- ▶ Issue of Notice for non filing
- ❖ Time Limit 30 days from the date of serving the notice

# Penalty for non filing the statement

- ❑ Fail to furnish before 30th June or 30 days from the issue of notice
  - ▶ Rs.100 per day.
- ❑ Punishment for False Statement
  - ▶ Punishable with imprisonment may extend to 3 years.
  - ▶ Punishable under the Code of Criminal Procedure.
- ❑ The Chief Commissioner required to institute prosecution against the person.

# Example 1

- ❖ X Ltd., an Indian Company.
- ❖ Product : Manufacture of Consumable Item
- ❖ Issued on line Advertisement
- ❖ The Company has used the services of Y Ltd., an US Based Company
- ❖ The Company has paid R.25 lakhs for the services
- ❖ Implications under the following circumstance
  - ❑ A. Y Ltd has no PE
  - ❑ B. Y Ltd has PE

# Solution

- ▶ The provisions provides for a levy of 6% of the amount for specified services.
- ▶ Amount Received or Receivable by a Non Resident from a Resident.
- ▶ Specified Service:
  - ❖ On Line Advertisement
  - ❖ Digital Advertising space
  - ❖ Other any other services for online advertisement.

# Answer 1

- ▶ When No PE
- ▶ X Ltd., is required to Deduct Rs.1.50 lakhs (6% of Rs.25 lakhs)
- ▶ The aggregate amount exceeds Rs.1 lakh.
- ▶ Since Y Ltd., is a non resident and no PE
- ▶ Non deduction results in disallowance of expenditure in computing the business income of X Ltd., (Sec.40(a)(ib) – 100% disallowance)

## Answer 2

- ▶ When Y Ltd., has PE in India
  - ▶ No equalization levy
  - ▶ X Ltd., need not deduct equalization levy
- ▶ But X Ltd., is obligated to deduct TDS as per Sec.195 (Payment to Non Residents) at the prevailing rates (Presently it is 20%)
- ▶ Non deduction of TDS u/s.195 results in 100% disallowance of business expenditure while computing business income of X Ltd.,

# Legal Provisions of Income Tax Act

- ❑ Sec.120 Jurisdiction of authorities
- ❑ Sec.131 Power regarding evidence
- ❑ Sec.138 Disclosure of Information
- ❑ Sec.156 Notice of Demand
- ❑ Proceedings of tax Authorities
- ❖ Default
- ❖ Penalty
- ❖ Recovery
- ❖ Etc.

# Appeals

- ▶ Appeal to HC
- ▶ Appeal to SC
  
- ▶ Other legal proceedings
  - ❑ Like offences
  - ❑ Non filing of returns
  - ❑ Etc.

# Issues of EL

- ▶ Classification of Income
  - ▶ Treatment as
    - ▶ Royalty
    - ▶ Fees for Technical Service
    - ▶ Business Income
  - ▶ Royalty and FTS is subject to withholding tax.
  - ▶ If the entity has PE it is treated as Business Income
- ▶ The law is silent on these issues.

# Tax Credit

- ▶ The question whether the ECO will be eligible to claim the EL paid will depend on the local tax laws in home jurisdiction.
- ▶ Double Taxation Avoidance Agreements (DTAA) entered into between India and foreign countries have been specifically defined and generally do not cover the EL.
- ▶ Tax credit may not be available for the EL paid in India, because EL has been introduced as a separate Chapter in the Finance Act and does not form part of the Indian Income Tax Act, 1961 (ITA).

# Issues of ECO

- ▶ On Definition
- ▶ Definition of Digital
- ▶ Electronic Facility or Platform
- ▶ Digital means 'composed of data in the form of, especially binary digits'.
- ▶ Electronic means 'of, relating to or being a medium (such as television) by which information is transmitted electronically'.  
Platform means 'the computer architecture and equipment using a particular operating system'.
- ▶ Definition of Goods and Services under EL.

# Impact on ECO

- ▶ The equalization levy applies to an e-commerce operator which can potentially include not only e-commerce retailers/ marketplace operators but also businesses which operate under the brick and mortar model with a fair degree of digitization.
- ▶ The term "brick-and-mortar" refers to a traditional street-side business that offers products and services to its customers face-to-face in an office or store that the business owns or rents.
- ▶ The local store and the corner bank are examples of brick-and-mortar companies.

# Impact on other industries

- ▶ Media and Entertainment
- ▶ Hospitality Services
- ▶ Communication
- ▶ Information Technology
- ▶ ERP
- ▶ Education

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► Thank you