

EQUALISATION LEVY

INTRODUCTION

"Equalise" is to make something equal or distribute evenly and "Levy" is to impose or charge, thus Equalisation Levy creates a level playing field.

Under the existing rules of International Taxation, the **Country of Source ("COS")** can tax a non-resident, carrying Business through electronic means, without any physical presence, only if the non-resident has a permanent establishment ("**PE**") in the COS. E-commerce companies do not need PE in any COS. They can set up the companies in tax havens and avoid tax in **Country of Residence ("COR")** hereby avoiding payment of taxes in both the countries.

E.g. Indian Company is receiving advertisement services from US Company. Here, COS is the Indian Company and COR is the US Company.

Permanent Establishment("PE"): - PE includes a fixed place of business through which the business of the enterprise is wholly or partly carried on. A PE will generally not be deemed to exist where the activity performed is preparatory or auxiliary in nature.

Moreover, when a company resident in Country of Source (COS) earns revenue from E-commerce business which includes buying and selling of goods via market place, advertisement and related services are liable to pay Income-tax as well as Indirect taxes (GST). However, when a non-resident company provides E-commerce services, it escapes from Income-tax.

Therefore, it has become necessary to cope up with this challenge with respect to Taxation of Online Transactions. Such growing concerns prompted G20 Nations and OECD (*Organisation for Economic Co-operation and Development*) to formulate an '**Action Plan on BEPS (Base Erosion and Profit Shifting)**'. Taxation of the Digital Economy is one of the first action plans among fifteen under the BEPS Project.

The BEPS Action 1 Final Report had laid down three options to address some of the tax challenges in the digital economy, i.e.,

- a new nexus based on significant economic presence,
- a withholding tax on digital transaction and
- equalisation levy on specified digital transactions.

In India, a Committee on Taxation of E-Commerce has been constituted by CBDT in 2016 to identify the direct tax issues in relation to e-commerce transactions and suggest an approach to deal with these issues. The committee had ruled out the first two options laid down in BEPS Action Plan 1 Final Report and settled down on **Equalisation Levy as a panacea for tax issues** facing digital economy in India.

Thus, Equalisation Levy ("EL") has been introduced to create a level playing field. (for both Resident and Non-Resident E-Commerce companies)

- ✚ **Equalisation Levy ("EL")** dubbed as "Google Tax" worldwide has been introduced under **Chapter VIII** ("Chapter") under **Finance Act, 2016** with effect from 01st June 2016 and extends to the whole of India **except** the State of Jammu and Kashmir.



It is thus treated as a far-reaching amendment in international tax space with the main objective of taxing Digital E-Commerce Transactions.

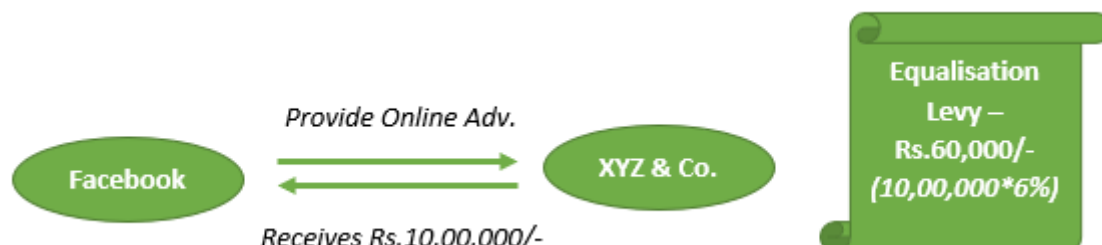
- ✚ **CHARGE OF EQUALISATION LEVY (u/s 165 of the Chapter):**

- Equalisation levy is charged on consideration received or receivable by a non-resident for any specified service provided to
 - a person resident in India & carrying on business or profession.
 - a non-resident having a permanent establishment in India.
- "Specified Service" means
 - online advertisement
 - Ex: General online advertisements, Pop-up ads.*
 - any provision for digital advertising space or
 - Ex: providing space for online advertisements*
 - any other facility or service for the purpose of online advertisement &
 - Ex: A company providing intermediary services by collecting ads from Ad making Companies and consulting non-resident E Commerce companies (like Face book, Google etc) for publishing the advertisements.*
 - includes any other service as may be notified by the Central Government in this behalf.

"online" means a facility or service or right or benefit or access that is obtained through the internet or any other form of digital or telecommunication network.
- Rate of Levy - **6%** of the amount of consideration
- Person responsible for deducting equalisation levy – **Resident / Non-resident with PE** (*i.e person receiving the services*)
- No Grossing up.

Example:

XYZ & Associates are engaged in providing Chartered Accountant Services. With a view to expand its customer base they have decided to advertise their services in Facebook (here Facebook is assumed as non-resident). The consideration agreed for the advertisement service is Rs.10,00,000/-



- Here XYZ & Co. will deduct Equalisation Levy @ 6% i.e Rs. 60,000 and deposit the same to the credit the Central Government &
- Remit Rs. 9,40,000/- to Facebook for the services provided.

EQUALISATION LEVY IS NOT CHARGED where

Non-resident providing specified service (as discussed above)

- has a **permanent establishment** in India and the specified service is **effectively connected** with such permanent establishment.
- the aggregate amount of **consideration** received by non-resident for **such** specified service during the **Financial Year does not exceed Rs. 1,00,000/-**.
- where the payment for the specified service is **not** for the purposes of carrying out **business or profession**

Ex: Public awareness advertisements like

- ❖ *Filing of Income Tax Returns to avoid payment of late fee.*
- ❖ *Swacch Bharath Abhiyan.*
- ❖ *Beti Bachao Beti Padhao*

OTHER POINTS:

- Section 10(50) of Income Tax Act, 1961 - Income arising to the non-resident payee from provision of the specified services on which equalisation levy is chargeable are exempt from Income-tax.
- Section 40(a)(ib) of Income Tax Act, 1961
 - No deduction shall be allowed in the hands of the payer where any consideration paid or payable to a non-resident for the specified services on which equalisation levy is deductible has not been deducted or after deduction, has not been paid on or before the due date specified in section 139(1).

- Where the equalisation levy has been deducted in any subsequent year or has been deducted during the previous year but paid after the due date specified in section 139(1) such sum shall be allowed as a deduction in in the previous year in which such levy has been paid.
- *In the above example an amount of Rs.10,00,000 shall be allowed as deduction in hands of XYZ & Associates provided the levy of Rs.60,000 has been deducted and deposited within the due date.*

COLLECTION AND RECOVERY OF EQUALISATION LEVY (u/s 166 of the Chapter)

- Person responsible for deducting & depositing Equalisation Levy (EL) – **Resident / Non-resident with PE** (*i.e person receiving the services*)
- Time Limit to deposit Equalisation Levy (EL) - by 7th day of the month immediately following the said calendar month.
- Challan for remitting levy - Challan – 285.
(www.tin-nsdl.com >> Services >> e payment: Pay taxes online >> Challan No./ITNS 285)

INTEREST AND PENALTY for failure to deduct and pay Equalisation levy (u/s 170 & 171 of the Chapter)

Particulars	Failure made	Interest / Penalty
Interest	Fails to Credit the equalisation levy or any part	simple interest at the rate of 1% of such levy for every month or it's part by which such crediting thereof is delayed
Penalty	Fails to Deduct the whole or any part of the equalisation levy	Amount of equalisation levy (In addition to levy and interest)
	Deducted but Fails to Credit the equalisation levy	a *penalty of Rs.1,000/- (In addition to levy and interest)

- *However, *penalty under this clause shall not exceed the amount of equalisation levy that he failed to pay.*
- *No Penalty If assessee proves to the satisfaction of AO that there was reasonable cause for the said failure.*
- *No order imposing penalty shall be made unless the assessee has been given a reasonable opportunity of being heard.*

FURNISHING OF EQUALISATION LEVY STATEMENT (u/s 167 of the Chapter)

- Time limit for furnishing the Equalisation Levy (EL) Statement – on or before 30th June of the financial year (“F.Y”), immediately following the financial year in which such specified services are received.
Ex: If specified services are received in F.Y 2018-19, the statement for Equalisation Levy is to be furnished on or before 30th June 2019.
- Form to be furnished - Form -1.
(www.incometaxindiaefiling.gov.in >> Official Utilities >> Other Forms Preparation Utilities)

- An assessee who has not furnished the statement within the prescribed time **or** having furnished a statement notices any omission or wrong particular, may furnish a statement or a revised statement before the expiry of **2 years** from the end of the financial year in which the specified service was provided.
- If he fails to furnish the statement - then Assessing Officer may serve a notice upon such assessee.
- **Penalty for failure to furnish the Equalisation Levy Statement**
 - Penalty for failure to furnish statement – Rs.100 for each day during which the failure continues.
 - If a person makes a false statement, then he shall be punishable with Imprisonment for a term which may extend to 3 years and with fine.
 - Prosecution shall also be instituted against the assessee which shall be made only with the previous sanction of the Chief Commissioner of Income-Tax.

✚ **Equalisation Levy (EL) Statement thus furnished, shall be processed and duly verified electronically under digital signature or under EVC. (u/s 168 of the Chapter)**

✚ **AN AMENDMENT IN FINANCE ACT, 2018 - Significant Economic Presence**

- As per Income Tax Act, 1961 Non-Resident Taxation depends on, the income that the assessee receives/deemed to receive **or** accrue/ deemed to accrue in India.
 - The income shall be deemed to accrue/arise shall depends on the “Business Connections” in India.
 - It is further clarified that “Significant Economic Presence” in India shall constitute business connection in India.
 - Significant Economic Presence (“SEP”) shall mean
 - transaction in respect of any Goods, Services or Property carried out by a non-resident in India, if the aggregate of payments arising therefrom exceeds prescribed amount.
- &**
- systematic and continuous soliciting of business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means.
 - *Provided that transactions or activities shall constitute SEP in India, whether or not*
 - *The agreement for such transactions or activities is entered in India or*
 - *The non-resident has a residence or place of business in India*
 - *The non-resident renders services in India.*

✚ **Conclusion:**

Taxation of digital economy is same under both the concepts i.e., Equalization Levy (EL) and Significant Economic Presence (SEP), however, it varies in terms of scope. The scope of Equalisation levy is limited only to certain online advertisement and related services. On the other hand, the scope of ‘Significant Economic Presence’ is much wider in terms of digital services provided or the kind of digital activity undertaken by the non-resident.

The concept of SEP is much broader than Equalisation Levy. SEP would result in Business Connection whereas Equalisation Levy be levied where there is no PE. Further, SEP covers the services which are covered under Equalisation levy regime, giving rise to overlapping of services covered under both the

concepts. However, there is no double taxation on due to overlapping of services. It is because income which is subject to equalisation levy is exempt from income tax as per section 10(50) of the Income Tax Act,1961.