

Extended scope of Equalization Levy as per Finance Act 2020

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Background of Equalization Levy

Background of Equalization Levy

- Equalization levy ('EL') was **introduced in Finance Act 2016** as an alternate mechanism of taxation for digital transactions
- EL takes cue from **BEPS Action Plan 1** dealing with challenges in digital economy
- EL is **not** a form of income tax and thus, no treaty benefit is available on EL
- EL is collected in a manner which is **similar to withholding tax**, i.e. payer deducts EL from the payment made.
- EL, at the **rate of 6%**, is required to be deducted by payer in India while making payment of consideration for specified services provided by non-resident
- Amounts on which EL is chargeable are **exempted from income tax**
- '**Specified service**' means online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement
- EL is **not charged** if:
 - Non-resident providing specified services has a PE in India and specified services is effectively connected to such PE
 - The payment for specified services is **not for the purpose of carrying out business or profession**
 - The aggregate consideration for specified services **does not exceed INR 1 Lakh** in any previous year.



A hand holding a red credit card over a laptop displaying an e-commerce website. The laptop screen shows various products, including a smartphone and a watch, with a prominent 'UP TO 70% OFF' banner. The background is a soft, out-of-focus light source.

Applicability and extended scope of EL



Applicability and scope of EL

Criteria	Description
Applicable on	E-commerce operator
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
Scope of supply/ services	E-commerce supply or services made or provided or facilitated: i) to a person resident in India ii) to a non-resident in the specified circumstances iii) to a person who buys such goods or services or both using internet protocol address located in India
E-commerce supply or service means	i) online sale 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 activities listed in clause (i), (ii), or (iii)



Applicability and scope of EL

Criteria	Description
Specified circumstances where EL will be levied even if supply or services are consumed by non-resident	1) Sale of advertisement , which targets a customer, who is resident in India or customer who accesses the advertisement through internet protocol address located in India; and 2) Sale of data , collected from a person who is resident in India or from a person who uses internet protocol address located in India
Amount covered	Consideration received or receivable by e-commerce operator for above scope of supply or services
Rate of EL	2% on gross basis
Applicable from	1 April 2020





Payment mechanism

Payment mechanism

- The **non-resident e-commerce operator** is **required to pay** EL on its own account.
- Payer is not required to deduct EL from consideration payable to e-commerce operator.
- The EL is required to be paid in **quarterly instalments** as per below schedule:

Payment dates	For 1st Quarter:	7 th July
	For 2nd Quarter:	7th October
	For 3rd Quarter:	7th January
	For 4th Quarter:	31st March





Exclusions from extended scope of EL

Exclusions

Where the **e-commerce operator has a PE** in India and such e-commerce supply or service is effectively connected with such PE

Where EL is **already leviable under existing scope** provided in Section 165 of Finance Act 2016

Sales/turnover/gross receipts **do not exceed INR 2 crores** during the previous year



Statement of EL



Statement of EL

- Statement of EL is required to be filed by **30th June** immediately succeeding the end of previous year.
- Statement of EL under the extended scope will be required to be **filed by the non-resident e-commerce operator**.





Challenges and way forward

Challenges and way forward

- Multifold challenges are in implementation of the extended scope of EL.
- Foremost challenge would be to enforce such compliance on non-resident e-commerce operators.
- Many of the existing payments which are otherwise taxable under the Act, will now be governed by extended scope of EL. Form 15CB will be required to be issued in consonance with this change.
- Ambiguity in the language of Section 10(50)
- The Multinational Enterprises (MNEs) which collect consolidated charges from their constituent group entities, will be required to segregate the charges which may be subject to EL.
- There is an ambiguity as to whether the EL will be applicable on third e-commerce operators receiving consideration from foreign MNEs, rather than receiving it directly from entities resident in India.
- MNEs will have to put in place robust IT system to track the orders/bookings which have been made using internet protocol address located in India.
- EL would be required to be paid even on supply or service which is consumed by a non-resident but was booked while being in India and using an internet protocol address located in India
- Non-resident e-commerce operator may face challenge to claim tax credit of the EL in its home country



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