



Damania & Varaiya
Chartered Accountants

TAX ALERT

Equalisation levy of 6% on digital ad:

The said levy has been notified w.e.f. 01st June, 2016.

Considering the potential of new digital economy and the rapidly evolving nature of business operations it is found essential to address the challenges in terms of taxation of digital transactions as the typical direct tax issues relating to e-commerce are the difficulties of characterizing the nature of payment and establishing a nexus or link between a taxable transaction, activity and a taxing jurisdiction, the difficulty of locating the transaction, activity and identifying the taxpayer for income tax purposes. In order to address these challenges, a new Chapter titled “**Equalisation Levy**” in the Finance Bill has been introduced, to provide for an Equalisation levy of **6%** of the amount of consideration for specified services received or receivable by a non-resident not having permanent establishment (‘PE’) in India, from a resident in India who carries out business or profession, or from a non-resident having permanent establishment in India.

The government has found a way to indirectly tax companies such as Google and Facebook, a development which could set the stage for taxation of cross-border digital transactions and potentially drive up costs for advertisers.

Let us look into its intricacies as under: -

1. Extent and Commencement:

Provisions relating to equalization levy (i.e. Chapter VIII of Finance Bill, 2016) extend to the whole of India except the State of Jammu and Kashmir.

2. Definitions:

“Specified service” means **online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement** and includes any other service as may be notified by the Central Government in this behalf.

3. Charge of/exemption from Equalisation levy:

- a) A person resident in India and carrying on business or profession; or
- b) A non-resident having a permanent establishment in India

Have to charge/deduct at the rate of 6% of the amount of consideration for any specified service, paid or payable to a non-resident.

However, in following cases Equalisation levy **shall not be charged**:-

- a. The non-resident providing the specified service has a permanent establishment in India and the specified service is effectively connected with such permanent establishment.
- b. The aggregate amount of consideration for specified service received or receivable in a previous year by the non-resident from a person obliged does not exceed Rupees One lakh or
- c. Where the payment for the specified service is not for the purposes of carrying out business or profession.

4. Payment of Equalisation levy and Interest/penalty:

- a) **Payment of Equalisation levy deducted:** - by the 7th day of the month immediately following the said calendar month.
- b) **Interest on delayed payment:** Simple interest @ 1% of such levy for every month or part of a month
- c) **Penalty for failure to deduct Equalisation levy:** Pay in addition to such levy and interest, a penalty equal to the amount of equalisation levy that he failed to deduct.
- d) **Penalty for failure to pay Equalisation levy:** The levy which has been deducted but not paid, a penalty of **Rs. 1,000/- for every day** during which the failure continues. The penalty under this clause shall however not exceed the amounts of Equalisation levy that he failed to pay.

Note: - The penalty under this Chapter shall not be levied unless the assessee has been given a reasonable opportunity of being heard.

5. Furnishing of statement:

Statement/return of Equalisation levy shall be filed annually i.e. after the end of each financial year.

6. Punishment for false statement:

The assessee shall be punishable with imprisonment for a term which may extend to three years and with fine.

7. In order to avoid double taxation, **exemption under section 10 of the Act** for any income arising to a non resident from providing specified services on which equalisation levy is chargeable.

8. In order to ensure compliance with the provisions this Chapter, the expenses incurred by the assessee towards specified services chargeable under this Chapter shall not be allowed as deduction in case of failure of the assessee to deduct and deposit the equalisation levy to the credit of Central government.

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