

Equalization levy

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Background

The world has long moved on from bricks and mortar denoting a place of business. No longer does a business need to have a storefront or an office in a country in order to trade or provide service. Businesses in this era have become more strategic about where they base their headquarters to avoid or reduce tax. Progress is impossible without change, and those who cannot change their minds cannot change anything. Therefore governments all over the world are finding ways for taxing such business.

The Birth of Equalization Levy:

Many online advertisement portals (e.g. Google, Facebook, Twitter) are Non Residents and do not have permanent establishments in India. Many Resident assesses make payment to them for advertisement and claim as a business expenditure under section 37 of the Income Tax Act, 1961. Now India losing its revenue since payer gets the deduction and amount received by payee is not taxable.

India's finance minister introduced an equalization levy to tax digital economy transactions on 29 February 2016, as part of his budget proposals. In accordance with the Organization for Economic Co-operation and Development (OECD)'s view as part of the global Base Erosion and Profit Shifting (BEPS) recommendation to tax e-commerce transactions "Equalisation Levy" was introduced in India in the year, 2016 vide notification no. 37/2016 as per Finance Bill 2016 with effect from 1st of July 2016. Equalisation Levy at the rate of six percent should be deducted.

Incidence of Charge

Equalisation Levy is applicable if payment is made by a resident or non resident having a permanent establishment in India to a non resident not having a permanent establishment in India for providing specified services. The term specified service means online advertisement or any provision of digital advertisement space or any other facility or service for the purpose of online advertisement. The levy is applicable only if an annual accrued payment to a single service provider exceeds one lakh rupees.

How to comply

The business having permanent establishment in India have to withhold 6 % from payment payable to non resident and remit it to the central government by the 7th of the following month. The same must be remitted through Challan no. 285, which can be paid either online or through authorized banks. An Annual Form 1 has to be filled by 30th June from the end of the financial year with the details of payments made to every non resident for these digital services provided as well as details of equalization levy withheld and deposited with the government.

Non-compliance

In case the assessee fails to deduct whole or part of this levy a penalty equal to the amount of levy shall be imposed along with a rate of interest at 1% on such levy for every month or part of the month until payment made. In case the assessee has deducted but not paid, then he shall pay an interest at the rate of 1% on such levy for every month or part of the month along a penalty of Rs. 1000 for every day

during which failure continues, however the penalty shall not exceed the amount of equalization levy payable. In case the assessee fails to file Form 1 within due date the same can be filed within two years from the end of the financial year along with a fine of Rs. 100 for each day during which the failure continues.

Effect of Levy

The total Revenue Collection during the period 1st June 2016 to 31st March 2019, the Central Government has earned a meagre amount of Rs. 1,800 crores (in 2018-19 Rs. 1,000 crores, 2017-18 Rs. 560 cr. and 2016-17 Rs. 200 crores approx.) as equalization levy.

Shortcomings

As per Section 10(50) of Income tax act, income of a non resident from specified services is exempt provided the same is subject to equalization levy. However, it does not mean that the income of the non resident from the specified services would be charged to income tax if the same is not chargeable to equalization levy. Also the penalty for failure to deduct this levy falls on the service recipient rather than the service provider.

Through equalization levy has brought in certain multinational digital entities without permanent establishment within its scope increasing the tax base it would be of much significance if the definition of specified service is widened.