

Key Notes:-

1. Since it is direct entry in Act objective is not described separately but it seems to cover wide range of digital transactions by Non resident EC operators which otherwise was difficult to tax in old convention
2. Equalisation Levy paid to central government is currently not eligible for tax credit in foreign country; so additional cost
3. Equalisation Levy @ 6 % is not levied on personal advertisement services provided by Non-resident. Whereas, Equalisation Levy @ 2 % is also levied on sale of goods or services for personal use.
4. FA 2020 amendment is trying to reach extra territorial jurisdiction to tax a Non resident EC-operator. So interesting to see the administration by Tax office
5. If deductible Equalisation Levy has not been deducted or paid by resident payer @ 6% for advertisement services before the due date specified in section 139(1), then the consideration paid or payable to non-resident shall be disallowed while computing the income under the head PGBP.
6. Income arising from ecommerce supply or services which is covered by Equalisation Levy is exempt from tax under section 10(50), to avoid double taxation.
7. Signing of Multilateral Instrument (MLI) might unwind the situation to certain extent.

Particulars	Section 194 O	Equalisation levy		Section 9
		6%	2%	
Status of Payer paying consideration	Resident / Non Resident	Resident	Resident / Non Resident*	Resident / Non Resident
Obligation of tax payment	EC- Operator to withheld	Resident Payer (refer to note no 5)	EC- Operator	EC- Operator
Services provided to	Resident E-commerce participant	Resident Business entities	Resident / Non Resident	Resident / Non Resident
Services provided by	EC operator	Non-Resident	Non-Resident EC operator	Non Resident
Services Covered	Any sale of Goods /provision of Services	Advertisement services received or receivable	Sale of data and online sale of goods & provision of services owned or facilitated by EC operator. And For Non-resident Sale of data & Advertisement connected to India	Sale of Advertisement or sale of data and online sale of goods & services
Rate	1%, 5% if PAN is not available	6%	2%	Taxable as business profit
Interest on non-payment of tax	12% to be paid by EC- operator.	12% to be paid by the payer.	12% to be paid by EC operator.	Interest on non payment of tax
Limit	Sales of EC-participant is > Rs. 5 lakhs	Amount of consideration should exceed one lakh rupees.	Sales or gross receipts of the EC-operator > Rs. 2 crores during the previous year.	As will be prescribed
E Return	EC operator	Payer of Equalisation Levy (Resident)	EC operator (Non-resident)	Income tax return

* Non-resident only in case of Sale of data & Advertisement connected to India

Concluding Remarks:

In the nutshell, the levy, has now been expanded to cover digital E-commerce transactions provided by EC operator to resident as well as to non resident. This might lead into increase in cost of digital service if burden of tax is passed on to consumers

Disclaimer:

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