



Equalization Levy 2.0 or 2.1 – The Pandora's Box Just Got Deeper

Equalization Levy was first introduced in Finance Act, 2016. At the initial, it was restricted to only online advertisement/ digital advertising space and was charged on the non-resident entity, but the payment for the same was to be done by the service recipient in India. The rate of levy for such services was kept at 6%.

Then came the Budget 2020, in which the scope of Equalization Levy was expanded, thus a new category of services was added to it, thus making it as Equalization Levy 2.0. In this, the scope of levy was expanded by defining the term e-commerce operator in a broader way and including online sale of goods and provision of services into its ambit. Further, such new inclusions were subject to levy at the rate of 2%, however, those services which were covered under the earlier provisions of Equalization Levy were still chargeable at a higher rate of 6%.

Under the Equalisation Levy 2.0, the onus of depositing the tax was shifted to the non-resident service provider along with furnishing of statement. Since the onus of deposit of levy and furnishing of the statement was shifted to the non-resident, it became mandatory for them to obtain Permanent Account Number in India and do the compliance of furnishing the statement for such levy deposited.

Now, in the Budget 2021, where the taxpayers were expecting clarity and some relaxations from the Government, the proposed amendment seems to have further expanded the scope and opened few points to litigation:

- **Exclusion of royalty and fees for technical services** – The proposed amendments have excluded royalty and fees from technical services out of the ambit of Equalisation Levy 2.0. Thus, where in case the payment is made online, but is characterised as royalty or fees for technical services, such payment will not be considered for Equalisation Levy 2.0, though the normal provisions of withholding tax shall apply. However, where a payment is characterised as subject to equalisation levy by the payer, and no withholding tax is withheld at the time of making such payment, but later the same is held as payment for royalty or fees for technical services by the tax officer, it will not preclude the tax officer to disallow the same as expense in the hands of the resident taxpayer and hold such resident tax payer as an assessee in default for not withholding tax on such payment made to the non-resident. Thus, one can say that the proposed amendment is an attempt to plug the arbitrage which was otherwise available to the taxpayer by subjecting the transaction to a levy of 2% as compared to 10% (or such higher rate) withholding tax rate.
- **Expanding the scope of online sale of goods and provision of services** – The proposed amendments have included acceptance of offer for sale, acceptance of the purchase order, placing the purchase order, payment of consideration and partly or wholly supply of goods /services as activities covered the scope of Equalisation Levy 2.0. Such amendment in the activities will make the provisions wide enough to cover any stray transaction which may not have been intended to be done online, but a single step done online will make it in entirety subject to Equalisation Levy 2.0.

- **Expanding the scope of consideration** – The proposed amendments have expanded the scope of consideration that will be now subject to Equalisation Levy 2.0. The inclusion of entire payments that exchange hands in a marketplace model irrespective whether the online platform owns the goods or not or is merely acting as facilitator or where the consideration is paid through online platform, but the services are rendered offline, will make the provisions more burdensome for the non-resident taxpayers.

Lastly, it is to be noted that some of these amendments have been proposed to be retrospective, i.e. from the date from which Equalisation Levy 2.0 was applicable being 1st April, 2020 in this case. Accordingly, it will be the need of the hour for the non-resident, who are engaged in sale of goods or provision of services through online platform and have Indian customers to re-visit their past transactions to check the liability for such levy, unless, the Finance Act provides some relaxation for the past transactions.

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