

## The Equalisation Levy

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### Background

Business is changing and so is the TAX. Now physical presence is not must to have to serve client but client can be served remotely using internet – Digital Business and Digital Economy. Similarly while originally tax laws were focusing on taxing the profit on the parameters of physical presence but now tax authorities of countries looking to tax digital business in one way or the other. Basic idea is to tax the profit on parameter based on the place where **users are there, value is being created and economic activity is carried out** rather solely based on the physical presence of business. Currently most of the countries are working for consensus and in the meantime has levied taxes, named either as Equalisation levy or some other name. Government of India is working on the same lines as well and decided to charge “Equalisation Levy” (“EL”)



Government of India, has levied Equalisation levy as an interim tax collection measure back in year 2016. At that time it was limited to online advertisement only – Levy @6% on the online advertisement services provided by non-resident entities. Now Indian Government has extended its scope to cover online provisions of services/supply of goods vide Finance Act 2020.

### What’s implication on business?

New equalisation levy may be applicable on your business and be a cost for your business. When it comes to services, the extended scope will cover entities providing online services such as:

- Online education/vocational courses,
- Online provision of software,
- Online assistance in web designing, web hosting, other tools pertaining to IT & ITES
- Providing cloud services, Software as a Services (“SaaS”), Infrastructure as a services (“IaaS”), PaaS,
- Online subscription of magazine – be it general one or pertaining to any specific field such as fashion, legal, accounting, educational or professional etc.
- Online provisions of data, sale of pictures, images, information etc.

### What is the extended scope of Equalisation Levy?

**The Charge-** Equalisation Levy will be charged @2% of the consideration received or receivable by an e-commerce operator pertaining to **specified transactions** entered into with certain **specific set of person**.

- E-commerce operator means a non-resident who owns, operates or manages a digital or an electronic facility or platform for online sale of goods or online provision of services or both
- No EL is to be paid if sales, turnover or gross receipts, as the case may be, of the e-commerce operator from the e-commerce supply or services made or provided or facilitated is less than INR 2 crore (~USD

0.3 mn) during the period 1st April to 31st March.

- Transactions which are liable to EL, provided in other sections pertaining to advertisement (which is liable @6%) – no EL to be paid under this section of the Act.

### The Specified Transactions covered:

- Online sale of goods or provision of services provided by the e-commerce operator;
- Online sale of goods or provision of services or both, facilitated by the e-commerce operator
- Any combination of above-mentioned activities



### The specific set of persons with whom transaction are covered:

Consideration received or receivable for the transaction entered into with any of the following persons (Individual or business entity):

- Person tax resident in India
- Person Non-resident in following circumstance:
  - **Sale of advertisement**, which targets a customer who is resident in India or a customer who accesses the advertisement through internet protocol (IP) address located in India
  - **Sale of data**, collected from a person who is resident in India or from a person who uses internet protocol address located in India
- Person (resident in India or non-resident in India) who buys such goods or services or both using IP address located in India

### Other important points:

- **Equalisation levy (“EL”) is applicable with effect from 1st April 2020 with first compliance due date on 7th July 2020.**
  - Transaction liable for EL, will not be taxed under Income Tax Act, 1961 but from financial year 2021-22 – Section 10(50) of Income Tax Act.
  - Equalisation levy shall not be charged if the e-commerce operator has a PE (a place of business in India which is liable for Indian taxes) in India and the service is effectively connected with such PE.
  - All compliances to be done by the eCommerce Operator - EL to be deposited quarterly by eCommerce and annual return to be filed by eCommerce operator. No compliance requirement as such on the buyer/payer.
  - EL is not a part of income tax, meaning thereby
- Benefit of tax treaties are not available on EL;
  - Foreign entities paying EL in India, may not be able to get credit in their residence country.

Compliance/Action	Periodicity	Period Covered	Due Date
<b>Deposition of EL to Indian Govt.</b>	Quarterly	1st April to 30th June	7th July
		<b>1st July to 30th Sept</b>	<b>7th Oct</b>
		1st Oct to 31st Dec	7th Jan
		<b>1st Jan to 31st March</b>	<b>31st March</b>
<b>Filing of annual statement of EL</b>	Annual	1st April to 31st March	30th June

### Consequences on Non Compliance:

#### On e-Commerce Operator

- Non deposit of EL – Interest to be paid @1% per month or part of the month.
- Non deposit of EL – Penalty equal to 100% of EL not deposited.
- Non submission of annual statement – Penalty of INR 100/- per day of default.

#### On Customer

Although customer is not under obligation to deposit EL or file annual statement, but tax office may treat him as a “representative” and in such case, customer may be asked to make compliance including but not limited to deposition of EL

**Bird's eye view - A brief questionnaire to know the applicability of equalisation levy on your business**

Ø Annexure -1 - Questionnaire for e-Commerce Operator

**Annexure -1**

<b>Should your business do a deep dive and check applicability of EL on its revenue - Bird's eye view</b>			
<b>Questions</b>	<b>Select your answer</b>		<b>What your answer suggest</b>
<b>Question - Pertaining to your business</b>			
Ø You owns, operate or manages - digital or electronic platform for sale of services and/or goods	Yes	No	If your answer is "Yes" for these questions - Please check the applicability of newly imposed EL on your business
Ø You are providing/selling your services/goods using online/digital platform such as  Your web portal  Web-portal of third party  E-commerce operator	Yes	No	
Ø Your turnover is more than INR 20 million (~USD 0.30 mn) from the Specified customers and Specified Transaction	Yes	No	
Ø Your business does not have Permanent Establishment in India, engaged in providing specified services to specified customers	Yes, We don't have	No, we have	
<b>Question - Pertaining to your specified customer</b>			
Ø Your customers are Indian resident	Yes	No	If your answer is "Yes" for these question - Please check the applicability of newly imposed EL on your business
Ø Your customer may not be Indian resident but procuring services/goods using Indian IP address	Yes	No	
Ø Your direct customer are not Indian resident but revenue pertains to  sale of advertisement, which targets Indian resident customer or a customer who accesses the advertisement though IP address located in India;  sale of data, collected from a person who is resident in India or from a person who uses IP address located in India.;	Yes	No	
<b>Questions - Pertaining to your transactions</b>			
Ø You are selling goods using online/digital platform	Yes	No	

<p>Ø You are providing your services (example of services as under) through online/digital platform</p> <ul style="list-style-type: none"> <li>• Online education/vocational courses,</li> <li>• Online assistance in web designing, web hosting, other tools pertaining to IT &amp; ITES</li> <li>• Providing cloud services, Software as a Services (“SaaS”), Infrastructure as a services (“IaaS”), PaaS,</li> <li>• Online subscription of magazine – be it general one or pertaining to any specific field such as fashion, legal, accounting, educational or professional etc.</li> <li>• Online provisions of data, sale of pictures, images, information etc. - Online transfer of software**</li> </ul>	Yes	No	<p>If your answer is "Yes" for these question - Please check the applicability of newly imposed EL on your business</p>
<p><b>Other relevant questions</b></p>			
<p>Ø Does your transactions are already taxable in India and taxes are being paid on that</p>	Yes	No	<p>If your answer is "Yes" for these question - New EL may not be applicable on you</p>
<p>Ø Does your transactions are already liable for EL @6% (pertaining to advertisement services)</p>	Yes	No	

Ø Annexure -2 – Questionnaire for Customer

**Annexure -2**

<b>Should your business do a deep dive and check applicability of EL on its procurement - Bird's eye view</b>			
<b>Questions</b>	<b>Select your answer</b>		<b>What your answer suggest</b>
<b>Questions - Pertaining to your Procurements</b>			
<input type="checkbox"/> Are you procuring services/goods using online/digital platform such as <ul style="list-style-type: none"> <li>· Web portal of supplier/service provider</li> <li>· Web-portal of third party (aggregator)</li> <li>· E-commerce operator</li> </ul>	Yes	No	If your answer is "Yes" for these questions - Please check the applicability of newly imposed EL on your business
<b>Question - Pertaining to vendor</b>			
<input type="checkbox"/> Your vendors are non-resident	Yes	No	If your answer is "Yes" for these question - Please check the applicability of newly imposed EL on your business
<input type="checkbox"/> You are not withholding income tax on these transactions	Yes, we don't withhold	No, We withhold	
<input type="checkbox"/> You are not paying equalization levy @6% (Earlier EL on advertisement)	Yes, we don't pay	No, we pay	
<b>Examples of services that may be covered under Equalization Levy</b>			
Online education/vocational courses,  Online assistance in web designing, web hosting, other tools pertaining to IT & ITES  Providing cloud services, Software as a Services ("SaaS"), Infrastructure as a services ("IaaS"), PaaS,  Online subscription of magazine - be it general one or pertaining to any specific field such as fashion, legal, accounting, educational or professional etc.  Online provisions of data, sale of pictures, images, information etc.  Online transfer of software**			
* Software is an area of litigation regarding applicability of income tax vis-à-vis EL			