UPDATES

Budget 2021 - Rationalisation Of Equalisation Levy Provisions (Part 2)

04 March 2021

This update covers:

In April 2020, the provisions of 2% equalisation levy (EL) were introduced for taxing digital transactions and the consequent income earned by foreign e-commerce companies in India. At the time, it was specified that EL would not be levied on the business income earned by a non-resident e-commerce operator from supply of service which is effectively connected to its permanent establishment (PE) in India. However, there was ambiguity on the scope of EL regarding other income streams of a non-resident e-commerce operator such as royalty and fee for technical services.

The Finance Bill, 2021 proposes to clarify and rationalise Equalisation Levy provisions applicable to e-commerce supply of goods or services.

Another issue that arose was in relation to the scope of EL on transactions which were conducted partly online and partly offline. Additionally, there was a mismatch between the effective date of provisions of EL i.e. 1 April 2020 and the exemption from income tax provisions to e-commerce transaction to which EL applied which started from 1 April 2021, thereby resulting in double taxation for such transactions for a period of one year.

These issues have been resolved through proposals presented in the Finance Bill, 2021 (Bill) as discussed below.

1 Royalty and fees for technical services payments excluded from the ambit of EL

The Bill clarifies that any consideration received or receivable for specified services and e-commerce supply of goods or services will not include consideration which is taxable as royalty or fees for technical services (FTS) in India under the Income Tax Act (ITA) read with the relevant treaty provisions. This is a welcome clarification as all licensing arrangements going forward will not be subject to EL once income tax has been paid on such royalty/FTS income earned from India.

2 Applicability of EL widened

EL is to be levied at the rate of 2% of the amount of consideration received or receivable by an e-commerce operator from 'e-commerce supply or services' made or provided or facilitated to specified persons. The definition of 'e-commerce supply or services' includes within its ambit 'online sale of goods' and 'online provision of services' and the Bill proposes activities that would be included within the ambit of 'online sale of goods' and 'online provision of services'. The impact of this amendment is that EL would be applicable even if a part of the transaction is concluded online.

The Bill also proposes that the consideration received or receivable from e-commerce supply or services will include:

a. consideration for the sale of goods irrespective of whether the e-commerce operator owns the goods; and

b. consideration for the provision of services irrespective of whether service is provided or facilitated by the e-commerce operator.

This amendment would also significantly broaden the scope of the EL provisions. The EL is now likely to apply on the total value of the sale of goods or provision of services facilitated by an online marketplace as opposed to being charged only on the commission earned by the platform.

3 Double taxation eliminated

While the EL provisions referred to above were made applicable from 1 April 2020, the ITA provides that any income arising from any e-commerce supply or services made or provided or facilitated on or after 1 April 2021 and chargeable to EL is exempt from income-tax. The Finance Bill proposes to correct this mismatch to provide for income-tax exemption on any income arising from any e-commerce supply or services made or provided or facilitated on or after 1 April 2020.

Our detailed updates on key tax proposals across different areas can be accessed through the links below:

1 Implications for InvITs and REITs

2 Rationalisation of Equalisation Levy provisions

3 Impact on mergers and acquisitions

4 Tax incentives for International Financial Services Centre

5 Key tax proposals for housing sector

6 Key tax proposals for employees

7 Other key proposals

8 Key indirect tax proposals