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Taxing E-Businesses - ESS EQL

What is the issue?

- With models of e-businesses evolving at a rapid pace, taxation around the same has become a huge debate between countries.
- In this context, here is an overview on the models of taxations globally and in India, and the concerns for Financial Services (FS) industry in this regard.

What is the G20 response?

- The G20 recognised this as a major issue requiring guidance around how countries should tax such e-businesses.
- The OECD, nominated by the G20, has put in a lot of efforts to develop a globally-acceptable tax model.
- The same is being debated across member nations.

What is the EQL that India introduced?

- In 2016, India introduced equalisation levy (EQL).
- This was to tax India-sourced income earned by a non-resident (NR) from online advertisements through digital means.
- This covers entities earning advertisement revenue from India through digital means, but not being subject to tax in India.
- Since its introduction, the government of India has seen EQL's contribution to the Indian exchequer increasing.

What is the recent change?

- In the course of the enactment of the India Budget 2020, the government expanded the scope of EQL with effect from April 1, 2020.
- It now covers within its ambit the e-commerce supply or services (ESS) provided by an e-commerce operator (EOP).
- It was a unilateral move by the government; while the OECD is yet to conclude its discussions.

What does this mean in practice?

- E-commerce operator (EOP) is defined as any NR who owns, operates or manages digital or e-commerce facility/platform for the online sale of goods

or online provision of services.
- [NR - as per Indian tax laws (ITL)]
- The ESS EQL shall apply to ESS made or provided or facilitated by EOP to a person, among other things -
    i. resident in India (or)
    ii. using internet protocol address located in India
- Also, it applies where the sales, turnover or gross receipts in a year exceeds Rs 2 crore.
- The consideration received shall be taxable at 2%.

What is the case with financial services industry?

- The ESS EQL shall apply to instances of e-commerce platforms situated outside India or online sale of software and the like.
- Notably, the financial services (FS) industry should be outside the purview of ESS EQL, as they are not EOP.
- However, given the language of the regulation and in the absence of any specific exclusion for the FS industry, it is not free from regulation.
- This can be illustrated below:
    i. an Indian company (ICo) has sold goods to a customer in the US through an e-commerce platform in the US
    ii. ICo has tied up with a money exchanger in the US to collect and remit the funds to ICo for a commission/fee
    iii. ICo makes payment to the merchant through a payment gateway (a NR entity), which charges network fees for the payments transmitted
- Prior to April 1, 2020, the afore-mentioned commission/fee was not subject to tax in India.
- This was because the NR did not have any presence in India.
- However, with ESS EQL in place, the consideration received by NR may now be subject to tax at 2%.
- The NR is required to obtain a tax ID in India and adhere to compliances.
- The failure of this would result in levy of interest and penalty.

What are the challenges involved?

- EQL is not administered under ITL, but it is governed by a separate legislation.
- Accordingly, the availability of treaty protection and foreign tax credit in the home jurisdiction for NR is likely to be a challenge.
- The objective of the government in expanding the scope of EQL was to cover supply of goods or services provided by NR.
- However, the financial services industry, too, has been covered within the ambit of ESS EQL.

- Now, ESS EQL may require the financial services players to relook at their commercial arrangements.
- This may, among other things, involve passing on transaction costs to customers in India.
- Countries like the UK, France and Spain have amended their digital tax laws to exclude the financial services industry.
- A clarification on similar lines from the Indian government will be welcomed by the financial services industry in India.

Source: Financial Express