

## **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**

