

EQUALISATION LEVY

Note: Consideration received or receivable for specified services and for e-commerce supply or services shall not include the consideration, which are taxable as royalty or fees for technical services in India under the Act, read with the agreement notified by government under section 90 or 90A of the Act.

SECTION 165: CHARGE OF EQUALISATION LEVY

Equalisation Levy shall be charged @ **6%** of the amount of consideration for any **specified service received or receivable by a non-resident** from—

- (i) a person resident in India and carrying on business or profession; or
- (ii) a non-resident having a permanent establishment in India.

Equalisation Levy under sub-section (1) **shall not be charged**, where—

- (a) **the non-resident providing the specified service has a permanent establishment in India** and the specified service is effectively connected with such permanent establishment;
- (b) **the aggregate amount of consideration for specified service** received or receivable in a previous year **does not exceed ₹1 lakh**; or
- (c) **where the payment** for the specified service by the person resident in India, or the permanent establishment in India **is not for the purposes of carrying out business or profession**.

Note 1: The resident in India or PE of Non-resident in India who is paying the amount to Non-Resident (Google) for online advertisement or for provision of digital advertising space has to deduct 6% equalization Levy and pay the balance to Non-Resident (Google).

Note 2: Section 40(a)(ib) provides or under:

- **Any consideration** paid or payable
- to a **non-resident**
- for a **specified service**
- on which **Equalisation Levy is deductible**, and
- such levy has **not been deducted** or after deduction, **has not been paid** on or before the due date specified in section 139(1)
- **shall be disallowed** while computing the income under the head P/G/B/P.

Where the Equalisation Levy has been deducted in any subsequent year or has been deducted during the previous year but paid after the due date specified in section 139(1), such sum shall be allowed as a deduction in computing the income of the previous year in which such levy has been paid.

Note 3: The amount received by Non-Resident (Google) is exempt from tax under section 10(50).

Note 4: Equalisation Levy deducted every month has to be paid to the credit of central Government by 7th of the next month.

Note 5: Failure to Deduct Equalisation Levy under section 165

The following consequences will be there:

- (a) Assessee has to pay Equalisation Levy and
- (b) Assessee has to pay a penalty equivalent to amount of Equalisation Levy he failed to deduct and
- (c) Assessee has to pay interest @ 1% per month/part of the month for the period starting from the date next to the date on which Equalisation Levy was to be deposited and ending on the date the Equalisation Levy is paid.

Note 6: Failure to pay Equalisation Levy in time

The following consequences will be there:

- (a) Assessee has to pay interest @ 1% per month/part of the month for the period starting from the date next to the date on which Equalisation Levy was to be deposited and ending on the date the Equalisation Levy is paid.
- (b) A penalty of ₹ 1,000/- per day for every day during which have failure continues, so however, this penalty shall be restricted to the amount of Equalisation Levy.

Illustration:

ABC Ltd., an Indian company, is carrying on the business of manufacture and sale of teakwood furniture under the brand name "PUREWOOD". In order to expand its overseas sales/exports, it launched a massive advertisement campaign of its products. For the purpose of online advertisement, it utilized the services of PQR Inc., a London based company. During the previous year 2022-23, ABC. Ltd. paid ₹5 lakhs to PQR Inc. for such services. Discuss the tax implications/TDS implications of such payment and receipt in the hands of ABC Ltd. And PQR Inc., respectively, if-

- (i) PQR Inc. has no permanent establishment in India
- (ii) PQR Inc. has a permanent establishment in India, and the service is effectively connected to the permanent establishment in India.

Answer:

- (i) **Where PQR Inc. has no permanent establishment in India**

In the present case, equalisation levy @ 6% is chargeable on the amount of ₹5,00,000 received by PQR Inc., a non-resident not having a PE in India from ABC Ltd., an Indian company. Accordingly, ABC Ltd. is required to deduct equalisation levy of ₹30,000 i.e., @ 6% of ₹5 lakhs, being the amount paid towards online

advertisement services provided by PQR Inc., a non-resident having no permanent establishment in India. Non-deduction of equalisation levy would attract disallowance under section 40(a)(ib) of 100% of the amount paid while computing business income of ABC Ltd.

(ii) Where PQR Inc. has permanent establishment in India and the service is effectively connected to the permanent establishment in India

Equalisation levy would not be attracted where the non-resident service provider (PQR Inc., in this case) has a permanent establishment in India and the service is effectively connected to the permanent establishment in India. Therefore, the ABC Ltd. Is not required to deduct equalisation levy on ₹5 lakhs, being the amount paid towards online advertisement services to PQR Inc. in this case.

However, tax has to be deducted by ABC Ltd. at the rates in force under section 195 in respect of such payment to PQR Inc. Non-deduction of tax at source under section 195 would attract disallowance under section 40(a)(i) of 100% of the amount paid while computing business income of ABC Ltd.

NEW EQUALISATION LEVY INTRODUCED BY FINANCE ACT, 2020 (SECTION 165A)

- 1. Date of Applicability :** 1st April, 2020
- 2. Applicable to: Non-Resident “E-Commerce Operator”.** Non- Resident E-Commerce means a Non-Resident who owns, operates or manages digital/ electronic facility or platform for online sale of goods or online provision of services or both. e.g. Alibaba China, AMAZON U.S.A.
- 3. Rate of Equalisation Levy: 2%**
- 4. Who has to pay Equalisation Levy:** Non-Resident E-commerce operator will pay Equalisation Levy to Indian Government.
- 5. Conditions for applicability of New-Equalisation Levy:**
 - (a) The Non-Resident E-Commerce operator should not have Permanent Establishment in India through which sale of goods or provision of services is made.
 - (b) The service is not covered by section 165 i.e., 6 % equalization levy.

The total sales, turnover or gross receipts of Non-Resident E-Commerce operator on which equalisation levy is chargeable should be ₹ 2 crores or more during the previous year.
- 6. Amount on which Equalisation Levy shall be paid :** The Equalisation Levy shall be levied on the amount of consideration received or receivable by Non-Resident E-Commerce operator from E-Commerce supply of goods and/or services provided by him to
 - (a) A person resident in India**
 - (b) A person who buys such goods and/or services using internet protocol address located in India**

- (c) A non-resident from sale of advertisement which targets a customer
 - Who is resident in India or
 - Who accesses the advertisement through internet protocol address located in India

- (d) A non-resident from sale of data collected from a person
 - Who is resident in India or
 - Who uses internet protocol address located in India.

Note: Consideration received/ receivable from e-commerce supply or services shall include:

Consideration for sale of goods/ provision of services irrespective of whether goods/ services are owned/ provided or facilitated by e-commerce operator so, however that it shall not include consideration for such sale/ provision by

- a resident in India or
- a permanent establishment of a non-resident where such sale/ provision is effectively connected with such permanent establishment.

7. Online sale of goods/online provision of services shall include one or more of following:

- (a) acceptance of offer for sale; or
- (b) placing of purchase order; or
- (c) acceptance of purchase order; or
- (d) payment of consideration, or
- (e) supply of goods or provision of services, partly or wholly.

8. Whether the amount on which Equalisation Levy paid taxable under Income Tax Act:

The amounts on which Non-Resident E-Commerce operator has paid Equalisation Levy is exempt from income tax under section 10(50).

9. When is Equalisation Levy to be deposited : The Non-Resident E-commerce operator will deposit Equalisation Levy for each quarter by the due date mentioned below:

Serial number	Date of ending of the quarter of financial year	Due date of the financial year
(1)	(2)	(3)
1.	30 th June	7 th July
2.	30 th September	7 th October
3.	31 st December	7 th January
4.	31 st March	31 st March

10. Interest for delay in payment of Equalisation Levy : 1% per month or part of the month by which payment is delayed.

11. Consequences of failure to Pay Equalisation Levy

The following three consequences will follow-

- (b) Non-Resident has to pay a penalty equivalent to the amount of Equalisation Levy and;
- (c) Non-Resident has to pay interest @ 1% per month or part of the month from the date Equalisation Levy was to be deposited till the date he deposits equalisation levy.

Illustration:

AMAZON U.S.A. is a non-resident E-Commerce operator which sells goods and provides services internationally.

The following information is provided to you in respect of sales of goods and services made by AMAZON U.S.A. for the year ended 31.03.2023.

1.	Sale of garments and perfumes to persons resident in India	₹ 150 Lakhs
2.	Sale of software to persons resident in India	₹ 10 Lakhs
3.	Sale of electronic items in Dubai to Non-Resident but the sales were booked using internet protocol address located in India	₹ 70 Lakhs
4.	Sale of Laptops in Germany to Non-Residents (Indian IP address is not used by any of the Non-Resident)	₹ 40 Lakhs
5.	SEPHORA U.K., a cosmetic giant runs advertisement on website of AMAZON U.S.A., advertising its product. AMAZON U.S.A. is paid, the following amount by SEPHORA U.K. for running the advertisement	
	(i) For clicks made from India	₹ 15 Lakhs
	(ii) For clicks made from outside India but using the IP address located in India	₹ 17 Lakhs
	(iii) For clicks made other than (i) & (ii)	₹ 65 Lakhs
6.	Amazon U.S.A. has a huge database of customers. MICROSOFT U.S.A. approaches Amazon U.S.A for provision of data. Amazon U.S.A. provides data to Microsoft U.S.A. and charges as under:	
	(i) Data relating to persons residing in India	₹ 14 Lakhs
	(ii) Data relating to persons residing out of India but using Internet Protocol address located in India	₹ 19 Lakhs
	(iii) Data not covered in (i) & (ii)	₹ 23 Lakhs

Answer:

It is presumed that AMAZON U.S.A. does not have any Permanent Establishment in India. On the following amounts. AMAZON U.S.A has to pay the Equalisation Levy @ 2%:

1.	Sale of garments and perfumes to persons resident in India	₹ 150 Lakhs
2.	Sale of software to persons resident in India	₹ 10 Lakhs
3.	Sales of electronic items in Dubai using IP address located in India	₹ 70 Lakhs
4.	Amount received from SEPHORA U.K. for advertisements	
	(i) Which targets customers resident in India	₹ 15 Lakhs
	(ii) Which targets customers using IP address located in India	₹ 17 Lakhs
5.	Amount received from MICROSOFT U.S.A. for sale of data	
	(i) of persons resident in India	₹ 14 Lakhs
	(ii) of persons using IP Address located in India	₹ 19 Lakhs
	Total	₹ 295 Lakhs
	Equalisation Levy 2 %	₹ 5.90 Lakhs