SATURDAY INTERNATIONAL TAX GYAN !!!

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EQUALISATION LEVY 1.0 – Google Tax

BEFORE EQUALISATION LEVY

Mr. Kaka wants to Advertisement for his Mithai business @Google

Bill raised by Google Inc of Rs. 2,00,000

Mr. Kaka

PE @ US
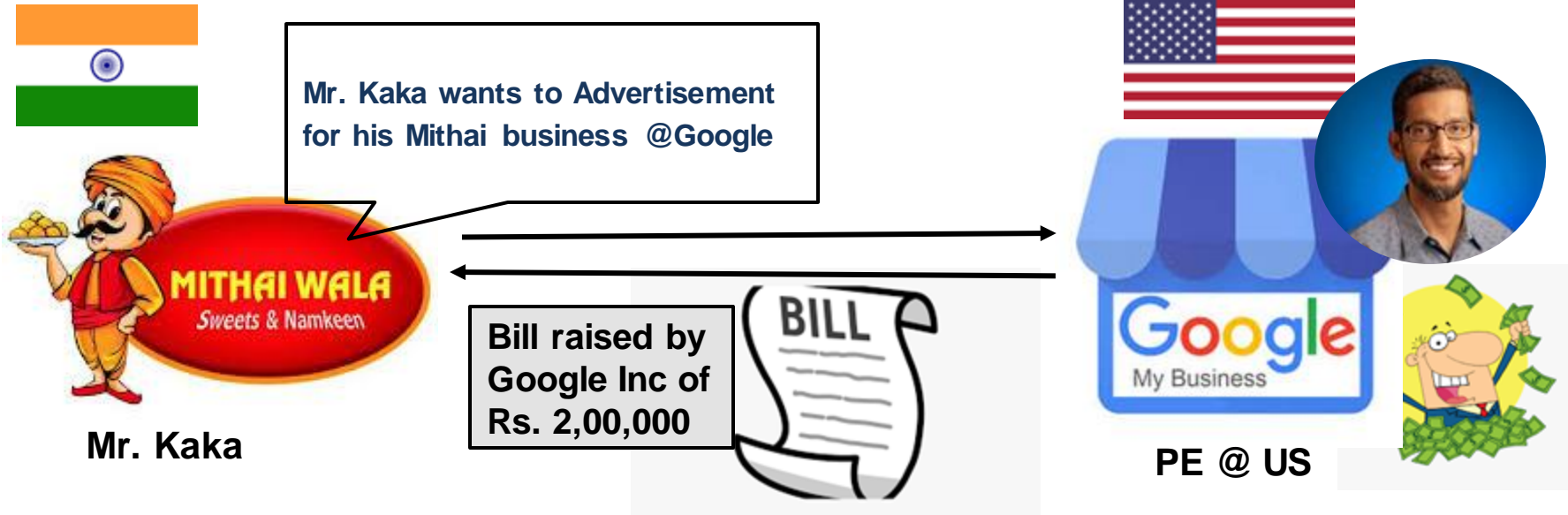
Let's assume Google Inc. does not have **PE** in India therefore, nothing is taxable in India

BACKGROUND OF EQUALISATION LEVY

❖ The digital economy in India was growing at a rapid pace, so it became necessary to address the challenges with regard to taxation of digital transactions at that time. Online advertisement companies like Facebook, Google and Yahoo were the beneficiaries of this increase in expenditure, with a major chunk of their revenue being generated from outside their country of residence.

❖ Such companies did not have to pay any tax in India, neither were they subjected to any withholding taxes, since the performance for the requested services were not executed in India. The revenue from these services rendered cannot be attributed to the operations of the Indian entity and due to the lack of a PE in India, no tax was applicable on the said income. Most of these companies were avoiding tax both in the country of source.

Because of which Equalization Levy was imposed. Equalisation levy is part of the Finance Act 2016 and not a part of the Indian Income Tax Act, 1961.

MEANING OF EQUALISATION LEVY (EL)

❖ According to section 164(d) of Finance Act, 2016. Equalisation Levy means the tax is leviable on consideration received or receivable for any **specified service** or e-commerce supply or services.

❖ Specified services means:
  ▪ Online Advertisement
  ▪ Any provision for digital advertising space or facilities/ service for the purpose of online advertisement.
  ▪ Any other service as may be notified by the Central Government in this behalf.

NOTE- Where 'Online' means a facility or service or right or benefit or access that is obtained through the internet or any other form of digital or telecommunication network

CHARGEABILITY OF EQUALISATION LEVY

❖ Section 165 of Finance Act, 2016 talks about the chargeability:

▪ Applicable rate of tax of 6% of gross consideration to be paid.

▪ It is a Direct tax to be withheld while payment is made to **Non-Resident service provider** by a Resident carrying business or profession OR a Non-Resident having PE in India.

▪ the levy will be applicable only on B2B transaction and not on B2C or C2C transactions.

WHEN EQUALISATION LEVY IS NOT CHARGEABLE ?

❖ When payment is made to a single service provider does not exceeds **Rs.100000** in a financial year..

❖ When Non-resident providing services has a PE in India and the specified services is effectively connected with such PE.

❖ When specified services received by a resident is not for the purpose of carrying out his business or profession.

S. 10(50) inserted under the Income-tax Act, **granting exemption** from income-tax on income which is chargeable to EL and hence eradicating the effects of double taxation.
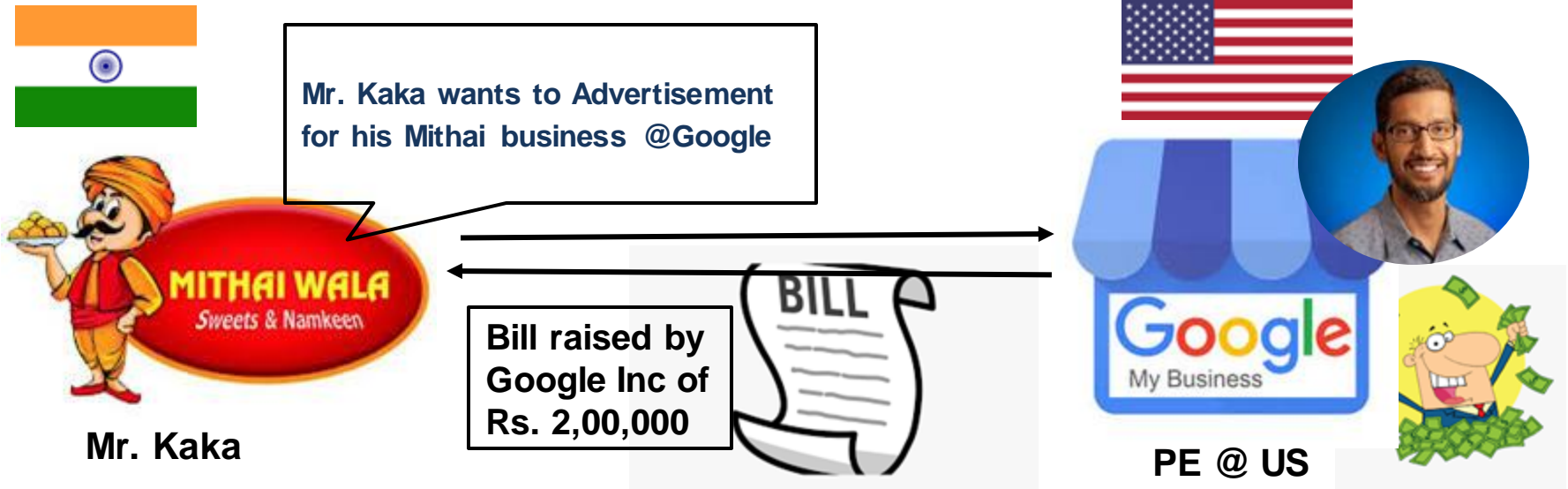
S. 40(a)(ib) inserted under the Income-tax Act, **disallowing 100% expense** on account of non deduction of EL.

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AFTER EQUALISATION LEVY

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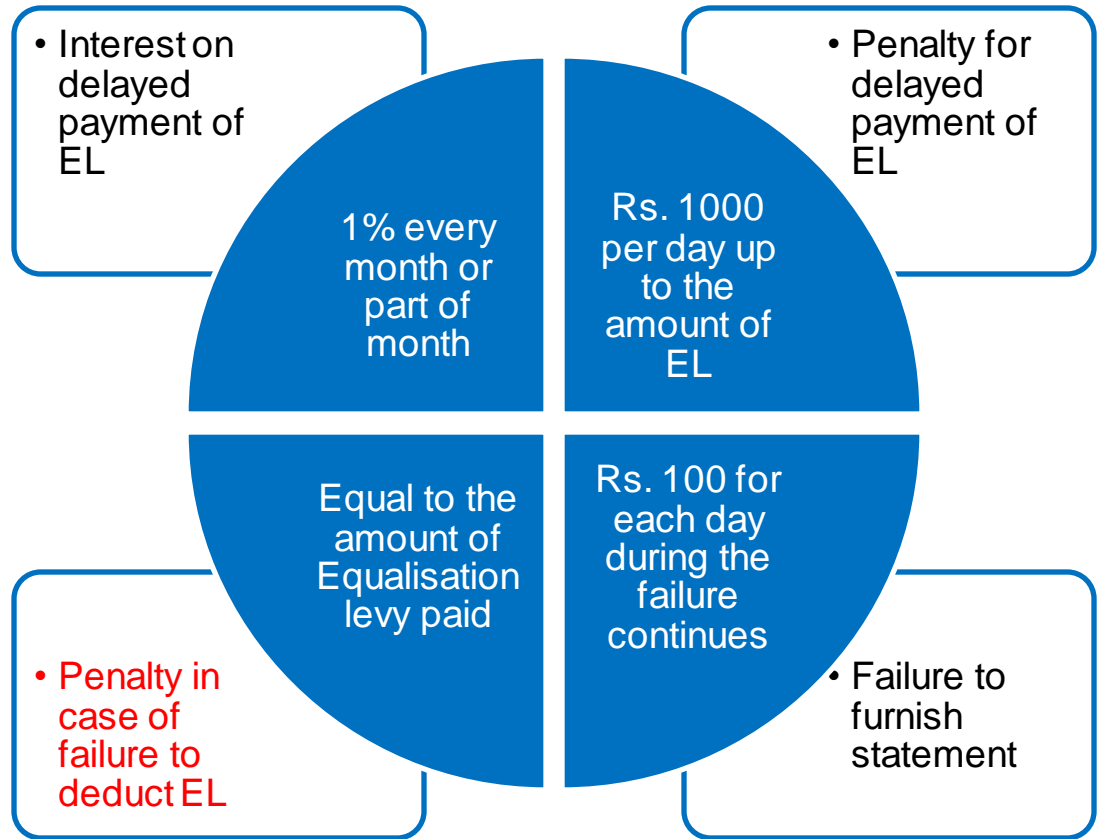PE @ US

- From 2016-17, Direct tax in the form of **Equalisation levy @ 6% i.e. Rs. 12,000 is required to be paid to Govt by Mr. Kaka.** (No mechanism for exemption or a lower rate, no reference to Section 206AA of IT Act)

- However, if amount of consideration received or receivable is less than **Rs.1,00,000** then EL not to be paid.

- In today's time all this big advertisement giants such as Google and Facebook have opened their companies in India and hence bills for such advertisement is raised by an Indian company and therefore equalisation levy is not applicable instead TDS is applicable on such transaction.

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Query	Solution
Who is responsible to levy Equalisation levy?	Resident carrying on business and profession in India OR a Non Resident having PE in India
When to deposit Equalisation levy?	EL levied shall be paid to the credit of Government by the **7th of month** immediately proceeding the said calendar month by depositing it online through **Challan No. 285**.
What in case Equalisation levy is not levied, wherever required?	Even if not levied, person responsible to levy still has to pay the amount **to be levied** to the credit of Government by the 7th of month immediately proceeding the said calendar month.
Whether any statement required to file?	Yes, statement in respect of all specified services, chargeable to EL shall be furnished electronically on e-filing portal in **Form 1** and duly verified, on or before **30th June** immediately following the financial year.
Whether the above discussed statement can be revised?	Yes, such statement can be revised before expiry of two years from the end of financial year in which specified services were provided.
Whether TAN and any other No. required to levy EL?	No, Only PAN No. is required.

INTEREST & PENALTY

- Interest on delayed payment of EL
  - 1% every month or part of month

- Penalty for delayed payment of EL
  - Rs. 1000 per day up to the amount of EL

- Penalty in case of failure to deduct EL
  - Equal to the amount of Equalisation levy paid

- Failure to furnish statement
  - Rs. 100 for each day during the failure continues

No penalty on failure of deduction or furnishing statement shall be if such person proves to the satisfaction of AO that there was some reasonable cause for such failure.
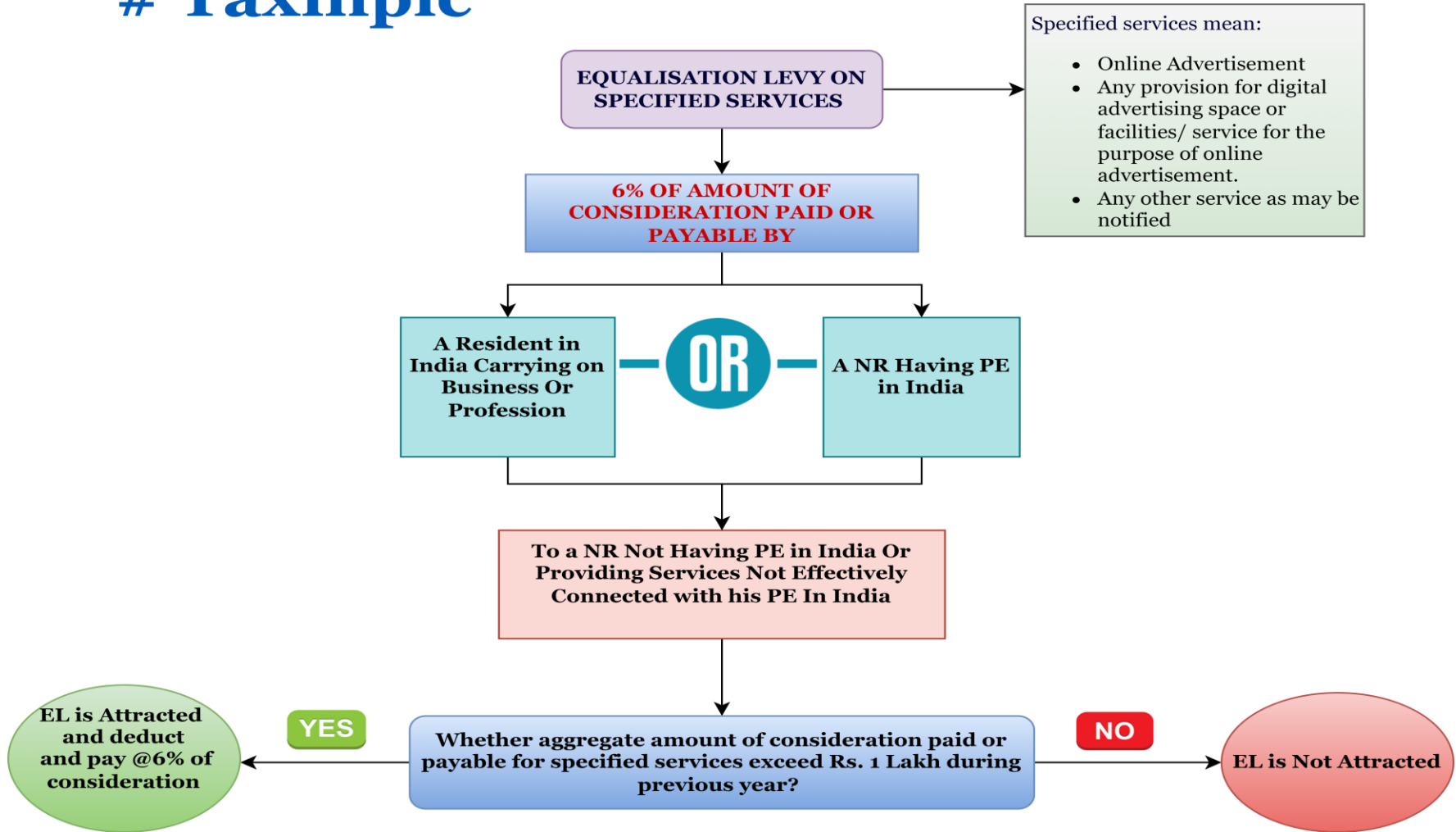
Who have power and authority to administer collection / filling /compliance of EL and handle cases related to EL. Whether appeal to CIT/ ITAT can be filed?

The Authority to check on the compliance of EL, will be similar to that prescribed under Income Tax Act, 1961. Also, assessee can file appeal against CIT/ITAT in the manner prescribed.

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EQUALISATION LEVY ON SPECIFIED SERVICES

Specified services mean:

- Online Advertisement
- Any provision for digital advertising space or facilities/ service for the purpose of online advertisement.
- Any other service as may be notified

6% OF AMOUNT OF CONSIDERATION PAID OR PAYABLE BY

A Resident in India Carrying on Business Or Profession

OR

A NR Having PE in India

To a NR Not Having PE in India Or Providing Services Not Effectively Connected with his PE In India

EL is Attracted and deduct and pay @6% of consideration

YES

Whether aggregate amount of consideration paid or payable for specified services exceed Rs. 1 Lakh during previous year?

NO

EL is Not Attracted

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Let's continue

Mr. Kaka have some query regarding Equalisation levy, so he approaches Mr. Keshav for solution.

Mr. Kaka

Mr. Keshav

1. What in case Mr. Kaka only pays Rs. 50,000 for advertisement to google and pays Rs. 75000 to Facebook for adv. Whether EL applies?

1. EL is applicable on payment to a single Non-resident exceeding Rs. 1,00,000 i.e. limit is checked for Google and Facebook separately. Hence, EL is not applied on transaction with both Google and Facebook as individual payment does not exceed Rs.1,00,000.

2. If Mr. Kaka paid the consideration in advance. Then when EL is levied?

2. EL is applicable when services are provided. As, service is not provided yet EL is not levied when only advance is paid.

3. If Mr. Kaka does not pay any advance but make a provision in books of account on estimated basis. When is EL levied?

3. EL is applicable when services are provided. As, services is not provided yet EL is not levied when just provision is made on estimated amount.

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Let's continue

Mr. Kaka

Mr. Kaka have some query regarding Equalisation levy, so he approaches Mr. Keshav for solution.

Mr. Keshav

4. What in case Mr. Kaka gives rasgulla to google instead of cash or cheque?

4. EL is only applied when payment is made in cash/cheque and not when payment is in kind.

5. What if Google refuses to pay EL and wants to get full amt as consideration. Mr. Kaka will gonna bear the i.e., EL is grossed up. Whether the provision of Grossing up is available?

5. There are 2 possible views:
   i. Mr. Kaka cannot gross up and he will pay the EL + Penalty discussed in slide no. 8
   ii. Mr. Kaka can gross up and will bear the EL payment as cost.

6. What in case Mr. Kaka also have a charitable trust namely, sweet trust. Sweet trust wants to advertise on Google. Whether provision of EL applies?

6. As discussed above EL is applicable only on B2B transaction and sweet trust is a charitable trust not carrying any business. Hence EL should not be applicable.

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