

SATURDAY INTERNATIONAL TAX GYAN !!!

#taxmadeeasy

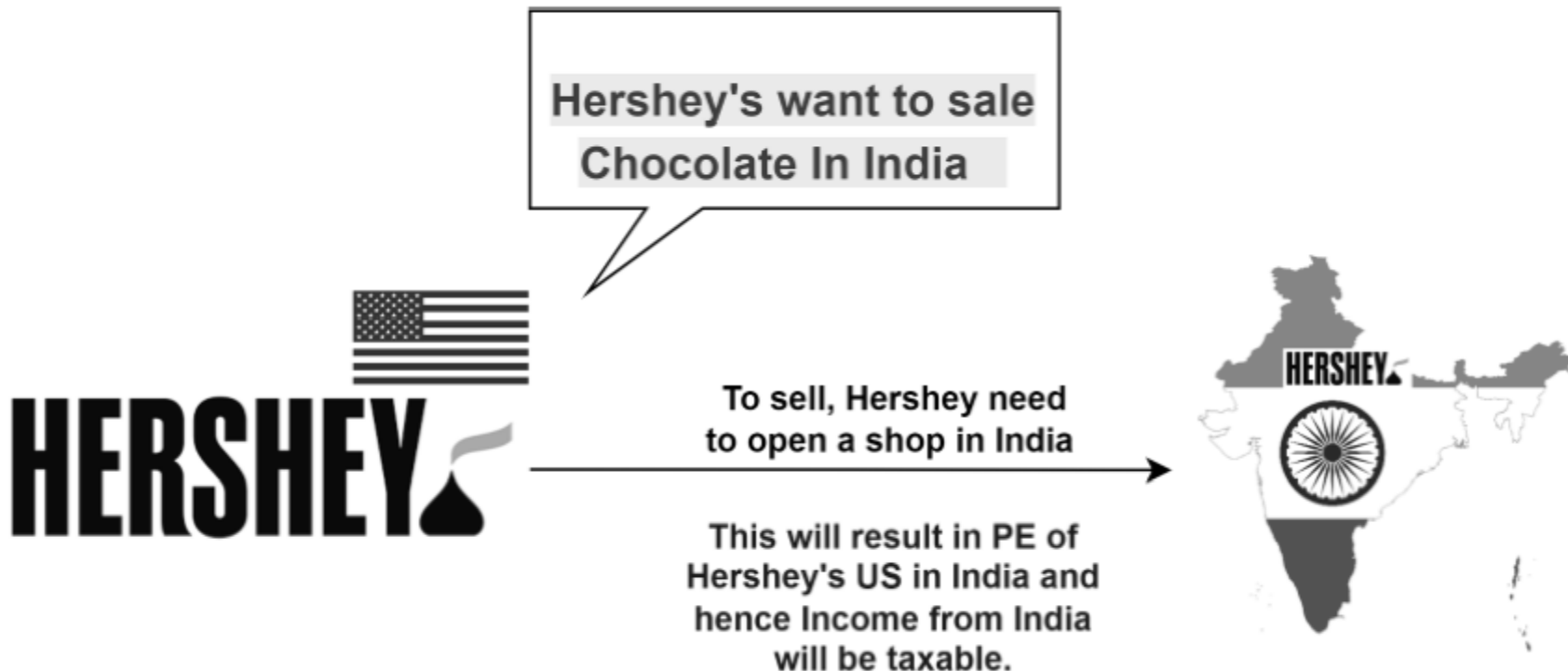


EQUALISATION LEVY 2.0





20 YEARS AGO





Present Day

**Hershey's want to sale
Chocolate In India**



To sell, Hershey has
created a digital
platform

**As Hershey does not have a
physical presence or PE in
India. Hence, No tax in India**

HURRAY!



**Digital Platform
of Hershey**

To Tax Such Digital transactions Equalisation Levy 2.0 was Introduced

MEANING OF EQUALISATION LEVY 2.0 (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**.
- ❖ **consideration received or receivable** from e-commerce supply shall include
 - ❖ consideration for the sale of goods irrespective of whether the e-commerce operator owns the goods
 - ❖ consideration for the provision of services whether service is provided or facilitated by the e-commerce operator.
 - ❖ However it shall not include consideration value received by it where goods or services are sold by person resident in India or has a PE in India.
- ❖ **E-commerce supply or services** mean:
 - ❖ Online sale of goods owned by the **e-commerce operator**; or
 - ❖ Online provision of services provided by e-commerce operator; or
 - ❖ **Online sale of goods or provision of services** or both facilitated by the e-commerce operator; or
 - ❖ or combination of any of the above listed activities.

MEANING OF EQUALISATION LEVY 2.0 (EL)

- ❖ **e-commerce operator** means a non-resident who owns operates or manages digital or electronic facility or platform for online sale of goods or online provision of services or both.
- ❖ **“Online sale of goods”** and **“online provision of services”** would include:
 - ❖ Acceptance of offer for sale; or
 - ❖ Placing of purchase order; or
 - ❖ Acceptance of purchase order; or
 - ❖ Payment of consideration; or
 - ❖ Supply of goods or provision of services, partly or wholly.

CHARGEABILITY OF EQUALISATION LEVY 2.0

- ❖ **Section 165A** of Finance Act, 2016 talks about the chargeability:
 - ❖ Equalisation Levy @2% would be chargeable on the amount of consideration received or receivable by an e-commerce operator from e-commerce supply or services made or provided or facilitated by it-
 - To a person resident in India
 - To a **non resident** in the **specified circumstances**
 - Sale of advt. targeting a customer resident in India or who accesses the advt. thro IPA located in India; and
 - Sale of data collected from a person resident in India or who uses IPA located in India.
 - To a person who buy such goods or services or both using internet protocol address located in India

WHEN EQUALISATION LEVY IS NOT CHARGEABLE ?

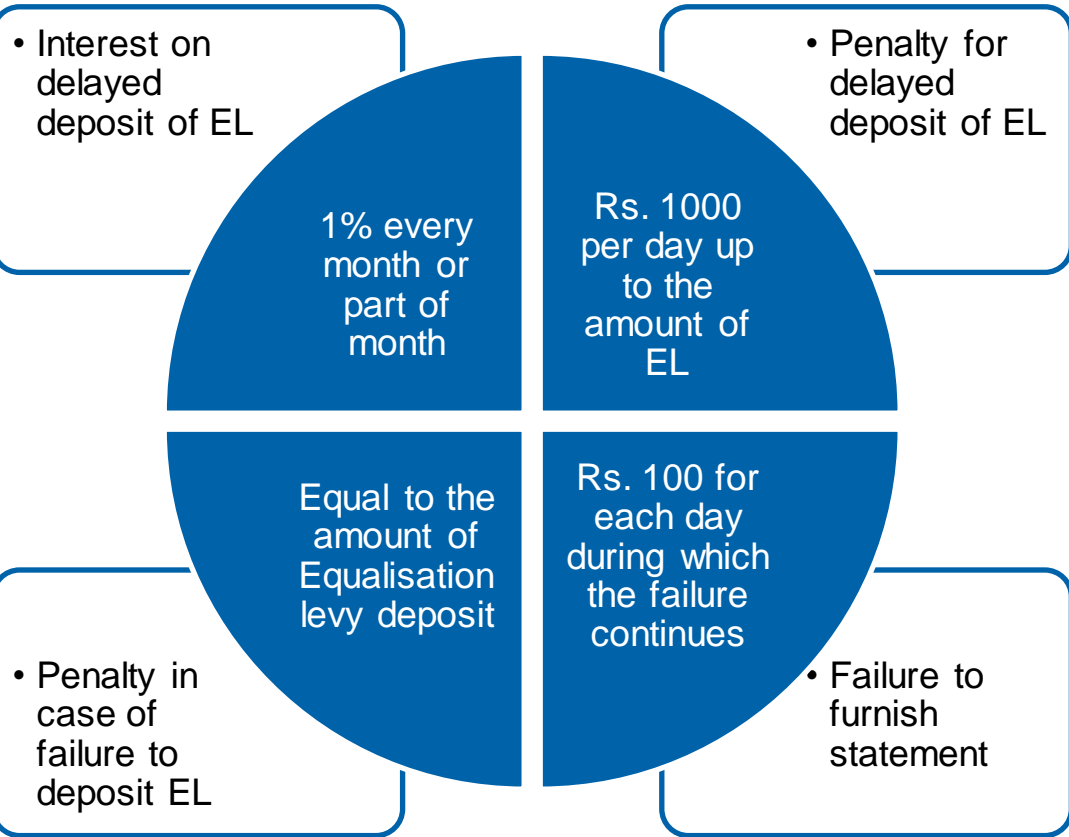
- ❖ Equalisation levy will not be charged when-
 - Where an e-commerce service provider has a permanent establishment in India and the service provided is **effectively connected** with such permanent establishment. (In that case it will be taxed as Foreign Company having PE in India)
 - Where the sales/turnover or gross receipts of service provided by e-commerce operator **does not exceed Rs 2 Crores** during the year.
 - Where the equalisation levy is **leviable under section 165**. (In that case EL will be deducted @6%)



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.

Query	Solution		
Who is responsible to deposit Equalisation levy?	Non-resident e-commerce operator who does not have a PE in India.		
When to deposit Equalisation levy?	S. No.	Date of ending of the quarter	Due date of that quarter
	1.	30 th June	7 th July
	2.	31 st September	7 th October
	3.	31 st December	7 th January
	4.	31 st march	31 st March
	EL is deposited online through Challan No. 285		
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 any identification No. required to make payment of EL?	Only PAN No. is required.		

INTEREST & PENALTY



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.

Taxinpic

- E-commerce supply or services mean:**
1. Online sale of goods owned by the e-commerce operator; or
 2. Online provision of services provided by e-commerce operator; or
 3. Online sale of goods or provision of services or both facilitated by the e-commerce operator; or
 4. or any combination of any of the above listed activities

**Equalisation Levy
on E-commerce
supply or services**

2% amount of consideration received or receivable by a Non-Resident E-Commerce operator from E-commerce Supply of goods or services provided to

**A person
resident in
India**

OR

**A person who
buys such
goods or
services or
both using IPA
located in
India**

OR

**A NR in the below circumstance:
(i) Sale of advt. targeting a customer
resident in India who accesses the
adv. through IPA located in India
(ii) Sale of data collected from a
person resident in India or who uses
IPA located in India**

**EL is attracted if sales,
turnover or gross receipts of
the E-commerce operator is
Rs.2 crore or more during
the PY**

NO

**Does the E-Commerce
operator have a PE
in India**

YES

NO

**Is the E-commerce
Supply or services
effectively connected
with such PE?**

YES

EL is not attracted



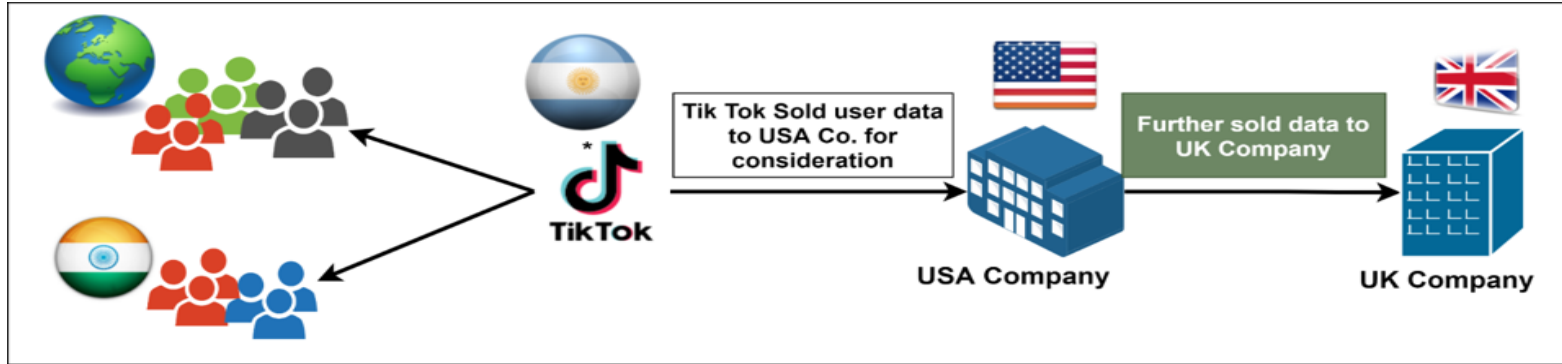
Manager of Amazon.com have some query regarding Equalisation levy, so he approaches Mr. Aagam for solution.



Mr. Aagam

- | | |
|---|--|
| <ol style="list-style-type: none">1. If amazon earns Rs. 215 Lakhs from E-commerce supply or service. On which amount EL will be deposited, 2.15 Crores or 0.15 Lakhs?2. A lot of people return the goods sold by Amazon; will it be included while calculating the gross receipt? | <ol style="list-style-type: none">1. EL is charged on total gross receipts if such gross receipt crosses Rs. 200 Lakhs. Thus, Amazon needs to deposit EL worth Rs. 4.3Lakh (2% of 215 lakhs).2. Section 165A of FA, 2016 does not directly talks about case of sales return, but it can be interpreted by the sentences “consideration received or receivable for sale made by e-commerce operator” that in case of returns consideration is paid back to participants. Thus no EL will be attracted. |
|---|--|

LET'S IMAGINE



As per section 165A it has been mentioned that Equalisation levy will also be levied in a situation where a non-resident sells any data collected from Indian resident or from a person who uses an IP in India.

1. **Tracing transaction-**

Difficult for department- let see how department would implement this.

2. **Why Taxable-**

Data of Indian users= asset of India (same as immovable property)

Disclaimer

- ❑ This presentation has been prepared on the basis of information available in the public domain and is intended for guidance purposes only.
- ❑ Jain Shrimal & Co. has taken reasonable care to ensure that the information in this presentation is accurate. It however accepts no legal responsibility for any consequential incidents that may arise from errors or omissions contained in this presentation.
- ❑ This presentation is based on the information available with us at the time of preparing the same, all of which are subject to changes which may, directly or indirectly impact the information and statements given in this presentation.
- ❑ Neither Jain shrimal & co., nor any person associated with us will be responsible for any loss howsoever sustained by any person or entity who relies on this presentation. Interested parties are strongly advised to examine their precise requirements for themselves, form their own judgments and seek appropriate professional advice.