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Removal of 6% Equalization Levy on Online Advertisements by Finance Act, 2025

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Introduction

- ❖ The Equalisation Levy was first introduced by the **Finance Act, 2016** as a measure to tax the digital economy, ensuring that non-resident companies benefitting from the Indian market contribute to the country's tax base.
- ❖ Under **Section 165(1)**, a 6% levy was imposed on consideration for specified services (such as online advertisements) received 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.”

Introduction

- ❖ However, with India's alignment to the **OECD's Pillar One** framework, the **Finance Act, 2025** has amended this provision to phase out the levy. The amendment, through insertion of **Section 165(3)**, states:

“The provisions of this section shall not apply to any consideration for any specified service received or receivable by a person on or after the 1st day of April, 2025.”

- ❖ This signifies the formal discontinuation of the 6% Equalisation Levy on specified services from **1st April 2025**, reflecting India's transition from unilateral digital taxation to a consensus-based global framework.

Introduction

- ❖ Over time, the levy — informally termed the '**Google Tax**' — prompted a strategic restructuring by many global tech companies.
- ❖ As a part of structuring for **Equalisation Levy**, several foreign entities **incorporated Indian subsidiaries**.
- ❖ These subsidiaries began **invoicing clients directly for advertising and digital services**, thereby **bringing transactions under the scope of domestic TDS provisions**, particularly **Section 194C**, instead of being subject to the Equalisation Levy.

Reasons for Removal

- ❖ The removal of the 6% Equalization Levy aligns India with the **OECD's global tax framework**, ensuring fair taxation of multinational digital companies.
- ❖ The tax was a **point of contention with the U.S.**, which viewed it as discriminatory against American tech giants like Google and Facebook, leading to potential trade disputes.
- ❖ **Indian advertisers bore the burden** of the tax, as foreign companies often passed the cost onto them, making digital advertising more expensive.
- ❖ The removal simplifies **tax compliance for businesses**, reducing administrative burden and encouraging **greater participation in digital advertising**.
- ❖ It makes **India a more attractive market for foreign tech investments**, potentially leading to increased job opportunities and expansion of global digital firms in the country.

Our Comments

- ❖ With effect from **1st April 2025**, such payments will **no longer attract Equalisation Levy**, and instead, the taxability will **revert to the traditional withholding framework under Section 195, Pre-2016 Era**, wherein the payer must:
 - Determine whether the payment is liable to tax in India and whether it is getting accrued or deemed to accrue in India as per **section 5 and section 9 of the Act**,
 - Classify whether the payment will be considered as **Royalty, FTS, or Business Income**, and
 - Examine the **relevant DTAA provisions** to determine PE status and applicable tax rate.

Our Comments

- ❖ In the past there have been various judgements wherein it has been held that payment for online advertisement is not FTS and in absence of PE in India such income cannot be taxed in India:
 - i. Income-tax Officer, Ward 12 (2), Kolkata vs. Right Florists (P.) Ltd. [2013] 32 taxmann.com 99 (Kolkata - Trib.) and
 - ii. Pinstorm Technologies (P.) Ltd. vs. Income-tax Officer-9(2)(4) [2012] 24 taxmann.com 345 (Mumbai)
- ❖ **Form 15CA/CB compliance will become essential** in such cases and applicable Part A, B, C or D needs to be chosen.
- ❖ Furthermore, the **exemption under Section 10(50)**—which earlier provided that income subject to Equalisation Levy shall not be taxed under normal provisions—will also **cease to apply** for payments made on or after **1st April 2025**, as the underlying levy itself is being withdrawn.



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