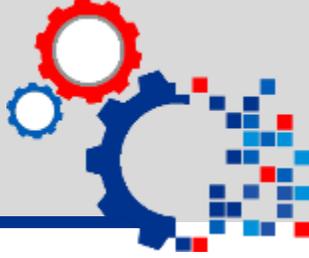




# Equalisation levy – expanded scope

[home.kpmg/in](https://home.kpmg/in)





Overview of the expanded equalisation levy

Navigating areas of uncertainty

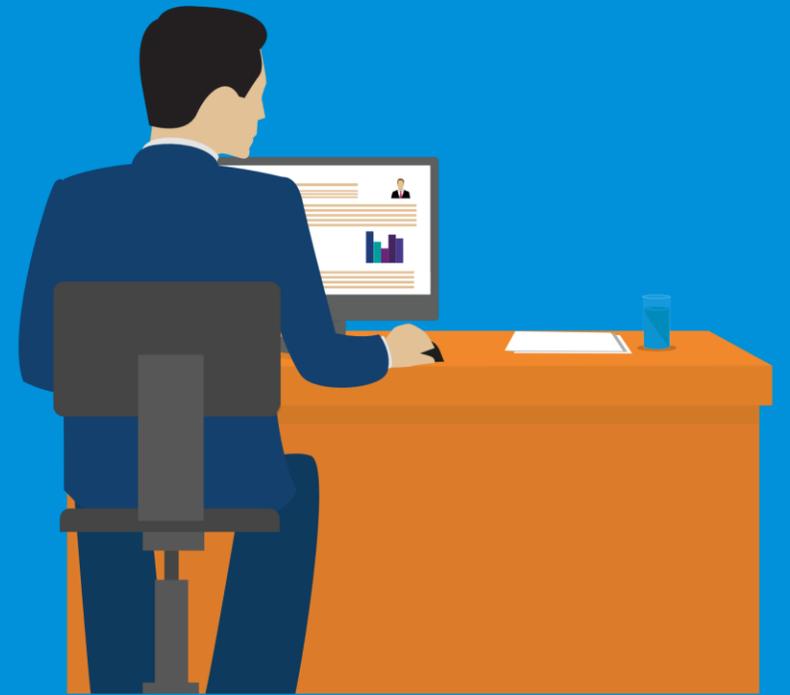
Other practical considerations

Questions and Answers

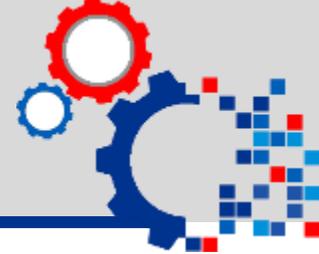




# Overview of the Expanded Equalisation Levy



# Applicability of the Equalisation Levy



## As originally introduced w.e.f. 1 June 2016

- 'For **Non-Residents receiving consideration from Indian Residents/Indian PE** for the following:
  - Online advertisement
  - Provision for digital advertising space
  - Any other facility or service for online advertisement
- Compliance obligation on Indian payer.

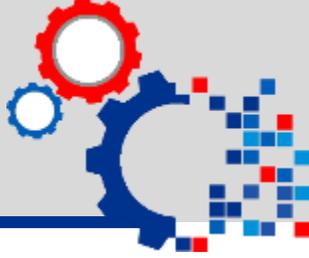
**Rate – 6 per cent**

## Expanded Scope w.e.f. 1 April 2020

- For **Non-Resident 'e-commerce operators' receiving consideration from e-commerce supply or services** provided/facilitated to the following:
  - a) Persons resident in India
  - b) Non-residents in respect of:
    - sale of advertisements targeting a customer resident in India or a person accessing the advertisement from an Indian IP address
    - sale of data collected from a person resident in India or who uses an Indian IP address
  - c) Persons who buy goods/services using an IP address located in India
- Compliance obligation on non-resident e-commerce operator

**Rate – 2 per cent**

# Applicability of Equalisation Levy



## Key Definitions

- 'E-commerce operator' – who owns, operates or manages a digital or electronic facility / platform for online sale of goods or online provision of services
- 'E-commerce supply or services' means
  - Online sale of goods owned by e-commerce operator
  - Online provision of services provided by e-commerce operator
  - Online sale of goods or provision of services or both, facilitated by e-commerce operator
  - Combination of the above
- '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

**Extra-territoriality and multiplicity of levies – Constitutional issues**

## Exclusions from Expanded EL

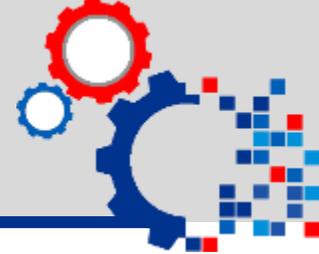
- Annual sales, turnover or gross receipts from covered transactions **< INR2 crores**
- Where supply or services are effectively connected with a PE in India
- Where 6% per cent applies on specified services\*

## Interplay with Income-tax

- Incomes chargeable to EL exempt from income tax
- However, exemption for expanded EL is **effective from 1 April 2021**

*\*Online advertisement; any provision for digital advertising space; or any other facility or service for the purpose of online advertisement.*

# Businesses potentially impacted



## Retail

- Online sale of goods



## IT/ ITeS

- Cloud computing
- Back-up/Server management solutions
- SaaS/PaaS/IaaS



## Hospitality

- Hotel booking
- Homestays



## Communication

- Video conferencing
- Voice over IP
- E-mail/ Instant Messaging service providers



## Entertainment and Visual Media

- Streaming of content
- Gaming platforms
- E-fitness



## Education

- E-courses
- E-books
- Online tests



## Print Media

- Subscription for e-journal, e-papers



## Financial Services

- Provision of financial products
- Fund transfers
- Payment service providers/gateways



## Professional Services

- Engineering, architectural, legal, management consultancy services



## E-marketplace or aggregators

- Facilitation of sale of goods or services



## Travel

- Online air tickets
- E-tickets for activities/ experiences



## Others

- Online provision of managed services
- Online sourcing
- Advertisement space

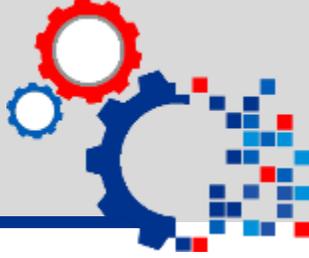




# Navigating areas of uncertainty



# Areas of Uncertainty



## Applicability

- Scope of '*online sale*' of goods and '*online provision*' of services
- Intra-group services
- Cross charge arrangements
- Software payments

## Quantification

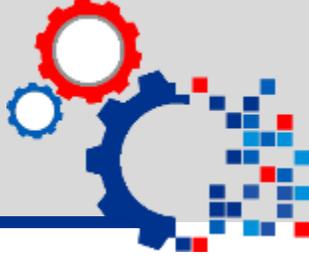
- 'Consideration' for aggregators – gross v. net
- Impact of section 10(50) exemption
- Composite contracts
- Inclusion of GST
- Sales returns
- Foreign currency conversion

## Registration and Compliance

- Registration - PAN
- Certainty on annual threshold
- Payment mechanics
- Refunds

**No FAQs / Clarifications issued**

# Applicability of the Levy (1/2)



## What is covered under 'Online sale' of goods?

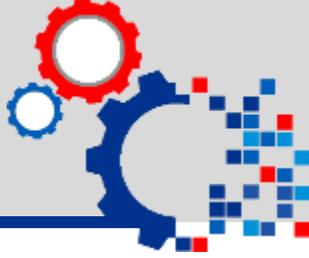
- Is the levy limited to 'digital goods'?
- Applicability to sales concluded through emails, ERP systems or other telecommunication tools
- What if copies of contracts negotiated in person are transmitted through email?

## Online 'provision' of services

- Applicability to offline services (e.g. airlines, hotels etc.) booked directly from the service provider's website?
- Applicability to legal, HR, accounting services, where deliverables are provided through email or other digital means



# Applicability of the Levy (2/2)



## Intra-group services

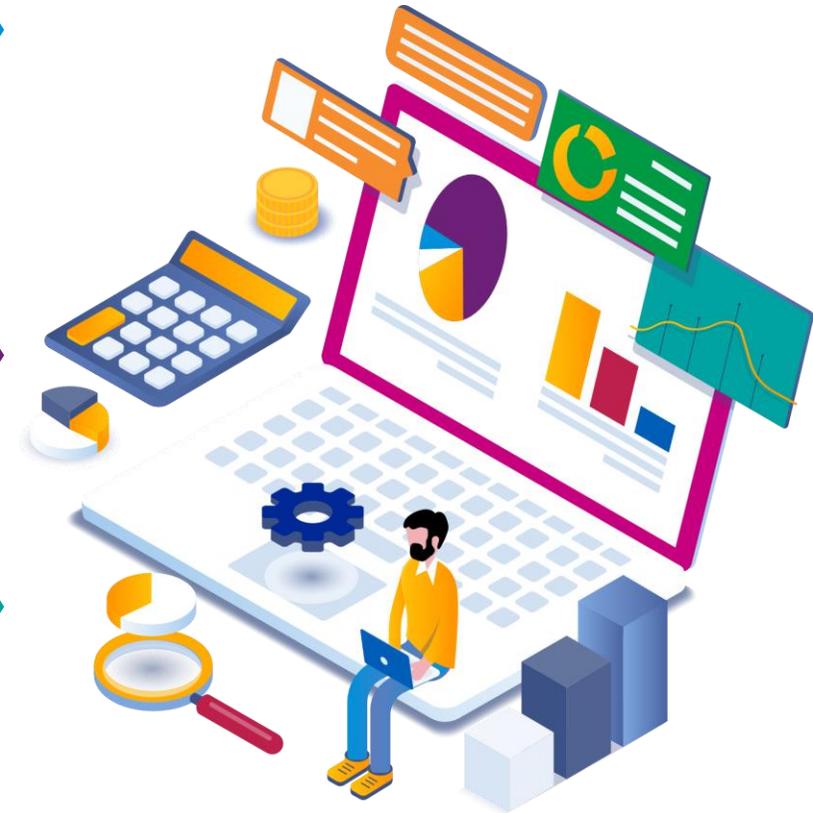
- Are intra-group services (legal, HR, accounting, IT etc.) covered?
- Interplay with withholding obligations

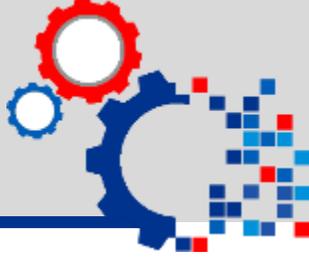
## Cross Charge arrangements

- Who will be liable to pay EL- the group entity or the third party service provider?

## Software Payments

- Are payments under software licensing agreements covered?
- What if tax has been deducted under s. 195 by the payer?





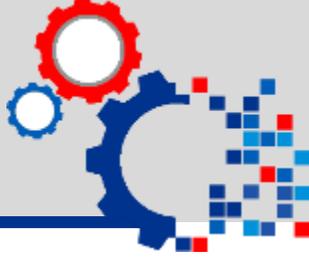
## Gross v. Net consideration

- Does the levy apply on the total amount received or receivable for the goods or services, or only on the commission?
- Can only the commission amount be considered for the INR 20 mn threshold?

## Impact of the s. 10(50) exemption

- Will amounts subject to the levy be exempt from income-tax?
- Can taxes deducted at source be set-off against the EL liability?





## Composite contracts

- How will the levy apply to composite contracts involving online and offline services?
- For global / regional advertising contracts, how can the consideration attributable to India be determined?

## Other issues around quantification

- E-commerce supply or services made, provided or facilitated before 1 April 2020 but invoiced / payments received after 1 April 2020
- Applicability of EL on the GST component
- Treatment of sales returns
- Foreign currency conversions



# Registration and Compliance (1/2)



- No separate registration – PAN to be the basis for filing / payments

## Application

- Prescribed Form 49AA
- Form to be **filled online**#
- **Physical copy** to be signed by Authorised Signatory
- Signed form to be submitted with documents

## Documents

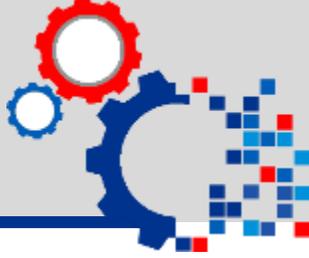
- Copy of Certificate of Incorporation or Charter documents (MoA/AoA) or Information as per Database of Regulatory Authority
- Attestation requirement:
  - ✓ By Indian embassy or
  - ✓ Apostille Authority\* or
  - ✓ Overseas branch of Schedule Indian Bank

## Timelines

- PAN issued within 10 – 15 working days of application submission
- E-PAN card sent over e-mail
- Physical PAN card sent at given address

# <https://www.onlineservices.nsdI.com/paam/endUserRegisterContact.html>

\* *In case country is signatory to the Hague Apostille Convention*



## Other issues

- What if there is no certainty on whether the annual threshold of INR 20 mn will be crossed in the year?
- Refund mechanism
- Payment by Non-residents through foreign banks (Challan ITNS 285)

## ITNS 285

Mode of Payment\*  e-tax payment immediately

Net-Banking\*

Debit Card\*

e-tax payment on subsequent d  
of the Bank branches)

Captcha Code\*  

(Enter text as in above image)

Clear Proceed Back

Bank Name
Allahabad Bank
Andhra Bank
Axis Bank
Bank of Baroda
Bank of India
Bank of Maharashtra
Canara Bank
Central Bank of India
Corporation Bank
Dena Bank
HDFC Bank
ICICI Bank
IDBI Bank
Indian Bank
Indian Overseas Bank
Jammu & Kashmir Bank
Oriental Bank of Commerce
Punjab and Sind Bank
Punjab National Bank
State Bank of India
Syndicate Bank
UCO Bank
Union Bank of India
United Bank of India
Vijaya Bank



# Other practical considerations



# Other practical considerations



- **Compliance obligations:**

- Payment to be made on a quarterly basis by the 7th of the month following the end of the quarter i.e. for June quarter – by 7th July and for March quarter - its 31st March
- Annual Statement to be filed

- **Processing of annual statement**

- Demand / refunds due to be determined by the authorities based on annual statement
- No appeal remedy available – only rectification possible

- **Interest:**

- Delayed payment attracts simple interest at 1% for each month or part thereof (section 170)

- **Penalty and Prosecution:**

- Penalty equal to the amount of EL not paid can be levied
- No penalty leviable if assessee can demonstrate 'reasonable cause' for failure
- Appeal lies to CIT(A), ITAT, HC and SC against penalty orders
- Prosecution lies for furnishing false information



# Thank you

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