India introduces new equalization levy on online advertising revenue

June 6, 2016

In brief

The Indian government on February 29, 2016 introduced an equalization levy on online advertising revenue earned from India by non-resident e-commerce companies, which became effective on June 1, 2016.

The Indian government also introduced Equalization Levy Rules, 2016 (Rules), which provide procedural guidance such as prescribing filing forms and appeals processes.

In detail

In accordance with the Organisation for Economic Co-operation and Development (OECD) base erosion and profit shifting (BEPS) recommendation to tax e-commerce transactions, the Indian Finance Act, 2016 included a separate Chapter (VIII) titled ‘Equalization Levy’.

The newly inserted provisions of the Finance Act 2016 provide a six percent equalization levy to be deducted from amounts paid to a non-resident who does not have a permanent establishment (PE) in India, for specified services.

Indian residents conducting business or non-residents with a PE in India must withhold the equalization levy.

The specified services include online advertisement, any provision for digital advertising space, or any other facility or service for the purpose of online advertisement.

The Indian Central Board of Direct Taxes (CBDT) issued a notification stating that the Chapter VIII provisions relating to the equalization levy would become effective on June 1, 2016. Therefore, payments made from June 1, 2016 for the specified services listed above will be subject to the equalization levy.

Notified rules

The CBDT also notified taxpayers that they should follow guidance provided in the Equalization Levy Rules, 2016 which provide a procedural framework for compliance with the levy, as well as the applicable appeals process. The Rules also took effect on June 1, 2016.

Levy and collection

An Indian payer is required to withhold the equalization levy from payment to a non-resident for specified services.

Discharge the equalization levy

Taxpayers must remit any equalization levy withheld during any calendar month to the central government by the seventh day of the month that immediately follows the calendar month in which the levy was withheld.

Reporting obligations

The Indian payer must electronically file an annual statement in the prescribed form providing details of payments made to non-
residents for specified services and details of any equalization levy withheld and deposited with Indian government treasury.

This statement needs to be filed by June 30 immediately following the financial year (i.e., April 1 to March 31).

Audit and appeal process

Tax authorities may audit the Indian payer’s statements.

In the event of any non-compliance, the tax officer may pass an order on Indian payer for recovery of levy, as well as for interest and penalties.

The rules also provide an appellate process to address any grievance of the Indian payer.

The takeaway

The Rules provide a manner of computation and deduction of equalization levy, as well as reporting obligations on the Indian payer. There are no compliance requirements prescribed for the non-resident party that earns income by providing the specified services.

Let’s talk

For a deeper discussion of how this might affect your business, please contact:

International Tax Services, United States

Chengappa Ponnappa
+1 646-313-0080
chengappa.ponnappa@pwc.com
Pranav Raval
+1 646-335-4859
pranav.raval@pwc.com