

Equalisation (Google) Tax Levy on E-Commerce or Digital Economy

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Article Info

Volume 5, Issue 5

Page Number : 89-94

Publication Issue :

September-October-
2022

Article History

Accepted : 01 Oct 2022

Published : 15 Oct 2022

ABSTRACT - With expansions of information and communication technology, the supply and procurement of digital goods and services has undergone exponential expansion everywhere, including India. The Equalization Levy (EL) enacted by India was one of options in the BEPS Action 1 Report to deal with the tax challenges arising from the digitalization of the economy. India was the first country to introduce EL in 2016. At first, EL 2016 was only introduced in respect to specific advertising services. However, in 2020, the scope of EL was expanded to cover e-commerce transactions as well. This paper explores the various constitutional provisions in India on implementation of Equalisation Levy. The study also examines the number of users in Digital Public Infrastructure and Platform in India. These papers explore the Digital Public Ecosystem in the field of Finance, Health and Commerce in India.

Keywords - Equalisation , Google, Tax levy, E-commerce, Digital, Economy.

INTRODUCTION- The Government of India's Finance Act 2016, in Chapter VIII, introduced an equalisation levy of 6 per cent applicable "...to consideration received or receivable for specified services provided on or after the commencement of this Chapter." 1 It applied only on business-to-business (B2B) transactions. The Finance Act clarified that 'specified service' means online advertisement and any provision for digital advertising space or any other facility or service for the purpose of online advertisement. It also provided that such specified services include any other service as may be notified by the Central Government in this regard.

The levy applies to specified services for more than Rs. 100,000 supplied by non-residents not having permanent establishments (PE) in India. The levy has to be deducted by a recipient, who is resident in India or has a PE in India, "from the amount paid or payable to a non-resident in respect of the specified service" and paid to the Central Government by the seventh day of the month immediately following the calendar month in which the sum has been deducted. The levy came into force from June 1, 2016. 2 The tax is administered by the Central Board of Direct Taxes. According to the Committee report that proposed the equalisation levy Equalisation levy also called *Google Tax* is tax levied globally on certain income earned digitally by the non-resident. It is proposed that a person making payment to non-resident

(where non-resident does not have a Permanent Establishment (PE) in India) for *specified services* and such payment exceeds the prescribed limit, then in such a case, a person is required to deduct the tax at the prescribed rate under equalisation levy.

OBJECTIVES OF THE STUDY

1. To find out the number of Users in Digital Public Infrastructure and Platforms (DPIPs) in Digital Economy (India).
2. To find out the Digital Public Ecosystem in Finance, Health and Commerce
3. in Digital Economy (India).
4. To find out the list of services taxable under Equalisation Levy.
5. To List out the Legal Provisions (Sections) applicable under Equalisation Levy.

RESEARCH METHODOLOGY

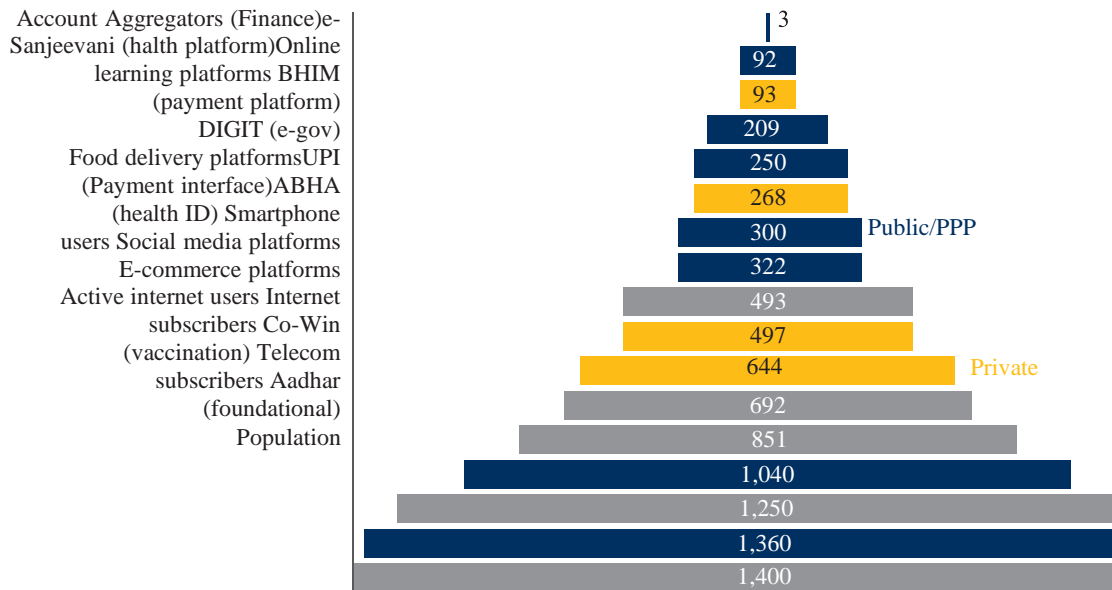
The secondary data has been used in this study for attaining the purpose. Data has been collected from various published documents virtually and physically both. Further the data has been arranged analysed as per the objective. The result has been presented in diagrammatic and tabular form

ANALYSIS AND INTERPRETATION:

- **To find out the number of Users in Digital Public Infrastructure and Platforms (DPIPs) in Digital Economy (India)**

As per the below figure No.1, More and more government services are being provided and accessed on digital platforms. With a large population of 1.4 billion, 1.3 billion telecom subscribers, 900 internet subscribers and nearly 500 million smart phone users, few countries in the world are experimenting with digital solutions that can match India's scale. The country's digital journey started in 2009 with Aadhaar, which is the world's largest biometric digital identity system. It provides the foundation on which India's digital ecosystem is being built. A range of digital goods, infrastructure, platforms and services are available within this ecosystem. Many of which have added more than a 100 million plus users already.

Figure 1: India has Digital Public Infrastructure and Platforms (DPIPs) along with an array of privately operated platforms (Number of users in million)



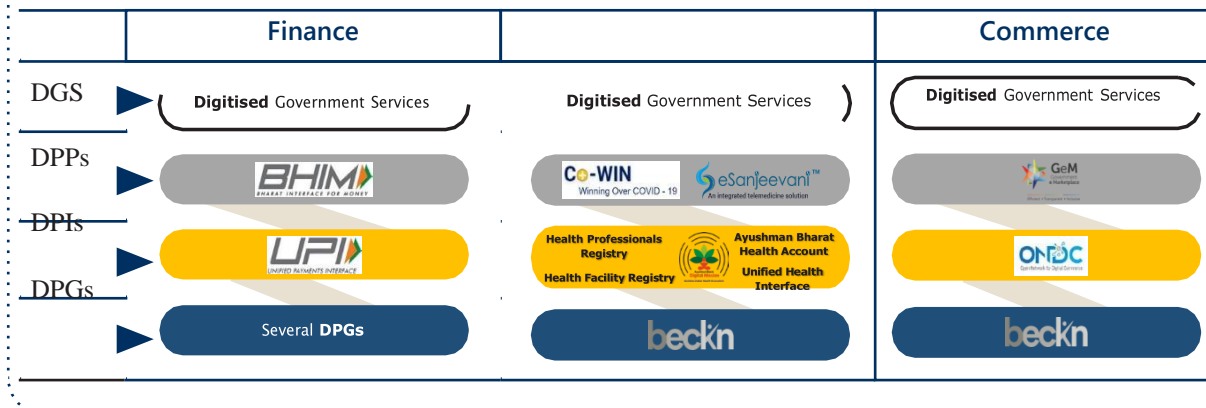
Source: Compiled by IPCIDE Team

Note: Blue bars are statistics for public or public-private partnership platforms, yellow are for private platforms, and grey are basic access related data for the digital economy.

• To find out the Digital Public Ecosystem in Finance, Health and Commerce in Digital Economy (India)

Many components of India’s digital ecosystem are owned and managed through public-private partnerships or are fully private. What has set the Indian model apart is its championing of the development and deployment of digital public infrastructure and several digital public platforms (DPIPs). A prominent example being the *India Stack*: the trinity of Aadhaar, Unified Payments Interface (UPI) and the Data Empowerment and Protection Architecture (DEPA) set up to “unlock the economic primitives of identity, data, and payments at population scale and to establish a level playing field for members of a digital ecosystem”. The Bharat Interface for Money (BHIM), a public sector mobile payment platform that was created as a reference app for UPI, directly competes with private players like PhonePe and Google Pay. There are numerous other DPIPs in operation, including health, commerce, urban governance, etc. (see Figure 2).

Figure 2: India's digital public ecosystem in selected sectors



Source: IPCIDE Policy Brief 3 (2023)

Note: DGS - Digitised Government Services; DPPs - Digital Public Platforms; DPIs - Digital Public Infrastructure; DPGs - Digital Public Goods

To find out the list of services taxable under Equalisation Levy

List of Items considered as chargeable income under Equalisation Levy: Any sum paid or payable or credited as a consideration for any of the following:

- (i) Online advertising or any services, rights or use of software for online advertising, including advertising on radio & television.
- (ii) Digital advertising space.
- (iii) Designing, creating, hosting or maintenance of website.
- (iv) Digital space for website, advertising, e-mails, online computing, blogs, online content, online data or any other online facility.
- (v) Any provision, facility or service for uploading, storing or distribution of digital content.
- (vi) Online collection or processing of data related to online users in India.
- (vii) Any facility or service for online sale of goods or services or collecting online payments.
- (viii) Development or maintenance of participative online networks.
- (ix) Use or right to use or download online music, online movies, online games, online books or online software, without a right to make and distribute any copies thereof.
- (x) Online news, online search, online maps or global positioning system applications.
- (xi) Online software applications accessed or downloaded through internet or telecommunication networks.
- (xii) Online software computing facility of any kind for any purpose.
- (xiii) Reimbursement of expenses of a nature that are included in any of the above

To List out the Legal Provisions (Sections) applicable under Equalisation Levy

RELEVANT SECTIONS OF FINANCE ACT 2016	LEGAL PROVISIONS
SEC 163	Extent, commencement and application
SEC 164	Definitions
SEC 165	Charge of equalisation levy on specified services
SEC 165 A	Charge of equalisation levy on e-commerce supply of services
SEC 166	Collection and recovery of equalisation levy on specified services
SEC 166A	Collection and recovery of equalisation levy on e-commerce supply or services
SEC 167	Furnishing of statement
SEC 168	Processing of statement
SEC 169	Rectification of mistake
SEC 170	Interest on delayed payment of equalisation levy
SEC 171	Penalty for failure to deduct or pay equalisation levy
SEC 172	Penalty for failure to furnish statement
SEC 173	Penalty not to be imposed in certain cases
SEC 174	Appeal to Commissioner of Income-tax (Appeals)
SEC 175	Appeal to Appellate Tribunal
SEC 176	Punishment for false statement
SEC 177	Institution of prosecution
SEC 178	Application of certain provisions of Income-tax Act
SEC 179	Power to make rules
SEC 180	Power to remove difficulties

CHARGES OF EQUALISATION LEVY

On and from the 1st day of April, 2020 there shall be charged as Equalisation Levy at the rate of two per cent. of 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

- (i) To a person resident in India; or
- (ii) To a non-resident in the specified circumstances as referred to in sub-section (3);
- (iii) To a person who buys such goods or services or both using internet protocol address located in India.

Therefore any non-resident e-commerce operator who is engaged in e-commerce supply or services is liable to pay 2% of the amount of consideration as equalisation levy to the Indian exchequer.

CONCLUSION

In today's world, with technology seeping into virtually every section of the economy, the 'digital economy' is becoming intertwined with the traditional economy such that making a clear delineation of the digital economy is getting harder and harder. Taxation is a very important aspect of any economy and is no different in a digital economy. The changing business environment from the traditional brick and mortar system to the modern "digital system" has fundamentally changed the way businesses carry out their global activities. Enterprises can now carry out business across different jurisdictions without maintaining and/ or having a physical presence in a particular jurisdiction. For businesses making cross border supplies, digitalisation can radically alter the 'tax take' of a particular country.

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