

Equalisation Levy

Equalisation Levy Explained



Person Making Payment for **specified Services** To a **Non Resident**

Person Being **Resident**
carrying on PGBP or **NR**
having **PE in India**

@ 6%

If Aggregate value
Exceed of 1 Lakh
a Year

TO CG by 7th of next
month in which it is
deducted

Shall Deduct the equalisation levy from the Amount paid or payable

If Not Deducted

If person deducting levy fail to do so
then he is personally responsible to
pay it.

Sec.166 Meaning and provision of Equalisation levy

Chapter VIII of the Finance Act, 2016, titled "Equalisation Levy", provides for an **equalisation levy of 6% of the amount of consideration for specified services**

- received or
- receivable



By a **NR not having PE in India,**

1. from a resident in India who carries out PGBP, **or**
2. from a non-resident having permanent establishment in India.

Romancing Analysis:

If a resident Pays to NR having PE in India then then no Equalisation Levy but However, tax has to be deducted by ABC Ltd. at the rates in force under section 195 in respect of such payment to PQR Inc. Non-deduction of tax at source under section 195 would attract disallowance under section 40(a)(i) of 100% of the amount paid while computing business income.

Sec10(50): Any Income Arising to NR from whose Income Equalization Levy has been Deducted shall be exempt in the Hands of NR.

Meaning of Specified Services

- (i) Online advertisement;
- (ii) Any provision for digital advertising space or any other facility or service for the purpose of online advertisement;
- (iii) Any other service as may be notified by the Central Government.

Threshold Limit/ Relief to Small players

1. No such levy shall be made if the aggregate amount of consideration for specified services received or receivable by a non-resident from a person resident in India or from a non-resident having a permanent establishment in India does not exceed Rs.1 lakh in any previous year.

2. equalisation levy shall not be charged where the payment for the specified service by the person resident in India or the permanent establishment in India, is not for the purposes of carrying out business or profession.

[Payment to International Matrimonial website exceeding Rs.1L will not be Subject to EL because it for Personal Purpose]

Consequences of non deduction of equalisation levy

Any assessee who fails to deduct equalisation levy shall, notwithstanding such failure, be liable to pay the levy to the credit of the Central Government by the 7th of the month immediately following the said calendar month. Thus, if the assessee responsible for deducting equalisation levy, fails to so deduct, he has, in any case, to pay such levy to the credit of the Central Government by the 7th of the month immediately following the said calendar month.

Sec.167 Furnishing of Statement in respect of Equalisation levy

Every assessee shall, within the prescribed time after the end of each financial year, prepare and deliver or cause to be delivered to the Assessing Officer or to any other authority or agency authorised by the Board in this behalf, a statement in the prescribed form, verified in the prescribed manner and setting forth the prescribed particulars in respect of all specified services during such financial year.

It is Furnished in Form 1 Electronically on or before 30th June immediately following that financial year.

Revised Return: A revised Return can also be filled on or before the expiry of 2 years from the end of FY in which service was Provided.

Power of AO to Issue Notice: AO has power to Issue notice if statement is not filled which then Assessee has to furnish Statement in response to Notice **within 30 days from the date of Service of Notice**

Sec.168 Processing of Statement

Where a statement has been made under section 167 by the assessee, such statement shall be processed in the following manner, namely

- (a) The equalisation levy shall be computed after making the adjustment for any arithmetical error in the statement;
- (b) The interest, if any shall be computed on the basis of sum deductible as computed in the statement;
- (c) The sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of interest computed against the equalisation levy paid under section 166(2) or section 170 and any amount paid otherwise by way of tax or interest;
- (d) An intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to him; and
- (e) The amount of refund due to the assessee in pursuance of such determination shall be granted to him.

However no such intimation shall be sent after the expiry of 1 year from the end of FY in which statement is furnished.

Where any levy, interest or penalty is payable under Notice he equalisation levy provisions, a notice of demand specified in Form No. 2 shall be served upon the taxpayer

CBDT may make a scheme for centralised processing of such statements

Sec.169 Rectification of Mistake

- With a view to rectifying any mistake apparent from the record, the AO may amend any intimation issued under section 168.
- Such intimation can be amended within 1 year from the end of FY in which the intimation sought to be amended was issued.
- The AO may make an amendment to any intimation either *suo motu* or on any mistake brought to his notice by the assessee.
- An amendment to any intimation, which has the effect of increasing the liability of the assessee or reducing a refund, shall not be made unless the Assessing Officer has given notice to the assessee of his intention so to do and has given the assessee a reasonable opportunity of being heard
- NO order shall be Passed unless OOBH is given

MADE A MISTAKE?

Sec.170 Interest on delayed payment of Equalisation Levy

Every assessee, who fails to credit the equalisation levy or any part thereof within 7th of the month following the calendar month in which it is deducted to the account of the Central Government, shall pay simple interest @1% per month or part thereof .

Further: Non-deduction of equalisation levy would attract disallowance under section 40(a)(ib) of 100% of the amount paid while computing business income.

Penalty Provision			
Sec	Particulars	Provision	
		Default	Penalty
171	Penalty for failure to deduct or pay equalisation levy	Failure to deduct equalisation levy	Upto 100% of Levy
		Failure to remit equalisation levy to the Central Government on or before 7 th of the following month, after deduction	In addition to paying the equalisation levy and interest, a penalty of ₹ 1,000 for every day during which the failure continues is leviable. However, such penalty shall not exceed the amount of equalisation levy that he failed to pay.
172	Penalty for failure to furnish statement	For failure to furnish the statement within Time i.e. June of the immediately following year or within 30 days from the date of service of notice by the AO – 100 Rs for each day of default.	
173	Circumstances when penalty cannot be imposed under section 171 and 172	No penalty for failure to deduct or pay equalisation levy or failure to furnish statement shall be imposable, if the assessee proves	

		to the satisfaction of the Assessing Officer that there was reasonable cause for the said failure. No order imposing a penalty under this Chapter shall be made unless the assessee has been given a reasonable opportunity of being heard.
176	Punishment for false statement	<p>If a person</p> <p>a. make a false statement or</p> <p>b. deliver a statement which is false</p> <p>he shall be punishable with imprisonment for a term which may extend to three years and with fine</p> <p>(i) An offence so punishable shall be deemed to be non-cognizable within the meaning of the Code of Criminal Procedure.</p> <p>(ii) This is irrespective of anything contained in the Code of Criminal Procedure, 1973.</p>
177	Institution of prosecution	Prior sanction of the CCIT is required for instituting prosecution against any person for any offence under section 176

Sec.174 Appeal to CIT(A)

- An assessee aggrieved by an order imposing penalty under this Chapter, may appeal to the Commissioner of Income-tax (Appeals) **within a period of 30 days from the date of receipt of Order from AO**
- **Appeal will be in form 3**
- Fees for appeal Rs.1000
- It can also be filled electronically

Sec.175 Appeal to ITAT

- An assessee aggrieved by an order made by the CIT(A) under section 174 may appeal to the ITAT against such order
- The Commissioner of Income-tax may, if he objects to any order passed by the CIT(A)
- **An Appeal will be filled in 60 days** from the date on which the order sought to be appealed against is received by the assessee or by the Commissioner of Income-tax.
- **Appeal shall be in form 4 along with a fess of Rs.1000**

Sec.179 Power to make rules

CG is empowered to make rules for the purposes of carrying out the provisions of this Chapter.

- (a) the time within which and the form and the manner in which the statement shall be delivered or caused to be delivered or furnished under section 167;
- (b) the form in which an appeal may be filed and the manner in which it may be verified under sections 174 and 175;
- (c) any other matter which is to be, or may be, prescribed.

Every rule made under this Chapter shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of **30 days**.

This period of 30 days may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree:

- (i) in making any modification in the rule, then, the rule shall thereafter have effect only in such modified form;
- (ii) that the rule should not be made, then, the rule would be of no effect.

However, any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Sec.180 Power to remove difficulties

The Central Government is empowered to remove any difficulty which arises in giving effect to the provisions of this Chapter. It may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty.

However, no such order shall be made after the expiry of 2 years from the date on which chapter came into force

Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Common Provision Shall Apply

120	Jurisdiction of ITA
131	Power of discovery and Inspection
133A	Survey
138	Disclosure of Information

156	Notice of Demand
220-227	Tax Payable and Recovery
229	Recovery of Penalties
232	Recovery of suits
260A	Appeal to HC
261	Appeal to SC
262	Hearing before SC
265-269	Definations
278B	Offense by Co
280A & B	Special Court
280C & D	Application of CPC
282	Service of Notice

Question from Past Exam

Q.1 ABC Ltd., an Indian company, is carrying on the business of manufacture and sale of teakwood furniture under the brand name "PUREWOOD". In order to expand its overseas sales/exports, it launched a massive advertisement campaign of its products. For the purpose of online advertisement, it utilized the services of PQR Inc., a London based company. During the previous year 2018-19, ABC Ltd. paid ₹ 5 lakhs to PQR Inc. for such services. Discuss the tax implications/TDS implications of such payment and receipt in the hands of ABC Ltd. and PQR Inc., respectively, if –

- (i) PQR Inc. has no permanent establishment in India
- (ii) PQR Inc. has a permanent establishment in India