Equalisation Levy Act, 2016

Extent, commencement and application.

163. (1) This Chapter extends to the whole of India except the State of Jammu and Kashmir.

(2) It shall come into force on such date1 as the Central Government may, by notification in the Official Gazette, appoint.

(3) It shall apply to consideration received or receivable for specified services provided on or after the commencement of this 1[Chapter, and to consideration received or receivable for e-commerce supply or services made or provided or facilitated on or after the 1st day of April, 2020]:

2[Provided that the consideration received or receivable for specified services and for e-commerce supply or services shall not include the consideration, which are taxable as royalty or fees for technical services in India under the Income-tax Act, read with the agreement notified by the Central Government under section 90 or section 90A of the said Act.]

Definitions.

164. In this Chapter, unless the context otherwise requires,—

(a) "Appellate Tribunal" means the Appellate Tribunal constituted under section 252 of the Income-tax Act;

(b) "Assessing Officer" means the Income-tax Officer or Assistant Commissioner of Income-tax or Deputy Commissioner of Income-tax or Joint Commissioner of Income-tax or Additional Commissioner of Income-tax who is authorised by the Board to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Chapter;

(c) "Board" means the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963);

1[(ca) "e-commerce operator" means a non-resident who owns, operates or manages digital or electronic facility or platform for online sale of goods or online provision of services or both;

(cb) "e-commerce supply or services" means—

(i) online sale of goods owned by the e-commerce operator; or

(ii) online provision of services provided by the e-commerce operator; or

(iii) online sale of goods or provision of services or both, facilitated by the e-commerce operator; or

(iv) any combination of activities listed in clause (i), (ii) or clause (iii);]

2[Explanation.—For the purposes of this clause, "online sale of goods" and "online provision of services" shall include one or more of the following online activities, namely:—

(a) acceptance of offer for sale; or

(b) placing of purchase order; or

(c) acceptance of the purchase order; or

(d) payment of consideration; or

(e) supply of goods or provision of services, partly or wholly;]

(d) "equalisation levy" means the tax leviable on consideration received or receivable for any specified service 4[or e-commerce supply or services] under the provisions of this Chapter;

(e) "Income-tax Act" means the Income-tax Act, 1961 (43 of 1961);

(f) "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;

(g) "permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on;

(h) "prescribed" means prescribed by rules made under this Chapter;

(i) "specified service" means online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement and includes any other service as may be notified by the Central Government in this behalf;

(j) words and expressions used but not defined in this Chapter and defined in the Income-tax Act, or the rules made thereunder, shall have the meanings respectively assigned to them in that Act.

1[**Charge of equalisation levy on specified services**.]

165. (1) On and from the date of commencement of this Chapter, there shall be charged an equalisation levy at the rate of six per cent of the amount of consideration for any specified service received or receivable by a person, being 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.

(2) The equalisation levy under sub-section (1) shall not be charged, where—

(a) the non-resident providing the specified service has a permanent establishment in India and the specified service is effectively connected with such permanent establishment;

(b) the aggregate amount of consideration for specified service received or receivable in a previous year by the non-resident from a person resident in India and carrying on business or profession, or from a non-resident having a permanent establishment in India, does not exceed one lakh rupees; or

(c) 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.

1[**Charge of equalisation levy on e-commerce supply of services.**

165A. (1) On and from the 1st day of April, 2020, there shall be charged an 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); or

(iii) to a person who buys such goods or services or both using internet protocol address located in India.

(2) The equalisation levy under sub-section (1) shall not be charged—

(i) where the e-commerce operator making or providing or facilitating e-commerce supply or services has a permanent establishment in India and such e-commerce supply or services is effectively connected with such permanent establishment;

(ii) where the equalisation levy is leviable under section 165; or

(iii) sales, turnover or gross receipts, as the case may be, of the e-commerce operator from the e-commerce supply or services made or provided or facilitated as referred to in sub-section (1) is less than two crore rupees during the previous year.

(3) For the purposes of this 2[section,—

(a) "specified circumstances" mean--]

(i) sale of advertisement, which targets a customer, who is resident in India or a customer who accesses the advertisement though internet protocol address located in India; and

(ii) sale of data, collected from a person who is resident in India or from a person who uses internet protocol address located in India.]

3[(b) consideration received or receivable from e-commerce supply or services shall include—

(i) consideration for sale of goods irrespective of whether the e-commerce operator owns the goods, so, however, that it shall not include consideration for sale of such goods which are owned by a person resident in India or by a permanent establishment in India of a person

non-resident in India, if sale of such goods is effectively connected with such permanent establishment;

(ii) consideration for provision of services irrespective of whether service is provided or facilitated by the e-commerce operator, so, however, that it shall not include consideration for provision of services which are provided by a person resident in India or by permanent establishment in India of a person non-resident in India, if provision of such services is effectively connected with such permanent establishment.]

1[Collection and recovery of equalisation levy on specified services.]

166. (1) Every person, being a resident and carrying on business or profession or a non-resident having a permanent establishment in India (here in this Chapter referred to as assessee) shall deduct the 8[equalisation levy referred to in sub-section (1) of section 165] from the amount paid or payable to a non-resident in respect of the specified service at the rate specified in section 165, if the aggregate amount of consideration for specified service in a previous year exceeds one lakh rupees.

(2) The equalisation levy so deducted during any calendar month in accordance with the provisions of sub-section (1) shall be paid by every assessee to the credit of the Central Government by the seventh day of the month immediately following the said calendar month.

(3) Any assessee who fails to deduct the levy in accordance with the provisions of sub-section (1) shall, notwithstanding such failure, be liable to pay the levy to the credit of the Central Government in accordance with the provisions of sub-section (2).

166A. The equalisation levy referred to in sub-section (1) of section 165A, shall be paid by every e-commerce operator to the credit of the Central Government for the quarter of the

financial year ending with the date specified in column (2) of the Table below by the due date specified in the corresponding entry in column (3) of the said Table:

TABLE

Serial number	*Date of ending of the quarter of financial year*	*Due date of the financial year*	
(1)	*(2)*	*(3)*	
1.	30th June	7th July	
2.	30th September	7th October	
3.	31st December	7th January	
4.	31st March	31st March.	

Furnishing of statement.

167. (1) Every 1[assessee or e-commerce operator] 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 such form, verified in such manner and setting forth such particulars as may be prescribed, in respect of all 2[specified services or e-commerce supply or services, as the case may be,] during such financial year.

(2) An 1[assessee or e-commerce operator] who has not furnished the statement within the time prescribed under sub-section (1) or having furnished a statement under sub-section (1), notices any omission or wrong particular therein, may furnish a statement or a revised statement, as the case may be, at any time before the expiry of two years from the end of the

financial year in which the 3[specified services was provided or e-commerce supply or services was made or provided or facilitated].

(3) Where any 1[assessee or e-commerce operator] fails to furnish the statement under sub-section (1) within the prescribed time, the Assessing Officer may serve a notice upon such 1[assessee or e-commerce operator] requiring him to furnish the statement in the prescribed form, verified in the prescribed manner and setting forth such particulars, within such time, as may be prescribed.

Processing of statement.

168. (1) Where a statement has been made under section 167 by the 1[assessee or e-commerce operator], 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 2[sum deductible or payable, as the case may be,] as computed in the statement;

(c) the sum payable by, or the amount of refund due to, the 3[assessee or e-commerce operator], shall be determined after adjustment of the amount computed under clause (b) against any amount paid under sub-section (2) of 4[section 166 or section 166A] 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 3[assessee or e-commerce operator], specifying the sum determined to be payable by, or the amount of refund due to, him under clause (c); and

(e) the amount of refund due to the 3[assessee or e-commerce operator], in pursuance of the determination under clause (c) shall be granted to him:

Provided that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the 5[statement or revised statement] is furnished.

(2) For the purposes of processing of statements under sub-section (1), the Board may make a scheme for centralised processing of such statements to expeditiously determine the tax payable by, or the refund due to, the 3[assessee or e-commerce operator] as required under that sub-section.

Rectification of mistake.

169. (1) With a view to rectifying any mistake apparent from the record, the Assessing Officer may amend any intimation issued under section 168, within one year from the end of the financial year in which the intimation sought to be amended was issued.

(2) The Assessing Officer may make an amendment to any intimation under sub-section (1), either suo motu or on any mistake brought to his notice by the 1[assessee or e-commerce operator].

(3) An amendment to any intimation, which has the effect of increasing the liability of the 1[assessee or e-commerce operator] or reducing a refund, shall not be made under this section unless the Assessing Officer has given notice to the 1[assessee or e-commerce operator] of his intention so to do and has given the 1[assessee or e-commerce operator] a reasonable opportunity of being heard.

(4) Where any such amendment to any intimation has the effect of enhancing the sum payable or reducing the refund already made, the Assessing Officer shall make an order specifying the sum payable by the 1[assessee or e-commerce operator] and the provisions of this Chapter shall apply accordingly.

Interest on delayed payment of equalisation levy.

170. Every 1[assessee or e-commerce operator], who fails to credit the equalisation levy or any part thereof as required under 2[section 166 or section 166A] to the account of the Central Government within the period specified in that section, shall pay simple interest at the rate of one per cent of such levy for every month or part of a month by which such crediting of the tax or any part thereof is delayed.

Penalty for failure to deduct or pay equalisation levy.

171. Any 1[assessee or e-commerce operator] who—

(a) fails to deduct the whole or any part of the equalisation levy as required under section 166; or

2[(aa) fails to pay the whole or any part of the equalisation levy as required under section 166A; or]

(b) having deducted the 3[equalisation levy referred to in sub-section (1) of section 165], fails to pay such levy to the credit of the Central Government in accordance with the provisions of sub-section (2) of that section,

shall be liable to pay,—

(i) in the case referred to in clause (a), in addition to paying the levy in accordance with the provisions of sub-section (3) of that section, or interest, if any, in accordance with the provisions of section 170, a penalty equal to the amount of equalisation levy that he failed to 4[deduct;

(ia) in the case referred to in clause (aa), in addition to the levy in accordance with the provisions of that section, or interest, if any, in accordance with the provisions of section 170, a penalty equal to the amount of equalisation levy that he failed to pay; and]

(ii) in the case referred to in clause (b), in addition to paying the levy in accordance with the provisions of sub-section (2) of that section and interest in accordance with the provisions of

section 170, a penalty of one thousand rupees for every day during which the failure continues, so, however, that the penalty under this clause shall not exceed the amount of equalisation levy that he failed to pay.

Penalty for failure to furnish statement.

172. Where an 1[assessee or e-commerce operator] fails to furnish the statement within the time prescribed under sub-section (1) or sub-section (3) of section 167, he shall be liable to pay a penalty of one hundred rupees for each day during which the failure continues.

Penalty not to be imposed in certain cases.

173. (1) Notwithstanding anything contained in section 171 or section 172, no penalty shall be imposable for any failure referred to in the said sections, if the 1[assessee or e-commerce operator] proves to the satisfaction of the Assessing Officer that there was reasonable cause for the said failure.
(2) No order imposing a penalty under this Chapter shall be made unless the 1[assessee or e-commerce operator] has been given a reasonable opportunity of being heard.

Appeal to Commissioner of Income-tax (Appeals).

174. (1) An 1[assessee or e-commerce operator] aggrieved by an order imposing penalty under this Chapter, may appeal to the Commissioner of Income-tax (Appeals) within a period of thirty days from the date of receipt of the order of the Assessing Officer.

(2) An appeal under sub-section (1) shall be in such form and verified in such manner as may be prescribed and shall be accompanied by a fee of one thousand rupees.

(3) Where an appeal has been filed under sub-section (1), the provisions of sections 249 to 251 of the Income-tax Act shall, as far as may be, apply to such appeal.

Appeal to Appellate Tribunal.

175. (1) An 1[assessee or e-commerce operator] aggrieved by an order made by the Commissioner of Income-tax (Appeals) under section 174 may appeal to the Appellate Tribunal against such order.

(2) The Commissioner of Income-tax may, if he objects to any order passed by the Commissioner of Income-tax (Appeals) under section 174, direct the Assessing Officer to appeal to the Appellate Tribunal against such order.

(3) An appeal under sub-section (1) or sub-section (2) shall be filed within sixty days from the date on which the order sought to be appealed against is received by the 1[assessee or e-commerce operator] or by the Commissioner of Income-tax, as the case may be.

(4) An appeal under sub-section (1) or sub-section (2) shall be in such form and verified in such manner as may be prescribed and, in the case of an appeal filed under sub-section (1), it shall be accompanied by a fee of one thousand rupees.

(5) Where an appeal has been filed before the Appellate Tribunal under sub-section (1) or sub-section (2), the provisions of sections 253 to 255 of the Income-tax Act shall, as far as may be, apply to such appeal.

173. Punishment for false statement.

(*1*) If a person makes a false statement in any verification under this Chapter or any rule made thereunder, or delivers an account or statement, which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to three years and with fine.

(*2*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under sub-section (*1*) shall be deemed to be non-cognizable within the meaning of that Code.

Institution of prosecution.

177. No prosecution shall be instituted against any person for any offence under section 176 except with the previous sanction of the Chief Commissioner of Income-tax.

Application of certain provisions of Income-tax Act.

178. The provisions of 1[sections 119, 120], 131, 133A, 138, 156, Chapter XV and sections 220 to 227, 229, 232, 260A, 261, 262, 265 to 269, 278B, 280A, 280B, 280C, 280D, 282 and 288 to 293 of the Income-tax Act shall so far as may be, apply in relation to equalisation levy, as they apply in relation to income-tax.

Power to make rules.

179. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(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.

(3) 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 thirty days which 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 in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to remove difficulties.

180. (1) If any difficulty arises in giving effect to the provisions of this Chapter, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:

Provided that no such order shall be made after the 1[31st day of March, 2022].

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