

India releases implementation rules for Equalization Levy on e-commerce supply and services

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Executive summary

On 28 October 2020, the Indian Tax Administration released implementation rules for the e-commerce supply and services equalization levy (ESS EL). The existing rules and forms relating to the advertisement equalization levy (Ad EL) were amended to extend their application to the ESS EL.

This Alert summarizes the implementation rules.

Detailed discussion

The Indian Government introduced the Ad EL in India¹ as a measure to tax certain digital transactions. With effect from 1 June 2016, any specified person making a payment to a nonresident (NR) for online advertisement and related services is obligated to deduct EL at 6% of the gross consideration (the Ad EL).

The *Finance Act 2020* amended the scope of the Ad EL with effect from 1 April 2020 to cover consideration received/receivable by NR e-commerce operators for e-commerce supply or services provided to specified persons (the ESS EL),² subject to certain conditions. The ESS EL is required to be paid at the rate of 2% on the amount of consideration received/receivable by NR e-commerce operators. Unlike the Ad EL, the obligation for payment of the ESS EL lies with the NR e-commerce operators, who are required to make EL payments on a quarterly basis and file an annual return.

In order to implement the ESS EL provisions, the existing Ad EL rules and accompanying forms which were released at the time of the introduction of the Ad EL have been modified to extend their application to the ESS EL. The amended rules are effective from 28 October 2020.

The key rules applicable to the ESS EL are as follows:

- ▶ The annual ESS EL statement can be filed electronically via digital signature or through an electronic verification code (EVC). The procedures for filing the annual statement electronically, a revised statement, or generation of the EVC are yet to be released.
- ▶ The due date for the filing of the annual ESS EL statement is 30 June of the immediately succeeding tax year (the same filing requirement as the Ad EL).
- ▶ Unlike the Ad EL, where a taxpayer is required to furnish information in relation to each service provider and transaction, an e-commerce operator is only required to provide details of consideration received/receivable and ESS EL paid on a quarterly basis.
- ▶ If the taxpayer or e-commerce operator is a company, the verification of the annual ESS EL statement can be made by the persons authorized to verify the tax return under the *Income Tax Act* or the principal officer of the company.
- ▶ The taxpayer or e-commerce operator has the option to provide the Aadhaar number instead of the Permanent Account Number (PAN) when filing the annual statement or filing an appeal before the appellate authorities.
- ▶ When filing the appeal forms, the taxpayer or e-commerce operator is required to provide details of any disputed amount of ESS EL, interest and penalty.

Implications

As the ESS EL provisions are effective from 1 April 2020, the implementation rules are highly anticipated. The forms mandate that e-commerce operators quote either the PAN or Aadhaar number when filing the annual statement as well as any appeal forms. Further, the person verifying the annual statement (in particular companies where the authorized person may also be an NR) is required to quote his/her PAN. This may create a procedural requirement to obtain a PAN even in the absence of any statutory requirement.

Additionally, there is an anomaly between the substantive provisions and the procedural forms for the levy of penalties for quoting an incorrect PAN/Aadhaar in the EL forms.

While procedural clarity has been provided for the implementation of the ESS EL provisions, additional clarification and guidelines on the scope and ambit of the ESS EL provisions are still required for which various industry representations have been made to the Indian Tax Administration.

Endnotes

1. Introduced by the *Finance Act 2016*.
2. See EY Global Tax Alert, [India extends Equalization Levy scope to cover e-commerce supplies or services](#), dated 29 April 2020.

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EYG no. 007520-20Gbl

1508-1600216 NY
ED None

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