



Equalisation Law

**Expansion in scope to cover
e-commerce supply or services**

July 2020

With effect from 1 April 2020, Equalisation Levy ('EL') of 2% is leviable on consideration received/receivable by a non-resident e-commerce operator from e-commerce supply or services

In the backdrop of the Organisation for Economic Co-operation and Development ('OECD')/ G20 Base Erosion and Profit Shifting ('BEPS') Action 1 dealing with the digital economy, in 2016, India introduced an EL of 6% on non-residents engaged in online advertisement and related activities. Considering that Action 1 recommended continued work in relation to digital economy, OECD/ G20

Inclusive Framework on BEPS is developing a consensus-based solution under a Two-Pillar approach¹ to address tax challenges arising from digitalisation of economy. While India awaits consensus to emerge, propelled by the ongoing discussions on BEPS 2.0 project, India has expanded the scope of EL effective 1 April 2020.

Brief overview of expanded scope of EL

Transactions covered	Targeted recipients	Exclusions
<ul style="list-style-type: none"> Online² sale of goods owned by e-commerce operator³ Online provision of services provided by e-commerce operator Online sale of goods or provision of services or both, facilitated by e-commerce operator Sale of advertisement or data between non-residents 	<ul style="list-style-type: none"> Indian resident Non-resident in specified circumstances⁴ Buyer of goods or services or both, using internet protocol ('IP') address located in India 	<ul style="list-style-type: none"> E-commerce operator having a permanent establishment ('PE') in India if the e-commerce supply or services are effectively connected to such PE Sales, turnover, or gross receipts of e-commerce operator from e-commerce supply or services are less than INR 20 million If existing EL of 6% is leviable on such transaction 

- Both, B2B and B2C transactions are covered
- Income of non-resident e-commerce operator exempt from income-tax with effect from 1 April 2021
- Creditability or deduction of EL in overseas jurisdiction to be evaluated
- Compliance obligation on the non-resident e-commerce operator

1. 'Two-Pillar approach' of OECD:

- Pillar One focuses on allocation of taxing rights and considers proposals for new profit allocation and nexus rules; and
- Pillar Two envisages Global Anti-Base Erosion ('GloBE') proposal such that all internationally operating businesses pay a minimum level of tax

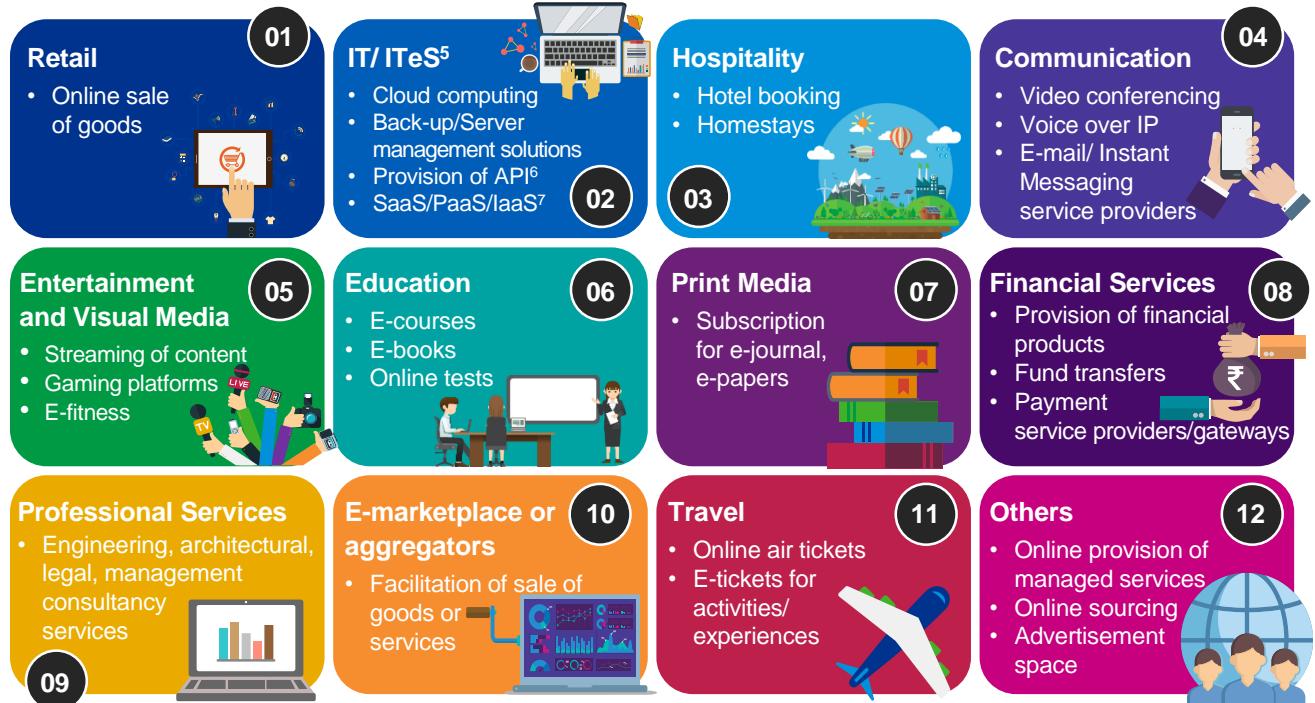
2. 'Online' means a facility or service or right or benefit or access that is obtained through the internet or any other form of digital or telecommunication network

3. '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

4. 'Specified circumstances' mean:

- sale of advertisement, which targets a customer, who is resident in India or a customer who accesses the advertisement through IP address located in India; and
- sale of data, collected from a person who is resident in India or from a person who uses IP address located in India

Illustrative transactions requiring evaluation



EL applicability- Key areas for consideration

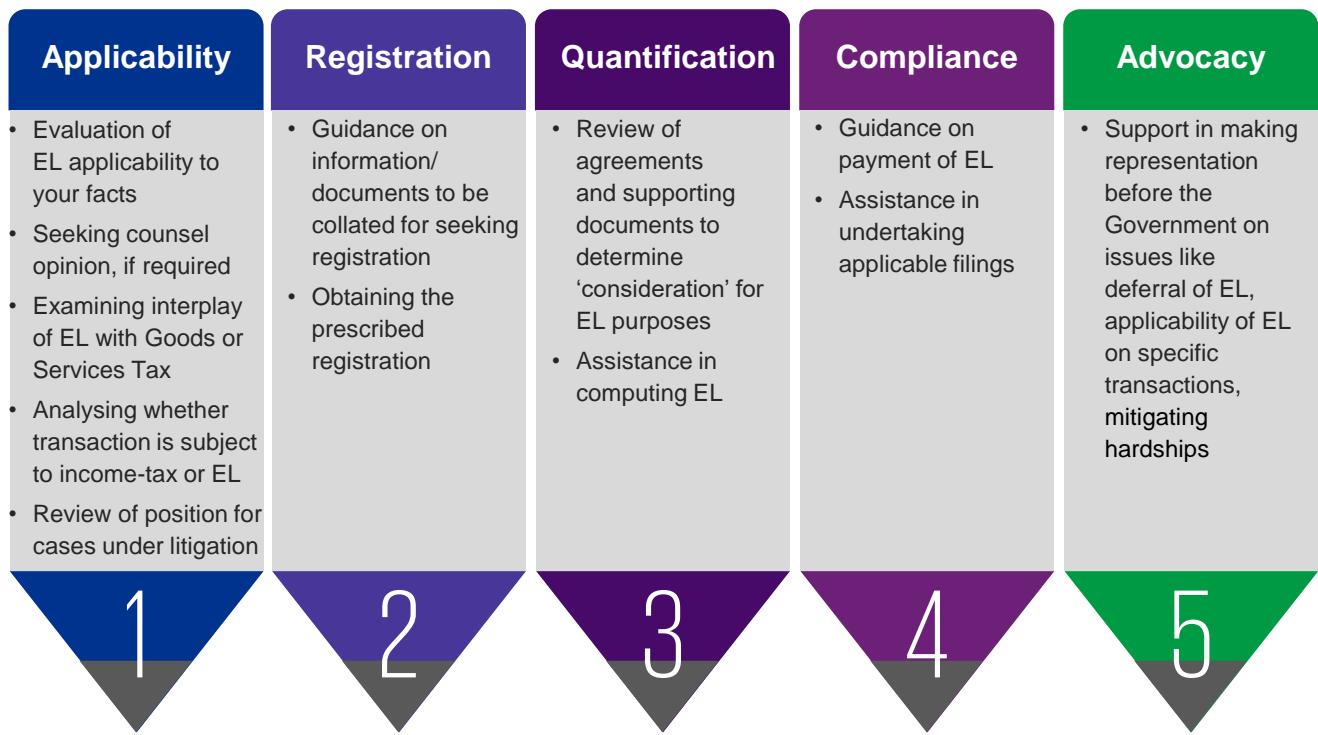
Online ordering and offline delivery of goods	Online ordering through e-mail/ enterprise resource planning software
Impact on re-seller models and intra-group cross-charges	Services provided by one non-resident entity and consideration received by another
Composite contracts for supply of goods, provision of services and download of software	Classification of intellectual property/ licenses as goods or services
One-off transaction involving Indian IP address	Orders placed using Indian IP address, for delivery outside India
Allocation of consideration in case of regional advertisements, including India	Advertisements targeted at non-residents accessed by an Indian resident or using an Indian IP address
Meaning of 'consideration' in the context of market-place models/ aggregators	Reports, drawings, designs, etc. prepared offline but shared online with customer
EL is applicable from 1 April 2020 while exemption from income-tax is from 1 April 2021	Risk of double taxation where royalty/ fee for technical services subject to withholding tax
Inter-play with indirect tax laws in India	Refund/ credit of EL where transaction subsequently subject to income-tax during audit
First installment due on 7 July 2020	Guidance on tax registration requirement awaited

5. IT/ ITeS – Information Technology/ Information Technology Enabled Services

6. API – Application Program Interface

7. SaaS/ PaaS/ IaaS – Software as a Service/ Platform as a Service/ Infrastructure as a Service

Our Value Proposition



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