

Background: India's "Equalisation Levy" Expansion

On March 23, 2020 the Indian Parliament passed an amended national budget (Union Budget 2020), which includes a number of new revenue measures and became effective on April 1, 2020.

Notably, the Budget includes an expansion of scope of India's existing "equalisation levy" to include **a new 2% tax on the sale of all goods and services by non-Indian companies over the internet into India**. The scope of this new tax appears significantly broader than that of national digital services taxes (DSTs) advanced to date. We understand the tax was incorporated into the Union Budget 2020 at a late stage and with no public consultation. **The tax is effective as of April 1, 2020, and the first quarterly payment to the Indian Government is due by July 7, 2020.**

Overview

- India's existing "equalization levy" (EL) was introduced in the 2016 Finance Act on certain non-resident businesses and applied a 6% tax on certain "specified services," such as online advertisement and the provision of digital advertising space.
- In contrast to India's existing EL, which requires compliance by Indian companies paying foreign advertising businesses for digital advertising services, **the new tax requires the non-Indian e-commerce company to file Indian tax returns and make quarterly payments to the Indian Government.**
- More specifically, the tax applies to "e-commerce operators," defined as **non-residents** who own, operate or manage a digital or electronic facility or platform for online sale of goods, online provision of services, or both.
- The "e-commerce supply or services" on which the tax applies are:
 - The online sale of goods owned by the e-commerce operator;
 - The online provision of services provided by the e-commerce operator;
 - The online sale of goods or provision of goods facilitated by the e-commerce operator (i.e., when the operator provides a platform for others to supply goods or provide services); or
 - Any combination of the above.
- The tax is applicable when the goods or services are provided or facilitated by the e-commerce operator to 1) a person resident in India; 2) a non-resident (in respect of the sale of advertisements targeted at persons resident in India or using an IP address in India); or 3) any person who buys goods or services using an IP address located in India.
- That tax does NOT apply in situations where 1) the non-resident has a permanent establishment in India and the covered supply of goods and/or services are connected to that permanent establishment; 2) the original 6% EL on "specified services" already applies to the supply of services in question; or 3) sales, turnover or gross receipts of the goods or services totaled less than \$263,000 during the previous year. This threshold is substantially lower than comparable revenue thresholds in existing national DST measures in Europe.