

E-Retailers Face Retroactive Tax Bills, Uncertainty in India

By Siri Bulusu

Feb. 4, 2021, 7:16 AM

-
- Changes could come into effect by April 1
 - Definition of e-commerce retailers remains a problem
-

Global online retailers like Amazon, Google, and Facebook could see retroactive tax bills in India on e-commerce services dating back to April 2020.

Thanks to changes in India's 2021-22 budget, e-commerce portals would have to pay a 2% tax—called the equalization levy—on the full amount of online sales made in India instead of just the amount collected from sellers using the platform. Businesses had asked the government to clarify the scope of the levy after it was expanded in 2020 to hit non-resident e-commerce operators making supplies in India.

"As a result of this clarification it becomes clear that transactions we thought were not liable to the equalization levy have now become liable—so the answer is to recalculate," Mukesh Butani, founder and managing partner at BMR Legal in New Delhi.

The announcement, released this week, comes as India continues its effort to collect taxes from online giants it says aren't paying enough in taxes on the billions in sales they generate. The levy is one of several unilateral measures around the world aimed at U.S. tech giants that raised trade tensions with the Trump administration.

Tax practitioners warn the proposal could also create uncertainty and a host of compliance issues for online retailers. If approved by Parliament, the changes would apply as soon as April 1.

"The provisions, as proposed, continue to raise questions related to compliance, underscoring the importance of direct industry engagement, consultation, and the publication of FAQs," said Megan Funkhouser, director of tax and trade policy at the Information Technology Industry Council in Washington—a trade group representing tech giants like Apple, Facebook, and Google. The three didn't return requests for additional comment.

Recalculating Taxes

Companies could face higher tax bills if they didn't use a gross method of calculating their taxable income. Under the budget, they would have to recalculate their tax bills to ensure they apply the tax to all applicable transactions and income.

"If a non-resident marketplace or aggregator company was taking a view that the equalisation levy is to be applied on net commission income and not on the gross transaction value, that technical position becomes incorrect now with the explanation coming in the budget," Sandeep Jhunjunwala, a partner at Nangia Andersen LLP in Bangalore, said in a text.

But the switch to gross transaction value means e-commerce platforms have to pay tax on the full amount of any sale, not just the amount remaining after transferring the payment to the sellers using the platform.

"Even if its only one company that is affected, they're not only paying tax on their income but on some third party seller's income which is way beyond what this digital project is intended to achieve," said Meyyappan Nagappan, digital tax leader at Nishith Desai Associates in Mumbai.

Uncertainty Continues

While companies have gotten answers on the scope of transactions, practitioners are still concerned about other ambiguous terms in the clarification like acceptance of offer for sale, placing of purchase order, or acceptance of the purchase order—all of which could hit a multitude of transactions.

The fact that the government took such a broad view in the definitions of transactions and payments subject to the tax suggests that the government intends to interpret which taxpayers are subject to it also, said Gary Sprague, a partner at Baker & McKenzie LLP in Palo Alto, Calif.

While the changes may not hit every multinational operating in India, it still puts those companies in an "uncomfortable place" because the proposal essentially shows that the Indian government will not regard the concerns of multinationals, Nagappan said.

But an Indian group representing 70,000 small traders is applauding the government's decision to double down on the tax, saying that it will level the playing field between global e-commerce operators and India's small brick-and-mortar retailers.

The budget changes signal the government is prepared "to crack down the unholy business practices of global e-trailers to monopolize and control Indian e-commerce and retail trade," Praveen Khandelwal, secretary general of the Confederation of All-India Traders, said in a text.

To contact the reporter on this story: Siri Bulusu in Washington at sbulusu@bloombergtax.com

To contact the editors responsible for this story: Meg Shreve at mshreve@bloombergtax.com; Colleen Murphy at cmurphy@bloombergtax.com