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Equalisation Levy – New Income Tax provisions for Digital economy

Considering the potential of new digital economy and the rapidly evolving nature of business operations it is found essential to address the challenges in terms of taxation of such digital transactions. In order to address these challenges, a new Chapter titled "Equalisation Levy" has been inserted in the Income Tax Act to provide for an equalisation levy. This is applicable w.e.f. 1st June 2016.



What is Equalisation levy ?

“Equalisation levy” means the tax leviable on consideration received or receivable for any specified service under the provisions of the act. While - “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;

What is the rate of Equilisation levy ?

An equalisation levy shall be charged at the rate of 6% of the amount of consideration for any specified service.

When an Equilisation levy is chargeable ?

An equalisation levy is chargeable at the rate of 6% of the amount of consideration for any specified service received or receivable by a person, being a non-resident from—

- a person resident in India and carrying on business or profession; or
- a non-resident having a permanent establishment in India.

What are the situations when Equilisation levy WILL NOT be chargeable ?

The equalisation levy shall not be charged in following 3 situations –

- the non-resident providing the specified service has a PE in India and the specified service is effectively connected with such PE; OR
- the aggregate amount of consideration for specified service received or receivable in a previous year by the non-resident does not exceed one lakh rupees; OR
- where the payment for the specified service by the person resident in India, or the PE in India is not for the purposes of carrying out business or profession.



Digital world

What are payment provisions, interest and penalty provisions for Equalisation levy ?

The equalisation levy shall be paid by every assessee to the credit of the Central Government by the seventh day of the next month. Even if amount is not deducted, still the person is liable to pay the same.

Who is liable to pay Equalisation levy ?

By every person, being a resident and carrying on business or profession or a non-resident having a permanent establishment in India. Such person shall deduct the equalisation levy from the amount paid or payable to a non-resident in respect of the specified service @6% of the aggregate amount of consideration for specified service in a previous year if it exceeds one lakh rupees.

What are the penal consequences for non compliance of Equalisation levy ?

Failure to pay / comply with provisions shall attract –

- simple interest @1% of such levy for every month or part of a month by which such crediting of the tax or any part thereof is delayed.
- A penalty of one thousand rupees for every day (max equal to levy not paid) during which the failure continues
- Penalty @ Rs 100 per day if there is Failure to furnish annual statement in Form 1 by 30th June
- Expenditure will be disallowed u/s 40 if equalisation levy has not been paid.

TCS on Sale of Car and Goods

TCS provision on sale of Goods and services above two lacs in cash-

➤TCS @ 1% on sale of bullion or jewellery or any other goods or providing any services **in cash** as consideration shall be collected.



➤Provision is applicable, if such consideration –
For bullion exceeds Two Lacs Rupees or
For Jewellery exceeds Five Lacs rupees or
For other goods or services exceeds Two Lacs Rupees.

➤However, TCS provision will not be applicable if tax Has been deducted at source by the buyer.

➤This provision has been introduced to reduce the quantum of cash transaction in sale of any goods and services and for curbing the flow of unaccounted money in the trading system and to bring high value truncations within the tax net.

➤Where the sale consideration received in partly in cash and partly in cheque TCS will not be levied if the cash receipt does not exceed Rs.2 Lacs even if the sale consideration exceeds Rs. 2 Lacs.



TCS provision sale of car

➤TCS on sale of motor vehicle above Rs. 10 Lacs to be collected by seller @ 1 % of the sale consideration at the time of receipt of such amount.

➤This is brought to cover all transactions of retail sales and accordingly it will not apply on sale of motor vehicles by manufacturers to dealers/distributors.

➤It will be applicable on sale of any motor vehicle.

➤Even an individual who is liable to audit as per the provisions of section 44AB of the Act during the financial year immediately preceding the financial year in which the motor vehicle is sold shall be liable for collection of tax at source on sale of motor vehicle by him.

➤The provisions of TCS on sale of motor vehicle exceeding ten lakh rupees is **not dependent on mode** of payment. **So even it is applicable on cheque payment.**

Important TDS Rates

Section	Nature of Payment	Threshold Limit	Rate %
194A	Interest by bank/ Co-operative society Interest by others	Rs. 10,000 Rs. 5,000	10
194C	Payment to Contractor/Sub contractor /Advertisement/ Transporter- For Single Transaction Aggregate transaction during FY	Rs. 30,000 Rs. 1,00,000 (From 01/06/16)	2*
194H	Commission/ Brokerage	Rs. 15,000 (From 01/06/16)	5
194I	Rent- Plant & Machinery, Equipment Rent- Land & building, furniture & fixture	Rs. 1,80,000	2 10
194J	Professional Fess , Royalties, Technical Fees Director Remuneration	Rs. 30,000 Nil	10
194IA	Purchase of Immovable properties from resident Indian	Rs. 50,00,000	1

* Rate 1 % in case of deductee is individual/ HUF.

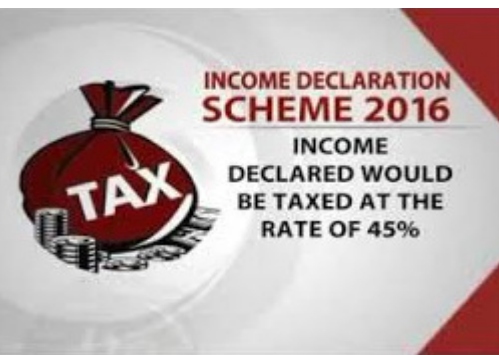
Note: If No PAN or Invalid PAN, TDS rate is 20 %. Declaration of non filing of TDS statement is mandatory in case of NIL TDS return.



Important TCS Rates

Sr. No.	Nature of Goods	Rate %
1.	Scrap, Alcoholic liquor for human consumption	1
2.	Jewellery (If Amount > Rs. 5 Lacs)	1*
3.	Bullion (If amount > Rs. 2 Lacs)	1*
4.	Purchase of Motor Vehicle (If value > Rs. 10 Lacs)	1
5.	Purchase of any goods or services, if value thereof exceeds Rs. 2 Lacs and the payment thereof made in cash	1

*If total or part of the amount is received in cash.



Income Declaration scheme 2016

Income Declaration Scheme 2016 (in common man's language Black Money Disclosure) - The Scheme provides an opportunity to persons who have NOT paid full taxes in the past to come forward and declare the undisclosed income and pay tax, surcharge and penalty totalling in all to **45%** of such undisclosed income declared.

SALIENT FEATURES-

Any person can make declaration under this scheme i.e. Individual, HUF, Firm, Company, AOP etc. are eligible to participate in the scheme.

Declaration can be made for -

- For any income which has escaped assessment i.e. which was not reported in income tax returns & tax on which remained unpaid.
- For any investment in any asset purchased from such undeclared income (asset can be in any form- cash in hand, deposits, land- building in any form, gold & other precious metals, other forms of investments).
- Fair Market Value as on 01 Jun 2016 of such investments shall be considered for tax purposes. Mode of Fair Value reporting has been prescribed in the scheme.
- Tax payable is 45% of such declared income which consists of 30% tax + 7.5% Surcharge + 7.5% penalty

EXCLUSIONS

In following circumstances –one cannot take benefit of scheme-

- **Income of that year** for which Income tax notice has been issued u/s 142(1)/ 143 (2)/ 148/ 153A/ 153 (C) of the act
- **Income of that year** for which Income search/ survey has been conducted
- Certain person who are covered under certain offences under Indian Penal Code, COFEPOSA detainees, NDPS Act, Prevention of Corruption Act etc.
- Income under Black Money Act-2015
 - Misrepresentation or suppression of facts i.e. incorrect/ partial disclosure is made
 - 45% Tax as mentioned above is not paid before 30.11.2016

Most importantly,

1. Such declaration shall be kept confidential & will not be shared with any other tax bodies viz Sales Tax, Service Tax, Excise & Customs
2. Indirectly such levies will not be attracted on such income No wealth tax shall be payable on such assets declared in above scheme.
3. The biggest relief- there will be no scrutiny / enquiry under income tax act or wealth tax act,
4. Further booster- total protection from prosecution provisions (i.e. imprisonment etc) under income tax act & wealth tax act ONLY for income declared under said scheme.
5. Prohibition from Benami Transactions Act – if the said asset is transferred back to owner by the Benami holder.



FORMS & DUE DATES OF THE SCHEME:

Form 1- Declaration to be made in Form - 1 by the assessee Before 30th Sept 2016

Form 2- An Acknowledgement will be given by ITax commissioner within 15 days from end of the month in which application is made.

Form 3- Intimation of payment of tax @45% by assessee before 30 Nov 2016

Form 4- Certificate of Declaration to be given by the ITax Commissioner within 15 days from the date of intimation of payment.

MODUS OPERANDI OF THE SCHEME-

Assets acquired from undisclosed income shall be valued as on 01 Jun 2016 by the registered valuer & report shall be obtained.

Such assets / properties may include- bullion, jewellery, paintings, sculptures, shares, securities, immovable property, interest in partnership Firm or any other asset.


Relief provided in Capital Gains working for assets acquired & disclosed under the scheme

Where investment in any asset is partly from explained sources (income already assessed to tax) and partly from undisclosed income, proportionate reduction shall be allowed in determining the amount to be declared under the Scheme

Declaration can be filed in physical format or electronic format

Total immunity from any tax proceedings for said declaration made.

Indirect Tax Dispute Resolution Scheme 2016

<p><u>Dispute covered -</u> Disputes which involve tax dues or violation of law where order of adjudication is passed. Appeal has been filed against such order under Customs Act, Central Excise Act, and / or Chapter-V of Finance Act (for Service Tax), and Appeal is pending before Commissioner (Appeals) as on March 31, 2016.</p>	<p><u>Dates to follow -</u> Submit Declaration by 31st December 2016 and Pay before 15th January, 2017.</p>	<p><u>Disputes Excluded -</u> Scheme excludes appeal if impugned order- Involves search or seizure proceedings. Prosecution launched (by June 1, 2016). Involves narcotics or prohibited articles. Involves offence under IPC or NDPS Act or Prevention of Corruption Act. Any detention order is passed under COFEPOSA</p>
<p><u>Relief to declarant-</u> 1. Non-binding closure of case on merits. 2. 75 per cent concession in penalty imposed</p>	<p>Indirect Tax</p> 	<p><u>Payments required-</u> 100% Disputed Tax + 100% Applicable Interest + 25% of Penalty</p>

Profession Tax Amnesty Scheme

The Profession Tax Department has issued a circular regarding Amnesty Scheme wherein members who have not enrolled so far can register online to obtain Enrolment Certificate **on or before 30th September 2016**. Profession Tax and related interest in respect of periods prior to 01/04/2013, will be waived in full. Further, Penalty u/s 5(5) of Profession Tax Act, 1975 will also not be imposed against such entities.

FEMA- Annual Return on Foreign Liabilities and Assets

WHO SHOULD FILE FLA RETURN?

All Indian companies and Limited Liabilities Partnerships (LLPs) which have received FDI and/or made FDI abroad in the previous year(s) including the current year

If the company has not 'received any fresh FDI and/or ODI (overseas direct investment)' in the latest year but the company has outstanding FDI and/or ODI, then that company is also required to submit the FLA Return every year by July 15.

Due date of submission is
15th July, 2016

INFORMATION TO BE REPORTED IN THE RETURN

If the company's accounts are not audited before the due date of submission, i.e. July 15 then the FLA Return should be submitted based on unaudited (provisional) account. Once the accounts gets audited and there are revisions from the provisional information submitted by the company, they are supposed to submit the revised FLA return based on audited accounts by end of September of same year.

CONSEQUENCES OF NON-FILING OF FLA RETURN

- a) Non-filing of the return before due date will be treated as a violation of FEMA and penalty clause may be invoked for violation of FEMA.
- b) Black Money Act, 2015 shall also be applicable on the person who has not disclosed his foreign assets and shall be liable to pay income tax and penalty as prescribed.

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Nature is made up of 5 elements and so is our Body – Ether, Air, Fire, Water and Earth. Ayurveda talks about these 5 elements in the form of Tridoshas – Waat (Air + Ether), Pitta (Fire + water) and Kapha (Water + Earth). But it is the 3 qualities of mind (Satva, Rajas, Tamas) which affects the imbalance to tridoshas leading to disease on the body. So better manage our mind which can heal our body.

**July 2016
to Sept
2016**

Vat –

- 21st July, 21st August, 21st September – Payment by monthly filers
- 30th July - Submission of Monthly return for April 2016

Imp Due Dates



Profession Tax –

- 31st July, 31st August, 30th September – Filing of Monthly returns

Income Tax –

- 7th July, 7th August, 7th September – Payment of Monthly TDS
- 31st July – filing of TDS return for First quarter
- 15th September – Payment of Advance Income Tax
- 31st July – Income Tax return (Non corporate and Non Tax Audit assessee)
- 30th September – Income Tax Return (corporate and Tax Audit assessee)

Smile Please !



- #### **Service Tax –**
- 6th July – Monthly / Quarterly Payment of Service Tax
 - 6th August, 6th September – Monthly payment of Service Tax (other than Proprietary concerns and Partnership firms)

Ind-AS Concepts – Financial Instruments

With Ind-AS becoming applicable w.e.f. 1st April, 2016, and considering the fact that with introduction of Ind-AS entire accounting world is undergoing a major change, we have decided to provide certain inputs related to Ind-AS through our newsletter on periodic basis. Here is the first update about Ind-AS provisions applicable for **Financial Instruments**, which itself is the major area of Ind-AS

1 Applicable Accounting Standards –

Ind-AS 32 Financial Instruments – Presentation

Ind-AS 109 Financial Instruments – recognition and measurement

Ind-AS 113 Fair Value Measurement

Ind-AS 107 Financial Instruments: Disclosures

2 A **financial instrument** is any contract that gives rise to a financial asset of one entity and a financial liability or equity instrument of another entity.

➤ So there will be - Financial assets, Financial liabilities and Equity instrument

3 **Classification** - A financial instrument needs to be identified whether it is debt instrument or equity instrument considering the substance of the transaction rather than its legal form.

➤ Financial Liabilities shall be measured either at Amortised cost or at FVTPL based on business model test and contractual cash flows. While financial assets shall be measured at FVTPL or at Amortised cost as well as at FVTOCI (irrevocable selection at the inception for FA being equity Instruments).

➤ Entity's own Equity Instruments (being ownership interest in the residual) is initially measured at Fair Value and thereafter is not remeasured.

4 **Measurement basis** used in Accounting for Financial Instruments –

➤ Amortised Cost – Using of Effective Interest Rate method (IRR)

➤ Fair Value through Other Comprehensive Income (FVTOCI) – Financial Assets may be measured at FVTOCI whereby the changes in FV are taken to OCI

➤ Fair Value through Profit Loss(FV PL) – Financial Assets and Financial Liabilities may be measured at FVTPL whereby the changes in FV are taken to Profit Loss.

5 There may be **Compound Financial Instruments** (e.g. – convertible bonds or debentures) which are required to be split into Debt and Equity components.

Equity Portion in such case = Proceeds received – PV of Debt component

6 **Derivatives** include: Forward contracts, Option contracts, Futures contracts, Swaps etc.

Derivatives are always measured at FVTPL

7 Imp changes in Ind-AS

Forward contract – Recognise MTM Gain / Loss (under current GAAP, premium is amortised, while forecast transaction only losses are MTM)

Interest rate swap - Recognise MTM Gain / Loss (currently MTM losses)

Commodity contract - Recognise MTM Gain / Loss (currently MTM losses)



8 **Reclassification –**

Financial Liabilities are not reclassified, while Financial Assets may be reclassified if there is change in the business model. Reclassification is to be applied prospectively.

➤ Reclassification of FA (whether debt instrument or equity instruments) from FVTPL to either -

- ✓ FVTOCI – then entity shall continue to measure Financial Asset at Fair Value, or
- ✓ Amortised Cost then FV on the date of reclassification becomes the Amortised Cost

➤ Reclassification of FA measured at Amortised Cost to either –

- ✓ FVTPL, then Fair Value is measured on reclassification date and difference is taken to Profit Loss, or
- ✓ FVTOCI, then Fair Value is measured on reclassification date and difference is taken to OCI

Updates for Maharashtra Co-operative Societies (incl Housing Societies)

Latest Due dates for Maharashtra Co-Op society audits:

- Do Classification of Active and Non Active Members -31st March and intimating the classification to the Inactive member by 30th April.
- Ensure Finalisation of Accounts by 15th May
- Hand over Accounts for Audit by 1st June
- Ensure Audit Completion by 31st July
- Upload Audit Report on Mahasahakar website by 15th Sept.
- Conduct Annual General Meeting by 30th Sept.
- Submit Mandatory Annual Return by 30th Sept.
- Upload Mandatory Return about Auditor appointment within one month from AGM or latest by 31st Oct.
- Submit Audit Rectification Report within 3 months from the date of submission of report by auditor.

Each co-operative society (incl Housing cooperative society) should ensure that –

It should visit <https://mahasahakar.maharashtra.gov.in>

Create its profile and register the details on the website.

Govt has now decided to track online – management of the various co-operative societies which includes Accounts, Audit, conduct of meetings and other statutory procedures and compliances.