




Chamber of Tax Consultants Study Circle

Amendments to
Finance Bill 2020 at enactment stage
& Covid 19 tax compliance reliefs

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Amendments to Finance Bill 2020 at enactment stage

Clarification on dividends received during transitional period (F.Y. 2020-21)

- ▶ The Budget proposed a significant corporate tax reform of reverting to 'classical' system of dividend taxation in hands of shareholders from F.Y. 2020-21
 - ▶ Consequent withdrawal of DDT u/s. 115-O in hands of company and 'super rich' tax @ 10% in hands of resident shareholder
- ▶ However, ambiguity arose w.r.t dividends declared on or before 31 March 2020 and received by shareholder after 31 March 2020
- ▶ At enactment stage, it is clarified that such dividend will be exempt in hands of shareholder provided DDT and 'super rich' tax, if applicable, is paid
 - ▶ DDT and 'super rich' tax to be paid by respective due dates and not necessarily by 31 March 2020

TDS rates on dividends to non-residents (F.Y. 2020-21)

- ▶ As per Budget proposal, no specific TDS rates provided for payment of dividends to non-residents where dividend is taxable at 'rates in force'
 - ▶ Consequently, residual rates of 30%/40% plus surcharge & cess applicable although final rate (s.115A) is 20% (subject to treaty benefit)
- ▶ At enactment stage, Part II of First Schedule amended to provide for TDS rate of 20% on dividends to non-residents plus applicable surcharge & cess

Reduction of surcharge on dividends (F.Y. 2020-21)

- ▶ As per Budget proposal, dividend income liable to applicable surcharge in hands of shareholder
 - ▶ Individuals, HUFs, AOPs, BOI & AJP liable to higher surcharge
 - ▶ 25% if total income is between INR 2 Cr to INR 5 Cr
 - ▶ 37% if total income > INR 5 Cr
 - ▶ Effective tax rate as high as 42.74% for residents and 28.50% for non-residents
- ▶ At enactment stage, surcharge rates reduced to maximum 15% for both residents and non-residents for TDS and advance tax purposes linked to 'rates in force'
 - ▶ Thus maximum surcharge on dividends is 15% even if total income > INR 2 Cr (Effective maximum rate 35.88%)
- ▶ But no corresponding amendments for non-residents where TDS/final tax is at specific rates giving rise to mismatches

Class of NR shareholder being individual, AOP, etc	TDS rate	Surcharge for purposes of TDS	Advance tax rate	Surcharge for purposes of advance tax
FDI or NRI investor	20%	Lower (Upto 15%)	20%	Higher(Upto 37%)
Unit holder in Category I/II AIF	20%	Lower (Upto 15%)	20%	Higher(Upto 37%)
Unit holder in Business Trust	10%	Higher(Upto 37%)	20%	Higher(Upto 37%)
Foreign Portfolio Investors	20%	Higher (Upto 37%)	20%	Higher(Upto 37%)

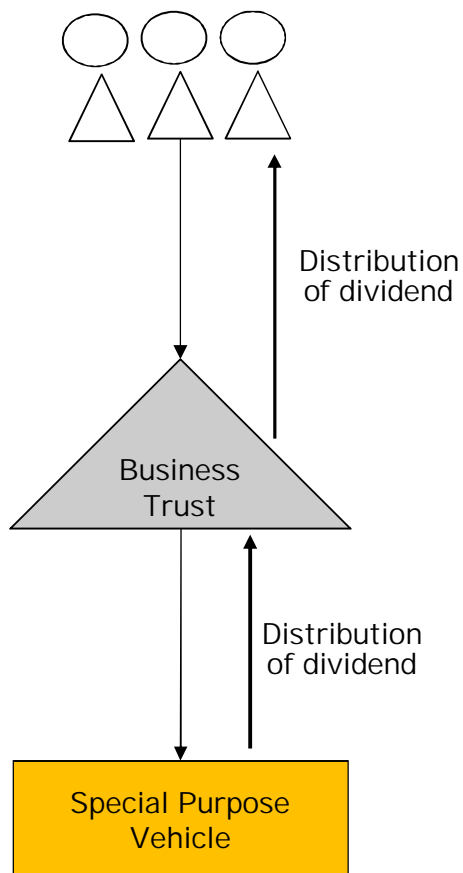
Concessional tax rate for domestic companies

- ▶ As per Budget proposal, effective from F.Y. 2019-20, domestic companies opting for lower corporate tax rates (22% u/s. 115BAA or 15% u/s. 115BAB) by foregoing specified tax incentives/deductions
 - ▶ Cannot avail non-income linked Chapter VI-A deductions (like donations to charities and political parties)
 - ▶ Can avail inter-corporate dividend deduction u/s. 80M
- ▶ At enactment stage, effective date is shifted to F.Y. 2020-21
 - ▶ Non-income linked Chapter VI-A deductions (like donations to charities and political parties) can be claimed for F.Y. 2019-20

Expansion in scope of inter-corporate dividend deduction (F.Y. 2020-21 onwards)

- ▶ As per Budget proposal, inter-corporate dividend deduction u/s. 80M for domestic companies was restricted to dividends received from other domestic companies
- ▶ At enactment stage, scope of s.80M deduction expanded to dividends distributed from following incomes :-
 - ▶ Dividends received from foreign company (regardless of % of shareholding)
 - ▶ Dividends received from business trust (only if SPV has opted for s.115BAA benefit)
- ▶ Dividends received from Category I/II AIF may also arguably qualify due to pass through fiction of direct investment by investor
- ▶ Notable exclusion – Income from equity oriented mutual funds

Amendments in Business Trust (REIT/Invit) dividend taxation



Particulars	Pre-amendment	Post- amendment SPV opts for s.115BAA	Post-amendment SPV does not opt for s.115BAA
DDT/TDS on dividend paid by SPV to BU	<ul style="list-style-type: none"> ▶ No DDT if BU held 100% in SPV ▶ DDT applicable if BU holding in SPV < 100% 	<ul style="list-style-type: none"> ▶ No DDT ▶ TDS u/s. 194 applicable 	<ul style="list-style-type: none"> ▶ No DDT ▶ TDS u/s. 194 applicable
Whether dividend taxable in hands of BU	▶ No	▶ No	▶ No
Whether dividend taxable in hands of unitholders	▶ No	▶ Yes	▶ No
Whether BU liable to TDS u/s. 194LBA	▶ No	▶ Yes (@ 10%)	▶ No
Whether unitholder being domestic company eligible for s.80M deduction	▶ N.A	▶ Yes	▶ No

Optional concessional tax rate regime for individuals/ HUFs - S.115BAC (F.Y. 2020-21 onwards)

- ▶ Budget proposal gave option to individuals/HUFs to switch to concessional tax regime by sacrificing most tax incentives & deductions
- ▶ As per budget proposal, option available :-
 - ▶ Year on year basis if not carrying on business
 - ▶ Irrevocable once exercised if carrying on business – but year on year option available once business ceases
 - ▶ Having opted, can withdraw once but then cannot opt in until business ceases
- ▶ At enactment stage, one time irrevocable option extended to individuals carrying on 'profession'
- ▶ Further, despite representations, Finance Bill not amended to expressly permit employers to consider CTR for employee salary TDS
 - ▶ Employers may need to adopt normal tax regime (with incentives/deductions) for salary withholding purposes
 - ▶ Employees can exercise option while filing return

Amended Residency Rule for Indian citizens/PIOs (F.Y. 2020-21 onwards)

Residency/extended residency rule	Pre-budget	Post-amendment
Indian citizen/PIO coming on a visit to India	<ul style="list-style-type: none"> ▶ Is in India for ≥ 182 days in relevant FY; or ▶ Has been in India for ≥ 365 days within four preceding FYs and is in India for ≥ 182 (instead of 60) days in relevant FY 	<ul style="list-style-type: none"> ▶ NR if < 120 days in India under second condition ▶ NR if ≥ 120 days but < 182 days & 'total income' other than foreign source income \leq INR 15 L ▶ NOR if ≥ 120 days but < 182 days & 'total income' other than foreign source income $>$ INR 15 L ('120 day rule')
Indian citizens not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature	No deemed residency rule	<ul style="list-style-type: none"> ▶ NOR if 'total income' other than foreign source income $>$ INR 15 L('deemed residency rule')

- ▶ Budget proposal to relax NOR rule withdrawn.
- ▶ However, NOR status of individuals satisfying 120 days rule or deemed residency rule will continue so long as respective conditions fulfilled

Impact of NOR status under domestic law provisions

- ▶ Foreign source income means income which accrues or arises outside India except income derived from business controlled or profession set up in India
 - ▶ 'Total income' as per s.5 is function of residency and place of accrual/arising or receipt of income – Chicken & egg controversy!!
- ▶ Consequential impact of NOR status under domestic law provisions
 - ▶ Income derived from business controlled in or profession set up in India becomes taxable in India even if it accrues or arises outside India
 - ▶ Control of business to be distinguished from substantial shareholding or directorship of foreign company
 - ▶ Certain concessional/flat rates of tax cease to be applicable (eg. 20% on dividend incomes, 10% on LTCG on unlisted shares)
- ▶ However, no incremental impact on following aspects
 - ▶ No foreign asset reporting obligation – but also no protection from Black Money Act if failure to report in past when individual was ROR
 - ▶ Income deemed to accrue or arise in India continues to be taxable as per source rules
 - ▶ NOR is treated as NR for international TP for determining AE relationship (s.92), avoidance of tax by transfer of income to NRs (s.93) and determining residency of executors (s.168)

Impact of NOR status under treaty provisions

- ▶ Relevance of treaty benefit
 - ▶ If India is source country, availing concessional tax rates under treaty (subject to treaty anti-abuse provisions)
 - ▶ If India is resident country, availing foreign tax credits for incomes arising outside India in India-controlled business/profession
 - ▶ Technically, no TRC required (being 'resident') to avail treaty benefit but practically advisable where India is source country
- ▶ Individuals being tax residents of countries which levy personal taxes like UK, USA, etc
 - ▶ Dual residency and tie breaker tests may come into operation
 - ▶ If individual is resident of other country, deemed residency rule unlikely to apply
- ▶ Individuals being residents in countries which do not levy personal taxes (Middle East countries)
 - ▶ More relevant for deemed residency rule in view of controversy on being 'liable to tax' in other country and application of tie breaker test
 - ▶ UAE/ Kuwait treaty residency is based on days of physical presence

TDS on cash withdrawals (s.194-N) – stricter regime from 1 July 2020


- ▶ TDS on cash withdrawals @ 2% in excess of INR 1 Cr from one or more accounts with bank, co-operative society or post office introduced by last year's Finance Act from 1 Sep 2019
- ▶ Norms made stricter at enactment stage of current year's Finance Act w.e.f 1 July 2020 for 'non-filers'
 - ▶ Applicable to persons who have failed to file returns for three successive years, for which time limit u/s. 139(1) has expired, immediately preceding the year of cash withdrawal
 - ▶ TDS @ 2% on cash withdrawals between INR 20 lakhs to INR 1 Cr and @ 5% in excess of INR 1 Cr
 - ▶ Due to different due dates (31 July, 31 Oct and 30 Nov) for filing returns for different classes of taxpayers, the 3-year period will be rolling period for cash withdrawals made before and after due date falling during each year of cash withdrawal
 - ▶ Eg. For due date falling on 31 July 2020, return filing compliance to be seen for
 - ▶ F.Y. 2016-17, 2017-18 & 2018-19 till 31 July 2020
 - ▶ F.Y. 2017-18, 2018-19 and 2019-20 from 1 Aug 2020
- ▶ TDS rate @ 2% and threshold of INR 1 Cr continues for other persons
 - ▶ But due to slight change in language of substituted section, ambiguity arises whether 'catch up' TDS required for entire past withdrawals once it crosses INR 1 Cr
- ▶ Central Government's powers to notify exceptions also widened (lower TDS cases)

Changes in TCS on LRS and sale of goods as compared to Budget proposals

- ▶ Date of applicability deferred from 1 April 2020 to 1 October 2020
- ▶ No duplicated TCS on LRS and overseas tour programme package

Situation	TCS obligation by Authorised Dealer (AD)
Remittances, other than for purchase of overseas tour package, during FY < INR 7 lakhs	No TCS
Remittances, other than for purchase of overseas tour package, during FY > INR 7 lakhs	TCS @ 5% on remittances exceeding INR 7L
Remittance out of education loan borrowed from specified financial institution as defined in s. 80E	TCS @ 0.5% (earlier 5%) on remittances exceeding INR 7L
If TCS collected by seller of overseas tour package	No TCS by Authorised Dealer

- ▶ Export of goods and import of goods exempted from TCS on sale of goods
 - ▶ TCS applies @ 0.5% when seller has turnover > INR 10 Cr in preceding FY and consideration received from buyer for sale of goods > INR 50 lakhs in current FY
- ▶ But still no clarity on scope of 'goods' whether it includes shares or securities, foreign currency, actionable claims, etc



Tax and statutory compliances in Covid – 19 backdrop

Covid 19 – Short term tax compliance reliefs

- ▶ **The Taxation and Other Laws (Relaxation of certain provisions) Ordinance 2020 ('Ordinance')** promulgated on **31 March 2020** to implement reliefs announced by Press Release on 24 March 2020
- ▶ **Specified Act** – Wealth tax, Income tax, Benami Property, Securities Transaction Tax, Commodities Transaction Tax, Black Money Act, Equalisation Levy, Direct Tax Vivaad Se Vishwas (S.2(1)(a))
- ▶ **Relaxation of certain provisions of Specified Act (S.3)**
 - ▶ Extension of time limits falling between **20 March 2020 to 29 June 2020** or such other notified date falling after 29 June 2020 till **30 June 2020** or such other date as CG may notify – Different dates may be notified for different actions
 - ▶ Completion of any proceedings, order, notice, intimation, notification, sanction, approval, etc by tax authority, Commission, Tribunal
 - ▶ Filing of appeal, reply, application, report, document, return, etc (Press Release also refers to Aadhar-PAN linking)
 - ▶ Investment, deposit, payment, construction, etc for s.54 to 54GB, Chapter VI-A under the heading “B-Deductions in respect of certain payments”(eg. 80C, 80CCD, 80D, 80G, etc) or any other provision to be notified by CG
 - ▶ Beginning of manufacture, production or services by SEZ Unit u/s. 10AA where letter of approval issued on or before 31 March 2020

Covid 19 – Short term tax compliance reliefs

- ▶ **Payment of tax or levy** - No extension for payment of any tax or levy falling due between specified period but if paid by 30 June 2020 or further notified date
 - ▶ Rate of interest for period of delay shall not exceed 0.75% per month (9% pa)
 - ▶ No penalty and prosecution for period of delay
 - ▶ No clarity on coercive measures to recover outstanding tax demands
- ▶ **PM CARE Fund (S.4)**
 - ▶ Shall have same status as PM National Relief Fund for exemption of its income (s.10(23C)(i))
 - ▶ Included in s.80G(2)(a)(iiia) along with PM National Relief Fund for 100% deduction without cap of 10% of GTI
 - ▶ Benefit can be claimed in F.Y. 2019-20 for donations made till 30 June 2020 or further notified date
 - ▶ CBDT Circular No. 2/2005 dated 12 Jan 2005 permitted consolidated payment by employer for donations by employees & issue of donation receipt by employer for PM National Relief Fund, CM Relief Fund and LG Relief Fund
 - ▶ Domestic companies claiming s.115BAA/s.115BAB benefit in F.Y. 2019-20 can also claim benefit
- ▶ **VSV (S.5)**
 - ▶ Date for declaration and payment without incurring 10% additional tax extended from 31 March 2020 to 30 June 2020

Covid 19 – Short term tax compliance reliefs

- ▶ CBDT has issued order under s.119 dated 31 March 2020 for reliefs in respect of lower/NIL TDS/TCS certificates for **F.Y. 2020-21**

Sr	Circumstance	Relief
1	<ul style="list-style-type: none"> ▶ Lower/NIL certificate for F.Y. 2019-20 available ▶ Applied for similar certificate for F.Y. 2020-21 on TRACES portal 	<ul style="list-style-type: none"> ▶ Certificate for F.Y. 2019-20 will continue to apply till 30 June 2020 or disposal of application by AO, whichever is earlier
2	<ul style="list-style-type: none"> ▶ Lower/NIL certificate for F.Y. 2019-20 available ▶ Could not apply for similar certificate for F.Y. 2020-21 	<ul style="list-style-type: none"> ▶ Certificate for F.Y. 2019-20 will continue to apply till 30 June 2020 ▶ But, application to be made to AO over email at the earliest, as soon as normalcy is restored or 30 June 2020, whichever is earlier
3	<ul style="list-style-type: none"> ▶ Neither having certificate for F.Y. 2019-20 nor application made 	<ul style="list-style-type: none"> ▶ Application to be made over email
4	<ul style="list-style-type: none"> ▶ Payments to NRs having PE in India and not covered by 1 and 2 above 	<ul style="list-style-type: none"> ▶ TDS @ 10% (including surcharge & cess) till 30 June 2020 or disposal of application, whichever is earlier

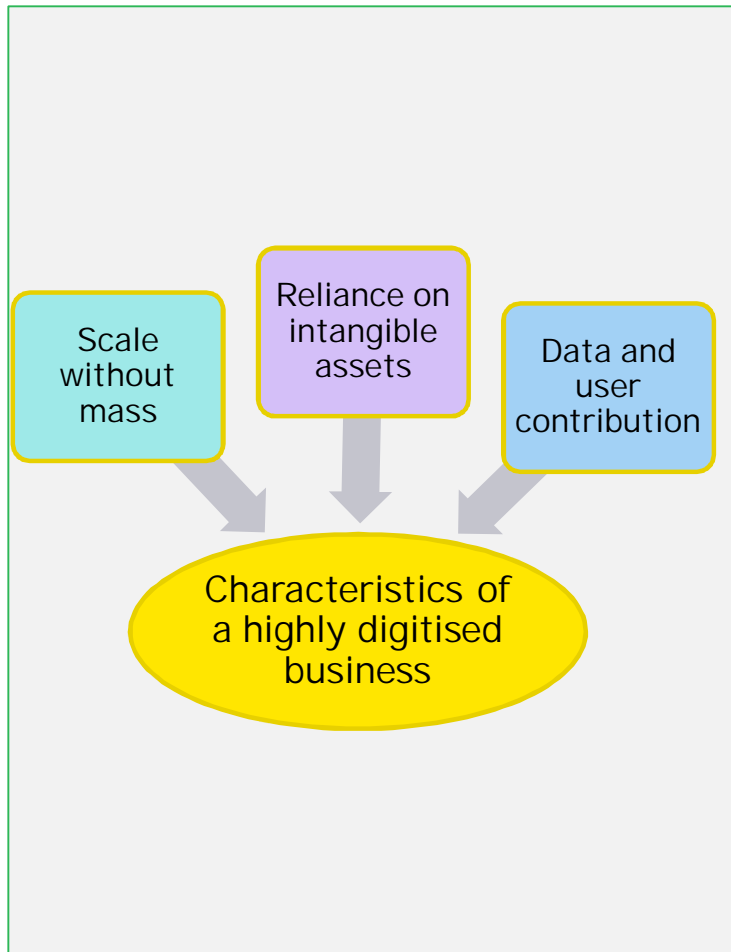
Covid 19 – Short term tax compliance reliefs

- ▶ CBDT has issued order under s.119 dated 3 April 2020 for reliefs in respect of lower/NIL TDS/TCS certificates for **F.Y. 2019-20**
 - ▶ Applicable to taxpayers who have made timely application through TRACES portal and have raised invoices in F.Y. 2019-20 but have not received payment till date
 - ▶ Taxpayers to intimate AO over email about pending applications along with required documents and evidences of application filed in TRACES portal
 - ▶ AO to dispose application by 27 April 2020 and communicate to taxpayer over email who, in turn, to share with deductor/collector
 - ▶ Lower TDS/TCS certificate to be applicable for amount credited/debited during F.Y. 2019-20 after date of making application but remained unpaid till date of issuance of certificate by AO
- ▶ CBDT has issued another order under s.119 dated 3 April 2020 for reliefs in respect of furnishing of **Form 15G/H**
 - ▶ Valid Form 15G/H furnished for F.Y. 2019-20 to be valid upto 30 June 2020 for F.Y. 2020-21
 - ▶ Payer to report in quarterly TDS statement for 30 June 2020



Equalisation Levy and TDS on e-commerce transactions

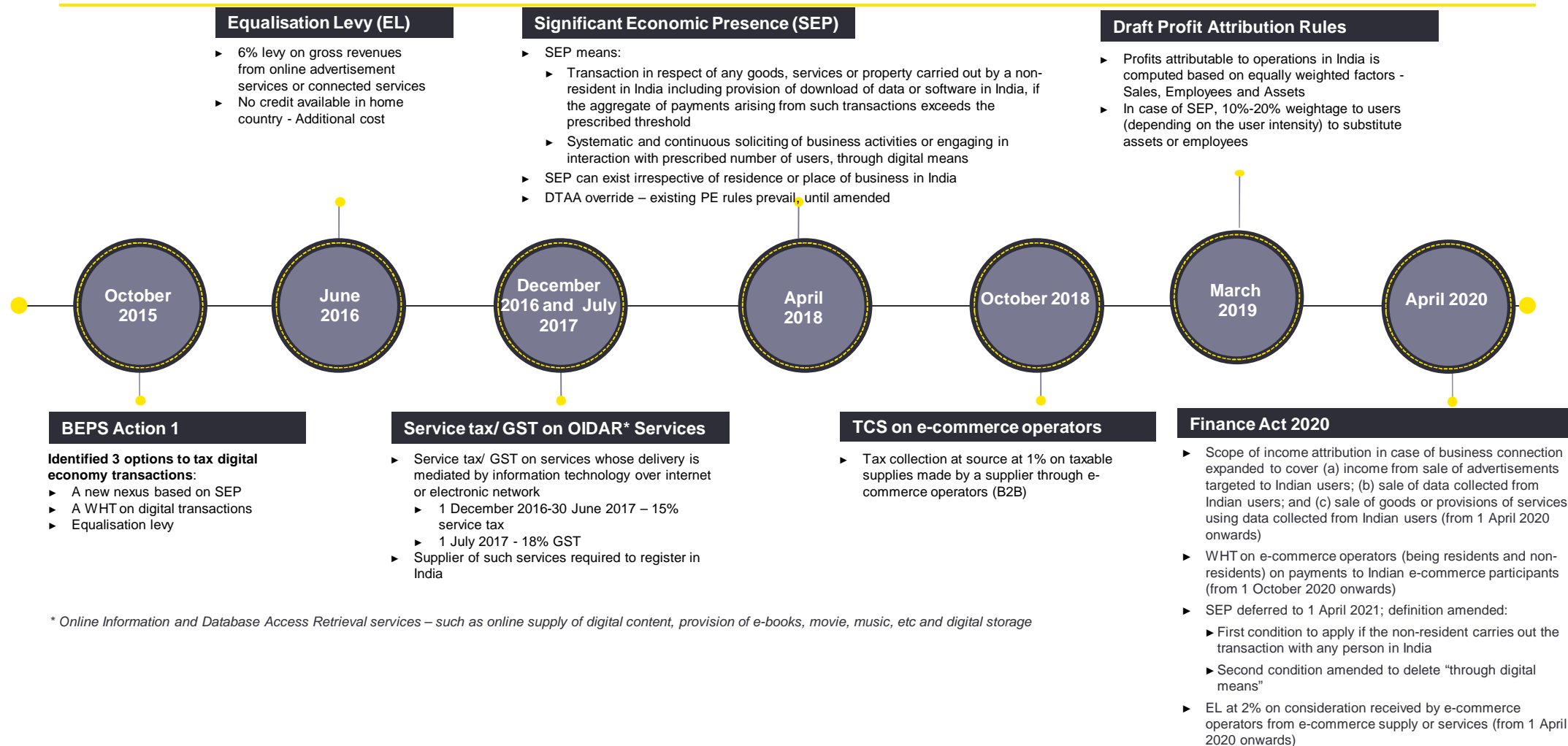
OECD Action Plan 1: Taxation of Digital Economy



BEPS Report on Action Plan 1 issued on 5 October 2015 identified 3 options and left it to countries to consider them, with the rider that existing treaties should be respected :





SEP/ Digital PE	Withholding Tax	Equalisation levy
<ul style="list-style-type: none"> ▶ A new nexus rule for determining the taxable presence of a non-resident in a country based on following factors: <ul style="list-style-type: none"> ▶ Revenue-based factors ▶ Digital factors (such as local domain name, local payment options, etc) ▶ User-based factors (such as monthly active users, data collection, etc) ▶ Changes in profit attribution rules to determine income attributable to significant economic presence 	<ul style="list-style-type: none"> ▶ A WHT on payments by residents (and local PEs) of a country for goods and services purchased online from non-resident providers 	<ul style="list-style-type: none"> ▶ An equalisation levy to avoid difficulties arising from creating new profit attribution rules for purposes of a nexus based on significant economic presence ▶ Approaches to the levy: <ul style="list-style-type: none"> ▶ Apply only to situations in which income is otherwise untaxed or subject to a very low rate of tax; or ▶ Credit the levy against corporate income-tax

Timeline: India developments



* Online Information and Database Access Retrieval services – such as online supply of digital content, provision of e-books, movie, music, etc and digital storage





TDS on E-commerce transactions u/s. 194O (w.e.f 1 October 2020)

Obligation on 	Scope 	Rate 	Persons covered 
<ul style="list-style-type: none"> ▶ E-commerce operator <ul style="list-style-type: none"> ▶ Can be Resident or Non-Resident ▶ <i>In case of NR, person responsible to pay includes authorised person, agent or person treated as agent u/s. 163 (s.204(v))</i> <p><i>E-commerce operator defined to mean a person who:</i></p> <ul style="list-style-type: none"> - Owns; - Operates; or - Manages <p><i>a digital or electronic facility or platform for electronic commerce</i></p> <p>At enactment stage, 'responsibility to pay' omitted from definition and e-commerce operator deemed to be person responsible for paying to e-commerce participant</p>	<ul style="list-style-type: none"> ▶ Sale of goods or provision of services of an e-commerce participant is facilitated by an e-commerce operator through its digital or electronic facility or platform <p><i>"electronic commerce" means the supply of goods or services or both, including digital products, over digital or electronic network</i></p> <p>CBDT can prescribe guidelines for removing difficulties, such guidelines to be laid before both Houses of Parliament and such guidelines binding on both Tax Authority and e-commerce operator (added at enactment stage)</p>	<ul style="list-style-type: none"> ▶ 1% on gross amount of sales or services or both credited or paid to e-commerce participant by e-commerce operator ▶ Payment made directly by customer to e-commerce participant deemed to be credited or paid by e-commerce operator ▶ Levy is nature of withholding tax – therefore, credit is available to resident e-commerce participant against his final tax liability 	<p>"e-commerce participant" means a person resident in India selling goods or providing services or both, including digital products, through digital or electronic facility or platform for electronic commerce</p> <p>Exception - E-commerce participant being individual/HUF whose gross amount of sale or service < Rs. 5 lakhs and has furnished PAN/Aadhar to e-commerce operator</p> <p>If TDS made by e-commerce operator under this section (or covered by above exception), no other TDS will apply (except in case of receipts by e-commerce operator for hosting advertisement or providing other services not in connection with sales or services provided by e-commerce participant)</p>

Existing Equalisation Levy (Payer based)

- ▶ Applies w.e.f 1 June 2016
- ▶ Payable by :-
 - ▶ Person resident in India carrying on business or profession
 - ▶ Non-resident having PE in India
 - ▶ Exceptions
 - ▶ NR providing 'specified service' has PE in India and specified service is effectively connected with such PE
 - ▶ Aggregate consideration receivable by NR for specified service does not exceed Rs. 1 lakh in a financial year
 - ▶ Payment is not for purposes of carrying out business or profession
- ▶ Resident or NR PE to deduct EL @ 6% if aggregate consideration in a FY exceeds Rs. 1 lakh
- ▶ '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

E-commerce EL (w.e.f 1 April 2020) (Payee based)

Obligation on 	Scope 	Rate 	Persons covered 
<ul style="list-style-type: none"> ▶ Non-resident e-commerce operator <ul style="list-style-type: none"> ▶ Not having a PE in India ▶ Sales, turnover, gross receipts ≥ Rs. 2 Cr ▶ Not covered under existing online advertisement related EL <p><i>E-commerce operator defined to mean a non-resident who:</i></p> <ul style="list-style-type: none"> - Owns; - Operates; or - Manages <p><i>a digital or electronic facility or platform for online sale of goods or online provision of services or both</i></p>	<ul style="list-style-type: none"> ▶ 'E-commerce supply or services' made or provided or facilitated by it <p><i>E-commerce supply or services means-</i></p> <p>(i) Online sale of goods owned by the e-commerce operator; or</p> <p>(ii) Online provision of services provided by the e-commerce operator; or</p> <p>(iii) Online sale of goods or provision of services or both, facilitated by the e-commerce operator;</p> <p>(iv) Any combination of activities listed in clause (i), (ii) or (iii)</p> <p>"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;</p>	<ul style="list-style-type: none"> ▶ 2% on amount of consideration received / receivable from e-commerce supply or services ▶ Levy not in nature of income-tax – therefore, credit may be subject to domestic law of the home country 	<p>'E-commerce supply or services' made or provided or facilitated, by e-commerce operator to:</p> <ul style="list-style-type: none"> ▶ a person resident in India ▶ a non-resident <ul style="list-style-type: none"> ▶ for sale of advertisement targeted at a customer resident in India or accessing such advertisement through an Indian IP address ▶ for sale of data collected from a person resident in India or from a person who uses an Indian IP address ▶ a person who buys goods or services or both using an Indian IP address

E-commerce EL does not apply where

- ▶ Non resident e-commerce operator has a **PE** in India and e-commerce supply or services is **effectively connected** with such PE
- ▶ EL is leviable under **online advertising EL @ 6%**
- ▶ Sales, turnover or gross receipts, as the case may be, of the e-commerce operator from e-commerce supply or services made or provided or facilitated is less than **Rs. 2 Cr** during the FY.

Corresponding exemption under ITA

- ▶ Income arising from e-commerce supply or services made or provided or facilitated on or after **1 April 2021** will enjoy exemption from domestic income tax u/s. 10(50) of ITA
- ▶ Two conditions for income tax exemption for consideration covered by EL-
 - ▶ Income should arise from services covered within the scope of EL; and
 - ▶ EL should be chargeable on such services

Other key considerations/contentious issues

- ▶ No credit in home country - EL may be a cost of doing business from India
- ▶ Potential considerations around 'treaty override' may arise
- ▶ Provisions seem wide enough to cover traditional businesses effecting sales or providing services online
- ▶ Inter-company transactions including LRD/ reseller arrangements and/ or supplies through group companies seem to be covered by the scope
- ▶ Crossing Rs 2 Cr threshold in a FY makes EL applicable from first rupee of consideration
- ▶ Accounting may be a key factor to determine consideration for the purpose of levy
 - ▶ Where Rs. 100 is collected by e-commerce operator and Rs. 80 is paid to seller after retaining Rs. 20 as its own income, whether EL @ 2% will apply on Rs. 100 or Rs. 20?
- ▶ Consideration on which equalisation levy @ 2% has been applied will be exempt from income tax absent a PE
 - ▶ The scope of levy seems to be wide enough to cover royalty transactions which otherwise would be taxable at 10%
 - ▶ Whether seller also entitled to exemption u/s. 10(50) if EL is applied on Rs. 100 and Rs. 80 is paid to seller?
- ▶ Mismatch in effective date of charging provisions (1 April 2020) and exemption provisions (1 April 2021)
- ▶ NR e-commerce operator may be liable to both EL and TDS u/s. 194-O
 - ▶ Where Rs. 100 is collected by e-commerce operator and Rs. 80 paid to seller, E-commerce operator has to pay EL on Rs. 100 or Rs. 20 and TDS u/s. 194-O of 1% on Rs. 100

Compliance and penal consequences

Particulars	Compliance										
Registration	Obtain tax registration in India										
Deposit of tax	<p>Quarterly, as per the due dates mentioned below, through a challan</p> <table border="1"> <thead> <tr> <th>Quarter ended</th> <th>Due date to deposit</th> </tr> </thead> <tbody> <tr> <td>30 June</td> <td>7 July</td> </tr> <tr> <td>30 September</td> <td>7 October</td> </tr> <tr> <td>31 December</td> <td>7 January</td> </tr> <tr> <td>31 March</td> <td>31 March</td> </tr> </tbody> </table> <p>For deposit, non-resident 'e-commerce operator' may be required to tie-up with an Indian bank</p>	Quarter ended	Due date to deposit	30 June	7 July	30 September	7 October	31 December	7 January	31 March	31 March
Quarter ended	Due date to deposit										
30 June	7 July										
30 September	7 October										
31 December	7 January										
31 March	31 March										
Annual statement	Annual statement to be filed by 30 June immediately after the end of FY										
Consequences of failure to discharge EL	<ul style="list-style-type: none"> ▶ Interest at 1% per month (or part of month) for which default continues ▶ Penalty equal to 100% of the EL ▶ Prosecution in case of furnishing false statement 										
Representative assessee	<ul style="list-style-type: none"> ▶ If non-resident e-commerce operator does not discharge liability, payer may be obligated 										

Comparison between EL and TDS u/s. 194-O

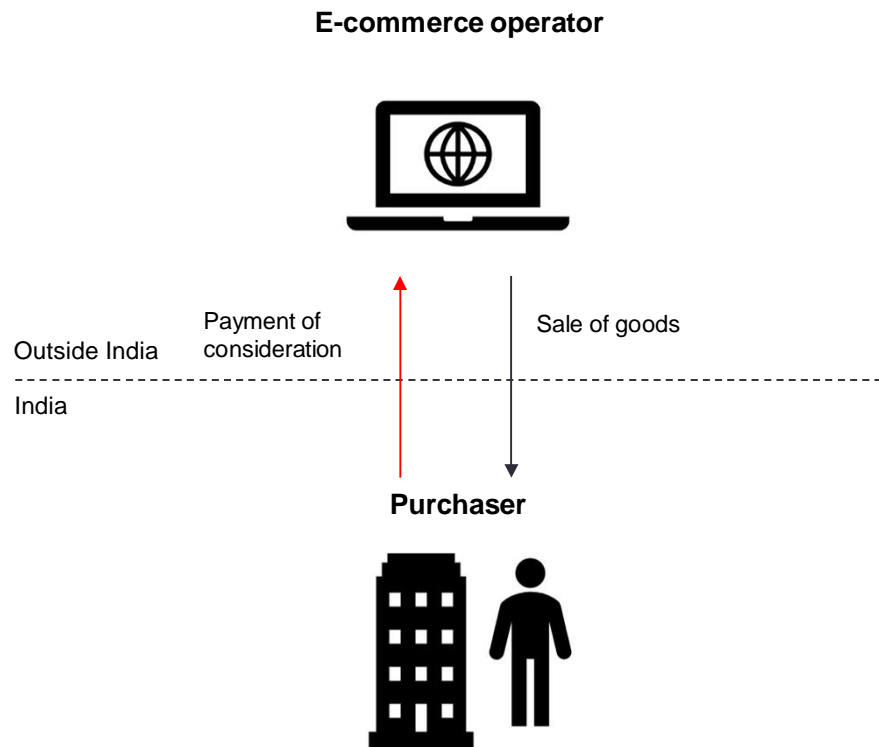
Particulars	Online advt EL	E-commerce EL	TDS u/s. 194-O
▶ Date of applicability	▶ 1 June 2016	▶ 1 April 2020	▶ 1 October 2020
▶ Nature of levy	▶ Final tax payable by resident or NR having PE in India	▶ Final tax payable by NR e-commerce operator	▶ WHT by e-commerce operator on payment to resident e-commerce participant ▶ Tax on e-commerce participant's income
▶ Rate of levy	▶ 6%	▶ 2%	▶ 1%
▶ Subject matter of levy	▶ Consideration received by non-resident for specified service viz. online advertisement and related services	▶ Consideration received by e-commerce operator from e-commerce supply or services made or provided or facilitated	▶ Amount credited or paid by e-commerce operator to e-commerce participant for sale of goods or provision of services facilitated by e-commerce operator
▶ Status of recipient/ E-commerce operator	▶ NR not having PE in India	▶ Should be NR not having PE in India ▶ Owns, operates or manages digital or electronic facility or platform for online sale of goods or online provision of services or both	▶ R or NR, regardless of PE in India ▶ Owns, operates or manages digital or electronic facility or platform for e-commerce ▶ Deemed to be responsible for paying to e-commerce participant even for direct payment by customer to e-commerce participant
▶ Status of seller	▶ N.A	▶ Resident or NR	▶ Should be resident
▶ Status of payer/buyer	▶ Resident in India carrying on business or profession ▶ NR having PE in India	▶ Resident in India ▶ NR in specified circumstances ▶ Person using IP address located in India	▶ Resident or NR

Comparison between EL and TDS u/s. 194-O

Particulars	Online advt EL	E-commerce EL	TDS u/s. 194-O
▶ Whether sale by E-commerce operator covered?	▶ Direct provision of service covered	▶ Yes	▶ No, only facilitation is covered
▶ Threshold for non-applicability	▶ Rs. 1 lakh qua payer	▶ Turnover of E-commerce operator from e-commerce transactions < Rs. 2 Cr	▶ Payment to individual/HUF e-commerce participant < Rs. 5 lakh in FY and such person furnishes PAN/Aadhar
▶ Corresponding exemption	▶ Income arising from specified service	▶ Income arising from e-commerce transactions exempt u/s. 10(50)	▶ No other TDS applicable (except on payments by e-commerce participant to e-commerce operator)
▶ Exception	▶ NR recipient having PE in India to which specified service is effectively connected	▶ E-commerce operator having PE in India to which e-commerce transaction is effectively connected ▶ Transaction subject to online advertisement EL	▶ None

Case studies on EL and TDS u/s. 194-O

Models – Online sale of goods



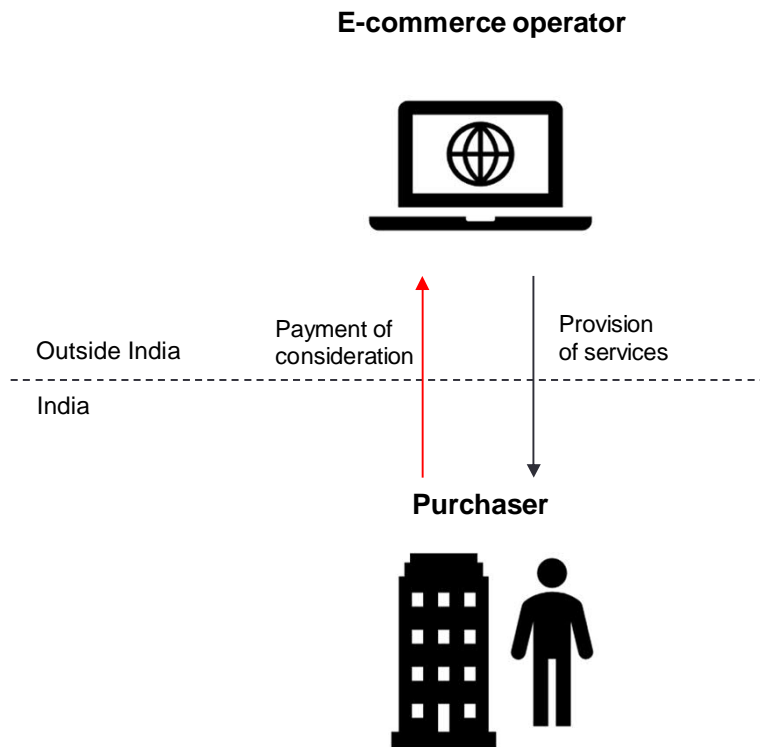
Businesses which potentially may get impacted:

- ▶ **Inventory based e-commerce operators (including brick-and-mortar businesses selling goods or providing services through their websites)**
- ▶ **Digital goods such as apps/ software/ music/ books etc**

Key considerations:

1. Will these businesses get covered:
 - ▶ Goods ordered online, but delivery is physical (fashion, electronics, etc)
 - ▶ License of software
2. *Whether Consideration will include?*
 - ▶ Duties/ Local taxes
 - ▶ Delivery/ logistics charges
3. TDS u/s. 194-O will not apply

Models – Online provision of services



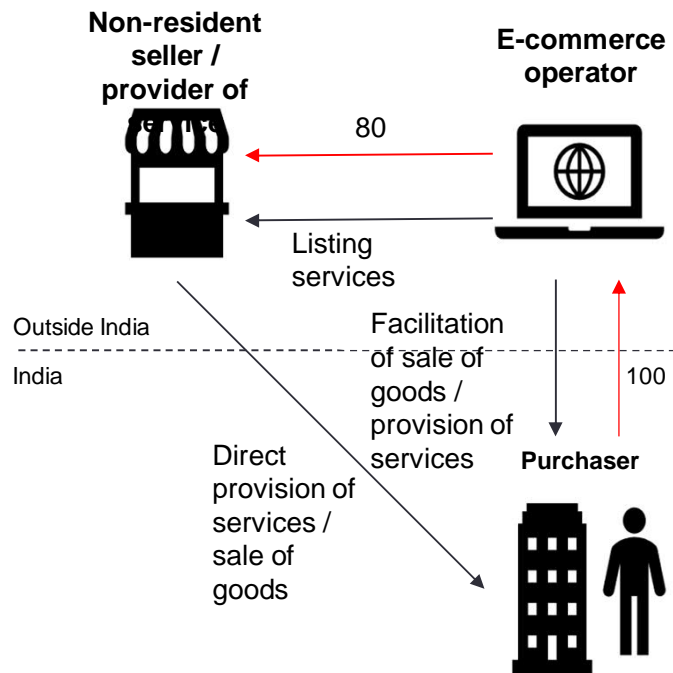
Businesses which potentially may get impacted:

- ▶ **Subscription based services**
- ▶ **Web hosting/ cloud computing**
- ▶ **Domain name registration services**
- ▶ **Data analysis**
- ▶ **Back end infrastructure service providers**
- ▶ **Online gaming**
- ▶ **Cyber security**

Key considerations

1. Will these businesses covered:
 - ▶ Services purchased online, but delivered offline (hotel accommodation, cab services, flight tickets, etc)?
 - ▶ Contract / MSA negotiated offline, but provision of service online?
2. Whether Consideration will include?
 - ▶ AMC charges where separately charged and timing of EL applicability
3. Ambiguity between royalty/ FTS vs EL
4. TDS u/s. 194-O will not apply

Models – E-commerce marketplace



Businesses which potentially may get impacted:

- ▶ **Aggregator based e-commerce operator – where privity of contract is between a) seller/ provider of service and b) buyer/ users**

Key considerations

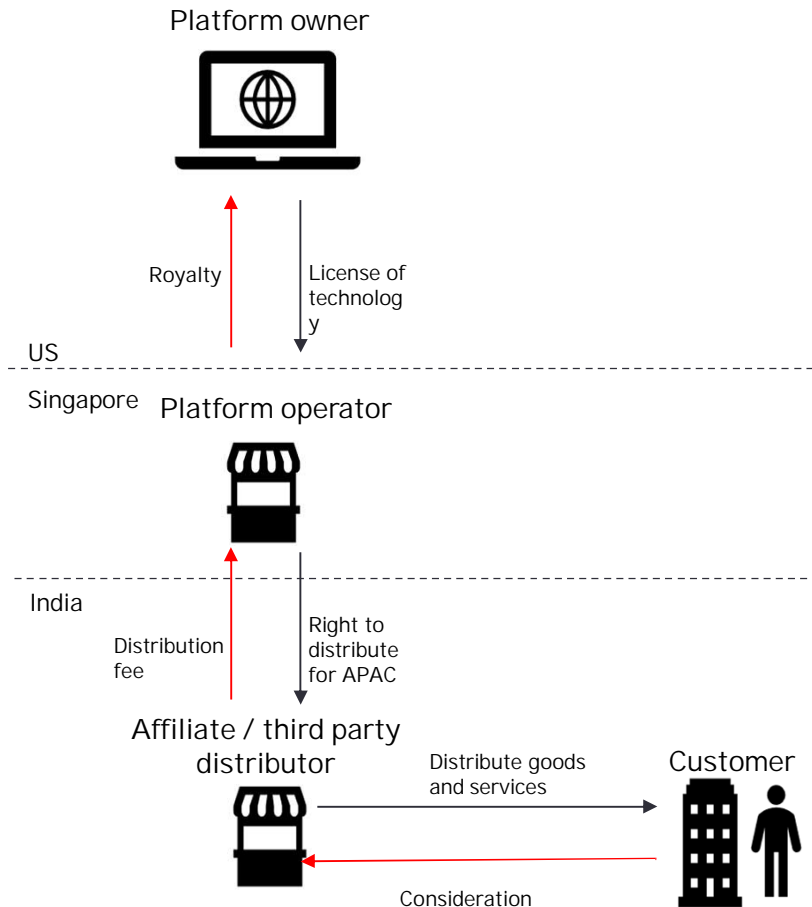
1. Whether “Consideration” will include:

- ▶ Facilitation of payment by ecommerce operator (ie 100); or
- ▶ Fees/ Commission received by e-commerce operator from seller/ provider of service (ie 20); or
- ▶ Fees/ Commission received by e-commerce operator from buyer/ users (say 20)?

“Gross vs net” a key question for applicability of EL in case of market place models

2. Rate of levy on listing services (6% vs 2%) – applicable to resident payer
3. TDS u/s. 194-O will not apply (since seller is NR)

Onshore Models – Distributor model



Businesses which potentially may get impacted:

- Digital economy players operating through onshore subsidiaries for distributing/ reselling their products/ services to Indian customers

Key considerations

1. Who is the e-commerce operator?

- ▶ Platform owner; or
- ▶ Platform operator/ manager; or
- ▶ Both

2. Are these payments chargeable to EL?

- ▶ Payment by resident distributor to non-resident platform operator/ manager? If yes, whether on Consideration payable to Platform operator or on revenues received from an Customer?
- ▶ Payment by non-resident platform operator to non-resident platform owner for facilitation

3. TDS u/s. 194-O will apply

Thank You

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