

EQUALISATION LEVY

About Us

- Rajput Jain & Associates is a Chartered Accountants firm, with its headquarter situated at New Delhi (the capital of India). The firm has been set up by a group of young, enthusiastic, highly skilled and motivated professionals who have taken experience from top consulting firms and are extensively experienced in their chosen fields has providing a wide array of Accounting, Auditing, Taxation, Assurance and Business advisory services to various clients and their stakeholders. focus at providing tailor made solutions to challenging problems of our clients, and perform with high quality and timely service.
- Rajput jain & Associates, a professional firm, offers its clients a full range of services, To serve better and to bring bucket of services under one roof, the firm has merged with its various Chartered Accountancy firms pioneer in diversified fields
- Our main office is located at Delhi. Incidentally, Delhi is the Capital of India. Our other offices are in Mankapur & Moradabad (U.P.). We have associates all over India in big cities. All our offices are well equipped with latest technological support with updated reference materials. We have a large team of professionals other than our Core Team members to meet the requirements of our prospective clients including the existing ones. However, considering our commitment towards high quality services to our clients, our team keeps on growing with more and more associates having strong professional background with good exposure in the related areas of responsibility. Further to meet the growing demands of the fiercely competitive market we are constantly looking forward for team of associates comprising of highly skilled professionals to cater the needs ever increasing clientele.

Amendments in Equalisation Levy



Agenda

01

Digital Economy and BEPS – Genesis and Action Plan 1

02

Equalisation Levy on specified services - 2016

03

Equalisation Levy on E-commerce operators - 2020

04

Q&A Session

Digital Economy and BEPS - Genesis and Action Plan 1



Taxation on non-residents in India - General

Permanent
Establishment
(PE)

Fixed Place PE, Service PE, Agency PE, Installation PE, Construction PE

Royalty

Use/ transfer of rights/ grant of licence/ imparting information in respect of patent, invention, model, design, trademark, process etc.

Fees for
Technical
Services (FTS)

Rendering of managerial, technical or consultancy services

Technical services are specialized, exclusive and based on individual requirement of the user; Standard facilities do not qualify as FTS

Supreme Court has categorically held in the case of Kotak Securities Ltd. v. CIT that online facilities for services that are standard in nature, cannot be held to be technical services

BEPS - Genesis

What is BEPS

Base Erosion and Profit Shifting (BEPS) refers to tax planning strategies by multinational enterprises (MNEs)

- that exploit gaps and mismatches in tax rules to make profits 'erode' for tax purposes or
- to shift profits to locations where there is little or no real activity but the taxes are low resulting in little or no overall corporate tax being paid

Cause of BEPS

The interaction of domestic tax systems in cross border transactions may result in double taxation of same income / leave gaps, resulting in double non taxation of income. BEPS strategies take advantage of these gaps between tax systems in order to achieve double non-taxation.

- The Organisation For Economic Co-operation and Development (OECD) and the G20 nations formulated the BEPS Action Plans
- BEPS Action Plan 1 relates to Digital Economy

BEPS - Action Plan 1 - Addressing the Tax Challenges of the Digital Economy

- Digital revolution, globally, is fast disrupting existing business models
- Tax laws, generally, have failed to keep pace
- Newer 'digital' business models have emerged
- These models have fundamentally challenged physical presence-based Permanent Establishment (PE) rules



- The eCommerce sector in India has seen unprecedented growth
- More and more customers are online as against offline
- Leading to increased "online" as a medium for advertisements
- Many foreign eCommerce companies provide online advertisement services

- The OECD and the G20 nations formulated the Base Erosion & Profit Shifting ('BEPS') Action Plans
- BEPS Action Plan 1 on Digital Economy discussed various alternatives



BEPS - Action Plan 1 - Addressing the Tax Challenges of the Digital Economy

Few of the Suggested Options in BEPS Action Plan 1

Option 1

**New nexus based on
significant economic
presence**

Option 2

**Withholding tax on
digital transactions**

Option 3

Equalisation Levy

Committee on Taxation of e-Commerce

Committee of Taxation of e-commerce

Committee constituted by the CBDT for -

- Identifying the business models of e-commerce
- Direct tax issues on e-commerce transaction
- Suggesting an approach to deal with the tax issues



Committee relied on BEPS Report Action Plan 1 - **Addressing the Tax Challenges of the Digital Economy**

Committee recommended EL out of various options, since:

- relatively simpler to implement
- greater certainty and predictability for all the stakeholders

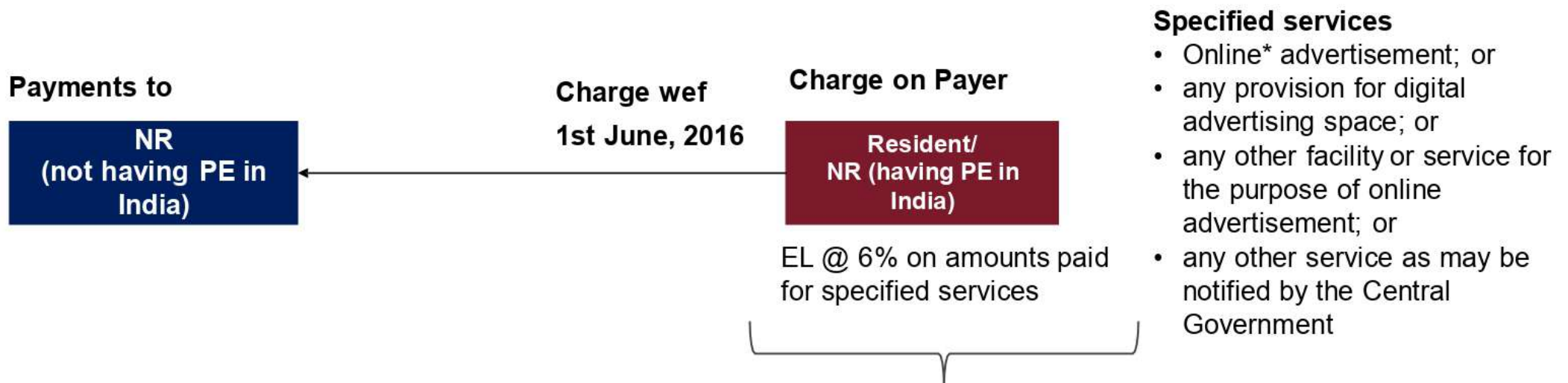
Identified 13 digital services including online advertisement

Finance Act 2016 introduced 6% Equalisation Levy effective 1st June, 2016!

Equalisation Levy ('EL') on Specified Services - 2016



EL on specified services – Key highlights



Exception, no charge if:

- Recipient i.e. the non resident has a PE in India and such income is effectively connected to the PE
- Income does not exceed INR 100,000
- Payment is not for carrying out business or profession i.e. Equalisation Levy would apply only on B2B transaction

*“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

EL on specified services



Online

- “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 [Section 164(f)]
- Examples of any other form of digital/ telecommunication network (Illustrative)
 - Streaming of advertisements on foreign television channels
 - Payments made to tele-shopping channels for advertisement
 - Big television screen played on street, which also screens advertisement
 - Advertisement on mobile applications (viz. a bank application, IM application etc.)
 - Advertisements on radio
 - Advertisements in the LCD screen of the flights

EL on specified services

Advertisement

- Not defined under Chapter VIII of Finance Act
- Not defined under Income Act
- Dictionary meaning - Blacks Law Dictionary :-
 - ✓ advertising. 1. The action of drawing the public's attention to something to promote its sale. 2. The business of producing and circulating
- Guidance under the Service Tax Law
 - ✓ 65B(2) "advertisement" means any form of presentation for promotion of, or bringing awareness about, any event, idea, immovable property, person, service, goods or actionable claim through newspaper, television, radio or any other means but does not include any presentation made in person;

Provision for digital advertising space

- Guidance from earlier service tax law

"sale of space or time for advertisement" includes,-

- I **providing** space or time, as the case may be, for display, **advertising**, showcasing of any product or service in video programmes, television programmes or motion pictures or music albums, or on billboards, public places, buildings, conveyances, cell phones, automated teller machines, internet;*
- I **selling of time slots on radio or television by a person, other than a broadcasting agency or organisation;***
- I **aerial advertising.**"*

- *'Provision for' wider in ambit than the term 'provision of'; could cover any provision (service)*

EL on specified services

For the
purposes
of online
ads

May involve number of service providers, falling in two categories

- **Category 1 - Core services** - Services directly linked to online advertisement such as creating/ designing digital advertisement
- **Category 2 – Incidental services** - Not directly linked to online advertisement but incidental to such services

Any other
service as
may be
notified

Central Government authorized to notify any other service

EL on specified services

Compliances

- Payment Due date - 7th day of the immediately following month
- Payer to furnish statement of specified services in Form 1 on or before 30th June of the next FY
- Processing of statement for any arithmetical error - Intimation in Form 2 to be sent to the assessee
- Tax officer can make computational corrections in statement

Consequences of non-compliances/ Appeal

- Interest @ 1% for every month or part of the month for delayed payment of Equalisation Levy
- Penalty for failure to deduct levy: Amount equivalent to Equalisation Levy
Penalty for failure to pay the levy after deduction: Penalty of INR 1,000 for every day, or amount of Equalisation Levy, whichever is lower
- Penalty for failure to furnish statement: INR 100 for each day during which failure continues
- If false statement furnished – Assessee may be subjected to imprisonment of a term up to 3 years and fine
- Appeals only in respect of penalty

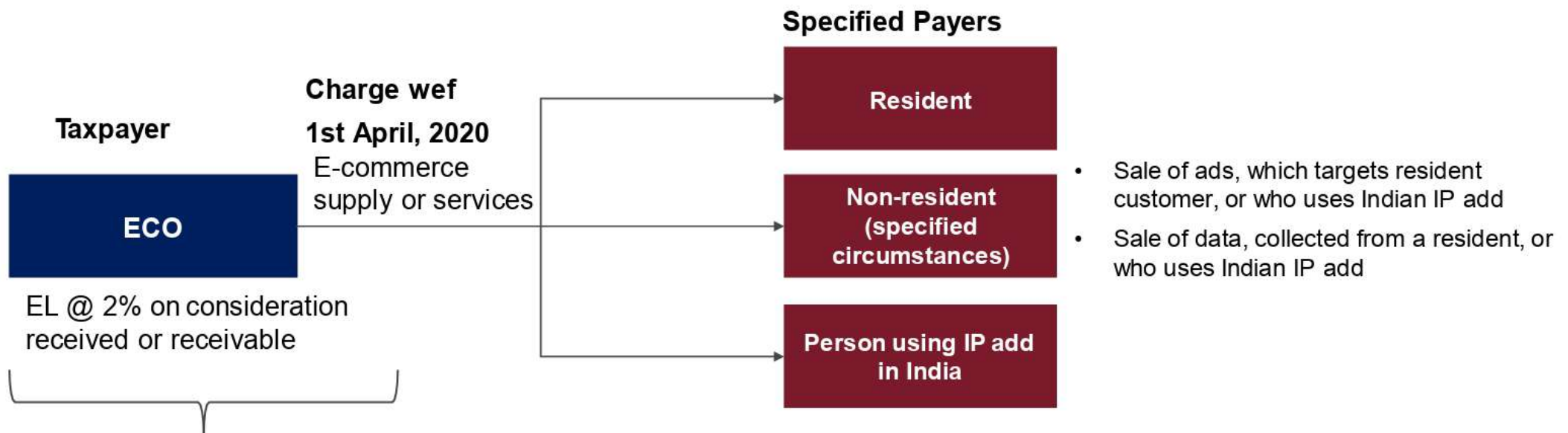
Income subject to EL excluded from total income

- Disallowance of expenses, if EL not deducted or after deduction, not paid upto ROI filing due date; subsequent allowance in year in which EL deducted/ paid

Equalisation Levy ('EL') on E-commerce Operators (‘ECO’) - 2020



Equalisation Levy on ECO – Key highlights



Exception, no charge if:

- ECO has a PE in India, and such E-commerce supply or services are effectively connected to PE
- EL for advertising is leviable
- Sales, turnover or gross receipts of ECO is less than INR 2 cr

Equalisation Levy on ECO

E-commerce Operator (ECO)

- ECO means Non Resident ('NR') who owns, operates or manages digital/electronic facility/platform for online sale of goods/provision of services or both

E-commerce supply or services

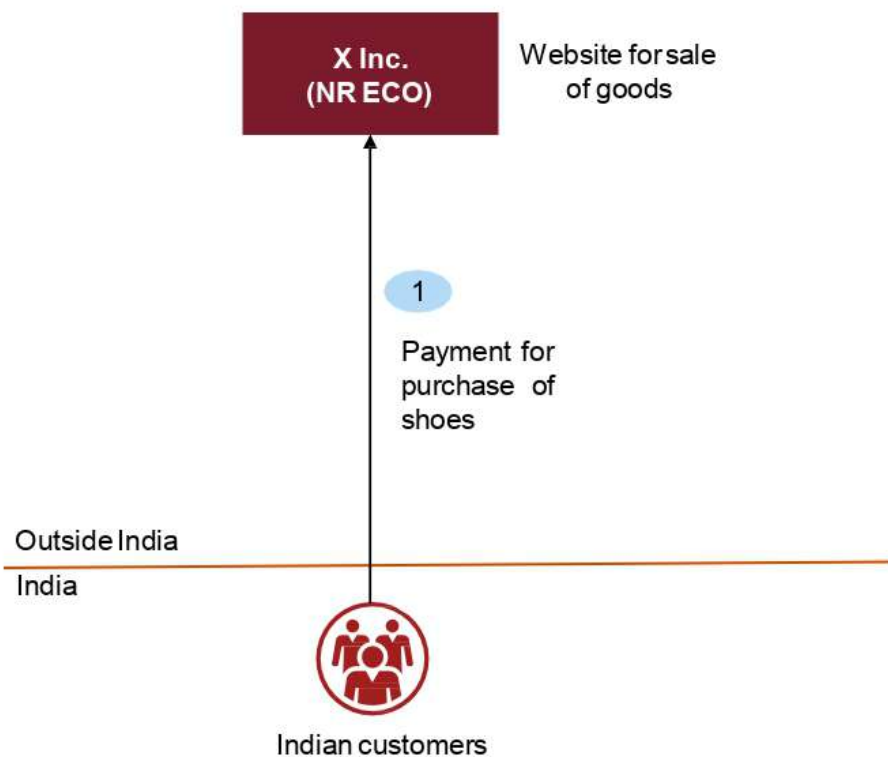
- online sale of goods owned by ECO; or
- online provision of services provided by ECO; or
- online sale of goods or provision of services or both facilitated by ECO; or
- any combination of the above

Specified Payers

- Person resident in India; or
- NR for sale of advertisement targeted at customer resident in India or accessing advertisement through an Indian IP add
- NR for sale of data collected from a person resident in India or from a person who uses Indian IP add
- Person who buys goods or services or both using IP add located in India

“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

Case study - 1



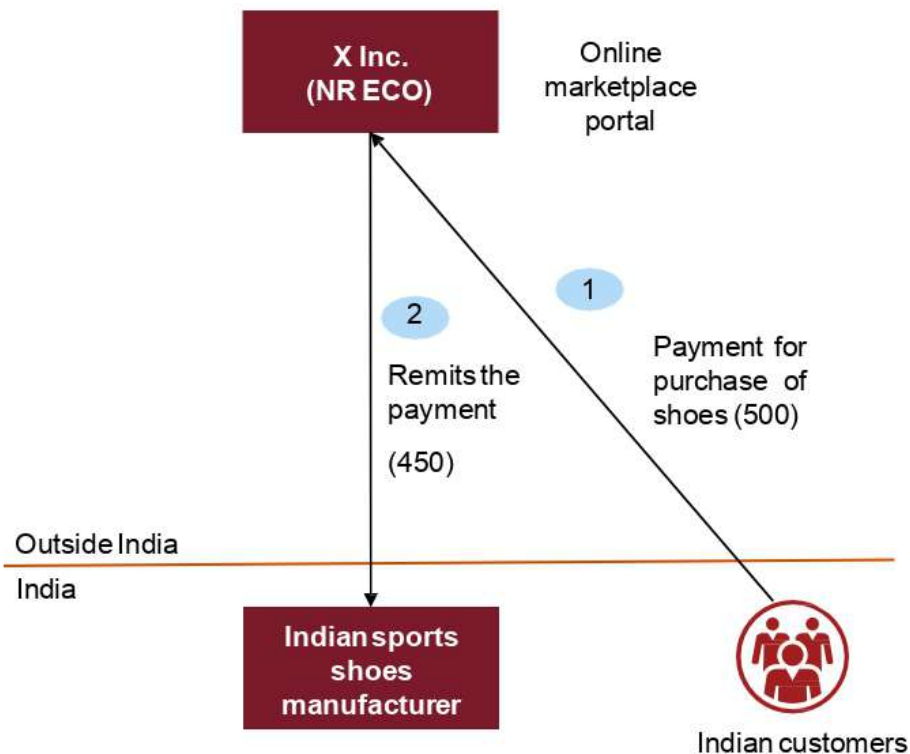
Facts

- X Inc. is a company engaged in manufacturing and sale of sports shoes. It also owns/manages/operates a website for sale of its goods.
- Customers in India and abroad can access the website and place order for purchase of sports shoes

Transaction

1. Indian customer places an order for purchase of sports shoes. Makes payment to X Inc. (NR ECO)

Case study - 2



Facts

- X Inc. is a non-resident e-commerce operator which owns/manages/operates an online marketplace portal
- Sellers list their products on website of X Inc
- Customers can access the portal and place order for purchase of desired products

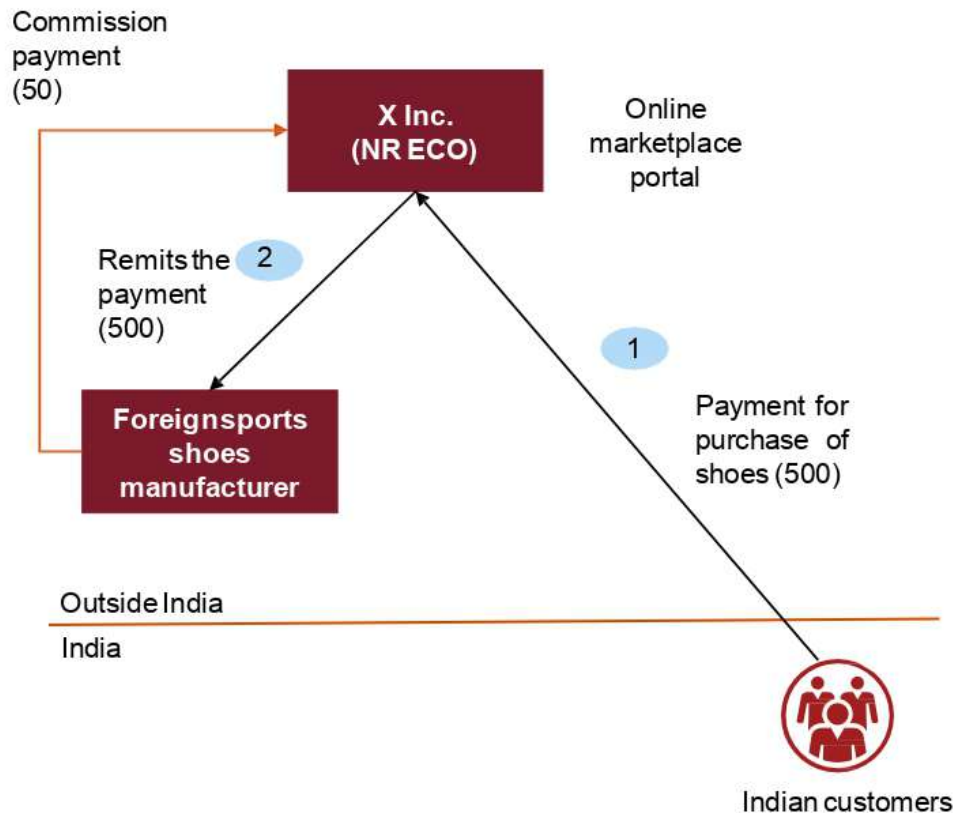
Transaction

1. Indian customer places an order for purchase of sports shoes. Makes payment of 500 to X Inc. (NR ECO)
2. X Inc remits the payment to the Indian sport shoes manufacturer – 450 net of commission
3. INR 50 is the commission earned from Indian customer

Point to Ponder

- Whether EL applicable on
 - 500 i.e. which X Inc. received from Indian customer?
 - 50 i.e. which X Inc. earned as commission?

Case study - 3



Facts

- X Inc. is a non-resident e-commerce operator which owns/manages/operates an online marketplace portal
- Sellers list their products on website of X Inc
- Customers can access the portal and place order for purchase of desired products

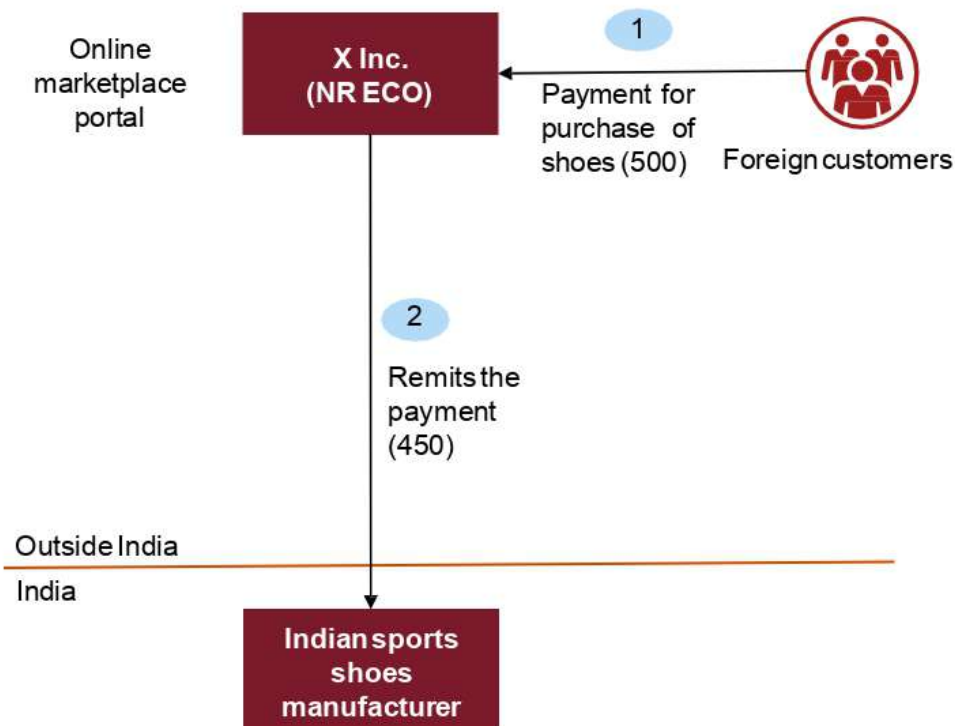
Transaction

1. Indian customer places an order for purchase of sports shoes. Makes payment of 500 to X Inc. (NR ECO)
2. X Inc remits the payment to the Foreign sport shoes manufacturer - 500
3. X Inc earns commission of INR 50 from foreign sports shoes manufacturer

Point to Ponder

- Whether EL applicable on
 - 500 i.e. which X Inc. received from Indian customer?
 - 50 i.e. which X Inc. earned as commission?
 - No EL as 50 commission received from a foreign manufacturer (who is a NR and not covered under specified circumstances)?

Case study - 4



Facts

- X Inc. is a non-resident e-commerce operator which owns/manages/operates an online marketplace portal
- Sellers list their products on website of X Inc
- Customers can access the portal and place order for purchase of desired products

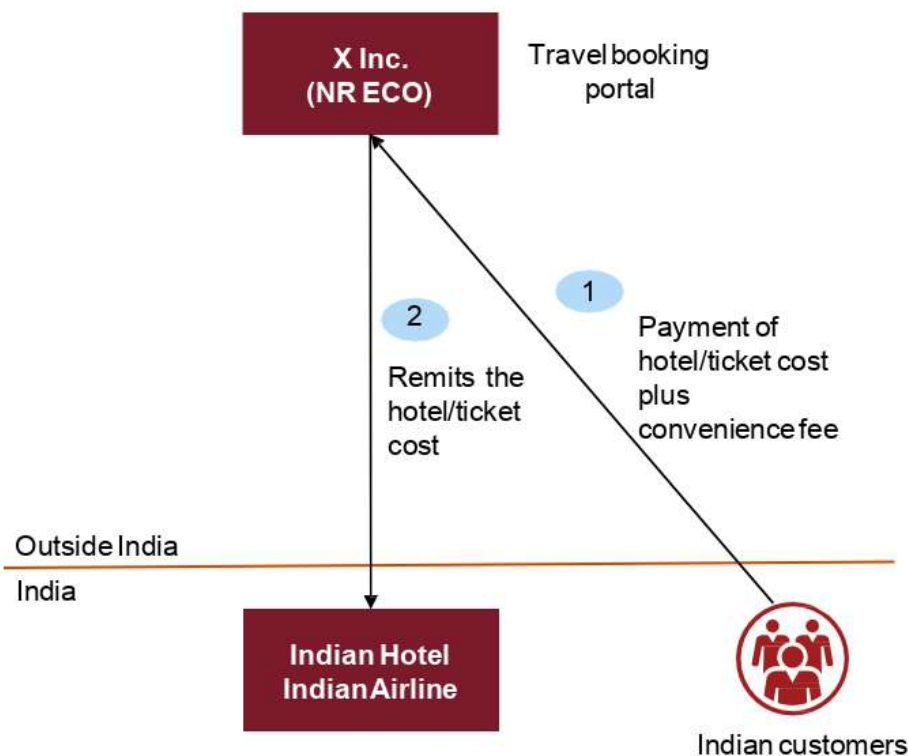
Transaction

1. Foreign customer places an order for purchase of sports shoes. Makes payment of 500 to X Inc. (NR ECO)
2. X Inc remits the payment to the Indian sport shoes manufacturer - 450 net of commission

Point to Ponder

- Whether EL applicable on
 - 500 i.e. which X Inc. received from foreign customer?
 - 50 i.e. which X Inc. earned as commission?
 - No EL?

Case study - 5



Facts

- X Inc. is a non-resident e-commerce operator which owns/manages a website for travel bookings
- Customers can access the website and make bookings for the desired flights/hotels

Transaction

1. Indian customer books an Indian hotel/airline ticket. Makes payment to X Inc. (NR ECO) of hotel cost/ticket cost plus convenience fee
2. X Inc. remits the hotel/airline cost to the Indian hotel/airline

Point to Ponder

- Applicability of EL - Convenience fee/commission received from customer
- Applicability of EL – Booking amount in hands of X Inc

Equalisation Levy on ECO

Payment

Quarter ending	Due date
30 June	7 July
30 September	7 October
31 December	7 January
31 March	31 March

Income arising from any e-commerce supply or services made or provided or facilitated on or after the 1st day of April, 2021, shall be exempt

Compliances/ Consequences of non- compliances/ Appeal

- Every ECO paying EL required to furnish an annual EL statement; Due date - On or before 30th June of the next FY; rules and form are yet to be prescribed
- Tax officer can make computational corrections in statement
- Delay in payment of EL attracts simple interest at the rate of 1% for every or part of month for the period of delay
- Failure to pay EL to attract penalty equal to the amount of the EL
- Failure to furnish such statement attracts penalty of INR 100/- for each day of default
- If a false statement has been filed then NR ECO may be subjected to imprisonment of a term up to 3 years and a fine
- Appeals only in respect of penalty

Equalisation Levy on ECO – Points to Ponder

Whether for calculating threshold of INR 2 crore – turnover or gross receipts of which year to be seen

Threshold does not exceed in first 3 quarters but exceeds in last quarter; whether interest applicable

Whether taxes (GST) to be included while determining gross receipts/turnover

Online procurement of RM/FG through inhouse portal from foreign affiliates

Purchase of online books

Whether sales return to be excluded while determining gross receipts/turnover – spreading across 2 tax years

Purchase Order over email

Documentation to be kept in place

Contact Us

- Rajput Jain & Associates Address: P-6/90, Connaught Circus Connaught Place New Delhi-110001
- Mobile No: 9811322785, 9555555480
- Telephone: +91 011 -23343333
- Email : info@carajput.com, singh.swatantra@gmail.com
- Website : www.carajput.com

Corporate & Head Office

- Address: 1598, Level-1, Sector 22-B, Chandigarh
- Mobile No: 9555555480, 9811322784, 9871857333
- Email : rajputjainandassociates@gmail.com
- Address: Building No. 53/160 R5, Bhakti Nagar, Pandeypur Varanasi 221002 (U.P) India
- Address: D 301 Omex Royal Apartment Sector 44 Noida, India
- Address: Building No 65 Ward No.10 Lakhe Chaur Marg, Kathmandu Metropolitan Kathmandu, Nepal.

Branch Offices



Follow us on

