India's New E-Service Tax Will Add To Woes Of Foreign Content Providers

Mayank Jain
@Mayank1029

Published: Dec 01 2016, 9:38 PM
Last Updated: Dec 01 2016, 9:38 PM

Starting today, a major indirect tax change could make e-services more expensive for individuals in India. The government will charge 15 percent service tax on all things bought from foreign websites including e-books, music, movies, internet advertising, providing cloud services, online games, software and other intangible products, according to a notification by the Central Board of Excise and Customs on November 9.

This means individuals availing these online content and services will now be required to pay a tax to overseas service or content providers. The tax will be levied on companies providing online information and database access or retrieval [OIDAR] services to "government, local authority, governmental authority, or an individual in relation to any purpose other than commerce, industry or any other business or profession [cross border B2C (business to consumer) OIDAR services provided in taxable territory]," the notification said. Indian e-commerce companies already pay service tax of 15 percent on the products sold in India.

Tax experts say this will change the manner in which service tax is levied on e-services.

"Earlier, the location of the service provider was considered to be the location of delivery of the service but now it has been changed to the location of the receiver," said Rohit Jain, partner at tax firm Economic Laws Practice. "The government has provided a special mechanism by which companies operating overseas will be liable to pay tax on their sales of OIDAR services to Indian residents."

This implies that the cost of accessing major online services will increase for all domestic residents but whether companies will be able to pass it on to their customers is still unclear, according to Pratik Shah, partner and head of indirect tax at SKP.

> "It will definitely add to the overall cost. If customers won't bear the cost, the overall cost for companies will rise. There will be a 15 percent hit in the supply chain somewhere. I really don't know if in such a competitive market, you can charge consumers an additional amount for downloading apps or using digital services."

it's unclear what this amount will be because the extent of compliance by companies remains to be seen, both Jain and Shah said.

Jain, however, added that large multinational companies will be more than eager to comply with all prevailing tax rules even if the government isn't able to keep a track on all transactions.

> "The most critical aspect is administration of this tax. The government may find it hard to monitor all app downloads or digital transactions but multinational companies are usually very tax compliant so they are likely to come forward and deposit respective taxes on time. Even if they don't, it will be fairly easy for the government to find their addresses and send notices."

Rohit Jain, Partner, ELP

The smaller startups, however, will prove much more difficult to track if they escape the service tax, Jain added.

Under The Scanner

The entities which are liable to pay tax will have three ways to pay up – find an agent, appoint a representative to submit tax liability or set up a unit in India to specifically deposit taxes. The first two are more feasible; it's unlikely that the companies will opt to set up offices in the country.

Shah from SKP said that the move will increase hassles for overseas corporations to find agents or representatives but setting up a base in India will be even more cumbersome.

> "It will expose the overseas entity to Indian tax authorities. This is something people are not comfortable or happy with. Once any country receives an access to an overseas entity's taxes, they can verify their books of accounts and that's something people will not appreciate."

Pratik Shah, Partner and Head-Indirect Tax, SKP

The validity of the service tax can be challenged, said Jain, if foreign companies object to paying taxes in a country where they are not physically present.

Shah, on the other hand, argued that a constitutional challenge may not hold up because there are precedents available for such taxation in the European Union and a country has the right to tax income generated within its territory.

"Anyone can challenge it but it is unlikely to be held as a constitutional challenge. Similar provisions are present across European Union countries as well. As long as income is arising in

Recommended For You

- Battery Maker Eyes India's $300 Billion Lithium-Ion Market
- Excess Capacity Makes Airfares Cheaper Than Rail Tickets To These Indian Cities
- Bajaj Auto Gains After Plan To Expand Three-Wheeler Capacity
- Moody's Unit Sees Caution in India Money Market on IL&FS Default

Telegram Subscribe