

India, US extend digital tax on e-comm supplies until June 30

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New Delhi

In an effort to maintain stability in digital business, India and the US have decided to extend a 2 per cent equalisation levy or digital tax on e-commerce supplies until June 30, the Finance Ministry said on Friday. Earlier, the validity was ending on March 31.

Experts say the US has suspended any trade retaliatory measures until June 30, 2024, or until the implementation of Pillar One of the OECD's global tax reform initiatives, whichever occurs earlier. Further clarification on the matter should come in months to come, they said. Effective April 1, 2020, India is imposing an equalisation levy (EL) of 2 per cent on amounts received/receivable by a non-resident e-commerce operator from e-commerce supply or services. This levy captures many cross-border e-commerce transactions in the absence of any local country physical presence.

India and the US joined 134 other members of the OECD/G20 Inclusive Framework (including Austria, France, Italy, Spain, and the UK) in reaching an agreement on October 8, 2021, on the statement on a two-pillar solution to address the tax challenges arising from the digitisation of the economy. On October 21, 2021, the US and Austria, France, Italy, Spain, and the UK reached a political compromise on the transitional ap-



proach to the unilateral measures in force while Pillar 1 is implemented.

On November 24, 2021, India and the US agreed that the same terms that apply under the October 2021 Joint Statement shall apply between India and the US with respect to India's charge of 2 per cent equalisation levy on e-commerce supply of services and the US' trade action regarding the said Equalisation Levy. The validity of this agreement was from April 1, 2022, till implementation of Pillar 1 or March 31, 2024, whichever is earlier. Now this has been extended for one more month.

Aravind Srivatsan, Tax Leader at Nangia Andersen LLP, said the US accused India

of stalling the two-pillar negotiations. This arrangement protects the interests of US MNEs, preventing the equalisation levy from becoming a sunk cost of doing business in countries that have imposed digital services taxes (DST).

PILLAR 1 OBLIGATIONS

India, along with the other countries mentioned, will now, according to this agreement, have to provide credit for the collected equalisation levy against future Pillar 1 obligations. "This overall arrangement is expected to see further extensions until a final consensus emerges on Pillar 1," he said.

Amit Maheshwari, Tax Partner, AKM Global, said that equalisation levy, prompted trade concerns from the US, leading to an investigation by the Office of the United States Trade Representative (USTR) earlier. In response, India defended the levy, emphasising its non-discriminatory nature, prospective application, and alignment with international tax principles outlined by the OECD/G20 BEPS Project.



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India, US extend equalisation levy pact till June 30

FE BUREAU

New Delhi, June 28

INDIA AND THE US have extended the validity of an agreement that allows New Delhi to levy a 2% tax on US digital service providers, till June 30, the finance ministry said on Friday. The 'equalisation levy' allows India to tax e-commerce supply of services from American companies, such as Apple, Netflix and others.

The agreement/joint statement has been extended as no consensus has yet been reached on the Pillar 1 tax package. Originally signed in 2021, the statement intended to give India the right to impose the equalisation levy on American digital service providers, until Pillar 1 is implemented.

The Pillar 1 tax regime is part of the OECD BEPS framework, signed by over 130 countries, and aims to levy a tax on the digital economy. Pillar 1 negotiations are mainly aimed at reallocating the taxing right on US-based digital giants, allowing about \$200 billion of corporate profits to be taxed in countries where the companies operate.

On October 21, 2021, the US, Austria, France, Italy, Spain, and the UK reached a political compromise on the transitional approach to the unilateral measures in force while Pillar 1 is implemented. The compromise is reflected in the joint statement that was issued by those six countries on that date.

On November 24, 2021, India and the US agreed that the same terms as the joint statement shall apply between the two countries, with respect to India's charge of 2%

DIGITAL DEAL

■ Equalisation levy allows India to tax e-commerce supply of services from American companies, such as Apple, Netflix

■ Agreement extended as there is no consensus on Pillar 1 tax package

■ Pillar 1 tax regime is part of the OECD BEPS framework and aims to levy a tax on digital economy



equalisation levy, the ministry said. The validity of this agreement was from April 1, 2022, till the implementation of Pillar 1 or March 31, 2024, whichever was earlier. This has now been extended till June 30.

Aravind Srivatsan, tax leader, Nangia Andersen, said: "The US as expected has rushed to extend the status quo on the rights enjoyed by US MNE on digital taxes (equalisation levy) paid in India, pending a consensus on Pillar 1 within the sunset date." "The overall arrangement is expected to see further extensions till final consensus emerges on Pillar 1."