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Budget 2018: Foreign digital companies with India user base may have to pay tax

BY SURABHI AGARWAL, ET BUREAU | FEB 03, 2018, 11:54 AM IST

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NEW DELHI: India could take the lead globally in outlining a feasible structure for taxing digital entities that have a large user base or business in a country but don't have a significant physical presence there.

Union Budget 2018 has, for the first time, mentioned India's intent to tax digital businesses by amending Section 9 of the Income Tax Act. According to experts, the discussion is part of the OECD and G20 Base Erosion and Profit Shifting (BEPS) and India is the first country to have taken concrete steps in this direction.

The digital tax will impact not just large companies such as Google, Facebook or Netflix but also scores of much smaller technology or Internet-driven companies that have operations in India.

Amit Maheshwari, partner, Ashok Maheshwary & Associates LLP, said digital companies have a unique model of operation where they don't need to have physical presence in India to earn revenue.

"Till now, there was no system to tax them. The equalisation levy was imposed only for online advertising which is a very small chunk of their operations. The government is now saying that they have the right to tax such companies under section 9, which have some economic nexus in India."

Maheshwari said that a discussion on this front is important since India is becoming a large market for many Internet companies given the huge number of smartphone and Internet users in India.



Companies seek level playing field as Budget mentions intent to tax digital businesses by amending I-T Act.

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The fine print of the Budget documents mentioned that the government will amend Section 9 of the Income Tax Act to provide that "significant economic presence" in India shall also constitute "business connection".

It said that "significant economic presence" could include download of data or software in India or interaction with a prescribed number of users. The government will hold consultations with stakeholders to spell out the finer details.

An official of a large technology company said that most companies are not shying away from paying taxes but the government should come out with a formula that works for everybody. "Some of the challenges are questions such as what will determine India income, just because a company has users in here doesn't mean it is necessarily making any revenue or profits from India." Netflix, Facebook, Google and AirBnB did not respond to queries seeking comments from ET.

Speaking at the World Economic Forum in Davos last month, Google CEO Sunder Pichai said the tax structure needs to be reformed in order to address these concerns by countries. "As a company we paid, over the last five years, close to 20% in tax. We are happy to pay a higher amount, whatever the world agrees on as the right framework. It's not an issue about the amount of tax we pay, as much as how you divide it among various countries."

Amending the I-T Act will enable the government to renegotiate its trade agreements (Double Taxation Avoidance Agreement) only after which companies will start paying taxes in India. Subho Ray, president of the Internet and Mobile Association of India (IAMAI), said that the body is open to having discussions with the government on this.

"Our only concern is that there should be parity in terms of international law of taxation since there are global companies operating in India but Indian technology companies also have operations the world over."

He said that one of the biggest concerns for the industry was the lack of level playing field when it comes to paying GST by an Indian and a foreign company. "If a foreign company books hotels in India through an online portal, it doesn't pay GST but an Indian company doing the same thing has to pay the tax. We want this issue to be sorted at the earliest since it creates disadvantage for Indian companies," he said.

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