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# Google tax may be broadened to cover non-digital MNCs

BY [SACHIN DAVE](#), ET BUREAU | UPDATED: MAY 08, 2018, 09.14 AM IST

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MUMBAI: A budgetary proposal to tax multinationals with a substantial user base in [India](#) such as [Google](#) and [Facebook](#) is now being widened to include non-digital companies.

This could mean that any company that merely sells goods or services in India could see domestic taxes of up to 42% on their profits, said two people with direct knowledge of the matter.

The government is planning to introduce rules to effect the change proposed in the budget in the coming weeks, said one of the persons quoted above.

Many tax experts fear this could impact several multinational companies that only export goods or services to India.

“The question is whether there is a tax to do business with India. If non-digital companies that merely trade with India could see their business connection/permanent establishment set in India slapped with domestic taxes, this could lead to unsettling of settled tax positions,” said Amit Maheshwari, partner, Ashok Maheshwary & Associates LLP.



Many tax experts fear this could impact several multinational companies that only export goods or services to India.

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According to another person with direct knowledge of the matter, the impact on non-digital companies is unintentional.

## Tax Muddle

**Permanent establishment (PE):** A place of business for a company that leads to tax in that jurisdiction

▶ **Currently** there is no domestic tax for cos that do not have PE in India

▶ **User or customer** base of a company is currently not used to determine PE

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▶ **Govt has** proposed a change to determine PE of digital companies through user or customer base

**If user or customer** base is used to check PE of even non-digital firms, tax outgo could jump

**TAX** Most tax experts assumed the change was limited to digital companies like Netflix, Google and Facebook

“It’s very difficult to define digital companies in the regulation, and even if this is done, there is a fear that this could be misinterpreted or exploited by several companies,” he said.

“Why should companies that earn billions from India or have potential to do so be not taxed in the country? The definition of permanent establishment has to change in the current environment, where several multinational companies operate through a complex maze of subsidiaries and tax structures,” the person told ET.

Tax experts said India could be looking to introduce this even in the existing [tax treaties](#) with other countries.

“The consultative process should result in a model that could apply to the digital economy but is not misused in the brick and mortar businesses.

Drafting of the rules must be water tight so that the rules don't get misused and any company that merely trades with India doesn't get burdened with tax at 42% on net profit method," said Vijay Iyer, national leader, transfer pricing, EY India While the focus is on multinationals operating in India through tax havens, the government could look at negotiating tax treaties with several countries. This could multilateral instruments (MLI) or bilateral negotiations. MLIs are basically common tax agreement which could lead to uniform tax regulations for all investors, irrespective of which destination they come from. MLIs are part of the base erosion and profit sharing (BEPS) framework.

"The applicability of the 'significant economic presence' rules may not have immediate impact since tax treaties wouldn't still govern most structures. However, the government may use this provision to initiate a conversation in multilateral forums like OECD and for bilateral tax treaty negotiations," said Iyer.

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