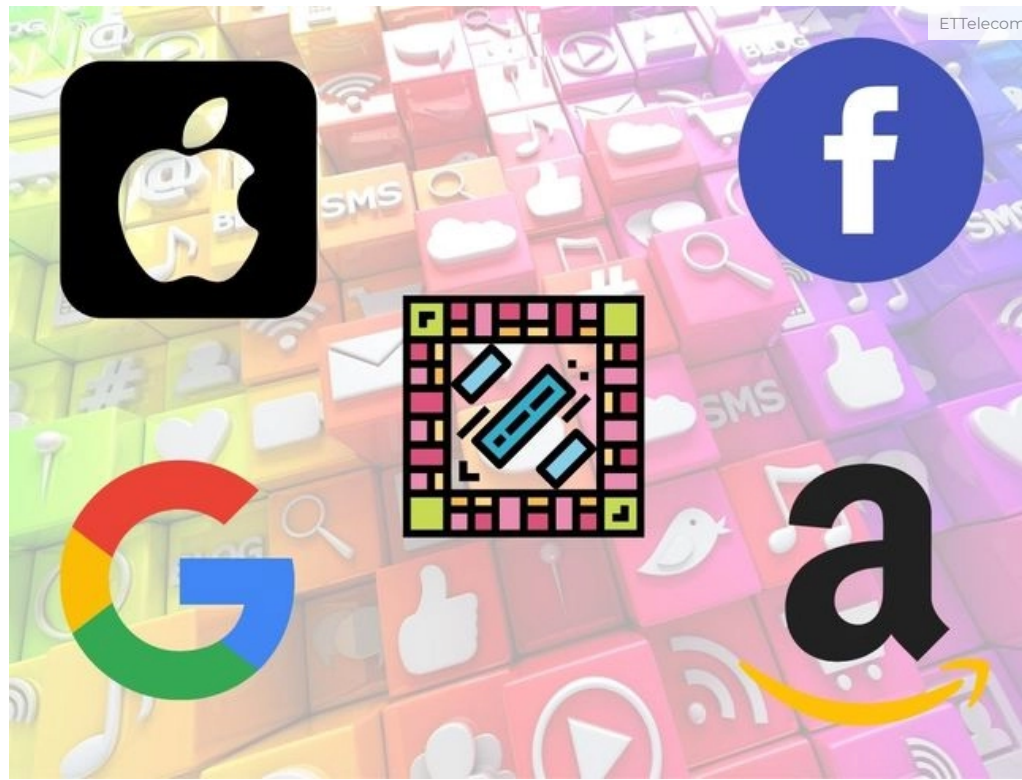


## Big Tech firms see tax windfall after Supreme Court ruling on Microsoft

### Synopsis

Big Tech firms, including Facebook, Amazon and Google, are set to file for tax refunds in India following a Supreme Court judgment on tax on royalty, but all may be not lost for the government.



**Mumbai:** Google, Facebook and Amazon could claim hundreds of crores in refunds from the Indian government, after the Supreme Court on Microsoft ruled that payments made by local users for the purchase of software from foreign companies or distributors cannot be taxed as royalty.

While Tuesday's ruling, disallowing deduction of tax at source on such payments, spoke about Microsoft, the principle and logic in the judgement are set to be used by other multinationals for their own cause, said legal experts.

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The Supreme Court ruling said, "The amounts paid by resident Indian end-users/distributors to non-resident computer software manufacturers/suppliers, as consideration for the resale/use of the computer software through EULAs (end user license agreement)/distribution agreements, is not the payment of royalty for the use of copyright in the computer software, and that the same does not give rise to any income taxable in India."

This would mean companies need not deduct tax at source as per the Income Tax Act, the court ruled, before adding that this would cover the different models used by companies to operate in India.

Multinationals including Google, Facebook, Amazon and Microsoft have been in one way or the other deducting tax on royalty or litigating on the issue, lawyers and consultants with direct knowledge of the matter said.

"The SC ruling is binding on the tax department as well. Large multinationals would claim refunds now," a tax lawyer advising one of the global big tech companies told The Economic Times.

The ruling by a bench of Justices RF Nariman, Hemant Gupta and BR Gavai

goes into the details of what a royalty is and what is not, thereby what can be taxed and what can't be.

Payments cannot be termed royalty and taxed where the software is purchased directly by an Indian end user from an overseas supplier or manufacturer, or from an Indian or foreign entity that acts as a distributor or reseller, the court said. This applies also to where the software is bundled with hardware.

Most multinational companies use a reseller model in India.

Experts said the ruling would have a far-reaching impact on the industry. Software companies that have been paying taxes all these years based on the taxman's stand would seek refunds, they said.

“This would trigger a major cash outflow for the government in the form of refunds which would be claimed by the industry against the taxes collected by the department in the last so many years. Interest on the principal in such cases was, however, objected to by the revenue department in the past, particularly on refunds to the payers, however, there are precedents to support such claims,” said Rahul Garg, partner at Asire Consulting.

“The ruling has put to rest several litigations on the characterisation of such payments as royalty. Earlier judgements like on Samsung Electronics by the Karnataka High court, which were pro-revenue stands, are overruled now,” said Amit Maheshwari, tax partner at AKM Global, a tax and consulting firm.

But all may not be lost for the government.

“As per the amendments proposed to the Finance Bill, 2021, many such payments would attract a 2% equalisation levy and the multinationals would

need to get registered in India and charge the same,” said Maheshwari.

Amazon, Google and Facebook have sought an opinion from their lawyers on the ruling. These multinationals are set to file for refunds soon, said people in the know.

The companies did not respond to emails seeking comment till press time Wednesday.

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