

India finds a new way to tax Google, Facebook

BY SURABHI AGARWAL & MEGHA MANDAVIA, ET BUREAU | UPDATED: DEC 17, 2018, 08.31 AM IST

New Delhi: India may be pushing Internet firms such as [Facebook](#) and [Google](#) to store data locally not just to safeguard critical data of its citizens but also to ensure due taxes are paid by these digital firms for services including advertisements sold to local clients, a senior official told ET.

The government's push for internet companies to host data of Indian users in local servers is also due to concerns that they deliver services mostly from overseas, outside India's tax jurisdiction.

"Who can the government tax? Any entity with presence here.

Today, Facebook can offer all their services here without having a presence. They have subsidiaries here, but that do limited business," said a government official.

"When you (Indian user) are signing up for Facebook or Google, your contract is not with their India office, so in my understanding there are other reasons certainly but location helps in taxation and revenues for sure.

The official said it is not limited to Facebook but applies to all foreign online companies that do business here. "One can say that government's approach to Facebook should not be to earn money off them but at the same time we can't deny the fact that they are making a lot of money," the official added.

"If any other Indian company would have done the same business — online or offline — they would have ended up paying a lot of taxes, so why let them go."

Facebook has 294 million users in India as of October, says data site Statista, while its messaging platform [WhatsApp](#) in February said it had 200 million users in the country, making it the largest user base for both firms.

Facebook and Google did not respond to email queries from ET on tax concerns raised by the government.

Analysts say India's push for internet companies to host data locally would help it have better supervision over them.

Amit Maheshwari, partner, Ashok Maheshwary and Associates said once these companies set up servers in India, then they can be treated as a permanent establishment and authorities will get the right to tax all income attributable to the country.

Realising the fact that India was losing out on revenue from digital firms billed overseas, the government in June 2016 introduced a 6% tax in the form of an equalisation levy or known as Google tax on the amount paid to internet companies by advertisers.

In the Union Budget 2018-19, the government also proposed to amend the Income Tax Act to tax digital entities with a large user base or significant economic presence in the country.

Losing out on revenues

Despite initial resistance, the revenue from the equalisation levy is over Rs 1,000 crore till March 2018, according to news reports, even as the guidelines on the last Budget proposal is still awaited.

Experts argue that despite the levy, India is still losing out on tax revenues since it is not valid on services such as annual or monthly subscriptions to streaming websites, or paid promotions done through platforms such as Facebook.

And data localisation seems to be government's latest weapon to get its due.

Tax consultant Maheshwari said the chances of losing out on tax revenue is also higher in case of advertising or promotional deals signed which are global in nature but also run in India.

"It is easy to shift profits in such scenario, the part which is reflecting in India is clearly taxable which the Indian government is losing out



Widening Net

WHAT GOVT WANTS

Tech cos pay taxes for services such as ads sold to local clients

WHY

Believes these cos escape tax liability as they are registered overseas

EXPERTS' VIEW

India has double tax avoidance treaties with many countries

These cos pay tax in one or the other jurisdiction

Bigger question is whether they are evading tax



on the ad revenues since even the equalisation levy doesn't apply on it," said Maheshwari.

Facebook, however, doesn't see recent developments where it has come under the government scanner on multiple issues including data localisation, curbing rumours or fake news as conflicts. "I don't think conversations are conflicts or battles. While governments are doing their bit to ensure public safety, as a company it's our job to participate in those conversations..." Ankhi Das, Facebook's public policy director for India and South Asia told ET.

Facebook had posted a profit of Rs 40.7 crore on revenue of Rs 341.8 crore in fiscal 2017, according to regulatory filings in India. Facebook's FY18 numbers are not available yet. In September, Reuters citing unnamed sources, had reported that Facebook is expected to generate revenue of \$980 million from India in 2018.

In November, ET reported that Google India has remitted over \$2 billion from the revenue earned in the country over the last five financial years to the US-based search giant's subsidiaries in Singapore and Ireland. The amount, which is categorised as an expense towards "purchase of advertising space," could further increase the search giant's tax liability in the country, even as a dispute with the Indian tax authorities — over the tax outlay on earlier transfers — continues to be heard in court.

'Dangerous game'

In fiscal 2018, Google India reported a 30% increase in revenues to Rs 9,337.7 crore with profit after tax rising 33% to Rs 407.2 crore. The amount transferred for "purchase of advertising space", increased by 36% to Rs 4,949.6 crore, according to regulatory filings.

Facebook has been under government scrutiny over user data breach and spread of fake news on its platform. The firm has maintained that it is working with the government on its concerns. It also appointed former Hotstar executive Ajit Mohan as its new India head from January.

Pratibha Jain, partner at Indian law firm Nishith Desai Associates, said the need of the Indian government to tax transactions for entities in the country is understandable.

"But in a globalised world, one can't look at the transactions in isolation.

As a huge exporter of software services, we take advantages of the multilateral and bilateral tax treaties, so it's a dangerous game we are getting into through the localisation debate," added Jain.

She said that India has double taxation avoidance treaties with many countries and these companies are paying tax in one jurisdiction or the other. "The big question is, are they evading tax, the answer is no!"