



March 31, 2020

Mr. Kamlesh Varshney

Joint Secretary (TPL-1)
Ministry of Finance
Government of India
New Delhi

Dear Mr. Varshney,

Greetings from AMCHAM India!

We write to you on our members' behalf to express deep concerns on the equalization levy provisions introduced by the Finance Act, 2020 (**Act**) on March 27, 2020 and which are sought to be brought into effect from April 1, 2020. The equalization levy of 2% (**Levy**) is sought to be applied on the consideration received by non-resident 'e-commerce operators' from 'e-commerce supply or services' made to Indian residents and even non-residents under 'specified circumstances'.

The Levy casts a wide net of applicability and it currently covers online marketplaces, service providers, retailers and manufacturers exporting their services to India. We are of the opinion that this Levy is not in line with the Government's stated intent of forging stronger economic ties with other nations in a bid to realize our goals of becoming a 5 trillion-dollar economy, especially at the back of a thriving digital economy.

Our specific concerns with the Levy as are follows:

1. **Global outbreak of COVID-19:** The global outbreak of the COVID-19 virus has left businesses all around the world reeling as they try to ensure continuity of goods and services while simultaneously protecting their employees. Many businesses are functioning at a fraction of their full capacity and will find it extremely hard to implement the internal processes required to successfully pay the Levy by the due date. As noted above, businesses hardly have any time to make complicated changes to their internal systems and begin accruing taxes on April 1, 2020. Such changes would be challenging even if the businesses were functioning at full capacity and any attempts to implement the systemic changes at this time are likely to not yield desired objectives and result in defaults in payment of the Levy. Further, the COVID-19 outbreak has made e-commerce goods and services more important than ever, as companies have been driven to embrace online services which facilitate productivity (such as video-conference software and intra-team communication software). The imposition of the Levy will have a direct effect on such online services and will cause a ripple effect throughout the economy. This may create a long-lasting negative effect on the Indian economy, in addition to the severe impact anticipated from the current pandemic.

2. **Absence of alignment with India's commitment to the efforts of the Organization for Economic Co-operation and Development (OECD) to address the tax challenges arising from the Digital economy.** The Government of India is actively engaged in the ongoing OECD-led process to achieve a multilateral consensus-based solution to address concerns with the current international tax framework. The imposition of this Levy which targets non-Indian businesses, even before the OECD process is concluded may have larger ramifications for India's International trade relations. This Levy being a unilateral measure contradicts the OECD ideology which is more consultative in nature and endorsed by India thus far. Further, this may also undermine India's ease of doing business as it creates disproportionate compliance burden for non-resident online companies to service and make available their products and services to Indian consumers.
3. **The Levy has been enacted with no consultation with industry.** The proposal for imposition of the Levy was not included in the Union Budget unveiled in February, neither discussed or debated in the parliament and was simply introduced and passed by both houses of the Parliament. While we understand that it was the extra-ordinary circumstances relating to COVID-19 epidemic, which perhaps compelled the Government to pass the law in an expeditious manner, it is our submission that the industry should not be completely left out of the discussion about the basis of taxation, practical difficulties and impact on businesses. We humbly submit that the view of the industry must be heard carefully before acting on such proposals to avoid unintended impact on the economy and practical difficulties to businesses.
4. **The scope of the Levy is too expansive, and will negatively impact the economy:** The scope of Levy, we believe, is discriminatory and is unduly wide to cover goods and services sold by non-resident online marketplaces, non-resident retailers that sell to Indian customers online as well as non-resident manufacturers that operate online sales portals. This Levy appears to be more in the nature of a tariff for doing business in India rather than creating a recognized tax category under the existing tax ecosystem. This is inconsistent with global norms including the OECD activity, the previous equalization levy, as well any tax law existing anywhere in the world. The Levy will disincentivize international businesses from providing their goods and services in India and would deprive the Indian public of cutting-edge innovations and technologies available over the internet as these businesses would have to now implement systems for effective compliance. The coverage of the Levy also proposes to include sale of physical goods / services by ecommerce operators, business to business transactions, where incidence is on business consumers, is unduly wide. Further, the inclusion of sale of products / provision of services by third party where the e-commerce operators do not even own any goods/ services, is rather hard. When combined with the larger set of goods of services envisaged to be taxed by the Levy, this will lead to significantly more foreign businesses being liable to pay the Levy and businesses passing the Levy on to the India consumer.
5. **The Levy undermines the ability of Small and Medium sized-businesses (SMBs), and Startups to "Make in India":** Most of India's startups and SMBs, leverage the opportunities offered by the internet and use non-Indian digital suppliers including software providers, app stores, software-as-a-service (SAAS) providers in the cloud services, infrastructure, social networking sectors to access the best of the world technology at lower costs. Access to such services is key to the development of the startup and SMB sector and contribute to the growth of 'Make in India' products. Levying an additional charge on services only serves to increase costs for such startups and SMBs, who rely heavily on such goods and services. Thus, this Levy would ultimately only serve to stymie their growth. Further, the Levy will restrict customer choice and limit the growth of micro, small and medium enterprises (MSME) that rely on global goods and services to access a variety of tools including cyber security, artificial intelligence, machine learning, translation, storage, etc. Indian users will be left with limited access and choice in online services, thereby

lagging their contemporaries in other countries. The numerous opportunities that are available in the global market to Indian MSME sector may dry up. The Levy will restrict the ability of many service providers to efficiently deliver services and goods to Indian customers including MSMEs, students, social media users, etc. at lower cost. Further, e-commerce businesses may pass on the burden of Levy to their Indian users including Indian businesses, which may ultimately hurt consumer interests.

- 6. Implementation/enforcement related concerns:** The provisions relating to the Levy are effective as on April 1, 2020. As a result, stakeholders hardly have any time to make complicated changes to their internal systems and begin accruing taxes on April 1, 2020, thus rendering compliance with the Levy, arduous and unfeasible. Further, in contrast to the existing equalization levy, which requires compliance by Indian companies paying foreign advertising businesses for digital advertising services, the EL requires non-Indian resident digital companies to make quarterly payments to the Indian Government and undertake periodic reporting compliances (which are yet to be prescribed). Since the Levy will be liable to be paid starting in July 2020, there is not only very little clarity on scope of the Levy and its implementation process, there is also very little time for such companies to setup the systems and processes required to pay it correctly. Further, owing to the global outbreak of COVID-19, as discussed in Point 1, these extraordinary circumstances provide for an even more challenging operating environment in which for companies to comply with these new measures.

In the wake of the above, we strongly urge the Government of India to refrain from enforcing the applicability of the Levy on the April 1, 2020 and to defer it by at least 9 months. Before the Levy is implemented, we recommend undertaking an impact assessment of such a broad Levy and the associated compliance burden. We also urge your office to initiate a stakeholder consultation with all impacted stakeholders – foreign as well as domestic – to ascertain the appropriate way forward including delaying the implementation till an impact assessment is undertaken based on such consultation. India's digital ecosystem deserves an enabling regulatory ecosystem and a supportive taxation regime which considers the ecosystem-wide implications of policy measures. We believe that the objectives of the Government could be better met by measures that are less intrusive and AMCHAM through its members would be very happy to participate in a deliberative exercise to identify these.

AMCHAM India fully supports Governments' current prioritization of measures that directly contribute to the economic and medical response to the COVID-19 outbreak but would strongly urge the Government of India to consider industry concerns and reconsider the scope of Levy, and refrain from enforcing its applicability on April 1, 2020. This aligns with the much-needed relief the Government has provided on enactment of multiple new provisions introduced in the Finance Act, 2020 and will help companies manage the difficulties they are generally facing managing compliance obligations during the current COVID-19 outbreak.

Our office can be contacted at amcham@amchamindia.com for further texture on this issue. We look forward to a fruitful dialogue with your office on this issue.

Thank you for your time and with best regards,

Ranjana Khanna
Director General CEO
American Chamber of Commerce in India