March 19, 2021

Shri Jayant Sinha
Chairman, Standing committee of finance
Member of Parliament [Lok Sabha]
India

Subject: Request for wider debate on Equalisation Levy

Respected Shri Jayant Sinha ji,

Our associations are a collection of the world's most innovative companies, representing every sector of the economy. We are substantial contributors to a vibrant Indian economy. For all of us, India is an essential market in which many of our members are deeply invested, and all of our members are committed to the Government of India's goal of making India a $5.0 trillion economy by 2025.

We write to raise concerns regarding the amendment to India's Equalisation Levy included in the Government of India's proposed Finance Bill to the Union Budget 2021-22. As detailed below, the amendment would create significant challenges for all businesses operating in India, further exacerbating the detrimental impact of a measure at odds with India's ongoing commitment to the multilateral negotiations at the Organisation for Economic Co-operation and Development (OECD)/G20 Inclusive Framework to address the tax challenges arising from the digitalisation of the global economy. The G20 Finance Ministers – including Finance Minister Nirmala Sitharaman – reiterated as recently as February 26 their support for the Inclusive Framework's timeline of realising a multilateral, consensus-based agreement by mid-2021.

It is in the spirit of support for a multilateral solution that we encourage the Parliament to refrain from adopting the amendment proposed to sections 163-165A of the Finance Act, 2016, which, despite its characterization by the Ministry of Finance as clarifications and an amendment, would fundamentally expand the scope of the Equalisation Levy and generate a range of new compliance questions and concerns. The proposed changes stand to undermine confidence in India's regulatory environment and negatively impact the ease of doing business in India.

- The clarification to clause (cb) of section 164 of the Finance Act, 2016, would expand the scope of existing rules to bring offline transactions within the Equalisation Levy's scope if any one of the following transaction aspects happens online: acceptance of offer for sale; placing the purchase order; acceptance of the purchase order; payment of consideration; or the supply of goods or provision of services, partly or wholly. This expansion will capture brick and mortar businesses as well as other companies that traditionally operate offline, and subject them to the Equalisation Levy simply because their transactions involve online payments or are concluded via email. This could have unintended consequences where even transactions within an organisation, and Indian imports of oil and food products, are subject to the Equalisation Levy, ultimately making India a less desirable environment for investment.

- The amendment to section 165A would explicitly include within scope the entire amount of consideration received for sale of goods or provision of services, even when the underlying good or service is provided by an unrelated third party and the e-commerce operator's income is only a portion of the gross amount received.
- The clarification to section 163 would specify that royalties and fees for technical services related to consideration for e-commerce supply or services should be taxed under the Income-tax Act when applicable, and not under the Equalisation Levy.

Particularly given the lack of wider public consultation prior to the introduction of the expansion of the Equalisation Levy as part of the Union Budget 2020-21, we request that the Government of India convene formal stakeholder consultations prior to further consideration of the recently proposed amendments. Because the breadth of transactions that would be newly captured under the proposed amendments, the Government of India and the business community invested in India would benefit from robust dialogue to ensure that policies can achieve the Government of India's intended short-term and long-term objectives and to engage with impacted firms about effective implementation. This is especially important considering the Government of India has not released FAQs or implementation guidance in response to company inquiries to better facilitate compliance with the existing scope of the Equalisation Levy.

We would also respectfully request the Parliament and the Government of India to pursue a prospective application of any further changes to the Equalisation Levy that would allow for companies to design and implement the structurally complex systems necessary to comply with the new rules. The proposed Finance Bill prescribes a retroactive effective date of April 1, 2020, which further undermines the principle of tax certainty and exacerbates the already significant compliance burdens posed by an unusual extraterritorial tax on revenue. This continued and growing uncertainty impacts foreign companies' ability and willingness to invest in India.

In lieu of advancing the proposed amendments, we encourage the Government of India to forgo further expansion of the Equalisation Levy and instead prioritize India's continued support for the multilateral negotiations to address the tax challenges arising from the digitalisation of the global economy.

We greatly appreciate your consideration of our perspectives and stand ready to work with you and your Government.

Sincerely,

Allied for Startups
Asia Internet Coalition
Asia Pacific MSME Trade Coalition (AMTC)
Information Technology Industry Council (ITI)
Internet And Mobile Association Of India (IAMAI)

Japan Electronics and Information Technology Industries Association (JEITA)
Japan Machinery Center for Trade and Investment (JMC)
Keidanren
National Foreign Trade Council
techUK
U.S. Chamber of Commerce
U.S.-India Business Council
U.S.-India Strategic Partnership Forum (USISPF)

CC: Smt Nirmala Sitharaman ji, Honourable Finance Minister, Government of India