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A Study on Taxation Laws on Foreign and Indian Online Streaming Platforms in India

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ABSTRACT

This manuscript provides a concise overview of the taxation laws governing foreign and Indian online streaming platforms in India. The Indian government has implemented a set of tax regulations aimed at both levelling the playing field and generating revenue from the booming digital entertainment industry.

The tax regulations that are applied to international internet streaming services that operate in India are covered in the first portion of this examination. The Equalisation Levy, also known as the "Google Tax," was implemented as part of this, and it puts a 2% tax on the money that foreign digital service providers get from Indian customers. Additionally, there are different rates of the Goods and Services Tax (GST) (with rates ranging based on the cost) applicable to subscription costs paid to overseas streaming services. A permanent presence in India for tax purposes is an idea that is also looked at.

The second part of the article focuses on the tax regulations that apply to Indian online streaming services. Domestic businesses in this sector are required to pay corporate income tax on their earnings, which normally ranges from 25% to 30% depending on turnover. They are also required to collect and return GST at rates based on the price of the subscription. In addition, certain Indian states have proposed or implemented Digital Services Taxes (DST) on the income produced by suppliers of digital services, expanding the tax landscape.

The paper emphasizes how these tax policies may affect the competition in the internet streaming sector. It highlights the worries that these restrictions would create an unfair playing field, favoring domestic platforms, and it looks at the difficulties in enforcing tax compliance and collecting money from overseas streaming platforms.

This comparative study also examines the global repercussions of India taxing foreign digital services, which have sparked concerns about tax and trade treaties. Last but not least, it talks about how these tax regulations can affect customers and possibly raise subscription prices.

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I. Introduction

In recent decades, India encounters technological growth which already plays a major role in other parts of the world. This is more evident with respect to the cinema industry. Conventional practice of watching movies and other audio and video content has always been in theaters. But as time passes we get to know about DVDs, Blu-ray Discs and CDs. a short time ago this technological advancement had almost reached the peak where we can watch movies by sitting at our home through the internet application called Over-The-Top (OTT) platforms. The audience of a TV show can now access the video in their smartphones, tablets, televisions, laptops and computers. This became so popular among people that out of ten people minimum 5 people can enjoy their favourite shows at the place where they are, Irrespective of the place of release of the movie or the TV show everyone around the globe can witness it in their hands. Developing countries like India having a lot of audience with a mixture of flavors with respect to the movies and Tv shows gets attracted and boost up the OTT platforms. During the times of COVID-19 we could witness that the users of OTT platforms had increased to 30% which is an increase in the number of paid subscriber from 22.2 million to 29.0 million between March and July 2020. Subsequently there is a boom in digital platforms with respect to Indian territory. This even encouraged many players to to emerger and expand their platform services in India[3].

II. Major streaming services in India

The country's OTT space is also experiencing a battle between indigenous and foreign players. There are nearly 45 OTT platforms currently attracting the audience in India. This number is expected to increase in the upcoming years. Among these 45 there are many local players who increase their standards to that of global players. Some of the main streaming platforms in India are[4]:

1. **Prime video**

Amazon owns and runs the video-on-demand (VOD) service Prime Video. 400 TV series and more than 2,000 films are available on Prime Video in India. Approximately Rs. 129 is the monthly subscription fee, or Rs. 999 annually.In India users of Amazon Prime Videos are around 60 million with respect to the global market, which took it a standard ahead with that of Netflix's 40 million Subscribers. The founder and CEO of Amazon, Jeff Bezos, claimed that India is the most lucrative market outside of America in an annual letter to shareholders.

[3] Volume 65, Issue 8, 2021 Journal of Scientific Research of The Banaras Hindu University

[4] Vol. 08, Issue 02: 489-499 International Journal of Business, Management and Social Research (Trends in OTT Platforms Usage During COVID-19 Lockdown in India)

2. Netflix

January 2016 marked Netflix's arrival in India. The multitude of original films and television series it offers is their USP (unique selling proposition). Netflix has made its largest investment in India to date in order to create more original content, as they originally lacked many localized or India-focused programmes. Three distinct membership tiers with varying perks are available for Netflix. There is no support for HD streaming with the Basic membership, which costs Rs. 500. HD streaming is supported with the Standard membership, which costs Rs. 650 per month. Up to four devices can stream simultaneously with the Rs. 800/month Premium membership, which also supports ultra-HD streaming. Netflix is far more expensive than all of its rivals. Therefore, they have introduced a low-cost, mobile-only version of their service that is only available in India.The plan costs Rs. 199, and it is aiming to bring a unique personalized experience to the Smartphone users in India. With this schemes, Netflix holds about 40 million subscribers comprising various plans.

3. Hotstar

Hotstar is ideal for watching movies, daily soaps, live sports and news channels. The users can create an account and view the content for free with advertisements between. Whereas, a Hotstar Premium subscription offers ad-free access to exclusive international movies and TV shows for a price of Rs. 199 per month or Rs. 999 per year. Hotstar downloads crossed 400 million in 2019, and one of the main pulling factors has been live streaming of cricket matches. During Indian Premier League (IPL) 2019 the platform recorded 300 million active viewers. India versus Pakistan match at the ICC World Cup 2019 registered an exceptional 100 million viewers, and India versus New Zealand semi-final had 25.3 million concurrent viewers.

4. Jio Cinema and Jio TV.

Dependency Many over-the-top (OTT) apps, including JioTV, JioCinema, and JioSaavn, are included with the Jio mobile data service in order to meet the diverse needs of the user base. The service primarily caters to Indian audiences with its content. With 647 Live TV channels available, JioTV offers almost twice as many as its rivals. The JioCinema, on the other hand, features over 10,000 films and TV series. Jio and Disney India have inked a long-term content agreement that will see Disney films and animation series featured on a special Disney-branded section of Jio's homepage. Additionally, Jio has announced the 2020 launch date of Jio Fibre's "First-Day-First-Show" plan. On the day of release, Jio Premium subscribers will be able to watch new films in the comfort of their own homes on-demand.

5. SonyLiv

The VoD streaming service SonyLiv is run by Sony Pictures Networks. There are over 40,000 hours of content available in a diverse range of genres. When comparing non-metropolitan cities like Lucknow, Indore, Patna, and Jaipur to metropolitan cities, SonyLiv grew at a faster rate. It is a freemium service that works similarly to Hotstar and offers content that users can view without having to sign up or subscribe. English-language films and TV series are available through the premium service, which has a monthly cost of Rs. 199. The platform saw 50 million viewers during India's cricket tour of Australia and England in 2019 and 70 million viewers during the 2018 FIFA World Cup.

6. SunNxt

The entertainment sector in India is renowned for its diversity and depth of culture. Sun NXT is a platform that offers a home for local content in an effort to celebrate this diversity. Being a domestic OTT platform having a monthly subscription of Rs.50 and an annual subscription of Rs. 480 it features films and television series in a number of regional languages, extending beyond mainstream Bollywood and providing a platform for lesser-known but incredibly interesting content. This is a big step towards encouraging appreciation and exchange of cultures within the nation. Entertainment fans in India and around the world can find everything they're looking for at Sun NXT, which was introduced by the Sun TV Network. By providing a large selection of content in several languages and appealing to the varied tastes of its audience, it has swiftly established a name for itself in the cutthroat OTT market.

7. Zee5

ZEE5 is one of the prominent over-the-top (OTT) streaming platforms in India. It It provides a vast and varied collection of media, encompassing films, television series, web series, and original content. It covers a wide range of genres, such as thriller, romance, comedy, drama, and more. The content on ZEE5 appeals to a broad spectrum of age groups and tastes. ZEE5 is renowned for emphasising local content. It provides content in Bengali, Marathi, Tamil, Telugu, Hindi, and other Indian languages. It can reach more people nationwide thanks to this strategy. Being an Indian local OTT platform, ZEE5 faces competition from other well-known OTT services like Netflix, Amazon Prime Video, Disney+ Hotstar, and others. In order to remain competitive, this has resulted in higher investments in technology and content. It's crucial to remember that India's OTT market is extremely competitive and dynamic, and platforms are always changing to satisfy the needs of a wide range of consumers. ZEE5's success is indicative of the nation's growing inclination towards digital streaming platforms.

III. TAX ON FOREIGN OTT PLATFORMS IN INDIA

India is one among the fastest growing countries in the dimensions of digital adoption and e-commerce. As the growth rate is enormous, one side benefited the country in the way of having good rapo with the other companies from foreign countries and by increasing the digital economy of the country, but contrary to this they raised a problem with regard to the taxation laws that need to be imposed on digital economy by the Indian government on the foreign company having residence in foreign country. A question was raised as to how much tax need to be imposed on these digital platforms upon the income generated in other countries like India which has many active subscribers for the company. The Organisation for Economic Co-operation and Development (OECD), in collaboration with the finance ministers of G20 countries, launched an Action Plan on Base Erosion and Profit Shifting (BEPS) in July 2013 in response to the gravity of the situation and to devise a coordinated strategy to address the issues surrounding taxation in the digital economy. BEPS pertains to the tax planning strategies employed by multinational corporations, which leverage vulnerabilities in the connections among distinct taxation regimes. The businesses take advantage of these loopholes to either artificially lower their taxable income or move their profits to low-tax jurisdictions with minimal or no economic activity. However none of the measures recommended did not alleviate the aforementioned problem. In an effort to tax transactions resulting from contemporary digital commerce, a number of nations, including India, have announced temporary changes to their domestic tax laws. As one of the pioneers, India has been a vocal supporter of source-based taxation with regard to transactions made in the digital economy.[5]

EQUALISATION LEVY. AND DST

India has significantly amended its domestic tax code over the years to guarantee that it will receive a fair share of taxes related to the digital economy.

- The definition of royalty was changed in 2012,
- the equalisation levy was introduced in 2016 (limited to online advertisement services and the provision of digital advertising space),
- the Goods and Services Tax was introduced in 2017,
- the definition of a business connection was amended to include a "significant economic presence" in 2018, and

[5] REPORT ON INDIA'S DIGITAL SERVICES TAX PREPARED IN THE INVESTIGATION UNDER SECTION 301 OF THE TRADE ACT OF 1974, https://ustr.gov/sites/default/files/enforcement/301Investigations/Report%20on%20India%E2%80%99s%20Digital%20Services%20Tax.pdf

- withholding tax was introduced on domestic e-commerce transactions in 2020, to name a few of the significant changes.

Equalization levy means the tax leviable on consideration (payment) received or receivable for certain specified digital services.

- The equalization levy was decided to be 6 per cent tax of the amount of the consideration
- The digital services on which these taxes were to be levied covered online advertising. It also includes any facility or service for the purpose of online advertisement.
- The tax would only be levied if the consideration is being received by a non-resident from:
    - a person who is residing in India and carrying on business or profession; or
    - a non-resident having a permanent establishment in India.

India-based businesses offering similar services would not be subject to the digital tax, but foreign individuals or entities would be.

With The Finance Act 2020, the Indian government modified some of the equalization levy's terms and put them into effect on April 1, 2020. With the passage of these amendments, an additional equalization levy of two percent was imposed on the money that an online retailer received from the sale of goods or services. The Digital Services Tax (DST) is another name for this new equalization levy.

➔ **Crux on DST**

1. [6]It applies to all range of service providers except all Indian companies
2. These includes

- online sales of goods that the e-commerce operator owns
- the e-commerce operator's online services being offered
- online sale of goods, provision of services, or both that is 'facilitated' by the e-commerce operator

[6] REPORT ON INDIA'S DIGITAL SERVICES TAX PREPARED IN THE INVESTIGATION UNDER SECTION 301 OF THE TRADE ACT OF 1974 https://ustr.gov/sites/default/files/enforcement/301Investigations/Report%20on%20India%E2%80%99s%20Digital%20Services%20Tax.pdf

3. When an online retailer receives payment for providing, facilitating, or manufacturing goods or services for another online retailer, the DST will be applied at a rate of 2%.
4. It is mandatory for the digital service provider to pay the Indian government the DST. This implies that the non-resident online retailer bears the responsibility for DST deposition.
5. The DST is a prospective tax, it would not be applicable in a retrospective manner.

DST has its own advantages like *Turnover tax, Placing a slab rates for the tax rates, limited scope as it focuses mainly on the digital services* and its own criticism like *unilateral DST's which causes discrimination among various countries, Disguised income tax as there is a high chance of imposition of double taxation on foreign countries*[7]. Foreign OTT companies like Netflix, Amazon, Sonyliv Thus till date the concept DST is a contraventional in nature. For example As the economic growth has slowed in the west, and more populaces are getting dependent on the state, countries have been looking for various ways to raise money through taxes. One such road had led to "Digital services tax" or Equalization tax in the EU. However, there are certain drawbacks to such laws. Negative impact on growth and innovation due to high regulatory and tax burdens, problems with double-taxation and higher compliance laws. However, such laws are increasingly seen as a way to solve the perceived unfairness in taxing the digital economy. (Kofler & Sinnig, 2019). Per the USTR's "Section 301 Investigations of Digital Services Taxes: Report on India's Digital Services Tax" (2021), India's implementation of the equalization levy received pushback from various countries, majorly from the USA. Most of the companies in the digital economy sector are based out of the US, which makes the levy, in its very nature, discriminatory against foreign companies and provides free reign to Indian companies. However, after implementing the equalization levy, USTR launched an investigation to find whether the law is indeed discriminatory towards US Companies. The ultimate report stated that the law was discriminatory towards foreign companies and gave unwarranted advantage to domestic companies and violated prevailing international tax principles. Since the majority of businesses in the digital economy are US-based, the fee by its very nature discriminates against foreign businesses while giving Indian businesses unrestricted access. But after the equalization levy went into effect, USTR looked into whether the law

[7] Young Ran Kim, Digital Services Tax: A Cross-Border Variation of the Consumption Tax Debate, 72 ALA. L. REV. 131 (2020).

actually discriminated against US companies. The final report declared that the statute was actionable under the law because it discriminated against foreign businesses, provided domestic enterprises an unfair advantage, and violated widely accepted international tax rules[8].

IV. Tax on Indian OTT Platforms

Apart from the foreign companies having subsidiaries in India, there are many new actors in the domestic country who have equal audiences in India as that of foreign ott platforms have in India. Some of the actors are Zee5, SUN NXT, Aha tamil, SonyLiv, MX player, Alt Balajee and so on. These actors are subject to taxes upon the income that they receive through subscriptions. The Indian Government imposes Goods and Service Tax(GST) on these OTT platforms. The appropriate GST rate for over-the-top (OTT) platforms generally ranges from 18% to 28%, contingent on many parameters such as service nature, content type, and subscription plans. In order to ensure that OTT platforms contribute to the government's tax revenue, this tax is applied to the subscription fees and other earnings they earn. OTT platforms must register, file returns, and send the government the collected GST in accordance with GST legislation. To stay out of trouble and make sure business is running smoothly in the Indian market, accurate and timely GST compliance is essential.

V. Consumers and OTT Platforms

Even though the end beneficiaries from these OTT platforms are the owners of the respective Indian or foreign company, their main source from which they get benefited are from us the Consumers. Thus it is essential to discuss whether the consumers also gets perquisite from these OTT platforms apart from watching movies or TV shows from almost every part of the country. This draws the attention towards their expenses they incur while getting the subscription. Such expenses also include the tax they pay for purchasing the subscription from OTT platforms. Goods and Service Tax are imposed on both Online streaming platforms (which varies from 18% to 25% for the OTT platforms) as well as on us as the consumers(which we need to pay around 18%) who avail their services. It is necessary to think over whether the imposition of tax by government on these OTT platforms are actually beneficial for the country as from eagle point of view the amount of income that the OTT platforms earn from their subscribers are in higher stance and the percentage of tax (both GST and DST) on these OTT platforms are comparatively less. Thus it is recommended that there should be an increase in the percentage of tax imposed on OTT platforms or the percentage of amount that we as consumers pay as

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[8] Young Ran Kim, Digital Services Tax: A Cross-Border Variation of the Consumption Tax Debate, 72 ALA. L. REV. 131 (2020).

GST should reduce which will lead to a fair play.

VI. Conclusion

Countries cannot function without specialized taxation mechanisms for the digital economy given the current era of digitization. Although there is still much to be discovered about this reconnaissance, India is starting to lead the way in putting in place a taxation system to keep up with the world's accelerating digitization. Notwithstanding its status as one of the world's leading digital economies, India is still in the early stages of honing its tax system to the point where it can effectively execute a widespread and comprehensive tax policy. The tax rate of 2% (comparable to the global average of 3.8%) on a wide range of business models and liable digital services, combined with an Indian levy makes up a significant portion of the nation's gross revenue. Because of the sheer volume of digital services that India consumes and trades, it can also be assumed that the Equalisation Levy's impact in India will be greater than that of comparable taxes in other nations, if it achieves the desired levels of efficiency. It is reasonable to assume that India will serve as a model for future taxation-related growth in the global digital economy.

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