

October 23, 2020

The Honorable Ricardo Monreal Ávila
Presidente
Junta de Coordinación Política
Senado
Estados Unidos Mexicanos

The Honorable Alejandro Armenta Mier
Presidente
Comisión de Hacienda y Crédito Público
Senado
Estados Unidos Mexicanos

The Honorable Erasmo González Robledo
Presidente
Comisión de Presupuesto y Cuenta Pública
Cámara de Diputados
Estados Unidos Mexicanos

The Honorable Patricia Terrazas Baca
Presidente
Comisión de Hacienda y Crédito Público
Cámara de Diputados
Estados Unidos Mexicanos

Dear Members of Congress:

On behalf of the undersigned associations, we write to you to express our deep concern with the proposal in Mexico's 2021 Economic (Budget) Package that would impose discriminatory requirements on the digital economy. Article 18-H BIS of the Law of Value-Added Tax (LIVA) includes a so-called 'kill switch' that would suspend the Internet connection on non-resident entities providing services to Mexican customers for failure to comply with Mexico's tax laws. This provision is inconsistent with Mexican law and trade obligations, would have a negative impact on the Mexican economy, and is unnecessary to ensure tax compliance. Thus, we call on you to remove the article from the Budget Package and suggest alternative approaches that would help the government achieve its objectives in a manner that is less harmful to the Mexican economy.

Article 145 of Mexico's Federal Telecommunications and Broadcasting Law prohibits blocking and filtering of the Internet. The 'kill switch' would require Internet service providers to block non-resident services if they are found out of compliance with Mexico's tax registration requirements. Further, Article 6 of Mexico's Constitution guarantees accessibility to the information society. Given the implementation challenges of Mexico's new tax system, it is challenging for companies to comply with the burdensome requirements, especially those non-resident service providers that do not charge for their service; therefore, we envision that there will be a significant number of blockages resulting from this provision.

The 'kill switch' already was proposed and rejected in the discussion of the 2020 Budget because members of Congress recognized the severe and negative impact that it would have on the digital ecosystem in Mexico. Mexican small- and medium-sized enterprises (SMEs) rely on digital services to connect to customers, create new businesses, improve operations, and safely store their information. Blocking those services, including free marketing and advertising tools, will make it harder for Mexican SMEs to compete in a global marketplace and will undermine the free and open Internet that is at the core of Mexico's approach to digital growth

On July 1, we celebrated the implementation of the U.S.-Mexico-Canada Agreement (USMCA), which includes numerous state-of-the-art provisions in its Digital Trade, Cross-

Border Trade in Services, Investment, and Financial Services chapters. Unfortunately, this proposal appears to be inconsistent with a number of provisions across these chapters, including National Treatment (Article 15.3), Access and Use (18.3), and Principles on Access to and Use of the Internet for Digital Trade (19.10).

Finally, the government has yet to explain why this proposal is necessary, as there are steps the government could take to ensure tax compliance that would be more practical and less detrimental to Mexico's economic interest. The government should simplify the registration process to make it easier for companies, no matter their size, to register with the government's tax authority. A more nimble process, like the one implemented in Chile, would see a significant increase in the number of entities that register, collect, and remit taxes on behalf of local consumers. The government also could consider implementing other models aligned with global best practices that would make the collection and remittance of the VAT effective for non-resident suppliers of digital services, including the financial intermediary model.

Based on the above factors, we respectfully request the Mexican Senate amend the 2021 Budget by removing Article 18-H BIS of the LIVA and recommend the Senate work with the Secretariat of Finance & Public Credit to implement more effective ways to ensure tax compliance while also promoting the growth of the digital economy. Our organizations continue to deeply value our relationships with the Mexican government and stand ready to work with you to resolve this urgent issue.

Sincerely,

ACT | The App Association
American Chamber of Commerce in Canada
American Chamber of Commerce of Mexico, A.C.
Asociación de Internet MX
Asociación Mexicana de Venta Online (AMVO)
Asociación Latinoamérica de Internet (ALAI)
Cámara Nacional de la Industria Electrónica, de Telecomunicaciones y Tecnologías de la Información
Canadian Chamber of Commerce
Coalition of Services Industries
Computer & Communications Industry Association (CCIA)
Consejo Empresarial Mexicano de Comercio Exterior, Inversión y Tecnología, A.C.
Information Technology Industry Council (ITI)
International Chamber of Commerce México
Internet Association
Software & Information Industry Association (SIIA)
U.S. Chamber of Commerce

CC:

Ambassador Christopher Landau
United States Ambassador to Mexico

Ambassador Martha Bárcena Coqui
Ambassador of Mexico to the United States