Indian Digital Tax Discriminatory: USTR

Why in News

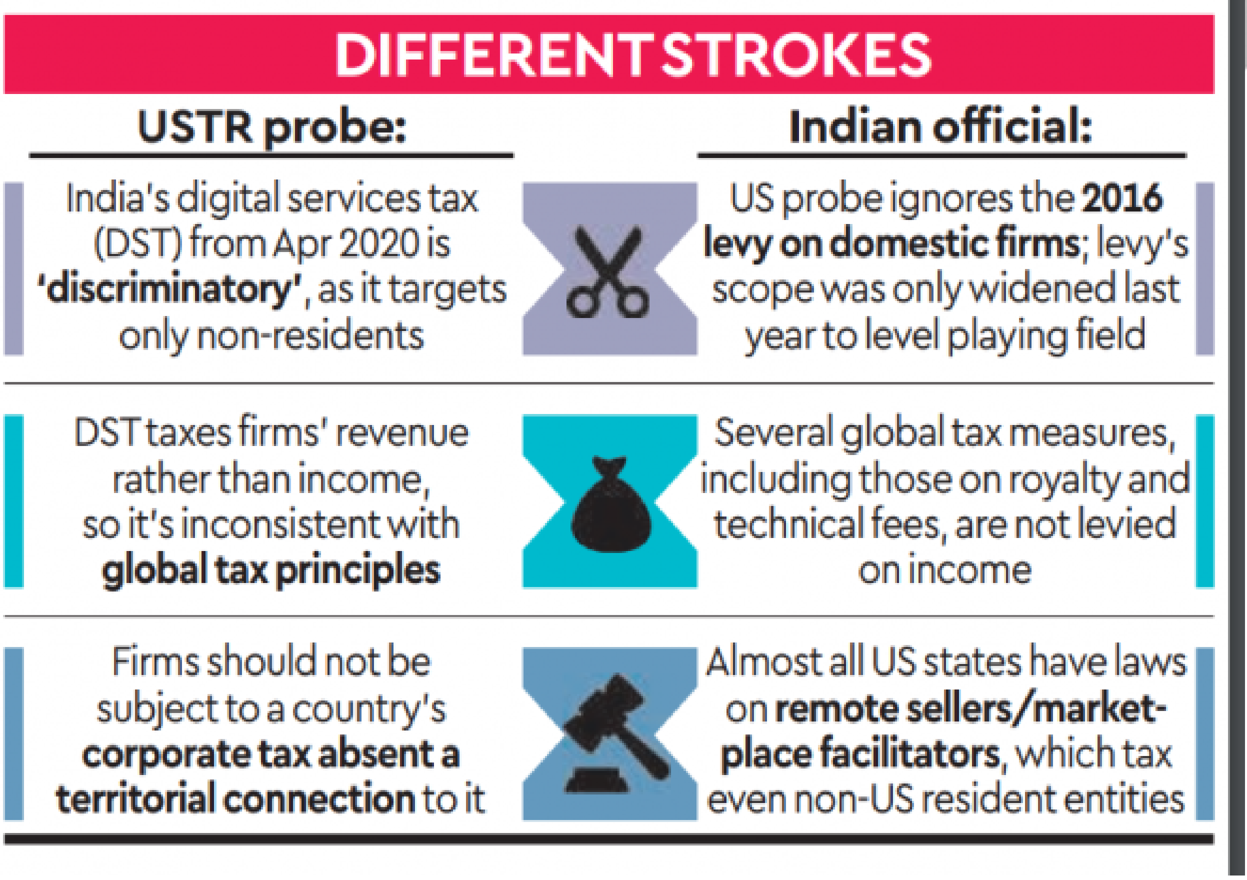
Recently, the Office of the **United States Trade Representative (USTR)** has said that the **Digital services taxes** adopted by **India, Italy and Turkey discriminate against US companies** and are **inconsistent with international tax principles.**

Key Points

- **The Office of the United States Trade Representative (USTR):**
  - It is responsible for **developing and coordinating US international trade.**
  - **Section 301 (US Trade Act)** gives the USTR broad authority to **investigate and respond to a foreign country's action which may be unfair or discriminatory** as well as negatively affect US commerce.
    - Adopted through the **1974 Trade act,** the Section allows the US President to **impose tariffs or other curbs on foreign nations.**
  - However, the law **mandates consultations with trading partners.**
- **Digital Services Taxes (DSTs):**
  - These are the adopted taxes on **revenues that certain companies generate from providing certain digital services.** E.g. digital multinationals like Google, Amazon and Apple etc.
  - The **Organisation for Economic Cooperation and Development (OECD)** is currently **hosting negotiations with over 130 countries that aim to adapt the international tax system.** One goal is to address the tax challenges of the digitalization of the economy.
    - Some experts argue that a **tax policy designed to target a single sector** or activity is likely to be unfair and have complex consequences.
    - Further, the **digital economy cannot be easily separated** out from the rest of the **global economy.**
- **India's Tax on Digital Companies:**
  - The government **had moved an amendment in the** Finance Bill 2020-21 **imposing a 2% digital service tax (DST) on trade and services by non-resident e-commerce operators** with a **turnover of over Rs. 2 crore.**
    - This effectively **expanded the scope of equalisation levy** that, till last year, only applied to digital advertising services.
    - Earlier, the **equalisation levy (at 6%) was introduced in 2016** and imposed on the revenues generated on business-to-business digital advertisements and allied services of the resident service provider.
  - The new levy **came into effect from 1st April 2020.** E-commerce operators are **obligated to pay the tax at the end of each quarter.**
- **USTR's Investigation Report:**

- The **DST in India is discriminatory** because it exempts Indian companies and targets non-Indian firms.
  - This hits US firms which **dominate the technology industry.**
  - 119 companies that it identified as likely liable under the digital services tax, 86, or 72%, were American.
- USTR estimates that the aggregate tax bill for US companies could exceed **USD 30 million per year.**
- The USTR has determined that India’s DST is unreasonable or discriminatory and burdens or restricts US commerce and thus is **actionable** under **Section 301 (US Trade Act).**

- **India’s Stand:**
  - India has described the **equalization levy as a fair, reasonable and non-discriminatory tax** aimed at all offshore digital economy firms accessing the local market and has **denied it targets US companies.**
    - It seeks to **ensure a level-playing field** with respect to e-commerce activities undertaken by entities resident in India as well as those not residents in India or without permanent establishment in India.
  - The government of **India will examine the determination/decision notified by the US** in this regard, and would **take appropriate action keeping in view the overall interest of the nation.**
  - There was no retroactive element or extra-territorial application involved in the levy which applied only on the revenue generated from India.
    - It is a recognition of the principle that in a digital world, **a seller can engage in business transactions without any physical presence, and governments have a legitimate right to tax such transactions.**



- **Concerns:**

- In the backdrop of an improper functioning of the **World Trade Organization (WTO)**, the move could signal the **start of more unilateral action by the US especially on the digital services front.**
- In India's case, the probe could **potentially affect the outcome of a bilateral trade** deal that India has been looking to forge with the US.

Way Forward

As India is racing towards becoming a digital giant, the **2% DST should be negotiated to avoid any hurdles** in its implementation. Further, there needs to be **international consensus on taxation on a digital economy.**

Source:IE