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Adarsh Tripathi

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CORPORATE TAX REFORMS IN THE DIGITAL ECONOMY: INTERNATIONAL COORDINATION AND CHALLENGES

Adarsh Tripathi*

Abstract

Traditional corporate tax systems lack effectiveness because the digital economy demands the elimination of Base Erosion and Profit Shifting (BEPS) worldwide. BEPS means shrinking the country's taxable profit by shifting the profit to low-tax countries. This research examines the complexity of digital company tax affecting higher tax countries. The BEPS initiative, taken up by the Organisation for Economic Co-operation and Development (hereinafter referred to as OECD), including Pillar One's profit reallocation and Pillar Two's global minimum tax, seeks to mitigate revenue losses from tax avoidance. However, the success of these reforms is threatened by divergent national interests, legal disputes, and unilateral digital services taxes (DSTs), which create further fragmentation in the international tax landscape.

In the matter of digital tax evasion, two significant cases are Google Ireland Ltd v. Commissioner of Income Tax.¹ And Amazon EU Sàrl v. The European Commission.² These cases show how big tech companies exploit gaps in the system to sidestep paying taxes. It highlights that existing rules aren't strong enough to stop countries from unfairly shifting their profit and reducing tax bills. Ireland and Luxembourg actively work against tax reform because they want to retain their tax competitiveness, but their opposition escalates tensions between tax jurisdictions with varying rates.

Beyond economic implications, the paper explores the political challenges of achieving multilateral cooperation, as some governments prioritise domestic fiscal policies over global coordination. Unilateral measures, such as France's GAFA tax on Google, Apple, Facebook, and Amazon, have sparked trade conflicts, particularly with the U.S.

While the OECD's proposals provide a structured approach to digital taxation, their effectiveness hinges on widespread adoption and enforcement. This research underscores the need for a balanced global tax regime that aligns economic

* 4th Year Student of B.A. LL.B. Manikchand Pahade Law College. Aurangabad, Maharashtra, India

¹ Irakli Ksovreli, Aggressive Tax Planning—Challenge of the Digital Era (2017)

² Pernilla Bergvad, Digital Services Tax – A Feasible Solution for Taxation of the Digital Economy? (2020)

sovereignty with international coordination, ensuring fair and sustainable corporate taxation in the digital era.

Keywords: Digital Economy, Corporate Tax Reform, International Coordination, OECD, Digital Taxation.

I

Introduction

Changes in the digital economy have shifted the strategic organisational character of different enterprises by applying dynamism to long-established businesses seen more as an evolution rather than a revolution, which is worldwide, systematic and innovative. Modern digital businesses enable major technology corporations to operate and earn tax revenues across multiple countries without a physical presence. This situation often results in a low or non-existent 'nexus' and 'permanent establishment' as traditional tax laws require.³ However, the advancement of this concept represents a set of problems for national tax systems, which are, to a great extent, based on 20th-century concepts that primarily focus on the direct taxation of profits by physical presence. The increased disparity between contemporary digital business models and conventional tax systems has created conditions in which some Multinational Corporations (MNCs) have avoided taxes and minimised payment rates through Base Erosion and Profit Shifting (BEPS). These practices not only decrease national tax collections but also raise new urgent issues concerning justice and equity in international taxation. Therefore, policymakers across the globe have found the need to undertake comprehensive corporate tax reforms.

The issue of international cooperation is central to discussion, which is based on nation-state level measures, is inefficient and, in some cases, damaging. Thus, the OECD started a work programme to address a range of issues about the international tax system under the BEPS project, focusing on the taxation of the digital economy.⁴ The OECD has estimated that as much as 4-10 per cent of total worldwide corporate income tax revenue, or between \$100 billion \$240 billion annually, is at risk from BEPS.⁵ The developing nations are disproportionately impacted by this BEPS, as a significant portion of their revenue is derived from corporate tax. To tackle this, the OECD's sweeping two-pillar approach, Pillar One and Pillar Two, aims to reform the current taxation by requiring big digital companies to pay some tax in every country where they have customers,

³ Ana Luísa Gonçalves Novais et al., *Selected Essays on International Business Law* (2018).

⁴ Monica Gianni, *OECD BEPS (In)Action 1: Factor Presence as a Solution to Tax Issues of the Digital Economy*, 111 JSTOR (2018)

⁵ Haiyan Xu, *The Reflection on the Magnitude and Disasters of BEPS Schemes*, 10(4) Beijing L. Rev. (2019)

irrespective of their offices and at least a minimum tax rate of 15%. As of 2024, over 140 countries have agreed, in principle, to implement the OECD's two-pillar solution.⁶ Pillar One shifts the right to tax granted to countries where products or services are sold, and it is for MNCs with annual global revenues exceeding €20 billion and profits above 10 per cent.⁷ This shift is meant to fix issues with the nexus standard, where digital companies make a lot of money in countries with high taxes while paying little or no taxes. However, there is still a problem in measuring this share of these profits, as it's tricky because different countries have different opinions about what creates value; some say it's the people who buy and use products, others say it's where the company does its research or makes the product.

Within Pillar Two, an explicit minimum rate is intended to eliminate base stripping of 15 per cent for MNCs with consolidated revenue over €750 million.⁸ However, the average global corporate tax rate is about 23.45 per cent in 2023, and low corporate tax rates are offered in countries like Ireland, 12.5 per cent.⁹ Thus, more MNCs are attracted due to the favourable environment. Businesses and Individuals that indulge in tax avoidance strategies employ nations with either a zero level or very low overall taxation rate, like the Cayman Islands and Bermuda, since countries with low taxation rates are very suitable for techniques like profit shifting or improving profits through cross-border activities.

The creation of a minimum tax standard facilitates this. This measure directly addresses the problem of "BEPS" by pressuring countries to compete for FDI through lower corporate tax rates, enhancing existing technology and enabling digital and other MNCs to engage in more effective tax avoidance. The expected increase in global tax revenues is estimated at \$150 billion annually once Pillar Two is fully implemented.¹⁰

Despite efforts to implement such reforms globally, several high-profile court cases show the difficulty of this process. Tax authorities in various jurisdictions audited big MNCs' tax structure and revealed the ongoing challenges. For instance, the European Commission determined that Apple's tax deal in Ireland and Amazon's in Luxembourg violate fair taxation principles and are therefore unlawful under current legislation. In *European Commission v. Ireland and Apple Sales International* (2016), the Commission sought to recover €13 billion in allegedly unpaid taxes, arguing that the tax structure Apple received in Ireland was unlawful state aid because it allowed Apple to avoid paying a near-zero tax rate on all its

⁶ PwC, Pillar Two Country Tracker (2024)

⁷ Roberto Fei, Massimo Moltoni & Gabriele Romeo, *New Challenges, New Rules: The Global Minimum Corporate Tax*, Orizzonti Politici (2021)

⁸ Reuven S. Avi-Yonah & Young Ran (Christine) Kim, *Tax Harmony: The Promise and Pitfalls of the Global Minimum Tax*, 43(3) U. Mich. J.L. Reform (2022)

⁹ Cristina Enache, *Corporate Tax Rates around the World, 2023* (2024)

¹⁰ Reuven S. Avi-Yonah, *A New Framework for Digital Taxation*, 63(2) SSRN (2022)

European profits.¹¹ However, in 2020, the General Court of the European Union set aside this decision on the legal and technical aspects regarding the interpretation of ‘fair’ taxation in a system that eludes the various tests to counter the problem of profit shifting.¹²

These cases demonstrate the generally weak state of current tax frameworks and the need to create a unified and coherent standard that will enable different jurisdictions to operate in a unified manner. It is noted that, due to increased variation in the national tax regimes of the intended adopters, there has been a tendency towards what is referred to as “double non-taxation,” whereby digital MNCs can avoid taxation in both the home country and the host country.¹³ The OECD’s proposed reforms aim to address such loopholes. Still, the effectiveness of these reforms rests on a high level of compliance among different nations, as noncompliance will weaken the international taxation system.

The negotiation of these reforms is not easy to accomplish. Those countries that have maintained low corporate tax rates to attract foreign investment through tax-friendly environments may not readily agree to any change in the tax structure that would undermine their competitiveness. Additionally, there has been an increase in the sovereignty argument, as some nations believe that joining the global tax standards may hamper their independence in local taxation policies.¹⁴ Many developing nations primarily rely on tax receipts from traditional MNCs with a physical presence and therefore face unique issues that challenge the current simplistic electronic tax rules, which are mainly geared towards large digital corporations. Moreover, reliance on such instruments can present legal and procedural problems, and such reforms need to be integrated into domestic tax laws to avoid delays and controversies that could hinder the broad-scale implementation of these reforms.

Nonetheless, the efforts made by international bodies such as the OECD indicate that there is increased awareness that conventional tax systems require modifications that can best be sourced through the realities of the digital domain. Given these conceptual and political challenges, this paper presents the objective of critically evaluating the main aspects of the OECD’s two-pillar strategy for its feasibility, its likely effects on national tax revenue, and its consequences for economic equality. As part of the discussion, recent cases and national actions in the absence of a generally accepted international policy will be presented, such as the 2

¹¹ Keith O’Donnell, Samantha Schmitz & Marie Bentley, *Apple Case: EU Judges Confirm That The European Commission Had It Wrong* (2020)

¹² *Id*

¹³ Zafar Harnekar, *The Source of Income from the Sale of Goods Electronically: An Analysis of the Division of the Taxing Rights in Cross-Border Situations* (2016)

¹⁴ Insop Pak, *International Finance and State Sovereignty: Global Governance in the International Tax Regime*, 10(1) SSRN (2004)

per cent DST on digital companies earning more than £500 million globally, with at least £25 million from UK-based activities and generating £300 million in the first year of 2021.¹⁵

According to the government forecast, the “GAFA” tax (Google, Apple, Facebook, Amazon) at 3 per cent on revenues from digital services in France generated revenue of approximately €518 million in the year 2022.¹⁶ Thus, outlining the prospects for practical, legal, and political solutions to international tax issues in this paper will help expand knowledge of the necessity for a concerted response to the taxation challenges of the digital economy.

II

Traditional Tax Rules for the Digital Economy

The existing international tax system has been designed to address the traditional ways of operation based on establishing a physical presence in a country to generate income. The conventional concept of PE is foundational. However, it becomes almost irrelevant in the digital economy because businesses can engage customers and beneficiaries in a country and generate profits without establishing a physical presence. This has created loopholes through which digital corporations can reduce their tax remittances, resulting in revenue losses for countries with large user bases.

According to a 2020 report by the Tax Justice Network, global tax losses due to profit shifting were estimated to be around \$245 billion annually.¹⁷ One direct and recent example is Google Ireland Ltd. from the United Kingdom.¹⁸ In its European operations, Google was strategically established to take advantage of Ireland’s favourable tax policies and transfer profits to Ireland to escape high-tax countries with high levels of user engagement. The case also shows how digital multinationals can use physical presence conditions to avoid significant taxation. This is why reform should focus on changing the economic presence rule rather than the physical presence rule. If tax laws move to the “place of physical presence,” then companies would have to pay taxes in the countries where they maintain offices, employees, existence, and other concrete business in one way or another, irrespective of their revenue’s origin. In this way, firms cannot simply relocate their

¹⁵ Ministry of Revenue and Customs, Introduction of the New Digital Services Tax (2019)

¹⁶ N. Marques, P.S. Onge & G. Campan, Taxing the Tech Giants: Why Canada Should Not Follow the French Example, MEI (2023)

¹⁷ Tax Justice Network, *The State of Tax Justice 2020: Tax Justice in the Time of COVID-19 (2020)

¹⁸ C. Hill, The Notorious and the Admired: The Effectiveness of EU Competition Laws to Reign in the Irish Corporate Tax Regime and the Market Power of Google, J. Bus. Econ. & Info. Tech. (2016)

offices to territories with low tax rates and avoid paying more tax to the countries where their business operations are real.

For instance, if Google set up a small office in a country with low taxes but made most of its money from the UK, the 'physical presence' rule would mean Google gets taxed in the UK because that's where it's doing business. This rule helps ensure companies contribute their fair share of taxes in the countries where they earn their profits, and it helps stop tax evasion.

In response, many jurisdictions request the creation of a taxonomy based on significant economic presence, allowing them to exercise taxing rights over companies with extensive digital operations in their jurisdictions. The idea is to update tax laws to focus more on where value is created, especially for digital companies shifting how and where they make money. However, making this system work is still tricky since countries disagree on what "economic presence" means, which could clash with existing international tax agreements.¹⁹

III

OECD's BEPS) Initiatives

In 2013, recognising that current tax regimes presented failures, the OECD headed a new BEPS project. BEPS seems most important in the digital economy because it targets the strategies that enable companies, through international tax planning, to move profits to territories with low taxation. The first pillar of the OECD's plan is the redistribution of taxing rights, known as Pillar One; the second pillar of the OECD's plan is the designed implementation of a global minimum tax, known as Pillar Two.²⁰ The BEPS initiatives themselves are inventive, although they face significant challenges. For example, Pillar One proposes that multinational companies should be taxed not only in the country where they are based, but also in countries where they have even a small digital footprint. However, this new approach lacks a degree of supranational collaboration, which is not easily achieved because of the varying economic and political stakes of sovereign players. Moreover, specific countries, notably Ireland and some countries in the Caribbean region, consider the reforms a threat to their sovereignty and the dismantling of the potential that has attracted multinational investment. Ireland's resistance is rooted in economic self-interest; corporate tax contributes substantially to its GDP, with 2022 figures showing that corporate tax revenues accounted for approximately 27.5 per cent of its total tax intake.²¹

¹⁹ W. Cui, *New Puzzles in International Tax Agreements*, 75 *Tax L. Rev.* 201 (2021)

²⁰ Reuven S. Avi-Yonah & Young Ran (Christine) Kim, *Tax Harmony: The Promise and Pitfalls of the Global Minimum Tax*, 43(3) *SSRN* (2021)

²¹ Larry McCarthy, **Corporation Tax - 2022 Payments and 2021 Returns** (CT 2023)

The OECD's proposed measures also trip over the existing bilateral tax treaties. One of the recent international tax relocation decisions arises from the Ireland case: *Dell Products Ltd. v. Revenue Commissioners*.²² In this case, Ireland enjoys a good tax policy that channels corporate revenue to the country, which was put under the microscope by the EU on anti-tax avoidance policy. The same can be said about the cases presented, which state that the OECD struggles to progress due to the opposition offered by the jurisdictions that benefit from the existing loopholes.²³ While Pillar Two has the ambitious goal of establishing the minimum tax to counter tax base erosion, its enforcement presupposes coordinated legislative amendments, but despite the BEPS initiative's push, there has been little progress because of low political will and resistance from some governments.

IV

Challenges in Achieving International Coordination

The consensus on digital tax reforms is a complex process because the interests of each country are divergent. Some developed countries have complained that digital multinationals are not paying taxes commensurate with the revenues they generate. Thus, they have called for higher taxes on corporations; the low-tax countries have opposed any changes that might eat into their models. For instance, according to a 2022 report by the OECD, large tech companies have seen profit margins between 15 and 30 per cent, while effective tax rates often fall below 10 per cent, far beneath the corporate average of 23.5 per cent in many developed economies.²⁴ Additionally, the emerging nations have an objection that the planned distribution methods are not very favourable for them. These countries often act as large consumers of digital services, approximately 60 per cent of the global digital consumer base, obtaining significant revenues for digital businesses.²⁵

DSTs are another act of recourse that has only exacerbated regulatory coordination issues. For instance, France recently started applying DST in 2019, which led to a 3 per cent levy on revenue generated by tech giants, and this led to a trade conflict with the United States because the latter accused the former of selectively targeting its technology firms.²⁶ The United States threatened to impose sanctions on French products worth \$2.4 billion due to the illogical unilateral imposition of taxes on

²² *Dell International Services India Pvt Ltd v. CIT* (International Taxation), MANU/AR/0002/2008 (AAR No. 735 of 2006, decided on 18 July 2008)

²³ Pieter Baert, *Ireland's Tax Reforms and the Fight Against Aggressive Tax Schemes* (European Parliament 2022)

²⁴ Felix Hugger, Ana Cinta Gonzalez Cabral & Pierce O'Reilly, *Effective Tax Rates of MNEs: New Evidence on Global Low-Taxed Profit* (OECD 2023)

²⁵ Neira Hajro, Kate Smaje, Benjamim Vieira & Rodney Zimmel, *Digital Resilience: Consumer Survey Finds Ample Scope for Growth* (McKinsey Digital 2023)

²⁶ Wei Cui, *The Digital Services Tax on the Verge of Implementation*, 67(4) SSRN (2019)

digital companies.²⁷ Forums such as Amazon in Luxembourg are being accused of receiving unfair state aid from Luxembourg through a favourable tax ruling. This case revolved around tax arrangements allegedly allowing Amazon to pay significantly less than other companies under standard Luxembourg tax laws. The European Commission argued that this arrangement violated EU state aid rules by giving Amazon an unfair competitive advantage, highlighting the challenges of making progress even within large entities like the EU.²⁸

The unilateral DSTs implemented by countries such as France and Italy reveal the shortcomings of multilateral negotiations in the OECD-led process, as countries seek immediate remedies for actual or perceived revenue losses. National taxes like DSTs can create problems for international business and trade. Research shows that if DSTs are adopted globally without a coordinated, worldwide plan, they could reduce global trade. However, as acknowledged, there is usually a trade-off between self-interest and the common good, which makes achieving such coordination a strenuous exercise.

V

The Effects of National Policies on Global Reforms

The current global digital tax systems present similar challenges because they consist of numerous diverse policies from various countries, each underpinned by unique economic objectives and regulatory drivers. For instance, the European Union has developed the DST, yet internal tensions have prevented its actualisation and increased compliance costs for multinational digital companies navigating multiple jurisdictions.²⁹ However, some regional EU countries, such as Spain, Italy and Austria, have unique DSTs, creating a fragmented legal environment that trading digital multinationals are forced to deal with.³⁰

Some of the significant effects of the various policies include the possibility of being charged levies twice. Multiple layers of tax will further create impedance, where companies operating in countries observing national DSTs and such prospective modified OECD regulations will be discouraged from investing heavily in the digital front.

²⁷ Sunita Doobay, Pamela A. Fuller, Henrique Lopes, Alexis Maguina & Robert J. Misesy Jr., *International Tax*, 54 HeinOnline (2024)

²⁸ Pernilla Bergvad, *Digital Services Tax: A Feasible Solution for Taxation of the Digital Economy?* (Lund University Faculty of Law 2020)

²⁹ Charlotte McFaddin, *Evaluating the Tax Veto in a Digital Age: Legislative Efficiency and National Sovereignty in the European Union* (SSRN 2021)

³⁰ Shannise Nomaqhawe Mbhele, *An International Comparison of Digital Services Tax* (Univ. of Johannesburg 2022)

It also destabilises the long-term sustainability of multinational consensus projects such as the OECD's BEPS project. With countries focusing more and more on national interests, the possibility for a global taxation regime for the digital economy recedes further into the distance. Although such multilateral approaches still prevail as the ultimate goal, the examples of actions taken by the representatives of the major economies show the challenges of achieving the uniformity of digital tax policies adjusted to the differences in the member countries' economic profiles and public finance requirements. The OECD has reported that negotiations are at a stalemate, with over 60 per cent of participants citing the inability to reconcile national fiscal needs with international agreements as a key barrier.³¹

VI

Findings/Results

Digital activities have led to massive changes in business activities from the traditional to the digital economy. Problems arise for governments trying to tax MNCs. Traditional tax systems, which base people's taxation on physical location, cannot adequately capture firms whose core business model is international and are not relevant to the literature that seeks to solve problems defined and limited by physical structure. These dissimilarities have created revenue gaps that allow corporations to fully exploit globalisation to minimise their taxes, thereby contributing to structural injustices in international taxation systems based on the historical tax framework, which was initially designed for traditional functions rather than those of digital MNCs. For instance, an OECD report revealed that digital MNCs can set their effective tax rate at 9.5 percent. The average statutory corporate income tax rate among member countries stood at 23.2 per cent.³² Cognizant of the weaknesses of current tax regimes, many nations, especially in the EU, have addressed these problems through policies put in place by some countries and international organisations.

In response, several nations, particularly within the European Union, have implemented DSTs, which have been developed to justify that MNCs should have a proportional share of taxes in the jurisdictions where they obtain significant revenues, although without a tangible presence. For example, 3 per cent of the DST of France, initiated in 2019, had collected €400 to €650 million within the first year of its implementation, proving the revenue-generating effectiveness of the

³¹ Allison Christians, *Taxation in a Time of Crisis: Policy Leadership from the OECD to the G20* (SSRN 2010)

³² Monica Gianni, *OECD BEPS (In)Action 1: Factor Presence as a Solution to Tax Issues of the Digital Economy*, 111 JSTOR (2018)

measure.³³ These taxes are intended to affect the big hi-tech firms that make enormous sales from internet advertising, stock dealing, and merchandise.

Adopting DSTs unilaterally can disrupt the international tax system, adding extra burdens on MNCs and straining trade relationships. The core issue is the lack of consistency across national tax policies, which creates uncertainty. MNCs are left navigating complex legal requirements and risk being taxed multiple times on the same income, making their operations less efficient and more costly. A 2022 study by the International Monetary Fund (IMF) reported that inconsistent national tax policies increase compliance costs for MNCs by an estimated 10 per cent and expose firms to potential double taxation.³⁴ This fragmentation challenges the basic tenets of a coherent international tax system and poses the risk of jeopardising world trade by raising tensions in trade relations.

The OECD's plan to implement a global minimum corporate tax rate of 15 per cent aims to curb tax base erosion but faces implementation hurdles due to varying national priorities.³⁵ Nevertheless, achieving consensus remains a challenge regarding uniformity, especially when first-tier systems may have conflicting perceptions, most likely arising from differing influential economies on fair distribution. Hence, certain countries are eager to proceed with individual taxes, such as DSTs, to manage the static current-source imbalances and meet revenue needs. The long-term plan for integral international taxation still depends on the solutions to these complex coordination problems. There is potential for continued fragmentation if a global consensus is not achieved, risking establishing a new system of overlapping tax laws and additional trade quarrels. The pathway toward this also means that successful implementation must be backed by more diplomacy and honest conversations between nations, especially to avoid harm, through carefully considering both developed and developing countries. The future of digital economy taxation combines these intricate factors with the imperative of establishing a fair and integrated system of international taxation that would suit the realities of the digital age.

Unilateral Measures vs. Multilateral Cooperation

Considering the absence of a cohesive approach to taxing the digital economy, numerous DSTs have been adopted. One example is France's DST, which consists of a 3 per cent tax on big digital companies that generate significant revenues in France, targeting Google, Amazon, and Facebook, among others. Despite being used

³³ Stefanie Geringer, National Digital Taxes: Lessons from Europe, 35(1) S. Afr. J. Account. Res. (2021)

³⁴ Fiscal Affairs Department, Technical Assistance Report: International Taxation Challenges and Options (IMF 2023)

³⁵ Simon Torkington, What Does the OECD Global Minimum Tax Mean for Global Cooperation? (World Econ. Forum 2024)

for a short time, implementing such taxes has fuelled bitterness, especially with the U.S., which claimed that DSTs impugn American enterprises. In response, the U.S. Trade Representative (USTR) acted and initiated investigations under Section 301 of the Trade Act of 1974, ultimately leading to threats of retaliatory tariffs on French imports.³⁶ This conflict raises the risks of ad hoc approaches leading to the fragmentation of the world's tax system, which, in turn, contributes to the disruption of global economic relations.

Self-generated DSTs also pose problems for businesses with different tax codes. While it is helpful to comply with multiple tax regimes, especially competing ones, they may stifle growth and innovation. Although the EU has called for a standardised digital tax regime within it, the aim is challenging to achieve because the countries have different motives. Thus, developing countries, which often depend on FDIs from digital powerhouses, are campaigning against such reforms for a similar reason: that they would decrease the appeal of their nations to MNCs. Such an imbalance underlines the need for a multilateral solution that will enhance the fairness of distribution and promote economic incentives.

Challenges of Implementing a Global Minimum Tax

The OECD Pillar Two plan that seeks to establish a floor level rate of 15 per cent applies a noble, if ambitious, attempt to curb tax competition by insisting that even MNCs in low-tax jurisdictions must pay taxes to some extent.³⁷ This measure aims to eliminate the issue of profit switching, in which MNCs book significant revenues in low-tax countries and pay less tax. Even as it is backed by some of the world's highest-tax jurisdictions, the plan is strongly opposed by many low-tax countries such as Ireland, which competes for investment by offering low corporate tax rates. Profit shifting is the act of MNCs redistributing corporate income to countries with lower taxation rates. According to OECD, profit shifting reduces government revenues between \$100 billion and \$240 billion yearly, or 4-10 per cent of global corporate income tax revenues.³⁸

According to the International Monetary Fund (IMF), around 40 per cent of MNCs' profits are routed to tax havens each year, creating a significant tax base problem for countries that offer higher taxes. Implementing the global minimum tax concept involves significant coordination issues, especially regarding international taxation and national dealings of tax authorities. There will be a requirement to characterise how nations exchange and monitor tax information, data privacy and data

³⁶ N. Marques, P.S. Onge & G. Campan, *Taxing the Tech Giants: Why Canada Should Not Follow the French Example* (MEI 2023)

³⁷ Simon Torkington, *What Does the OECD Global Minimum Tax Mean for Global Cooperation?* (World Econ. Forum 2024)

³⁸ Haiyan Xu, *The Reflection on the Magnitude and Disasters of BEPS Schemes*, 10(4) Beijing L. Rev. [First Page] (2019)

jurisdictions. However, the possibility of having loopholes or promoting regulatory evasion persisted. However, to address these concerns, the OECD has come up with what is known as a “top-up” mechanism whereby a country can impose additional taxes on the basis that the effective tax rate of an MNC in a low tax jurisdiction is below the minimum standard set by the top-up tax.³⁹ However, there are some doubts about how efficiently this system can be employed and what measures can be taken to ensure its compliance on the international level.

Political and Economic Implications of Reforms

The suggested changes that are part of Pillar One, which aims to redistribute taxing rights, are highly political and economic. Pillar One shifts tax rights from the residence country of the firm involved to the market jurisdiction, with a clear advantage to countries where digital services are consumed. However, the aim here is to solve the problem of stateless income, that is, income not subject to any tax, which causes developing nations to question whether or not they will get their equitable share of taxes. G20 developing economies have claimed that the allocation formula in the first pillar is unfair to them, as it only rewards large economies. They should receive a bigger tax because their consumers are more digitally active.

Such reform could result in conclusions that MNCs in the digitisation technology sector would experience an increase in the tax levies they pay, thus affecting their profitability and business model. *Google Ireland Ltd v. Revenue Commissioners*⁴⁰ Describes how, for decades, the digital goliath managed its taxes in such a way that poses questions to other tax authorities worldwide. If effected, these reforms would unbalance traditional tax planning, forcing companies to rethink their structures and possibly suffer a rise in overhead charges.

However, those who emphasise the tax justice point of view claim these changes are needed to fight the systemic unfairness in the existing global tax systems. Besides the proposed reallocation of taxing rights under Pillar One, it also tries to bring methodological changes about taxing digital businesses while insisting on international cooperation in addressing the problems of taxing cross-border activities. On the other hand, MNCs warn that such adjustments may result in them being paid for by consumers due to the end consumer bearing the tax cost. Such concerns raise essential questions about achieving tax equity and economic stability, which remain at the heart of current global tax reform proposals.

When it comes to the outcomes of this research, one can underline the necessity of a higher level of cooperation at the international level to make the reforms of the tax system in the context of the digital economy both effective and fair. As the OECD's

³⁹ Maarten F. de Wilde, *Why Pillar Two Top-Up Taxation Requires Tax Treaty Modification* (SSRN 2022)

⁴⁰ Irakli Ksovreli, *Aggressive Tax Planning: Challenge of the Digital Era* (2017)

BEPS framework stands as one of the seminal blows in this field, much of its effectiveness will depend on individual countries' capability to balance national and global goals. The BEPS model has become threatened by the newest mutation of unilateral actions DSTs, which jeopardise multilateral coordination and trade relations.

Relevance of Case Law in Tax Jurisdiction Disputes

Judicial decisions have significantly shaped the interpretation and application of legal principles in the digital economy, as in the case of Google Ireland Ltd. and Ireland Revenue Commissioners⁴¹ concerning jurisdiction over fees generated from digital services within the European Union. The case emphasised some issues concerning the globalisation of business and the use of the tax system in the attempt by firms to reduce their taxes in countries with high taxation rates.⁴² While, after hearing and consulting the interested parties, the ECJ found that Ireland could not apply the withholding tax on the revenue from Google Ireland from the ad services, this case nonetheless reveals the challenges that individual jurisdictions face when using their tax laws to regulate multinationals. This precedent again emphasises the need for an integrated global tax system since the uncoordinated movement in the form of unilateral measures may not adequately address the issue of tax avoidance or profit shifting.

Similarly, in the United States, the *Wayfair v. South Dakota* (2018) case brought the meaning of the nexus needed for state tax collection on remote sales to the Supreme Court.⁴³ This ruling eliminates the “physical presence” requirement for state taxation purposes. It states that states can collect taxation money from out-of-state businesses due to economic and virtual nexus. We can see echoes of *Wayfair* all around us, especially as it relates to the taxation of the digital economy, because it highlights the need to introduce tax reforms in line with the present-day economy. The ruling means countries may explore similar systems to manage new transactions involving digital services, improving international tax cooperation by providing more comprehensible digital economy regulation.

BEPS and the Shift Toward Multilateral Solutions

A report by PwC (2023) on multinational taxation revealed that only 30 per cent of countries have fully integrated the BEPS Pillar Two minimum tax rate of 15 per cent into their domestic law, demonstrating slow and uneven progress.⁴⁴ Transfer pricing

⁴¹ Id

⁴² Charlie Taylor, *Google Ireland Agrees €345m Tax Settlement with Revenue, Ir. Times* (Nov. 2021)

⁴³ *Wayfair v. South Dakota*, 138 S. Ct. 2080 (2018)

⁴⁴ Council Directive (EU) 2022/2523 of 14 December 2022 on Ensuring a Global Minimum Level of Taxation for Multinational Enterprise Groups and Large-Scale Domestic Groups in the Union, [2022] OJ L 328/1

disputes remain over 50 per cent of tax authorities surveyed, indicating that transfer pricing audits are the primary focus of cross-border tax disputes. Pillar One and Pillar Two of the BEPS framework established by the OECD are oriented toward eradicating profit distribution and minimum income while going beyond the state's interests. *Glencore International AG v. Commissioner of Taxation* (2020)⁴⁵ in Australia is an excellent case explaining how difficult it is for countries to regulate and impose transfer pricing rules on MNCs. Here, the internal pricing structures of Glencore were accused of engaging in transactions that sought to reduce tax remittances. The Australian Federal Court ruled in Glencore's favour because it is challenging for the tax authorities to prove that pricing structures are unfair without general international benchmarks or international collaboration. Examples such as Glencore show that global regulation of profit splitting is necessary due to the ineffectiveness of national attempts to counteract multinationals' aggressive behaviour.

Unilateral Actions and Risks to Multilateral Cooperation

Several countries' adoption of DSTs beyond the OECD framework mirrors the increasing trend in protectionism and respective actions. These measures, meant to accord value generated within a country's economy, have shifted from many countries considering this value a tax discrimination scheme and contradictory to international trade rules. Like France, Italy, and the UK, they imposed a 3 per cent tax on revenues from digital services.⁴⁶ In the case, *Apple Inc. v. Commission*, the European General Court also set aside the decision of the European Commission to recover €13bn allegedly owed in unlawful state aid from Apple to Ireland.⁴⁷ The ruling also focused on the peculiarities of a single market member's tax measures within the common area, as well as a challenge that might disrupt international standards. The case of Apple shows that trade tensions may be caused by unilateral actions that result in tax measures; everybody saw the Commission's action as an attempt to target American companies. It also points out that using unilateral DSTs is counterproductive since it triggers retaliatory tariffs and trade barriers, which hinder international trade. Pillar One would coordinate the taxing rights of countries and thus lessen the potential for legal disputes and countermeasures.

Capacity Building and Equitable Participation in Global Tax Reforms

A given country's capacity to participate in the formulation of new tax reforms is crucial to enhancing its ability to participate actively in the international tax reform

⁴⁵ Christian N. Borg, *Australian Transfer Pricing in the Aftermath of Glencore Investment Pty Ltd v. Commissioner of Taxation* [2019], 29 Bond Univ. (2022) Christian N. Borg, *Australian Transfer Pricing in the Aftermath of Glencore Investment Pty Ltd v. Commissioner of Taxation* [2019], 29 Bond Univ. (2022)

⁴⁶ N. Marques, P.S. Onge & G. Campan, *Taxing the Tech Giants: Why Canada Should Not Follow the French Example* (MEI 2023)

⁴⁷Stephen Daly, *The €13bn Question: Is the Fiscal State Aid Era Over?* (SSRN 2024)

process. There are often compelling logistical and capacity constraints that prevent several developing countries from unilaterally undertaking complex tax reforms; situations involving tax controversies within such countries are frequently manifested as issues related to the distribution of resources. For instance, in the case of *Vodafone International Holdings BV v. Union of India* (2012) The Indian Supreme Court ruled in favour of Vodafone. It stated that India cannot tax an offshore transaction related to capital gains tax.

The Vodafone ruling also highlights that justice must be done in global tax legislation because developing countries have an inadequate legal framework to deal with the complex tax strategies adopted by large companies. Building these capacities will increase the ability of these countries to participate effectively in the OECD's work on base erosion and profit shifting and in shifting international taxing rights for large digital businesses.

Conclusion

The current international tax framework cannot adapt to the digital economy's rapid changes. Fragmented, broken policies, different understandings of business activities, and resistance to world standards have created loopholes that multinational companies often take advantage of and exploit. The OECD's two-pillar proposal solves these problems by encouraging more equal tax allocation and preventing tax base erosion through a global minimum tax. Yet, success depends on widespread political support, similar laws across countries and every nation's ability to become involved, with developing nations leading the way. Such measures by single states are needed due to a sense of urgency, though they can create problems for international agreement. Laws established after tax disputes in different places show that a unified system for tax enforcement would make the process easier. As a result, we must improve institutions, allow equal participation and deepen cooperation between countries. Worldwide coordination is the only way to restore justice, consistency and validity in international tax regulations.