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REWRITING INTERNATIONAL TAX NORMS FOR SUSTAINABILITY

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REWRITING INTERNATIONAL TAX NORMS FOR SUSTAINABILITY

*Preeti Lakhera**

[Abstract: Developing countries have the mandate to improve the standard of living of their citizens and provide basic welfare commitments in terms of improving health and education. This obligation needs consistent revenue generation by administering a robust tax regime. But as the digital economy flourishes and most of the business models are integrated with these technologies the economic activity happens without a physical footprint. This necessitates the need to reform our international tax system in a manner that the countries where the value generation happens or the consumers of those businesses are located get their right to tax the digital companies. The article gives an overview of the existing international tax regime for the digital economy for India as well as international. It explores how the digital business models cannot be taxed within the existing system meant for the digital economy. It then explores the theme of reinforcing the need to tax reform international tax landscape for digital economy to finance sustainable measures. It does so from the gaze of a developing country like India.

Keywords: *Tax, Sustainable Development, Base Erosion, Developing Countries]*

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I

INTRODUCTION

In the space of tax policy, the priorities of the taxpayers and the tax seeker vary to a considerable degree. The government wants to collect revenue to finance its obligation. In this context, the article raises the key argument that only a coordinated approach to reformulating the International Tax Rules will provide the countries with the finance to achieve Sustainable Development. The lack of commitment to this coordination will only promote unitary measures and differentiated tax regimes which only give entities the space to take advantage of the tax competition. And achieving financial support for sustainable development goals will become a near impossibility.

II

THE EXISTING LEGAL FRAMEWORK FOR INTERNATIONAL TAX

The existing International Taxation framework is contained within the model tax conventions that were created in the early twentieth century.¹ Generally, the bilateral treaties across the world are based on the OECD Model tax convention which divides the tax base between the resident and source nations.² The United Nations has its own version of the Model convention which is substantially similar to the OECD version except it allows for more source-based taxation.³

The charge of the income is framed in the way the type of income connects with

¹ OECD, MODEL TAX CONVENTION ON INCOME AND ON CAPITAL (2017) available at: <https://www.oecd.org/ctp/model-tax-convention-on-income-and-on-capital-full-version-9a5b369e-en.htm>; See also, United Nations, UNITED NATIONS MODEL DOUBLE TAXATION CONVENTION BETWEEN DEVELOPED AND DEVELOPING COUNTRIES (2017) available at: https://www.un.org/esa/ffd/wp-content/uploads/2018/05/MDT_2017.pdf (last visited Aug. 2022).

² See, OECD, MODEL TAX CONVENTION ON INCOME AND ON CAPITAL (2017), available at: <https://www.oecd.org/ctp/treaties/model-tax-convention-on-income-and-on-capital-condensed-version-20745419.html> (last visited 21 Aug., 2022); For an in-depth analysis of tax treaties, see Doron Narotzki, *Tax Treaty Models-Past, Present and a Suggested Future*, 50 Akron L Rev, 383 (2016).

³ See, United Nations, UNITED NATIONS MODEL DOUBLE TAXATION CONVENTION BETWEEN DEVELOPED AND DEVELOPING COUNTRIES (2017), available at: https://www.un.org/esa/ffd/wp-content/uploads/2018/05/MDT_2017.pdf (last visited 20 Aug., 2022).

the nation-state.⁴ Primarily a nation takes a tax either if the entity earning the income or profit has benefitted because of its association with the nation-state.⁵ It is either connected if the income has been sourced within a nation-state. Also, as the passive income from the country of residence, any income generated should be earned there.⁶

Depending on the type of income the decision can be taken that the income is to be taxed by the resident state or the state with the source jurisdiction. As incomes, capital, and people exchange grew in a globalized world a big problem was that on the same income multiple jurisdictions will try to take a tax. For example, if an American company invests money in India and its subsidiary announces dividends, the Indian government wants to take tax saying that income is generated in India. This creates a potential for double taxation which can be resolved by creating a framework within a bilateral treaty on how two nations share a tax base. The model tax treaties were created to decide the understanding for sharing of taxes and had detailed mechanisms for sharing them.⁷ They are a blueprint for nations to negotiate as to when income is to be taxed and by whom.⁸ And the source countries have to be satisfied with any residual and small proportion of income in taxes.

The Indian domestic tax framework is contained in the Income Tax Act, of 1961 wherein the charging of income is based on the occurrence of the taxable event.⁹ The event occurs when the income has been accrued in India.¹⁰ Or when it is earned by the person who fits into the definition of the resident within the IT Act.¹¹

⁴ The Income Tax Act, 1961, S. 4 is the charging section in the Indian context. The tax is charged on the total income when it is either sourced in India or earned by a resident who is based in India. *Also see*, for the explanation of source and residence principle, Subhajt Basu, *International Direct Taxation and E-Commerce: A Catalyst for Reform*, 10 NUJS L Rev, 19 (2017);

For the general understanding of the international tax structure, *see*, Reuven S Avi-Yohan, *Structure of International Taxation: A Proposal for Simplification*, 74 Tex L Rev, 1301 (1996).

⁵ *See*, Pinto Dale, *The Theoretical Foundations and Continued Rationale for Source-Based Taxation in an Electronic Commerce Environment*, *Australia Tax Forum* 27, 444 (2012).

⁶ *See*, Reuven Avi-Yonah, *The Structure of International Taxation: A Proposal for Simplification*, *Tex. L. Rev.* 1301, 74 (1996).

⁷ *See*, Gautrin Carlos Perez, *Basic Introduction to Tax Treaties*, *Willamette J. Int. Law Dispute Resolut.* 17, 157 (2009).

⁸ *Id.*, Perez at 162; Rebecca M. Kysar, *Interpreting Tax Treaties*, *Iowa Law Rev.* 101, 1387 (2016); *See also*, Tilly Dagan (2003). *The Tax Treaties Myth*, *NYU J.L. & Pol'y* 32, 939 (2003).

⁹ The Income Tax Act, 1961, S. 4.

¹⁰ The Income Tax Act, 1961, S. 5.

¹¹ The Income Tax Act, 1961, S. 6.

III

JOURNEY FOR SUSTAINABILITY

The last century introduced us to the discourse of progress which is sustainable and benefits all in equal measure. Sustainable development is the organizing principle for meeting human development goals while at the same time sustaining the ability of natural systems to provide the natural resources and ecosystem services upon which the economy and society depend. In September 2015 the United Nations organized a Sustainable Development Summit where global leaders pledged to adopt the new Sustainable Development agenda including the Sustainable Developmental goals (SDGs). The most important agreement while adopting the goals is that poverty eradication is linked to the achievement of education and health. These broad goals advocate the eradication of hunger, poverty, and inequality, spur action on climate change and the environment, and provide health and education to all. Also, to establish strong civil institutions and strong partnerships which benefit all.¹²The SDGs are like the next work in progress and grow on the Millennium Development Goals (MDGs) which are targets aimed at solving many of the challenges of humanity while being considerate about the environment.¹³ The achievement of these goals is an ambitious agenda and more so as it requires enormous resources in the hands of governments. The tax framework of most nations at the domestic and international levels is antiquated and fails to capture the income getting created in a digital economy.¹⁴

Though the dominant narrative for growth shifts attention to the attainment of sustainability, finding the resources to fund these initiatives is a challenge, especially for developing countries.¹⁵ As most governments across the globe

¹² See, UNDP WELCOMES THE ADOPTION OF SUSTAINABLE DEVELOPMENT GOALS BY WORLD LEADERS (2015). <http://www.undp.org/content/undp/en/home/presscenter/pressreleases/2015/09/24/undp-welcomes-adoption-of-sustainable-development-goals-by-world-leaders.html>.

¹³ Nanda Ved P., *The Journey from the Millenium Development Goals to the Sustainable Development Goals*, Denv. J. Intl'l L 44, 389 (2016).

¹⁴ Scholars are writing as to how the new age of digital business models is making tax policy difficult for the government. See, Fetzer Thomas and Dinger Bianka (2019), *The Digital Platform Economy and its Challenges to Taxation Tshinghua*, China Law Rev. 12(1), 29 (2019).

¹⁵ See, United Nations, INTER-AGENCY TASK FORCE ON FINANCING FOR DEVELOPMENT, FINANCING FOR SUSTAINABLE DEVELOPMENT REPORT 2021, available at: <http://developmentfinance.un.org/fsdr2021> (Last Visited 5 Oct., 2022); James X Zhan and Amelia U. Santos Paulino, *Investing in the Sustainable Development Goals: Mobilization, Channeling and Impact*, J Int Bus Policy 4(1), 166-183 (2021).

lack the finances for financing their development this has led to a global movement called the “Financing for Development”.¹⁶ In July 2015 the International Conference on this initiative was held in Addis Ababa, Ethiopia where the countries had agreed on steps to raise resources for financing their development objectives. ¹⁷One of the resolutions of the Conference was the acknowledgment that cooperation on tax matters is a necessity for governments across the globe. Notably, the agenda stressed the need for cooperation and communication among domestic tax authorities of different nations. This was to achieve traction on international tax matters. ¹⁸ Significantly we mention the Agenda¹⁹ where the Heads of State and Governments agreed that they have a strong political commitment to financing sustainable development. They declare that the relevance of national policies and the optimum use of domestic resources and the emphasis on national ownership of key resources are central to the shared value of achieving sustainable development in the coming years.²⁰ The Agenda also commits to the modernization of revenue generation by making it more progressive and focusing on efficiency in tax collection.²¹

IV

THE PROBLEM OF SHRINKING TAX BASE

For the taxpayer, the tax is an expenditure and for the enterprises a cost of

¹⁶ See, FINANCING FOR DEVELOPMENT, available at: <https://www.un.org/sustainabledevelopment/financing-for-development/>. (Last Visited Sept. 2020); Homi Kharas and Charlotte Rivard, *Financing for Sustainable Development is Clogged*, BROOKINGS (May 11, 2022), available at - <https://www.brookings.edu/blog/future-development/2022/05/11/financing-for-sustainable-development-is-clogged/> (Last visited 6 Oct.,2022); OECD, GLOBAL OUTLOOK ON FINANCING FOR SUSTAINABLE DEVELOPMENT 2019, TIME TO FACE THE CHALLENGE, available at- <https://www.oecd.org/dac/financing-sustainable-development/development-finance-topics/Global-Outlook-on-Financing-for-SD-2019.pdf> (Last Visited Oct, 2022).

¹⁷See, United Nations, COUNTRIES REACH HISTORIC AGREEMENT TO GENERATE FINANCING FOR NEW SUSTAINABLE DEVELOPMENT AGENDA (2015), available at- <http://www.un.org/esa/ffd/ffd3/press-release/countries-reach-historic-agreement.html> (Last Visited 18 Sept. 2018).

¹⁸ *Id.*

¹⁹ See, United Nations, THE ADDIS ABABA ACTION AGENDA OF THE THIRD INTERNATIONAL CONFERENCE ON FINANCING FOR DEVELOPMENT, available at- http://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA_Outcome.pdf (Last Visited on 2nd September 2018).

²⁰ *Id.*, para 10.

²¹ *Id.*, para 22.

doing business. The previous decades have seen the government's tax base shrink due to innovative tax planning by individuals and corporations to whom tax is just a cost they want to avoid. As countries in different stages of development may have different revenue needs, they offer tax breaks to attract investments within their country. This tax arbitrage gives the entities scope of minimizing their taxes by doing innovative tax planning. The result is that tax minimization leads to a stage of tax nullification. In other words, the entities may not be paying any taxes in any territory of the world. Thereby, tax competition promotes base erosion which shrinks the tax base of countries across jurisdictions.

The tax base gets further shrunk when the new-age businesses strive for digital technologies which allow them to thrive in an economy without maintaining a physical locus therein. The current framework creates more challenges for taxing the digital economy as it has been created to tax the physical structure.²²

One of the primary reasons for reducing the tax base is the opportunities for tax avoidance even if it is legal within the existing framework. Thereby the agenda commits to reducing such opportunities by having a robust framework of anti-avoidance in all tax treaties. ²³The larger resolve is that the multinationals will be asked to pay taxes in jurisdictions where they create value in their business model. It is the trans jurisdictional economic activity that generates profits for corporations. In addition to this, the Financing for Development Office (FFDO) under United Nations is executing a project to increase the capacities of developing countries for domestic revenue mobilization. This can be achieved by increasing their capacity to protect and expand their tax base.²⁴

After the world business chains have moved away from manufacturing to business models which have intangible and services as their major components it has become easier for multinational companies to avoid taxes. A major reason is that intangibles form the most valuable part of any business their ownership can be transferred to any company located in a tax haven. With growing times most of the cross-border income earned by multinationals is going untaxed. Also due to the advent of digital technologies, companies are generating an enormous number of profits in jurisdictions without the need of having any

²² Asaf Harpaz, *Taxation of Digital Economy: Adapting a Twentieth-Century Tax System to a Twenty-First Century Economy*, 46 *Yale J Int'l L*, 57 (2021).

²³ *Id.*, para 23.

²⁴United Nations Department of Economics and Social Affairs, CAPACITY DEVELOPMENT: TAX BASED PROTECTION, *available at* <http://www.un.org/esa/ffd/topics/capacity-development/capacity-development-tax-cooperation/cd-tbp.html> (Last Visited 1st Sept., 2018).

physical presence therein. In modern-day businesses which are powered by digital computing technologies, most of the value of the business is contained in the intangibles. Then the best way for the multinationals to show profits in tax havens is to incorporate companies there that own all the intellectual property. Companies have to minimize their cost to stay efficient and to them, tax is a cost of doing business.

This has led to a growing discourse for international tax reform which addresses the needs of the new digital age and allows the government to take its rightful tax.²⁵ Against this backdrop, the key argument of this paper is that there is an urgent need to accelerate international tax reforms from the perspective of developing countries so that they are able to adequately finance their sustainable development goals. In other words, they have to expand and preserve their tax base if they have to undertake their welfare commitments.²⁶

This money could have been used to pay for vital services like hospitals and schools. As per the report India spends 1.3 percent of its GDP on health (the global average is 5.99 percent), and an annual survey analyses economic progress. Further, the report claims that each year 2.34 percent of the GDP is lost to tax dodging, an amount that is sufficient to achieve free health coverage for all Indians. Evidently, the report makes the claim how important it is to reframe the existing national and global tax policies if we have to tackle the twin problems of poverty and inequality. It talks about using the process of making taxes progressive to combat inequality.²⁷ Money is needed to make investments in the education and environment for reducing inequality and making sure it does not arise.²⁸ Generating finance to fund such goals is tough as governments have already taken debt to finance expenses and cannot afford to raise more debts.²⁹ Some solutions have come from organizations working for tax policy reform for decades.

²⁵ Suranjali Tandon, *In search of a solution to tax digital economy*, NATIONAL INSTITUTE OF PUBLIC FINANCE AND POLICY, NEW DELHI, WORKING PAPER 354 (6 Oct. 2021), (Last Visited Dec. 2021); Michael P. Devereux & John Vella, *Debate: Implications of Digitalisation for International Corporate Tax Reform*, 46 *INTERTAX* 6/7, 550-559 (2018); Alessandro Turina, *The progressive policy shift in the debate on the international tax challenges of the digital economy: A "Pretext" for overhaul of the international tax regime?*, 356 *CLSR* (2020).

²⁶ For a detailed analysis of Sustainable Taxation, see, Henry Ordower, *Capital, an Elusive Tax Object and Impediment to Sustainable Taxation*, 23 *Fla Tax Rev* 625 (2020).

²⁷ *Id.*, pg. 21.

²⁸ *Id.* pg. 22.

²⁹ See, Facundo Alvaredo, Lucas Chancel, *et. al.*, THE WORLD INEQUALITY REPORT (2018), visit at- <https://wir2018.wid.world/files/download/wir2018-full-report-english.pdf> (accessed on 17th Aug., 2018).

V

OECD AND ITS PROPOSALS

The Organization of Economic Commerce and Development has taken leadership for tax reform and provided a model for sharing tax resources. Legal Scholars have been consistently writing as to how global business and tax competition threaten the core commitment goals of the welfare state.³⁰ Tax competition is facilitated by tax arbitrage across jurisdictions in different stages of development. The biggest problem of base erosion happens as the digital tech companies working in the global state may not pay any substantial amount of tax. The result is less revenue for the government. Also, the problem is that the credibility of the tax framework gets lowered in the eyes of the common man. Further, domestic businesses face the burden of tax more as multinational companies are able to reduce their tax liability through innovative tax planning mechanisms.

Though the international tax framework was antiquated and facilitated aggressive harmful tax competition among nations, it was the 2008 financial crisis that set-in motion the introspection and commitment to reform. The G-20 took initiative by encouraging the OECD to embark on its now famous BEPS Project.³¹ With shrinking revenue collection, the OECD and G20 launched the Base Erosion and Profit Shifting (BEPS) project in 2013 which came up with 15 Action Plans in October 2015.³² The Action Plans had suggestions and recommendations to change different aspects of the international taxation framework.

The main and larger aim of the project is to see that the taxation of the profits should be done in the place where economic activity is conducted and value is created. This issue came up specifically in the context of Action Plan 1 of the project which focused on the Digital Economy.³³ One of the main criticisms of the new proposed BEPS regime is that it is offering the same old age brick and

³⁰ Reuven S. Avi-Yonah, *Globalization, Tax Competition, and the Fiscal Crisis of the Welfare State*, 113 Harv. L. Rev. 1573 (2000).

³¹ See, Reuven S., Avi-Yonah and Haiyan Xu, *Evaluating BEPS*, 10 Erasmus Law Rev 3, (2017); Allison Christians, *BEPS and the New International Tax Order*, BYU L Rev 1603 (2016).

³² See generally, Allison Christians, *Taxation in a Time of Crisis: Policy Leadership from the OECD to the G20*, 5 Nw J L & Soc Poly 19, (2010); Yariv Brauner, *What the BEPS*, 16 Fla Tax Rev 55, (2014); For the evolution of the journey of the BEPS Project, see, Yariv Brauner, *Thinking Like a Source State in a Digital Economy*, 18 Pitt Tax Rev, 234-237 (2021).

³³ See, Tamer Budak, *The Transformation of International Tax Regime: Digital Economy*, 8 Inonu U L Rev. 297 (2017).

mortar regime principles to the new age regime.³⁴ The whole action plan is just a botched attempt to try to fit the old international tax regime into the new digital world order.

Also, though the initial BEPS Project came up with a 15 Action Plan with suggestions they were only deliberated but no progress was made. The BEPS framework was revitalized by BEPS 2.0 which advocated a twin pillar one approach. Pillar one was about the reallocation of taxing rights between the source and residence countries. The pillar two approach is about creating a minimum tax so that companies pay some taxes on their profits.³⁵

So, the OECD launched its popular BEPS 2.0 which came up with its twin pillar proposals. The Twin pillar proposals by the Secretariat are aimed at coming up with policy options that are available. The Pillar One Proposal is about the allocation of taxing rights to the countries which are primarily the market jurisdictions. ³⁶In the global value supply chains, many jurisdictions have become spaces for creating intellectual property, and many for manufacturing and assembling goods based on that intellectual property. But the other is only for selling the goods. But in an environment where the goods and services are revised and set based on the feedback and data analytics around consumer experience the market jurisdictions add value. So, they want to be allocated their fair share of profits. On the other hand, the pillar two approach is all about taking a minimum tax after a particular jurisdiction has reached a threshold that is determined according to profits and the number of consumers.³⁷

The policy framework advocated within the BEPS framework is coming in for a lot of criticism as it does not take into consideration the value creation happening in developing countries. The OECD policy-making is dominated by a small number of rich countries and the latest proposals for tax reform are seeking discussions of the draft prepared by the Secretariat and not the inclusive framework. The issue may be resolved if all countries that have not got a voice in earlier international tax-making are given a platform to participate. And this participation results in inclusive tax policy-making. ³⁸The

³⁴Avi-Yonah, Reuven S. *et. al.*, *Evaluating BEPS*, 10 *Erasmus Law Rev.*, 3-11 (2017); *see also*, Ashish Goel and Shilpa Goel, *Has the Permanent Establishment Rule outlived its utility in a Digitalized World*, 11 *NUJS L Rev* 25 (2018).

³⁵ Bruno da Silva, *Taxing Digital Economy: A Critical View around the GloBE (Pillar Two)*, 15 *Frontiers L China* 111 (2020).

³⁶ Itai Grinberg, *Stabilizing Pillar One: Corporate Profit Reallocation in an Uncertain Environment*, 23 *Fla Tax Rev* 130 (2019).

³⁷ OECD (2021), *Tax Challenges Arising from the Digitalisation of the Economy-Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS*, OECD, Paris.

³⁸ *See*, Allison Christians, *BEPS and the New International World Order*, *BYU L. Rev.* 1603

other criticism is that this BEPS policymaking is not been to involve the other member countries in framing the new international world order but prevents any mobilization of any alternative regional grouping for the formation of international tax policy which is in favor to give more taxing rights to developing countries. Though there has been a consensus around the Pillar two approach countries like India want market jurisdictions where the consumers are based to be given their fair share of profits.

VI

INDIA'S EFFORTS TO PREVENT BASE EROSION

Various mechanisms of taxing the digital economy. In order that the government to fulfil its revenue needs, it is imperative that it comes out with a strategic vision to tax the digital economy. It can come with various measures like having compulsory taxes for the companies who have consumers utilizing their services in India. In line with this, the Income tax department had made attempts to tax these transactions The Income tax department's attempts to tax these transactions within the existing legal framework have not found favor with the courts. In *ITO v. Rights Florist*,³⁹ the Kolkata bench of the Income Tax Appellate Tribunal studied the existing framework to assess whether a website will be able to establish a permanent establishment for a foreign business. As the OECD commentary makes it clear that it does not consider the website as a permanent establishment the tribunal did not take an alternative view. According to it, the country where the server hosting the website is located has fiscal jurisdiction over the revenue. This rigid stand of the OECD has come under criticism from many developing countries, where companies do all types of economic activities by creating websites but manage to escape taxation by hosting them in a low-tax jurisdiction.

The Action Plan 1 report was studied by an Indian committee on the taxation of e-commerce in great detail to suggest the Indian response thereto and came up with its response in February 2016.⁴⁰ The action plan 1 report had come up with various recommendations to tax the digital economy. But the Indian committee focused on an Equalisation levy on payments made to non-residents for providing specified digital services like online advertising, cloud computing, an online platform for buying and selling, etc. The suggestions were incorporated by the Finance Act of 2016 by imposing a levy at the rate of

(2016), available at: <http://digitalcommons.law.byu.edu/lawreview/vol2016/iss6/4>.

³⁹ ITA No. 1336/Kol/2011.

⁴⁰ Report by the Committee on Taxation of E-Commerce formed by the Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Government of India (Feb. 2016).

6% on any payments made to a non-resident. To limit the scope of the levy the payments meant for providing online advertisement services were brought under the tax in the first instance.⁴¹ As it targets companies like Facebook and Google who provide these services the tax has become popular by the name “Google Tax”. With the introduction of this levy, India has become one of the first countries to impose a tax on the digital economy. It is to be noted that the introduction of the tax has been done by the introduction of a chapter in the Finance Act instead of any amendment in the income tax act. The reason for choosing this mechanism is in view of the fact that the income tax act can be overruled by India’s treaty obligations contained in various DTAAAs when the latter is more beneficial to the assessee. Though this levy is a welcome step in the endeavor to tax the digital economy its ramifications can be studied only with the progress of time. In all probability, the digital giants will not shell this money easily from their pockets and may pass this tax onto the consumer of their services. If this happens it will only increase the cost of doing business for the local companies for whom using online advertising is no longer an option but an absolute necessity.

A task force headed by Arbind Modi was set by the government in November 2017 for reforming the direct tax laws. The new law was to focus on the new economic realities of India. ⁴²One of many references of the task force is to study the best international best practices of the world. It is eagerly awaited if they will include a normative framework of the BEPS Project or try to create a jurisprudence of their own.

India has earlier been participating Earlier India has participated in the BEPS initiative. In June 2017 India signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting in Paris.⁴³ The Convention allows the member countries who sign to fulfil their minimum standards to a treaty that had been agreed upon while negotiating the Final BEPS package.⁴⁴

⁴¹ The Finance Act 2016, Ch. VIII.

⁴² See, Office Order No. F No 370149/230/2017, (MINISTRY OF FINANCE Nov. 22, 2017) available at-<https://www.incometaxindia.gov.in/News/MiscCom-Constitution-Task-Force-drafting-New-Direct-Tax-Legislation-22-11-2017.pdf> (Last Visited 18 Sept., 2018).

⁴³ See, Press Release, *India Signs the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting at Paris* (MINISTRY OF FINANCE Jun. 7, 2017) available at-<https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/631/Press-Release-India-Signs-Multilateral-Convention-Implement-Tax-Treaty-7-06-2017.pdf> (Last Visited 18 Sept., 2018).

⁴⁴ *Id.*

VII

THE NEED TO FINANCE BY UNILATERAL TAXATION

This concern regarding lack of inclusivity in international tax making is leading countries towards unilateral measures of taxation. Unilateral taxation has arisen due to the delayed solution by the OECD of finding a multilateral consensus for solving the issue of resolving the issue of taxation of multinational companies.⁴⁵ Many countries have introduced unilateral measures to tackle base erosion. (add from the previous article). The United Kingdom came up with a digital services tax to tackle the issue.⁴⁶

VIII

CONCLUSION

The fact is that BEPS is working in the framework of the old tax framework when the new age economy wants a new system.⁴⁷ Demand is growing to create an environment for creating tax policy jurisprudence within the BRICS economies and other regional groupings. The BRICS nations are holding regular meetings at the government level and reiterating that tackling BEPS is a huge concern for them. The last meeting held in India in December 2016⁴⁸ had all acknowledging that profits should be taxed in jurisdictions where they are created. In other words, in places where the activities generating the profits are performed. The meeting ended with a resolution to work closely among member nations as well as developing countries. The goal was to have enhanced engagement with the BEPS project.

A major contribution to the success of the BEPS framework is that cooperation to solve tax matters is high on the agenda. But critics are sceptical of the real benefits of these discussions and negotiations. The OECD's Harmful Tax Practices initiative ended up with the withdrawal of the United States. And it

⁴⁵ Wei Cui, *What is Unilateralism in International Taxation?*, 114 AJIL Unbound 260 (2020); Shubhankar Gupta, *Unitary Taxation: A Case for Developing Nations*, 7 Nirma ULJ 69 (2018).

⁴⁶ Wei Cui, *The Digital Services Tax: A Conceptual Defense*, 73(1) Tax Law Review, 69-111 (2019).

⁴⁷ Mindy Herzfeld, *The Case Against BEPS: Lessons for Tax Coordination*, 21 Fla Tax Rev 1 (2017).

⁴⁸ See, Press Release, *Sub : Meeting of the BRICS Heads of Revenue and Experts on Tax Matters at Mumbai* (MINISTRY OF FINANCE Dec. 6, 2016) available at <https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/560/Meeting-BRICS-Heads-Revenue-and-Experts-on-Tax-Matters-at-Mumbai-6-12-2016.pdf> (Last Visited 19 Sept., 2018).

did not exclude it from participating in other OECD initiatives.⁴⁹ Though the broad policy suggestions of the BEPS project are easy to agree on the differences surface once the technicalities of implementation come into practice. Different nations are placed in different circumstances so following a uniform normative framework is not pragmatic. And this pragmatism forces countries to move out once the real implementation of agreed-upon international tax reform starts.

The concept of Corporate Social Responsibility informs that corporations should be paying money as they have a social responsibility to do so. As the company is located within an ecosystem of the nation for it to thrive and sustain it needs to pay taxes. This ethos can also inform the debate as to how important is reformulating the international taxation framework if we need to have sustainable development. Sustainability as a concept has to be actionable and it has to finance by a robust revenue generation plan.

⁴⁹ *supra* Note 21.