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The Two-pillar Solution: Not a Choice, but a Compulsion

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ABSTRACT

This paper shall address the allegations of DST being discriminatory against U.S. companies, and elucidate how the allegations were a mere tool to impose retaliatory tariffs to coerce countries into accepting the Two Pillar Solution. The dire need for the U.S. to adopt such coercive methods and the benefits it would reap from the Two Pillar solution will be discussed in detail. In addition, the failure to cater to, and the adverse implications of the Two Pillar Solution on LMICs will be illustrated. Furthermore, the colourable method adopted by India to tax the untaxable shall be analysed in detail. With this, the paper aims to shed light on how the Two Pillar Solution is being put forth as an endeavour to attain a global taxation system, while its design implies otherwise.

Keywords: *The Two Pillar Solution; Digital Service Tax; Equalisation Levy; Profit allocation; Significant Economic Presence.*

1.0 Introduction

In 2013, the digital economy of India was still at its nascence. With an established internet user base of 300 million in December 2023[1], the Committee on Taxation of E-Commerce estimated it to grow to 500 million by 2016.[2] The Internet of Everything (IoE) for India was estimated to have a Value at Stake (VAS) of Rupees 31.8 for the next 10 years.[3] The vast digital economy of India attracted various companies like Google who generated a revenue of INR 44.3 billion in 2014. Until 2016, the revenue generated by digital service providers like Facebook, Amazon and Google was not taxed as they had no physical presence in India. However, through the Base Erosion and Profit Shifting (BEPS) Project of the OECD, the government sought an opportunity to tap into the revenue generated by digital transactions.

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As a result, in 2016, Equalization Levy was introduced, it sought to impose a tax of 6% on revenue generated through online advertisements. Subsequently, due to the rapid growth of the digital sector within 4 years, the scope of the Equalisation levy was expanded through Section 165A of the Act. Now, a levy of 2% is imposed on the revenue generated through any E-commerce transaction from non-residents in India.

Notably, the equalisation levy, also known as the Digital Service Tax, is not applicable to domestic digital service providers. Though the newly introduced DST was beneficial to the Indian economy, it was detested and deemed to be discriminatory by the US. In a report published by the United States Trade Representative (USTR) titled '*Report on India's Digital Service Tax*', it was stated that though the DST is applicable to all non-resident digital services companies on paper, the majority of the assesses would be U.S firms. "*USTR's analysis identified 119 companies likely subject to the DST, of which 86 (72%) are U.S. companies*".[4]

In response, the Trade Representative of the US published a Notice of Action dated 06/07/2021 in the Federal Register announcing a retaliatory tariff of 25% on Indian products. Similar tariffs were imposed on other countries that imposed DSTs. These additional tariffs were not a form of action but more of a coercive tool to force Low to Middle low-income countries like India and Turkey into accepting the US-formulated Two Pillar solution. Such misuse of an organisation like OCED by the US for the furtherance of its own self-interest shall be discussed in this paper. The paper will also look into the validity of the allegations made by the US pertaining to the discriminatory nature of the Equalisation levy. In addition, a detailed analysis of the Two pillar solution will be carried out in this paper to deduce if the new global taxation structure is beneficial to a developing country like India.

2.0 The Equalisation Levy: Not Discriminatory but a Necessity

After five whole years of the implementation of the Equalisation Levy in India, the USTR published a report titled Section 301 Report on India's Digital Service Tax.[5] The report made several allegations of the DST being unreasonable and a tool for crippling US e-commerce, but one allegation in particular led to a chain of events, that at the time of the publication of the Report seemed an unplanned and frantic reaction to being subject to tax, but after the announcement of OECD's Two pillar system, it became overt that the US was forging a coercive weapon that would force India and 9 other countries to bend to its will. The allegation was of the Equalisation Levy being discriminatory against US and US-based companies. That is, the Equalisation levy is discriminatory as it is only applicable to non-resident companies and digital service providers.[6]

The contention pertains to Section 165 of the Income Tax Act, 1961 which states that:
"...there shall be charged an equalisation levy at the rate of six per cent ……. on service received or receivable by a person, ***being a non-resident*** *from..."*[7]

Here, the provision states that the equalisation levy shall be applied to digital services provided by a non-resident digital service provider, which connotes that resident digital providers shall be excluded from the ambit of the provision's applicability. But excluding resident service providers from the equalisation levy is not discriminatory but a simple exclusion to avoid double taxation.

That is, in India, until 1st June 2017, Section 66B of the Service Tax Rules, 1994 had levied a tax of 14 % on all services including Online Information and Database Access or Retrieval (OIDAR) services.[8] OIDAR services have been defined in Rule 2(1) (d) (ccc) of the Service Tax Rules 1994 as *"... services whose delivery is mediated but information technology over the internet or an electronic network... and includes electronic services such as advertising on the internet, providing cloud services, provision of e-books, movie, music, software, online supplies of digital content, online gaming...".*[9] The definition connotes all digital services, and as provided in Section 64 of the Finance Act, 1994;[10] the taxes shall be levied on resident service providers. Subsequent to the implementation of the unified Goods and Services Tax regime, OIDAR services were brought under the ambit of GST (Goods and Service Tax). It is pertinent to note that Section 2(17) of the CGST Act widened the scope of OIDAR services to include all the prevalent digital services[11], for which, under Service Accounting Code and Products, Heading 998439, the GST rate for OIDAR services is placed at 18%.[12]

Thus it is overt that resident digital service providers are already liable to pay 18% IGST on the services they provide, and hence, subjecting them to Equalisation Levy would increase their tax burden by 2%. Such imposition of an additional tax rate is a perfect example of double taxation. Hence, it can be deduced that resident digital service providers have been expressly excluded from the Equalisation Levy to avert double taxation and abysmally high tax burden. Further, it is also submitted that the resident digital service providers are already subject to 6 times more the tax rate of Non-resident service providers, thus, imposing an additional of 2% on the resident companies would not only be against the canon of equity, it would also be austerely unjust.

Yet another argument put forth by the USTR is that 72% of companies that would be subject the equalisation levy are US companies, thus making it discriminatory.[13] This statement is a desperate attempt at trying to prove that Levy is discriminatory, it is not only inconsiderate but ignorant. In the same report, USTR has proudly boasted that U.S. Companies are the global leaders in the digital services sector, it is an inherent trait for global leaders to possess a larger stake in their respective sectors, hence, when that sector

is taxed, it is only normal for most companies of the global leaders to be subject to tax. It is neither discriminatory nor an implicit targeting mechanism, but just mere coincidence and logic.

3.0 The Two Pillar Solution: Not for a Uniform Tax System, but For the US

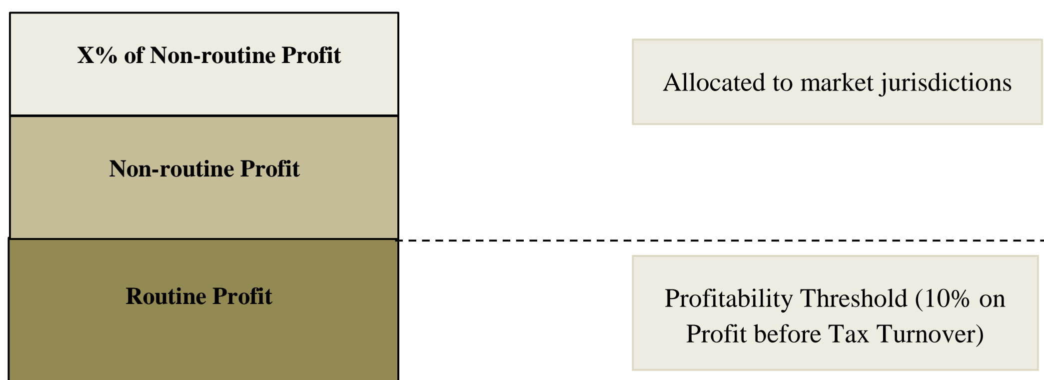
The OECD presented the Two Pillar Solution as pillars that would hold up the principles of fair distribution of profits and taxing rights and put a floor for limited tax competition, however, behind these pillars, lays bare the truth that they hold up nothing but the self-interests of the United States of America. To elucidate the same, it is imperative to break down the two pillar solution and analyse each and every aspect of it.

3.1 An insight into the Two Pillar Solution

3.1.1 Pillar one

As mentioned earlier, the Two Pillar solution consists of two parts, Pillar One is a framework for allocating taxing rights between countries where Multi National Enterprises create the largest amount of profit, to facilitate the same, the element of Amount A was implemented in Pillar One. 25% of the residual profit of an MNE shall be treated as Amount A. Such amount is then allocated to the market jurisdiction. Any profit that exceeds the routine profit that is 10% of the revenue of a MNE in that jurisdiction is termed as residual profit (refer to Figure 1).[14]

Figure 1: The Profit Allocation Model



Source: OECD, Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS

For example, take A, which is an MNE, earns 1000 crores as revenue and 200 crores as profit in India.

Then its routine profit would be:

10% of Total Revenue = 10% of 1000 crores

= 100 crores

Its Residual Profit would be:

Total Profit – Routine Profit = 200 crores -100 crores

=100 crores

Thus, Amount A would be:

25% of Residual Profit = 25% of 100 crores

= 25 crores

Hence, here, A would have to pay 25 crores to India.

3.1.2 Pillar two

Pillar Two aims at implementing a Global Minimum Corporate Tax of 15%. It has been stated that such imposition would enable countries to protect their tax bases. It restricts countries from providing predatory tax incentives that may force other countries to lower their own tax rates regardless of the fact if they can afford such tax cuts or not, just to keep businesses within their countries. In simple words, it eliminates the existence of 'Tax Havens'.[15]

Pillar Two has been specifically designed in such a way that all MNE's pay a minimum of 15% tax. An interesting element that has been incorporated in this pillar is that of 'Top-up Tax'. That is, MNE's are mandated to calculate their total Effective Tax Rate for each market jurisdiction, and if the ETR does not amount to 15%, then the difference between the 15% and ETR has to be paid as Top-up Tax. This Top up Tax is to be paid to the parent jurisdiction of the MNE.[16]

3.2 The hoax of profit allocation

On breaking down the aspects of Pillar One, three imperative elements can be deduced that clearly reflect how the Pillar One has been designed to cater to the interest of US. First and most interesting aspect of the Pillar One is that it requires all the countries that implement it to remove the Digital Service Tax implemented by them to bring "*an end to trade tensions resulting from the instability of the international tax system*".[17] The author would like to highlight that Pillar One *specifically* mentions and requires DST to be removed, no other form of tax has been explicitly mentioned under this pillar. As mentioned by the USTR themselves, out of the total number of companies that would be liable to DST, 72% are U.S. companies in India,[18] similarly 62% in Italy,[19] and 69% in

Turkey[20] are U.S. companies. Hence, the biggest beneficiary of the removal of DST would be evidently the United States of America.

One may argue that though the DST is being removed, the MNE's would still be liable to pay 25% of the residual profit to the market jurisdictions, hence, the revenue so earned by the state through Amount A would make up for the removal of DST. This argument opens doors to two separate but connected loopholes. First one is pertaining to the calculation of Amount a profit and second one is pertaining to the disparity in revenue that the market jurisdictions would receive from Pillar One compared to the revenue they received through their DST.

As mentioned earlier, Amount A is 25% of the residual profit, and residual profit is any amount of profit that exceeds 10% of the total revenue of the company in that particular market jurisdiction. This formula of calculating Amount A places a high threshold which allows many companies to be exempt from paying any amount to the market jurisdiction at all.

That is, Take Apple Inc., whose revenue in FY22 was Rs. 33,381 crore and Net profit is Rs.1263 crore in India.[21]

The Routine Profit of Apple Inc. in FY22 would be= 10% of Revenue

= 10% of 33,381 crore

= Rs. 3,338.1 crore

Here, as the Net profit of Apple Inc. in India is Rs. 1,263 crore which is less than the calculated routine profit, Apple Inc. would be completely exempted from paying tax for the profit earned.

Similarly, Take Amazon, with a revenue of Rs.16,378 crore in FY21 with a profit of Rs.18.5 crore.

The Routine profit of Amazon in FY21 would be= 10% of Revenue

= 10% of 16,378 crores

=Rs. 1637.8 crores

Hence, considering the fact that the profit of Amazon in FY21 was Rs. 18.5 crores, that is not more than Rs. 1637.8 crore (routine profit), Amazon would be exempt from paying tax to the market jurisdiction as well.

Considering the fact that despite Apple Inc and Amazon India being one of the largest MNE's in India, yet they would be exempt from paying Amount A under Pillar One to its market jurisdiction points to the ineffectiveness of the design of Pillar One. This ineffectiveness may be an intentional backdoor to reduce the amount that MNE's would have to pay under Pillar One.

It is submitted that Pillar One's high threshold exempts most MNE's from having to pay Amount A, thus defeating the entire objective of "effective profit allocation". In

addition, as the Pillar One requires removal of DST as well, the revenues that countries would get from taxing the digital services provided by non- resident companies would also cease to exist.

For instance, take the case of Google India, which received Rs. 24926.5 Cr as its advertising revenue, with a profit of Rs. 1238.9 Cr.[22]

Revenue received by the market jurisdiction (India) by DST= 2% of Gross Revenue

= 2% of 24926.5 Cr

= 498.53cr

Revenue received by the market jurisdiction by Pillar A=

Routine Profit = 10% of Revenue

= 10% of 24926.5 Cr

= 2492.65 Cr

As the Net profit of Google is 1238.9 Cr, which is within the routine profit, Google would be exempt from paying any tax. In such a case, not only would India be not getting any revenue through Amount A, it would also lose the revenue it used to get through DST. This perfectly illustrates how Pillar One would put an end to the revenue that the countries get from MNEs. Similar assessment has been made by Oxford Economics, whereby it was found that poorer countries would incur a loss of around $230 million due to the residual profit allocation share.[23]

In conclusion, Pillar One would not only put a halt to the revenue that countries get from MNEs through DST, the high threshold of the promised alternative, that is, profit allocation through Amount A would not allow countries to tap into the revenue of the MNEs as most of them would be exempt. It would require an MNE to have a high-profit margin to be liable to pay Amount A to its market jurisdiction. If we take the top 3 market leaders of digital services in India, Facebook, Amazon and Apple, the average profitability rate of these MNEs is approximately 2.95%, hence it is overt that the Pillar One has been intentionally designed with a high threshold so as to allow MNEs to escape from their liability, and it disingenuously removes tax burden on the MNEs by mandating the removal of DST.

4.0 Coercive Retaliatory Tariffs: A Tool for Compulsion

India is not the first or the only country to impose DST, Austria, Indonesia, Italy, Spain, Turkey, the Czech Republic, France and the United Kingdom have imposed similar DST taxes on non-resident companies as well. Akin to how the Section 301 investigation was carried out against the Indian DST system, the aforementioned countries were also subject to investigations. Unsurprisingly, all the DST's were held to be discriminatory and

unreasonable, because they target U.S. Companies. The author has already elucidated why the allegations are without any substance and frivolous, the same justification is applicable to the other countries as well. That is, as shown in Table 1, these countries already have a domestic tax structure for digital services provided by resident companies, and imposing an additional burden of DST would be unjust and inequitable:

Table 1: DST and VAT/GST rates of countries

S. No.	Countries	Tax on Resident Digital Service Providers (VAT/GST)	DST Rate
1	Austria	20%	5%
2	Indonesia	11%	10%
3	Italy	22%	3%
4	Spain	21%	3%
5	Turkey	18%	7.5%
6	United Kingdom	20%	2%
7	Czech Republic	21%	5%
8	France	20%	3%

Source: *Office of the United States Trade Representative, Proposed Action in Section 301 Investigation of Digital Services Tax (86 Fed. Reg. 16816, 2021).*

As a response to the DST's imposed by these 9 countries, US announced the imposition of retaliatory tariff on them. In a series of notices dated March 31, 2021, the US announced tariff of 25% on goods from Austria, Italy, India, Spain, Turkey, France and United Kingdom.[24]

At first, the imposition of tariffs appeared to be desperate acts of retaliation, but with the introduction of the US formulated Two Pillar System, it is overt that the imposition was a well- planned move. The heavy tariff on the countries was forged as a weapon to coerce the countries into accepting the Two Pillar System.

As elucidated in the previous chapter, Pillar One of the Two Pillar Solution has been designed in a way to cater to the interests of the US, as it not only absolves U.S. companies from a total tax burden of 38.5% in DST but also reduces the money that they would have to pay to the market jurisdictions.[25] However, it is overt that developing countries such as India and Turkey got the shorter end of the bargain, and this raises a serious question as to why the countries consented to implement the U.S. formulated Two Pillar System. The answer is simple, they were forced and coerced into consenting to the implementation. That is, the illustration provided in the second chapter is not limited to the scenario of India, but also reflects the situations of Turkey as well, yet the two countries

have accepted and announced the implementation of the Two Pillar system into their domestic laws. On inspecting the dates at which the notice of action and the Two Pillar Solution was announced, the reason for the acceptance of the Two Pillars become overt.

That is, the Notice of Action against the 9 countries that imposed DST on Non-Resident Digital Service Providers, was published between July 2020 to June 2021, whereas, the blueprint of the Two Pillar Solution was published on October 2020.[26] The Notice of Action announced a tariff of 25% on all goods of the 9 counties. The date on which the tariffs were announced and the Two Pillar Solution, whose objective also included the removal of DST to put an end to the Trade War' was published point to the fact that the imposition of tariff was part of a well-planned strategy to force the countries into accepting the Two Pillar System, whose biggest beneficiary was U.S itself. If this appears to be a mere speculation, the fact that just after two months, on June 2021, United States decided to terminate the Section 301 tariffs on India in exchange for India's transition from DST to the Two Pillar Framework may be indicative of the fact that the entire chain of events was indeed planned. The same is the case for the other 8 countries as well (refer to Table 2).

Table 2: Dates of Termination of Notice

Countries Against Whom Notice of Action was Served	Date of Termination of Action
Austria, France, Italy, Spain and United Kingdom.[27]	November 18, 2021
Turkey[28]	November 24, 2021
India[29]	November 26, 2021

Source: *Office of the United States Trade Representative, Termination of Actions in the Section 301 Digital Services Tax Investigations, (86 Fed. Reg. 64590 2021)*

In addition, the report on Termination of Action states that the countries have reached a political compromise, and in the same paragraph, it has been provided that the amount "*that accrues during the transitional period prior to implementation of Pillar 1 will be creditable in defined circumstances against future income taxes due under Pillar 1, and in return*", U.S. would simply terminate the tariffs. It is overt here that the countries, again get the shorter end of the stick. However, the imposition of 25% tariff on goods is a hefty sum for countries to pay. In comparison with the revenue the countries receive from DST, the tariff they have to pay on the estimated aggregate level of trade is far greater (refer to Table 3), thus forcing certain countries to accept the new regime to be free of tariffs.

Table 3: Comparison of Tariff Payable and DST Revenue

Country	DST Revenue (2017)	Aggregate Trade Amount	Tariff Payable (25% of the Aggregate Trade Amount)
Austria	25 million	45 million	11.25 million
India	40 million	55 million	24.75 million
Italy	5.5 million	140 million	35 million
Spain	968 million	155 million	38.75 million
Turkey	160 million	160 million	40 million
UK	358 million	325 million	81.5 million

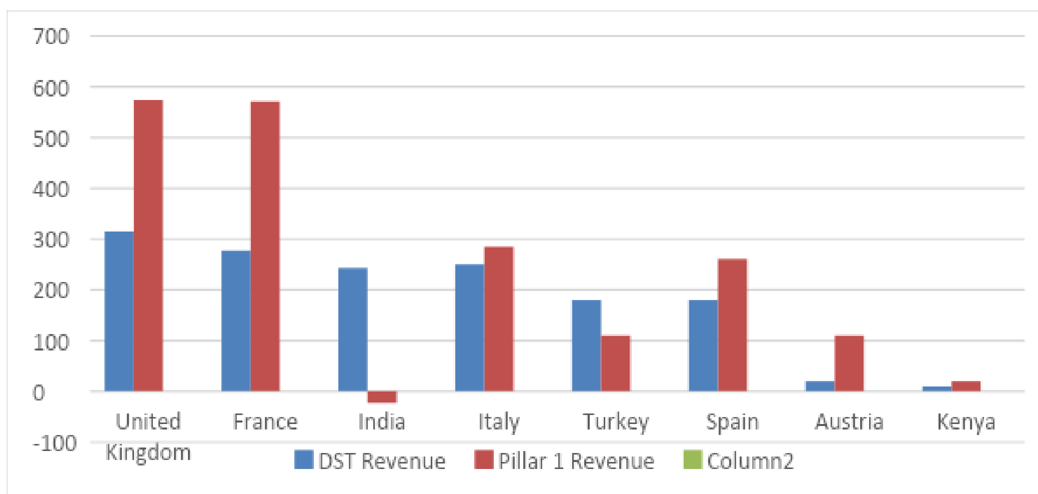
Note: The data of DST Revenue has been sourced from USTR's Notice of Proposed Action.[30] *The data of Aggregate Trade Amount has been sourced from Ernst & Young.*[31]
Source: *Office of the United States Trade Representative, Proposed Action in Section 301 Investigation of Digital Services Tax (86 Fed. Reg. 16822, 2021) and Ernst & Young, 'USTR proposes 25% punitive tariff on Austrian, Indian, Italian, Spanish, Turkish and UK origin goods in response to each country's DST; terminates investigations for Brazil, Czech Republic, EU and Indonesia' <https://taxnews.ey.com/news/2021-0661-ustr-proposes-25-percent-punitive-tariff-on-austrian-indian-italian-spanish-turkish-and-uk-origin-goods-in-response-to-each-countrys-dst-terminates-investigations-for-brazil-czech-republic-eu-and-indonesia >*

For countries like Austria and India, the tariff payable is half the amount of the DST revenue, and for Italy, the tariff is 6 times the DST revenue. It is pertinent to note that for India and Turkey, the Pillar One revenue is lower than the DST revenue, yet they are forced to accept the two-pillar solution so that the tariff imposed on trade is terminated. Such compulsion is owing to the fact that the US is currently the largest trading partner of India, with its bilateral trade reaching a record of $157 billion in 2021, and for Turkey, the US has a 6% partner share in trade. Thus, these developing countries cannot afford to go on a trade war with the U.S.

However, the same is not the case for all the countries that have a DST regime, when it comes to high income countries like Austria, Italy, Spain and U.K, the Pillar One system has been purported to be beneficial. As mentioned before, for India and Turkey, the same is not the case. India would be the one incurring the greatest loss, where it would only receive 23 million in revenue from Pillar One, as opposed to the 235 million it received in DST revenue.

Hence, it is conclusive that, on one hand, as Pillar One would prove to be beneficial for high-income countries, which are motivated to accept and implement the same, whereas for developing countries, who will be at a loss by implementing the Two Pillar Solution (refer to Figure 2), a gun known as tariff has been placed against their heads to force them into implementing the same. The two pillar solution is thus a perfect example of rich getting richer and the poor getting poorer.

Figure 2: A comparison of DST Revenue and Pillar One Revenue



Note: The data has been procured from Digital Service Taxes by Kane Border, Sofia Balladares, Mona Barake and Enea Baselgia.[32]

Source: *Kane Border, Sofia Balladares, Mona Barake and Enea Baselgia, 'Digital Service Taxes'*

5.0 India's Colourable Taxation

It has been demonstrated that contrary to its claims, the OECD Two Pillar solution will adversely affect developing countries, including India. India became a signatory of the Two Pillar regardless of the losses that it would have to incur so as to save its trade relations with US, however, it is safe to say that India has found an indirect way to tap into the revenue of digital service providers. The main concern that DST sought to address was pertaining to the MNE's escaping tax liability due to the absence of a permanent establishment in India. MNE's that specifically provided digital services, had the inherent advantage of providing services globally from a single establishment in any part of the world. The permanent establishment holds much significance in taxation as it is one the factors that determine if an income of a non- resident accrued or arose in India.[33] As most non-resident digital service providers, did not have a permanent establishment in India, the revenue generated by them in India was left untaxed till the establishment of the DST.

As indicated earlier, the implementation of the Two Pillar Solution mandated the removal of DST, resultant to which, the liability of MNE's would revert to the position before the DST regime, which is free from any tax liability. As per the Two Pillar solution and the DTAA, India was barred from implementing any new legislation to tax the MNE's,

hence, the State simply expanded the scope of 'business connection'. It did so by implementing the concept of Significant Economic Presence by way of Explanation 2A of Section 9(1) with effect from F.Y. 2021-2022. That is, as per section 9(1) (i) of the Act, any income accruing or arising from a business connection in India is deemed to be Income accruing or arising in India,[34] and such income of a non-resident that arises or accrues in India is taxed under section 5(2)(b) of the act.[35] Thus by expanding the scope of business connection, the scope of Income accruing or arising in India has also been expanded

Explanation 2A provides that it "*is hereby declared that the significant economic presence of a non-resident in India shall constitute "business connection" in India"*.[36] Under the same explanation, it is provided that any non-resident shall be deemed to have significant economic presence in India if:

- If the aggregate payment for any transaction made in respect of goods or services by a non-resident to a person in India in the previous year, exceeds 2 crore rupees;[37] or
- If there is continuous or systematic solicitation of business, or interaction with 3 Lakh users in India[38]

With the implementation of Significant Economic Presence, large MNE's who provide services in India, yet have no permanent establishment in India, will also be brought under the ambit of section 5, by deeming their income to be accruing or arising in India. The concept of significant economic presence was introduced in 2018, but wasn't implemented as the DST was already in place to tax the MNE's. However, at present, the need to tax them has arisen again, and the implementation of SEP is much appreciated.

In addition, it is pertinent to note that the MNE's will be liable for 30% of their gross income in India, as opposed to the 2% charged by the DST. Hence, in the end, India found a colourable taxation mechanism and finally got the larger end of the stick.

6.0 Conclusion

U.S. used the allegations of the Digital Services Taxes of countries being discriminatory as a mere median through which it could impose *ad valorem* tariffs on trade. The retaliatory tariffs were further used as a weapon to force Low to Middle Income Countries like India and Turkey, who would incur huge losses in revenue due to Pillar A revenue to accept and implement the same. The implementation of the Two Pillar system by the countries with a DST regime was imperative for the US as it would lead to the removal of a total of 35% DST on U.S. companies. It is however pertinent to mention that Amount A as prescribed in Pillar One is indeed beneficial to many Middle to High Income and High Income countries, but it does not however compensate for the fact that the LMICs would be starved of essential revenue.

In a bid to attain uniform global taxation, the OECD would be depriving developing countries of vital revenue. The design of the Two Pillar Solution will have two adverse implications on Low to Middle Income countries; first, due to the rules of Pillar One, the DST revenue of the countries will be cut off, and second, as per Pillar Two, Minimum Global Corporate Tax of 15% will be implemented, resultant to which, the opportunity of countries to attract businesses and revenue by being tax havens will cease to exist. The significance of a uniform taxation is understood by the author, but doing so without any regard to the developing countries is vicious and obtuse.

On the contrary, the Two Pillar Solution will have two beneficial implications on High Income countries; first, Pillar One will bring in more revenue. The reason for the same is the profit margin of MNE's in high income countries is high, thus, producing excess residual profits. Second, issue pertaining to tax base erosion will also be done away with due to the inexistence of tax havens. For instance, in U.S. various efforts were made to prevent companies from establishing their businesses in other countries with lesser corporate tax. Corporate tax rate was reduced from 35% to 21%, and the GILTI was also introduced. Despite these measures, companies continued to move to other tax havens, which caused a huge revenue loss for U.S., hence, upon the implementation of the Two Pillar solution, not only will U.S. be getting revenue through Amount A, the revenue through corporate tax will also witness a stark increase. Due to the Minimum Global Tax of 15%, corporations will have no incentives to move to developing countries to conduct their business, thus preventing tax base erosion. The same is the case for other high income countries.

As LMIC's cannot afford to indulge in a trade war with U.S., they will be forced to implement the solution. In such situation, the step taken by India to increase the scope of business connection under Section 9 of the Income Tax Act and implementation of the concept of Significant Economic Presence is an effective and colourable mechanism to tax the untaxable digital service revenue. The expanded scope of business connection and Significant Economic Presence will inevitably bring the income generated by MNEs providing digital services in India under the ambit of income deemed to accrue or arise in India, thus making it taxable. It is submitted that similar colourable methods should be taken up by other countries to avert the loss of digital tax revenue.

Endnotes

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