

OECD-brokered Digital Tax - Doctrine of Pity & Pittance at play for Non-rich!

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By Shailendra Kumar, Founder Editor

THE Pandora Papers amounting to 12 million documents and files, leaked from 14 financial firms dealing with offshore tax jurisdictions, may have exposed the purchases of exotic real estate of at least 35 current and former political leaders but, more than anything else, the 'Pandora's box' has only beamed flashlight on the festering malaise of the extant International Taxation order! The rickety and chunky International Tax System of more than 100-year-old now tends to embody too many inherent systemic and shambolic frailties including tax avoidance which appears to be the key theme of the latest **exposé**!

The tax havens or secrecy jurisdictions, numbering about 50, have survived and thrived only with the tacit consent of the rich economies. A good number of them have physical proximity to their key financial centres such as London. The rich and famous and plutocrats in the elite and powerful countries who make generous political donations, do need such 'secrecy jurisdictions' to park even their tax paid wealth and they create letter-box companies for the privacy and security reasons!

A large swathe of political leaders and billionaires from developing and poor countries avail the services of such tax jurisdictions either to park corruption money or income subjected to stiff tax rates. Legal structures like Trusts and Foundations sumptuously aid them in accomplishing their 'jihadist' missions! Interestingly, all such tax havens are not offshore. For instance, Nevada and South Dakota in the US luxuriously peddle secrecy through Trusts and offer ghoulish relish to the wealthy across the world! The Pandora Papers have unmasked nothing new except a few dozen names and are certainly not the last in the series! More such tales of hooding wealth would unfold in the future and they cannot be completely geo-fenced by the market-driven governments!

In the context of global MNEs, tax avoidance sparking profit-shifting to low-tax jurisdictions and base erosion in the hapless market economies has been a major apple of discord among the world leaders. It all started in 1990s - the cliff for the forces of globalisation. And it continued unabated to such an extent that MNEs began to game the international tax rules amounting to double non-taxation! And the famous victims were both - the home as well as the market economies! It took inordinate amount of time for the rich and developed economies to admit that the single pillar 'constructed' with the 'Fixed Place' bricks of the International Taxation edifice, negotiated by the League of Nations, stands corroded and dilapidated for the prevailing digital business eco-system in the world!

Digital data has indisputably established itself as one of the most spurring factors of production to ensure higher profitability of a global enterprise. The digital service providers and technology companies have emerged as the vanguards of global economic growth in the 21st century. The turnovers of many of them are far greater than 88 per cent of sovereign territories. The COVID-19 which may be widely viewed as a ruthless scourge, has further accelerated the digital transformation of the global economy ([See Cob\(Web\)-733](#)

). For the US, its share has grown almost at par with the share of its manufacturing sector in the GDP. Similarly, China has also reaped humongous benefits out of rapid digitalisation of its economy. The digital economy now accounts for almost 15 per cent of the world economy - Worth over USD 15 trillion. Indeed, a major source of tax revenue for many populous and internet-intensive developing countries.

However, a change in the international taxation framework was always short-circuited by the US - the home of GAFA! If we add Netflix and Microsoft, it has come to be dubbed the '**Silicon Six**'

! The US always put a spoke in the wheel of change demanded by the developing countries. A trade war spun out when many European economies unilaterally decided to impose Digital Service Tax. India too levied Equalisation Levy. And it sparked much wailing and gnashing of teeth in the form of Section 301 Investigation. The US viewed such levies as a bid to wrong-foot its large technology titans. However, these measures did succeed in pumping hot air into a 'perfect storm' and the US under the Biden Administration, decided to go with the views of other members of G-7 which in July month mandated the OECD to construct a new taxation order on two pillars - Pillar one to tax the digital

services and Pillar two to fix the floor for global minimum tax - anything but not less than 15 per cent of corporate tax. The OECD is, molecularly speaking, a club of rich nations and it does subserve its masters very loyally and efficiently! If a developing or a poor economy expects any shade of fairness in the solutions 'sledgehammered' by it, it would amount to immodesty on part of the 'victim' economy to blame OECD, yuck!

Anyway, let's fly down to Paris where OECD is literally sweating it out in 'litres', perhaps with a shade of morbidity, to break the ice over many cumbersome technical issues teetering in balance for several years! Its SWAT teams of negotiators are arguably operating within the letter, if not the spirit of a new treaty-in-the-making! At the back of its mind, it has the deep-seated fear of its solutions being subjected to blows of cold winds! It has a fright about its solutions which may feed frenzy and cut a wide swath among the developing countries. Interestingly, non-rich countries also appear to be getting frazzled to further study the enigmatic calculus of profit A, B & C which entail six-step complex computation formula to arrive at some tangible sum ([TII Edit by Mr D P Sengupta - International tax reform - India should be careful](#)

). And it may, at best, add up to ONE PER CENT of a country's corporate tax collections. This is as per widely reported interview in the Indian Press, of Mr Pascal Saiant-Amans, the Director at the Centre for Tax Policy and Administration of the OECD. The reported gain of one per cent would boil down to barely Rs 4500 Crore for India whereas its restrained Equalisation Levy mops up close to Rs 2000 Crore.

Anyway, India would not mind sacrificing some revenue for the larger jihadist cause of building a New International Tax Order provided it is laid on a strong foundation of non-discrimination and fairness. The UN Report on digital taxation has rightly discussed - Why the new levy be restricted only to 100 top MNEs?

How would such a high threshold of Euros 20 billion serve the interests of developing countries? Why should OECD compartmentalise profits as A, B & C and that too, only above 10% margins! Secondly, OECD has its eyes fixed on arbitration clause in tax matters, the scent of which a small economy may not tolerate as it nibbles into one's sovereignty! The UN Tax Committee has approved insertion of Article 12B on taxation of digital economy and a simple and neat method has been prescribed in its Model Tax Convention.

Notwithstanding many loopholes in the OECD-hammered two-pillared and much pilloried solutions, most poor and developing economies are likely to sail with the arm-twisting rich countries or simply being geopolitical acolytes of many of them. Certainly not out of naivety! Aha! Yet another reason could be - A pound of flesh is better than aplenty which may not be realised in the near future! Perhaps, the burden of fair expectations has become tiresome and tasteless

- Cooling heels for years is indeed painful! That is why they may simply roll with the punches! However, such a solution which may be reviewed only after seven-long years as per the proposal, may suffer wanton cracks much before its first official review as it is going to be premised on jarringly blurred truths!

So far as the Pillar 2 negotiation goes, the floor rate is likely to be set at above 15% but this is to be seen how the US rejigs its tax regime - 21% tax rate under GILTI and 28% corporate tax for which the daggers are out between the Democrats and the Republicans. Given the unskirted fact that bipartisan support would be missing for the solutions being hammered out by the OECD, the US Senate is unlikely to approve the new treaty in the near future! Similarly, the ambitious time-frame of 2023 for implementing the new rules may prove to be tougher than climbing a steep cliff

if one goes by the Statements of some of the Finance Ministers of EU Member countries. For instance, the Swiss Finance Minister said early this week that 2023 may be too early in view of the time-consuming legal process in Switzerland! I sincerely hope that if a history is on the cusp of being tailored by the OECD, let it be premised on the strong foundation of fairness and mutually serving principles so that the revision of such a history is not warranted too soon!