

OECD-brokered Tax Order, yuck, Disorder - Fiscal 'Squid Game' turns BEPS into 'TEBS'!

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THE fiscal bubble shell has burst! The G-7 sponsored fiscal 'Squid Game' played on the OECD turf is over! The 'Mission Bamboozle' stands accomplished with the signing of the OECD-piloted agreement for a New International Tax Order, yuck, Disorder! The final win goes to the club of rich and elite countries! Quite predictable! Never in doubt! But the bizarre news is - The 'bad apple' - the tax havens - in the orchard dizzily survives! More strangely and bemusingly, there was no thrumming and humming from the 'victims'! No ding-a-ling! Not even a bit of ding-dong battle!

Why? Was it because a handful of poor and developing countries were condescendingly picked up for various OECD working committees and they failed to sniff the spooky developments! Or, they could not grok the proposed changes lucidly enough, to stare down the barrel! It may also appear that the developing countries ended up being used as a cat's paw? Or, like death, final decisions entered the official communique quietly! Or, being in the know of the real intention of the elite club, they simply quit and ended up facilitating the rich countries to go cha-cha-cha! A long barrel of laugh at the cost of revenue-starved poor and developing countries, **voila!**

Anyway, a history - made of doomy stuff, bad in taste & zombie in effect - was 'sealed' last Friday in Paris and now vetted by the G20 finance leaders in Washinton yesterday. It was certainly not whiggish inevitability - victory of progress over status quoist! In the run-up to the sealing of the deal, a facade was successfully created, thanks to the refined gimmick like the BEPS Project which has now put on the 'tattered' attire of TEBS - Trust Erosion & Benefit Shifting Project! The charades stand unmasked, completely! The off-solemnised slogan of 'Race to the Bottom' has come to be treated like a week-old fish! Rather than stymieing it, the OECD New Tax Order has ended up gifting a new 'bottom' or a bottom with a reasonably decent depth! This is what 15% global minimum corporate tax rate promises to the countries dubbed as tax havens! Let's recall the first list of EU members which threw tantrums at signing the agreement - Ireland, Hungary and Estonia.

Ireland, in particular, was pivotal for the US as it had ascended to the status of a favourite second home for many American tech giants - clearly a brazen loss of revenue for the US treasury. Since the rich countries have, post-economic meltdown, run into much grimmer fiscal deficits, the COVID-19 besides and needed higher tax collections to fuel their economic growth, they wanted a new international tax order more desperately than the developing and poor economies. For the intransigent US, every deal was largely a 'Golden calf' unless Ireland was a part of it. The OECD was given this secret mission to cajole Ireland into the deal at any cost!

And the OECD did not despair its back-slapping master. It accepted Ireland's demand at the cost of poor countries to raise the threshold for exemption - finally, USD 868 million, leaving a large swathe of Irish companies outside the sweep of the new tax regime. As per some studies, the new tax rate of 15% would only apply to 56 Irish MNEs with about one lakh employees and 1500 foreign MNEs. The prevailing rate of 12.5% will continue to apply to smaller Irish companies.

Ireland was also the one which insisted on deleting the expression 'at least' 15% floor rate. Initially, the widespread speculation was that it would be anywhere between 15% and the GILTI rate of 21% but Ireland was simply adamant on nothing above 15%. Even 15% floor rate with high turnover threshold which brings only about 100 MNEs under the fold of new tax order, was good enough for the angst-ridden US as most of these MNEs which make embarrassingly abnormal profit, are residents of America but were parking their profits in tax havens because of high corporate tax rate of 37% in the US. Mr Trump was the one who slashed it to 21% which Mr Biden is now trying hard to spike it to 28%. The US was largely focussed on mopping up extra revenue from its own MNEs which, as per one study, have been parking 40% of their profits in tax havens. So, if the floor rate is fixed at 15% with a string of top-up tax in the home country, it would enable the US to collect a major chunk of extra revenue being projected by the OECD under the new tax regime. Critics estimate that almost 60% of OECD-projects gains would be trousered by the rich countries.

In fact, the story was not much different for the EU too as a good number of European MNEs also followed the clichéd route of parking profits in tax havens - assigning intangibles to subsidiaries located there. Out of the global corporate profits of about USD six trillion per annum, about 40% is parked in low-tax jurisdictions like Ireland, Luxembourg, Singapore, Hong Kong, the Caribbean islands and the British dependencies

like the Virgin Islands. Since the 15% floor rate made some hefty sense for the elite club and also a much-disputed beginning of a new tax order in the present digitalised world, most rich economies simply played squint to the needs of the poor and developing countries.

African countries are right when say that as against
nine per cent corporate tax share in total tax collections in the rich world, it is 19% for them as per 2017 data.

Thanks to the COVID-19, the corporate tax has ascended in its heft as a potential source of higher revenue collections in the coming years. The tale is no less pale for the Asian and Latin American countries which have huge dependence on corporate tax collections to bankroll their developmental programmes. Then comes the knock-on effect of lower floor rate on existing corporate tax rates in poor and developing countries. They are going to be compelled to reduce it if wooing FDI is one of their priorities! Secondly, it would be naive to believe that it would not have a butterfly effect on the domestic taxation rates. The Argentine Economy Minister cannot be faulted for his observation - Developing countries were forced to choose between 'something bad and something worse'!

The US, albeit armed with the fiscal '**batterie de cuisine**'

, was so desperate and also scared of no-deal-scenario as it feared a new trade sparring with its own allies like France and UK that even Hungary, a low-tax jurisdiction, also extracted its own pound of flesh from the deal. It forced the OECD to agree to its 10-year phase-in period for the changes rather than five-year as proposed - a gaping loophole for tax havens to exploit it with impunity!

About 48 hours prior to the OECD meeting, the US Treasury Secretary Yellen is reported to have spoken to Estonian Finance Minister to board the OECD bus. Then, a 'black box' reaction! No heed was paid to the odd four who declined to sign the agreement - Sri Lanka, Kenya, Pakistan and Nigeria. Rubbing salt to the wound is the provision of a binding and non-optional dispute resolution process to reassure MNEs that they will not be taxed many times over. A much-feared Gordian knot for the MNEs!

On Pillar one issue, the OECD has come under heavy artillery fire for proposing a fiddly and poppycock calculus to tax super-profit above 10% margin of barely 70 MNEs. Though the OECD paper promises a slice of profits to market jurisdictions but such a slice is not going to be more than a piddly sum - a candy, perhaps! It was also a well-thought strategy to concentrate all attention on tech titans and let others like pharma MNEs escape the radar of sledgehammer.

On top of all these, extractives and regulated financial services companies have been kept outside the purview of digital tax. But why? There is no plausible rationale, nor explained by the OECD! However, any levy on digital income is to be rolled back after the new tax regime comes into play in 2023. However, the Chair of the G20 finance leaders summit at Washington yesterday, the Italian Economy Minister, said that no time limit is finalised for withdrawal of existing digital service tax and Italy may do it not before 2024! Italy collects USD 290 million annually from digital services.

To say the least, I strongly feel that neither the fixing of the floor rate of 15% nor the digital tax solution is going to promote fiscal harmony in the new tax regime peddled by the OECD. The floor rate of 15% is too low to make any meaningful dent into the majestic edifice of tax havens which have deliberately been given an extended lease of life. The race to the bottom to attract investments would continue unabated and MNEs would have wooing tax schemes stitched by the tax havens to park their super profits there. The much-vaunted goal of guillotining harmful tax competition has been short-changed by the New International Tax order which is destined to go for 'reconstruction' much sooner than the rich world may expect! The BEPS finally turned out to be a boondoggle project for the poor and the developing world! Time to say Goodbye to OECD and labour hard to carve out a comprehensive tax forum at the United Nations which is also rapidly turning into an outlived international body!