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Should digital taxation be in sync with the OECD-G20 Two-Pillar Framework?

An Analysis of the Equalization Levy in India and Its Aftermath.

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ABSTRACT

The flourishing growth of the digital economy in India has made digital taxation an indispensable system in India's revenue generation. The study provides a detailed assessment of the OECD (Organization for Economic Cooperation and Development)- G20(Group of 20) group's initiatives on digital economy taxation. Furthermore, there is an in-depth analysis of the limitations of the Indian 'Income Tax Act 1961' and the subsequent adoption of the equalization levy. The effect of equalization levies on tax treaties, rules, and the General Agreement on Trade in Services (GATS) are examined in detail. The economic impact of the equalization levy is also evaluated by analyzing the digital trade restrictiveness index. Finally, an evaluation is carried out on the OECD- G20 Two-Pillar framework on the background of the problems of digital taxation. The study also examines the growth of the equalization levy in India and assesses the USTR (United States Trade Representative) report in light of the equalization levy.

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Introduction and Background

Taxation refers to the obligatory payment of taxes to individuals or entities to the government based on the individuals' income or the value of transactions. Taxation has become an increasingly important buzzword in recent decades and countries across the world are grappling with its growing dimensions. The underlying principle of taxation is to establish nexus between the person or entity being taxed and the country where the tax is imposed (Kumar &Agarwal, 2020). Notably, Multi-National Enterprises (MNEs) like Facebook, Amazon, Google, and Uber, generate billions of revenues through digital transactions (UNCTAD, 2022). Digital MNCs can be categorized as either purely digital, operating mainly in a virtual environment, or even mixed mode combining offline products and services with digitally enabled business models like Amazon or Uber.

India is one of the fastest-growing digital economies in the world with high mobile- internet penetration and the second-largest market for e-commerce activities, generating around 644 million users in 2021 alone (State of India's Digital Economy Report,2023). There has been constant growth in a wide range of digital activities in India such as E- commerce transactions, digital payments, Online education, and so on. India is the second largest shareholder of UPI digital payments in the world (SIDE Report, 2023). India's digital economy is achieving advanced growth, expected to reach US$ one trillion by 2025 (UNCTAD, 2022).

The flourishing growth of the digital economy in India has made digital taxation an indispensable system in India's revenue generation. Interestingly, digital entities come outside the purview of a country's taxation as they don't have a permanent establishment in the market country. They work predominantly on servers located outside the country and rely heavily on users' data (Shome, 2021). Ideally, the method of taxation for these MNCs should significantly vary based on the extent of the digital mode (Bruce et.al, 2022). However, many countries worldwide face digital taxation issues, especially developing economies. This is mainly due to multinational Enterprises (MNEs) from developed countries conducting digital businesses in developing economies, leading to their revenue being untaxed or shifted to low-tax jurisdictions (Harpaz, 2021). Market economies which are predominantly in developing countries lose a considerable amount of revenue because of the extensive profit shifting and tax avoidance of digital MNCs (OECD, 2015).

To address this problem, several countries including India, the UK, Australia, Hungary, Italy, and Israel have implemented unilateral measures, including an equalization levy in India, for digital taxation, as traditional taxation methods designed for brick-and-mortar businesses have proven insufficient in dealing with the digital economy (Mehra & Roy, 2020). But analyzing the equalization levy and all those types of digital service taxes (DST) from a broad perspective of international taxation, we can consider the equalization

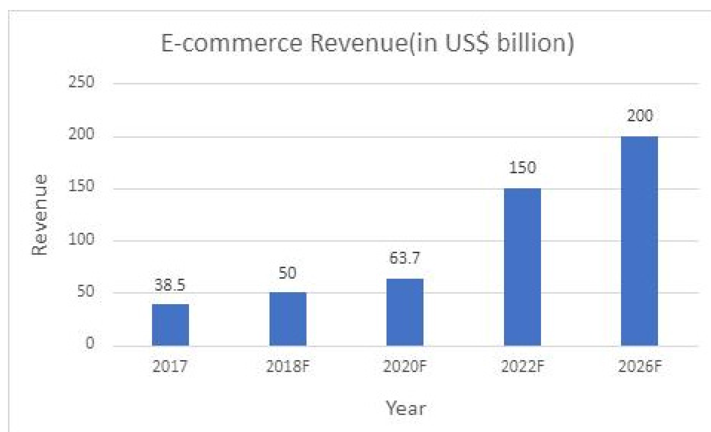

Fig. 1. E-commerce Revenue of India

Source: Indian Brand Equity Foundation Estimates, 2019

levy as a double-edged sword. Equalization levies and those types of DSTs (Digital Service Taxes) have far-out effects on international tax treaties, rules, and GATS (Noonan & Plekhanova, 2020).

Here arises the need for international consensus among world countries regarding digital taxation to avoid both the problems of international double taxation and non-taxation (OECD-G20 Report,2019). OECD (Organization for Economic Cooperation and Development)-G20(Group of 20) two-pillar framework (2021) is an ideal solution for many of the problems of digital taxation. It is currently in discussion and expects to be implemented by the last of 2023.

Literature Review

Digital business models come in a variety of shapes and sizes, including internet platforms, digital solutions, e-commerce, and digital content. E-commerce and social media platforms, for example, rely heavily on large-scale data processing collected from users. They may operate with little or no economic presence and on central servers outside the country (UNCTAD, 2022). Digital MNCs, on the other hand, operate on servers located outside the jurisdiction and do not require a physical presence in the market country (Nadeem & Saxena, 2018).

OECD Ottawa ministerial conference 1998, provides the taxation framework conditions for electronic commerce. The Committee on Fiscal Affairs (CFA) of the OECD provides the principles and guidelines for the government in taxing e-commerce transactions. It is important for countries to explore ways to tax e-commerce transactions by applying broad taxation principles, such as neutrality, efficiency, certainty, simplicity, effectiveness, fairness, and flexibility. It also expounds on the elements of the taxation framework such as taxpayer service, administration, collection, control, consumption taxes, international tax treaties, and cooperation. (OECD,1998).

Foreign digital MNEs shift or evade the tax liability from market counties by BEPS (Base Erosion and profit shifting) techniques. It capitalizes on the concept of Permanent establishment in tax conventions and national tax laws to come outside the purview of taxation. They shift the profit to low-tax jurisdictions by transfer pricing on deductible payments such as interest and royalties to subsidiaries (Shome,2021). Developing economies that are the target market for foreign digital multinational enterprises (MNEs) are losing a significant amount of tax revenue due to the lack of taxation of these companies. The OECD-G20 joint initiative has identified the challenges associated with taxing the digital economy (Kumar and Aggarwal, 2020).

OECD in 2013 as a part of its first action plan – ‘Tax challenges arising from digitalization’ assigns TFDE (Task Force on Digital Economy) to develop a report identifying issues and possible actions to tax the digital economy. In 2015, a report on “Addressing the Tax Challenges of the Digital Economy” was published which suggested three key measures for digital taxation such as (a) developing a new nexus based on the concept of significant economic presence (SEP), (b) A withholding tax on the digital MNEs, and (c) introducing an equalization levy (OECD-G20, 2015). OECD also released a two-pillar framework report on digital taxation to reach an international consensus. The first pillar deals with the allocation of taxing rights to market countries and Pillar two suggests a global minimum tax on the profit of digital MNEs (OECD-G20, 2021).

International tax treaties aim at preventing double taxation of foreign entities or residents between contracting states. The OECD Model Tax Convention provides guidance on how to tax income and capital investment in international transactions. Articles 4 and 5 of the Convention define tax residency and permanent establishment, and they provide detailed guidelines for how income and capital should be taxed in the source country and the resident country. The Convention also specifies whether tax credits or exemptions should be provided under double tax avoidance agreements (OECD,2017).

The gradual progress of India into a fast-growing digital economy is taking place because of mobile and internet penetration with India being one of the largest leaders in both categories. The increasing revenue generation of the e-commerce market in the Indian economy takes place through various forms of marketing, advertising, sales, billing, and product delivery. Foreign digital MNCs are doing a considerable velocity of business in India (Anuj. et.al, 2018).

Indian Income Tax Act had some inherent limitations to tax the digital economy. It overcomes those limitations through the finance act and subsequently introduced an equalization levy through the Union finance act (Singh and Aggarwal, 2020). Equalization levy has both bright and darker sides to our economy. On the brighter side, it is a brave step towards the BEPS project, which tries to adopt tax neutrality. It brings a reasonable amount of revenue to government finance (Agrawal, 2016). On the darker side, as the threshold limit of the equalization levy is small, it will affect small and medium business units to a large extent. The aspects of tax credits are not mentioned in the equalization levy as it also will lead to restrictive trade barriers from affected countries (Oberoi and De, 2021).

The equalization levy was intended to create a level playing field between domestic and foreign competitors, but its impact was even greater than we expected. It had a multi- folded effect as MNCs face the problem of double taxation. They are bound to pay tax on both the home and source countries which leads to over-taxation. It eventually passes the burden to the final consumers through higher prices (Koffler & Sinning, 2019). Digital service taxes (DSTs) lead to trade retaliatory measures by foreign countries. It hinders the free movement of capital and services (Karnosh, 2020). Equalization levies and those types of DSTs have a significant impact on Tax treaties, laws, and GATS. It thereby has a far-out influence on international double taxation (Nooanan & Plekhanova, 2020).

Objectives of the study

1. To analyze the taxation of the digital economy and the issues of digital taxation.
2. A comprehensive analysis of equalization levy on the background of the Income tax act.
3. To analyse the alternative for digital taxation by focusing on the OECD-G2O two- pillar framework.

Research Methodology

A descriptive-based data analysis method is used for this research study by applying existing theory and knowledge. The data analysis part is limited to simple statistical analysis.

Analysis

OECD -G20 Intervention in Digital Taxation

OECD is a developmental organization of 38 nations encouraging economic growth and trade and G20 is an international forum made up of 20 countries, including the European Union which India is also a part of. OECD first addressed the issue of digital taxation in 1999 through the global conference on electronic commerce held in Ottawa. They subsequently created a taxation framework for electronic commerce in 2001. Digital MNCs like Facebook, Google, and Amazon, generate considerable revenue in market countries specifically in developing economies through e-commerce activities, online advertising, cloud computing, and so on (UNCTAD 2022). The problem lies in this juncture as digital MNEs were outside the purview of taxation till 2016. By exploiting international tax rules and national tax acts, digital MNEs shift their profit to low-tax jurisdictions leading to the problem of non-taxation in market countries (Nafarrate,2021). The concept of BEPS (Base erosion profit shifting) was identified by OECD's TFDE (Task Force on Digital Economy) in 2013. BEPS is the tax planning strategy in which MNEs use deductible payments such as royalties and interest payments to reduce their tax burden on market countries. It is about shifting their high-tax elements such as patents, servers, and intellectual properties in low-tax jurisdictions, and low-tax elements such as labor in resident countries by intra-group transactions (between parent and subsidiary companies). This leads to the total tax liability remaining nil or very low (OECD BEPS Action Plan 1). The second scenario relates to the inherent limitations of national tax laws. According to international tax laws, a country can tax an entity if it has a permanent establishment in that territory. In that case, digital MNEs cannot be taxed as they don't have a permanent establishment. They work mostly on servers located in low- tax jurisdictions and rely heavily on users' data (Shome, 2021). Market countries lost between around 100-240 bn$ per year due to the BEPS strategy adopted by digital MNEs (OECD, 2015).

Realizing this complex issue, the OECD along with G-20 nations jointly worked together to address the BEPS problem of the digital economy. OECD-G20 has developed an inclusive framework for BEPS which

consists of 135 countries. It equips government to tackle the complex issues of BEPS by introducing 15 action plans on BEPS ranging from tax issues on digital taxation, and tax treaty abuse to multi-lateral instruments. Three alternatives introduced by the OECD-G20 action plan 1-BEPS on the digital economy (OECD, 2015). The first one is developing a new nexus to tax digital MNEs based on their number of users, revenue threshold, and several contracts instead of permanent establishment. The second one is imposing a certain amount of gross revenue of entities as withholding tax. The last one is the imposition of an equalization levy to tax foreign digital MNCs in domestic countries to create an equal level of competition in the economy. The revenue accumulation and taxation issue that arose out of web 2.0 technology was specified in OECD interim report on the digital economy in 2018.

Internet-driven platform-based digital business models such as Facebook, Google, Amazon, and so on are creating a market value of around US$ 4.3 trillion per year (CGE Survey, 2016). Digital MNCs in Web 2.0 technology predominantly work on large-scale data aggregation, monetization, and valuation and show no economic or physical presence in the market countries (Mehra and Roy, 2020). So, foreign digital entities doing e-commerce operations in the market countries or source countries don't create value for the real owners of the data and they don't pay a minimal amount of taxes in those countries (OECD, 2018). As many countries unilaterally implemented digital taxes in their manner, the problem of international double taxation and tax wars arose among countries (Low, 2020). OECD-G20 along with the group of 135 countries is working to reach an international consensus on the framework of digital taxation through a two- pillar framework report, 2021(OECD, 2021)

Indian Income Tax Act: Limitations in taxing Digital transactions

The main problem of the Indian taxation system is that it cannot tax foreign digital MNCs as they don't have a permanent establishment or fixed place of business in India. They work mostly through servers located abroad and using data points (Kumar and Aggarwal,2020) Digital business models take various forms such as E-commerce, advertising, subscription, platform as service, data as service, software as service, and so on. According to Section 92F(iiia) of the Income Tax Act of 1961, a permanent establishment (PE) is defined as a fixed place of business through which the business of an enterprise is wholly or partly carried out. The absence of two basic criteria, namely residence, and PE, has led to the non-taxation of digital transactions in India. (Sood, 2023) The Income Tax Act of 1961, which stipulates the law and procedures for the taxation of income of individuals and entities in India, has structural limitations that have led to the non-taxation of digital transactions in the country to a large extent. (Sood, 2023). For taxing income, the residential status of an Individual is determined. Both citizenship and residential status are different aspects. A person may be an Indian citizen, but it doesn't necessarily mean that they must be a resident of India for the financial year. Likewise, a foreign national may be considered a resident of India for a specific tax year if they meet certain requirements. Section 6 of the Income-tax Act explains the conditions for determining the residential status of various categories such as individuals, HUF, and companies. As digital taxation is more concerned with companies, the concept of PE (Permanent establishment) and the residential status of entities became the criteria for taxation. Domestic companies are taxed according to corporate tax rates. The challenges of taxing the digital economy in India arise when transactions are conducted with foreign digital companies that do not have a permanent establishment (PE) in India. Three specific issues need to be addressed:

Income characterization or categorization: The business income is categorized by companies and tax laws into different heads such as business profits, royalties, and fees from technical services. The establishment of PE is necessary for taxation excluding royalties. The tax treatment is different for different categories where there is a clear line of disagreement on whether to include an income in business profits or to include it in royalties which led to legal disputes.

Establishment of permanent establishment concept: It is very difficult to capture foreign digital MNCs (multi-national corporations) into the framework of physical business of the permanent establishment. They work mostly through digital servers located outside the marketing jurisdictions without setting up a physical presence.

Attribution of profits to a permanent establishment: Once a permanent establishment (PE) is determined, the profits must be allocated to it to determine the taxable amount. The relevant PE must then determine the arm's length price, which is the price at which two unrelated willing buyers and sellers would agree to transact. However, it is very difficult to determine the arm's length price of foreign digital multinational corporations (MNCs) because they do not have a fixed place of business or employees to perform daily activities.

Implementation of Equalization Levy through Indian Union Finance Acts:

The government of India introduced an Equalization levy through a Memorandum explaining the provisions of the Finance Bill 2016. The equalization levy aims to create a level playing field between domestic and foreign companies. It explains the need for the implementation of an equalization levy or digital taxation in India which states that permanent establishment rules framed for old brick-and-mortar economy should be restructured. It should be adapted for the digital economy which doesn't have a fixed place of business. To address the challenges of taxing digital multinational enterprises (MNEs) that do not have a physical presence in India, the government has proposed to introduce a new tax called the Equalization Levy. The levy would be 6% of the amount of consideration received or receivable by a non- resident MNE for specified services provided to a resident in India. After this, it was introduced. The levy must be paid by the Indian recipient and the threshold limit is one lakh rupees. It also states the procedure of payment, penalty, income tax deduction, and grievance mechanism relating to equalization levy. Following the bill, it was passed on to both houses, and it became an act. It applies only to business-to-business transactions.

As an extension Government of India introduced the concept of Business connection and SEP (Significant economic presence) in 2018. It was introduced through the memorandum explaining the provisions in the finance bill 2018 to capture digital entities and to expand the digital tax base. It was introduced as part of the OECD-G20 BEPS action plan 1 report. Foreign digital MNCs who had considerable business in India can be taxed irrespective of permanent establishment. Indian agents who are doing contracts in favor of foreign entities should be taxed as significant economic presence in the source country (India). The proposed amendment should be discussed in line with tax treaties. It was also introduced through finance bill 2018 and both houses passed the same bill. The act came into effect on April 1, 2019, and will apply to the assessment year 2019-20 and subsequent assessment years.

Only online advertisements were part of the equalization levy till 2020. The next remarkable step taken by the Union government was to introduce an equalization levy on e-commerce operations in 2020 through the amendment to Finance Act. A foreign e-commerce operator without a permanent establishment in India should be taxed on the total amount of revenue generated from Indian users. Part VI amendments to the finance act 2016 inserted section 165A to include a levy on the e-commerce supply of goods and services. The rate of tax is 2% and the threshold limit is 2 crore rupees. A huge amount of revenue comes under tax net as foreign e-commerce tech giants do billions of businesses in the Indian market. Big companies such as Amazon, Apple, and Flipkart come under the purview of taxation. It applies to all e-commerce transactions between India and foreign entities.

The Central Board of Direct Taxes began collecting equalization levies from 2016-17 onwards on online advertisements. It expands its horizon to e-commerce operations from the year 2020 onwards. A huge amount of revenue comes under tax net as foreign e-commerce tech giants do billions of businesses in the Indian market. Big companies such as Amazon, Apple, and Flipkart come under the purview of taxation. It applies to all e- commerce transactions between India and foreign entities.

The opening equalization revenue amounts to 338 crores which is a very high amount realizing the fact that tax from online advertisements is only collected. Next year (2017- 18) shows around a 74% increase and reaches a total revenue of 589 crores. 2018-19 shows 59% growth and reaches the amount of 938 crores. The last time pre-pandemic (2019-20) reflected an overall growth of 21% and resulted in an overall revenue of 1136 crores. The pandemic year (2020-21) depicts a revenue of 1492 crores showing a growth of 31%.

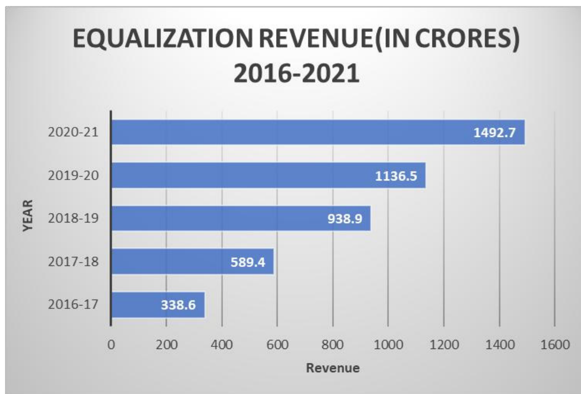

Fig. 2. Equalization Revenue collection

Source: Rajya Sabha OLTAS

Findings of the study

Analysis of Equalization Levy Vis a Vis International tax treaties, Rules, and GATS:

International tax treaties are legal agreements between two or more countries that outline how their respective citizens and businesses will be taxed on income and capital generated from cross-border transactions. International tax treaties are also known as tax conventions or DTAAs (Double Tax Avoidance Agreements). They are designed to prevent double taxation and tax evasion by ensuring that income is only taxed once in each country. Tax treaties are legally binding agreements between countries that establish the framework for the allocation of taxing rights. They cover a wide range of issues, including the definition of income, tax rates, the treatment of dividends, interest, and royalties, and dispute resolution between countries. Tax treaties have overriding powers over domestic tax laws.

The unilateral digital tax measures implemented by countries such as India, Italy, the United Kingdom, France, Australia, and Spain had a zealous impact on international tax rules. It also has a sweeping effect on trade and development between the countries in the form of retaliatory tariffs and trade-restricting measures. International tax rules and the OECD Model Tax Convention are the foundation of tax treaties (Low, 2020). Digital taxes will affect international taxation, which is visible in two ways. The first one is the incidence of double taxation which is the basic violation of international tax rules, and the second one is the hindrance of the free movement of capital caused by digital taxation (Karnosh, 2021). Explaining this concept, a unilateral digital tax adopted by a country will force the digital MNEs to pay tax on the source country and pay tax on their home country, leading to double taxation. It leads to the basic violation of tax treaties which mainly aim at the prevention of double taxation. Secondly, digital tax implemented by countries unilaterally will increase the cost burden of digital MNCs as they must restructure their tax schedule, which will eventually force them to increase the cost of services which will finally pass the burden to consumers (Sabo, 2020).

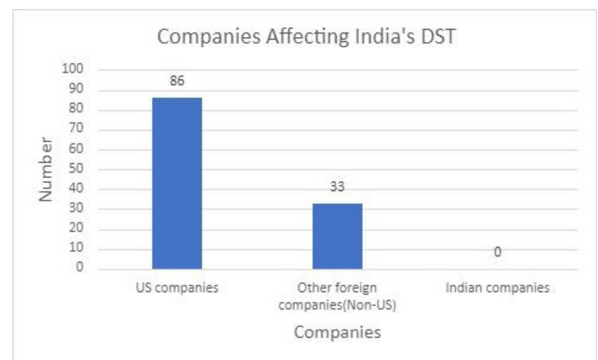

Fig 3. US Trade Representative Report on India

Source: USTR Report 2021

Analyzing this figure, we can see that US companies are affected mostly by India's digital services tax which creates many implications both in trade and development. The digital MNCs which are working mostly in developing economies like India are US companies. i.e., almost 72% of it. Regarding the equalization levy, the US claims that it will mostly affect their companies as they are bound to pay double tax on the same transactions. It will also lead to the scenario where the price of service will increase and automatically the burden will shift to final consumers. The details will be covered in the subsequent sections.

A detailed analysis of the Legal impact of digital taxes can be studied from two angles.:

1. Based on Bilateral tax treaties
2. Based on WTO GATS (General Agreement on trade-in-services) Agreement

Bilateral tax treaties:

Digital taxes imposed by a country on foreign digital MNCs violate international tax rules (Articles) in tax treaties (India-US tax treaty). It specifically affects Article 5 – Permanent establishment, Article 7 – Business profits, Article 25- Relief from double taxation, and Article 26- Non-discrimination.

Article 5 explicitly states that taxes should be imposed on entities that have a physical presence or managerial control in a country. Digital MNCs fall outside the scope of the PE Concept as they work through servers located abroad (Yonah, 2022). So, taxing such firms leads to violation of PE articles in tax treaties. Article 7 – Business profit states that India can tax the entity of the US unless it has PE in India and tax can be calculated only on business profits. The equalization levy, which is calculated on the gross revenue of digital transactions, is in clear violation of Article 7 of the GATS. Prevention and relief from double taxation is the main aim behind tax treaties which is explained in Article 25. But there is no provision in EL 2020 regarding tax credits or exemptions. So, it leads to double taxation for US firms as they are bound to pay tax in India and the US for their international income. US digital MNEs are more prone to India's digital tax as the threshold limit is high which makes Indian firms fall outside the scope of taxation (Zabo, 2020). It leads to the violation of the non-discrimination principle (Article 26) of the India -US tax treaty. It makes US digital firms more exposed to tax boundaries and tax compliances compared to domestic firms.

WTO GATS:

Article II of the GATS deals with MFN (most favored nation) treatment and Article XVII deals with National treatment between trading nations. MFN accords countries to treat the contracting state no less favorably than it treats other states. While DST includes GATS, the problem of double taxation and discrimination from domestic firms has become a reality for US digital firms (USTR report 2021). It leads to the violation of the MFN article (Noonan & Plekhanova, 2020). The National Treatment article states that countries cannot discriminate against foreign services and service suppliers in terms of access to markets, establishment, and the provision of services. Indian DSTs make US firms in the digital tax bracket and Indian domestic digital firms fall outside the ambit of taxation (USTR report 2021). It results in the violation of the National Treatment article.

The economic impact of Digital taxes on trade and commerce:

The development of the world economy as the result of rapid development in digital technology is immense (WTO, 2019). It leads to the easy movement of goods and services across the globe and makes countries closer to each other. The unilateral digital tax implemented by countries leads to distortion in trade and commerce between nations (Low, 2020).

Digital Trade Restrictiveness Index (DTRI): Digital Trade Restrictiveness Index is an indicator of 64 countries around the world that depicts the range of restrictions to the digital trade of a country. It covers a wide gamut of digital trade policies and a broad spectrum of policy measures prepared by ECIPE (Economic Centre for International Political Economy) in 2018. The index is based on four categories of restrictions that affect digital trade: fiscal restrictions and market access, establishment restrictions, data restrictions, and trading restrictions. The overall ranking of India in the index stands at third which raises serious doubts about the development of our digital trade environment.

Talking about the first cluster which evaluates tariffs, taxes, and public procurement, India ranks first among World countries which implies that there are some serious issues in the diaspora of the Indian digital economy. India has high tariffs on digital goods and services (6% tax) which makes digital services more expensive. It also leads to domestic double taxation (as IGST on OIDAR Services at 18%) and international double taxation as foreign MNEs are also bound to pay tax on their home countries. Various trade defense measures on digital products like data localization norms by the Reserve Bank of India in 2016 mandated all foreign entities to carry out their core data functions through a server located in India. It leads to the scenario where digital entities are forced to increase their prices. Sooner or later the burden will pass to final consumers.

Fig. 4. Digital trade restrictiveness Index

A. Fiscal Restrictions & Market Access			Tariffs and Trade Defense	Taxation & Subsidies	Public Procurement
Rank	**Country**	**Index**	**Country**	**Country**	**Country**
1	INDIA	0.63	ARG	BRA	CHN
2	BRA	0.62	BR A	TUR	IND
3	CHN	0.6	PAK	ARG	ZAF
4	AR G	0.49	IND	CHN	IDN
5	PA K	0.49	NG A	PAK	USA
6	IDN	0.43	RUS	FRA	ECU
7	ZAF	0.43	BR N	IND	-
8	NG A	0.41	CH L	JPN	BRA
9	RUS	0.4	PRY	MEX	AUS
10	US A	0.37	CH N	NGA	GRC

Value 0- Optimal (More open to digital services trade)
Value 1- Negative (More restrictive to digital services trade)
Source: ECIPE, DTRI Estimates, 2018

India's index value is rising. But still, there are barriers to the free flow of digital services trade. The digital taxation regime has multiple effects on digital trade services in various forms (Low,2020). It can be visible in the shape of high import tariffs imposed by the affected countries and shifting of digital trade economy to the less tax regime countries. Digital MNEs shift their service area to developing economies with less complicated tax regimes and high infrastructure connectivity and payment systems.

In conclusion, unilateral digital taxation measures have a more disruptive impact on Indian digital trade in terms of legal and economic implications. Violation of tax treaties and tax rules will create a trade war and endless disputes. Where high digital tax distorts trade and commerce in the form of high import tariffs and a shift of digital trade investment to a better economy. Ultimately the high-cost burden will pass to the final consumers (Ntiamoah and Asare, 2020). The structural part of threshold conditions is the integral area that makes DST discriminatory between domestic and foreign entities (Zabo, 2020). That means the higher threshold limit captures more foreign digital entities. Analyzing the context of Indian DST and all the unilateral digital taxation measures implemented by various countries, it is discriminatory in nature. It also violates basic international tax principles and tax treaties. So, there is a paramount need for international consensus on digital taxation for a better flow of capital and economic well- being among nations.

Global Perspective: The way forward for digital taxation in India Reacting to OECD digital economy report 2015, many countries such as India, implemented their own unilateral digital taxation measure which is implemented as an equalization levy. Each country's tax rates and threshold conditions vary, creating serious distortions in international taxation and trade and commerce (Faulhaber, 2019). So, this paper argues for the implementation of Two pillar framework by OECD-G20 Countries as the part of BEPS Project which aims to address the tax challenges arising from the digitalization of the economy.

Pillar 1: It aims to shift the taxing rights to market or source countries where large digital MNCs do their business mostly. It is applicable to MNEs having annual global revenues above €20 billion euros and a rate of earnings before tax to revenues above 10%. Pillar one nexus is based on the allocation of Amount A (Tax base) to market jurisdiction where MNEs earn £1 million or more from that jurisdiction (or €2,50,000 for smaller market jurisdiction having GDP below £40 bil-

lion). The quantum of taxation to market jurisdiction is between 20 and 30% of the residual profits in excess of 10% of the revenue of MNCs. Amount A overlays the existing profit allocation rules and it eliminated double taxation either by exemption method or tax credit method. It also calls for the removal of DSTs from each country and implements pillar one strictly based on the arm-length principle.

Pillar 2: The Global anti-base erosion Rules (GLOBE) call for a minimum tax rate of 15% on companies with annual revenue of over 750 million euros. This means that even if a company's effective tax rate is lower than 15%, it will still have to pay the minimum tax. An income inclusion rule has to be adopted to impose a tax on a parent entity in respect of a group entity having a low taxed income. It also insists countries impose corporate tax rates of below 9% on interest and royalties and STTR (subject to tax rule) in treaties which makes sure that treaties should not be abused. The provision of tax incentives is also framed for new business activities. The main focus of this pillar is to increase the effective tax rate of MNCs to 15%.

Analyzing the two pillars, if it reaches a consensus among member countries, it will create a better environment for digital taxation and better economic relations among nations (OECD Two-pillar Framework 2021). Pillar 1 will benefit more developing economies such as low and middle-income countries as they get taxing rights. It will generate around 125 billion US$ each year (OECD two-pillar framework report, 2021). While Pillar 2 will alleviate the burden on developing countries to provide extreme freehanded incentives for attracting foreign investment. Subject to the tax rule (STTR) will help developing countries prevent the tax avoidance of MNCs by utilizing deductible payments of interest and royalties. The formulaic approach of arm-length pricing in the distribution and marketing segment will help market countries in better administration (OECD two-pillar framework report, 2021). Pillar 2 will generate additional revenue of around 150 billion US$ for market economies like India.

To summarize, the tax base determination would be based on financial accounting income which will reduce the burden of MNCs as it will reduce the compliance costs and the final burden to consumers. Pillar 2 was widely accepted by all countries as corporate tax avoidance costs countries an estimated amount between USD 100-240 billion annually which is around 4-10% of global GDP (OECD, 2021). Global tax not only creates additional revenue but also puts a stop button on intense tax competition.

Conclusion and Discussion

India is a rapidly growing digital economy with a large number of mobile internet users and e-commerce customers. In 2021, India had the world's second-largest share of e- commerce users, with over 644 million users. This makes India a key market for digital businesses. Foreign digital MNEs which have a considerable share of the e-commerce market in developing economies like India, shift or evade tax liability through BEPS and the Permanent establishment concept. So, countries are losing considerable revenue due to the non-taxation of foreign digital MNEs (OECD,2015). There is a well-known fact that developing economies have a greater dependence on tax revenues than those developed. Reacting to OECD's initiative on digital taxation Report 2015, the Indian government implemented an Equalization levy on online advertisements in 2016 and e- commerce operations in 2020 of foreign MNEs. India's Equalization levy, the unilateral digital taxation initiative has earned a fair amount of revenue. The equalization levy, which generates revenue for the government, has been criticized for violating international tax treaties, rules, and the GATS. It eventually leads to the incidence of international double taxation and the violation of the Most favored nation's treatment and Nation's treatment under GATS. The economic impact of the equalization levy can be traced by analyzing two scenarios. First, one is regarding the USTR report on the equalization levy which forces the US government to increase the import tariffs on Indian goods for a short period in 2021, which was then revoked. The second scenario is the poor performance of India in the Digital Trade Restrictiveness Index where the high digital tax is also an important factor for the downfall. It leads to the situation where foreign digital MNEs shift their investments to more digital-friendly economies like Denmark, Sweden, Singapore, etc. The equalization levy had a long-run effect on the perfectly competitive market where it leading to a rise in prices and eventually shifting the burden onto final consumers.

As a reaction to all this turmoil, an international consensus on digital taxation is much needed. So, there is urgent action required for desisting unilateral digital taxation initiatives in many countries including India (OECD, 2019). Lack of coordination in international tax policy will lead to serious problems of both double taxation and non- taxation. So, the argument put forward by the paper is the implementation of the Two- pillar framework measures of the OECD as a fair solution for the taxation of the digital economy. Pillar, one reallocates the taxing rights to source countries based on revenue threshold while pillar two establishes a global minimum tax on MNEs. It creates a fair and harmonious environment in digital taxation as both the cases of taxation and nontaxation can be prevented because of the taxing rights and equitable justice for digital MNEs also (OECD-G20, 2021). So, India should implement the Two Pillar Framework report very shortly. It will Create a strong digital taxation environment and congenial trade relations between countries. Foreign digital MNEs should not be given excessive burdens regarding high digital taxes. A fair balance between national tax laws and international tax treaties is much needed for digital taxation as ensured by the two-pillar framework. It will eventually boost the velocity of investment and leads to flourishing economic growth. India's equalization levy or the digital tax must be in sync with the OECD-G20 two-pillar framework for the efficient administration of digital tax.

Implications of the study

This study which examines the warping effects of digital taxes, especially the equalization levy and the indispensable role of the OECD-G20 Two-pillar framework can be discussed to form guidelines for the creation of foreign trade policies. It should be discussed in the context of tax treaties between countries specifically relating to digital trade transactions to better understand transparent economic relations.

Limitations of the study

The study focuses merely on India's tax treaty with the United States due to the difficulty in considering the tax treaties of India with various countries.

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Annexure

ECIPE Digital Trade Restrictiveness Index, 2018

	A. Fiscal Restrictions & Market Access		Tariffs and Trade Defense	Taxation & Subsidies	Public Procurement
Rank	**Country**	**Index**	**Country**	**Country**	**Country**
1	**INDIA**	**0.63**	ARG	BRA	CHN
2	**BRA**	**0.62**	BRA	TUR	IND
3	**CHN**	**0.60**	PAK	ARG	ZAF
4	**ARG**	**0.49**	IND	CHN	IDN
5	**PAK**	**0.49**	NGA	PAK	USA
6	**IDN**	**0.43**	RUS	FRA	ECU
7	**ZAF**	**0.43**	BRN	IND	KOR
8	**NGA**	**0.41**	CHL	JPN	BRA
9	**RUS**	**0.40**	PRY	MEX	AUS
10	**USA**	**0.37**	CHN	NGA	GRC
11	**TUR**	**0.35**	PHL	CHL	MYS
12	**GRC**	**0.33**	THA	HUN	RUS
13	**KOR**	**0.33**	IDN	KOR	JPN
14	**PRY**	**0.32**	EUR	USA	TUR
15	**ECU**	**0.31**	AUT	RUS	NGA
16	**CHL**	**0.28**	BEL	CHE	PRY
17	**ITA**	**0.28**	BGR	COL	ITA
18	**THA**	**0.27**	HRV	CRI	GBR
19	**BRN**	**0.27**	CYP	ECU	BGR
20	**PHL**	**0.27**	CZE	AUT	ISR
21	**HUN**	**0.26**	DNK	BEL	PAK
22	**FRA**	**0.26**	EST	HRV	PAN
23	**GBR**	**0.25**	FIN	CZE	PHL
24	**AUS**	**0.25**	FRA	DEU	VNM
25	**MEX**	**0.24**	DEU	GRC	THA
26	**BGR**	**0.24**	GRC	ITA	MEX
27	**CZE**	**0.24**	HUN	LVA	ARG
28	**DEU**	**0.24**	IRL	LTU	BRN
29	**LVA**	**0.24**	ITA	NLD	CAN
30	**LTU**	**0.24**	LVA	POL	COL
31	**NLD**	**0.24**	LTU	ROU	CYP
32	**ROU**	**0.24**	LUX	SVK	CZE
33	**EUR**	**0.23**	MLT	ESP	DEU

	A. Fiscal Restrictions & Market Access		Tariffs and Trade Defense	Taxation & Subsidies	Public Procurement
Rank	**Country**	**Index**	**Country**	**Country**	**Country**
34	**PRINT**	**0.23**	NLD	SWE	HUN
35	**PAN**	**0.22**	POL	ISR	LVA
36	**VNM**	**0.22**	PRINT	NOR	LTU
37	**CYP**	**0.21**	ROU	PRY	NLD
38	**SVN**	**0.21**	SVK	PER	PRT
39	**JPN**	**0.21**	SVN	ZAF	ROU
40	**AUT**	**0.21**	ESP	TWN	SVN
41	**BEL**	**0.21**	SWE	THA	PER
42	**HRV**	**0.21**	GBR	FIN	EUR
43	**POL**	**0.21**	TUR	EUR	CHL
44	**SVK**	**0.21**	PAN	CAN	CRI
45	**ESP**	**0.21**	ZAF	DNK	AUT
46	**SWE**	**0.21**	VNM	EST	BEL
47	**FIN**	**0.21**	ECU	PRT	HRV
48	**DNK**	**0.20**	KOR	IDN	DNK
49	**EST**	**0.20**	MEX	AUS	EST
50	**MYS**	**0.20**	CHE	BRN	FIN
51	**IRL**	**0.19**	USA	BGR	FRA
52	**LUX**	**0.19**	AUS	CYP	IRL
53	**MLT**	**0.19**	NZL	IRL	LUX
54	**CHE**	**0.17**	TWN	LUX	MLT
55	**ISR**	**0.13**	MYS	MLT	POL
56	**TWN**	**0.13**	ISL	SVN	SVK
57	**COL**	**0.12**	CAN	GBR	ESP
58	**PER**	**0.11**	COL	HKG	SWE
59	**CAN**	**0.10**	ISR	ISL	HKG
60	**ISL**	**0.09**	CRI	MYS	ISL
61	**CRI**	**0.09**	PER	NZL	NOR