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TAXATION OF THE DIGITAL ECONOMY IN INDIA: A CRITICAL ANALYSIS OF EQUALISATION LEVY AND SIGNIFICANT ECONOMIC PRESENCE

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ABSTRACT

The digital economy has fundamentally transformed global commerce, presenting unprecedented challenges to international tax systems designed in the early twentieth century. Traditional taxation frameworks, rooted in the concept of permanent establishment and physical presence, have proven inadequate in capturing tax revenues from digital businesses that can generate substantial income without maintaining significant physical infrastructure. The Equalisation Levy introduced in 2016 and expanded in 2020 together with the Significant Economic Presence doctrine established in 2018 serve as India's main method to solve its multiple challenges according to this dissertation.

The study examines the full scope of both mechanisms which includes their legal framework and their judicial interpretation and their impact on constitutional rights. The research investigates how these two systems operate within the current tax system of India and its compliance with international treaty agreements. The dissertation examines how India handles digital taxation by comparing its methods to those used in France and the United Kingdom and Italy and other countries while studying how OECD digital taxation rules are developing.

The court system uses case law to analyze how digital technology has changed the definition of nexus according to the research. The study addresses significant concerns regarding extraterritoriality, legislative competence, and treaty conflicts that have arisen from these unilateral measures. The dissertation studies the Equalisation Levy elimination which India announced in 2024 together with its shift to the OECD Two-Pillar Solution. The examination of statutory provisions and case law and international comparisons and policy implications enables the dissertation to provide better insights about the necessary evolution of modern tax systems to meet digital economy requirements.

1 The Equalisation Levy was introduced via Chapter VIII of the Finance Act, 2016 and came into force on 1 June 2016. See Finance Act, 2016, ss. 163–172.

2 Significant Economic Presence was inserted into s. 9(1)(i) of the Income-tax Act, 1961 by the Finance Act, 2018, effective from Assessment Year 2019–20.

3 OECD, Addressing the Tax Challenges of the Digital Economy – Action 1: 2015 Final Report (OECD Publishing, 2015).

CHAPTER 1: INTRODUCTION TO DIGITAL TAXATION AND INDIA'S REGULATORY RESPONSE

The evolution of the international economy has seen a profound paradigm shift with the advent of the digital economy, fundamentally changing the manner in which business is done across international boundaries. The likes of Amazon, Google, Facebook, Apple, and many other firms have been valued in trillions through the provision of digital services, typically in jurisdictions where they lack any physical presence but make considerable earnings. In this regard, the international community faces an urgent challenge as to how to ensure that profitable businesses contribute to tax revenues of the jurisdictions in which they operate.

As one of the fastest growing economies in the world with an expanding market for digital services, India found itself at the frontline of the challenge. While international bodies such as the OECD were deliberating over a consensus-based response to the digital taxation problem, India embarked on unilateral taxation measures. The implementation of the Equalisation Levy in 2016 followed by its expansion in 2020 together with SEP provisions adopted in 2018 show India's attempt to impose taxes on foreign businesses that operate in its jurisdiction.

The framework for international taxation rests on the concept of "Permanent Establishment," defined in the early twentieth century by the League of Nations. As per this principle, Permanent Establishment is a fixed place of business through which an enterprise conducts a part or all of its business operations. Such a framework was adequate in the era of physical commerce since a firm operating in a certain jurisdiction would be required to maintain a physical place from where they conducted business.

However, digital commerce differs considerably from traditional commerce in many aspects. One characteristic of the digital economy is mobility. A firm conducting its operations in a particular jurisdiction may choose to employ its workers and house its servers in jurisdictions friendly to corporate tax rates, and yet provide services to clients internationally. Further, digital businesses are intangible in nature; algorithms, IP, data, and branding represent most of a company's worth and can easily be moved across jurisdictions.

In addition to that, modern digital businesses function as platforms where value creation occurs through the aggregation of data on multiple sides of a market. Consequently, the business model employed creates a scenario known as Base Erosion and Profit Shifting (BEPS). Multinationals use complex tax planning strategies to shift the location of their revenues from high-tax jurisdictions to low-tax jurisdictions to reduce the total tax burden on the group. As per OECD reports in 2015, it was calculated that between \$4 billion and \$10 billion worth of

taxes are lost annually as a result of BEPS.

India has become one of the largest consumers of digital services in the world. In 2024, the number of internet users reached 900 million, representing a large market for global technology giants. Indeed, several multinational corporations derive a sizable chunk of their revenues from India, but the contributions towards Indian tax coffers remain relatively insignificant. This situation prompted India to adopt some unilateral tax measures.

India employed two main tools in tackling the issue of taxation in a digital economy. The first instrument used was the Equalisation Levy. It was implemented in two phases. The first implementation of the Equalisation Levy was effective on June 1, 2016, placing a 6% tax on payments made by Indian residents for online advertising services by non-residents. In other words, it was targeting non-resident corporations providing digital advertising services in India, namely Google and Facebook.

The second stage involved the amendment of the Income-tax Act through the Finance Act, 2020, which significantly broadened the scope of the Equalisation Levy to apply to a larger scope of activities in the digital economy. In accordance with this legislation, from April 1, 2020, there is a 2% levy applicable to all "e-commerce supplies or services" from non-residents. The levy applies to any online transaction involving the sale of goods and services, delivery of digital services and even payment of fees for providing data.

Concurrently with the introduction of the broadened Equalisation Levy, the SEP provisions were also included in the Income-tax Act of 1961, pursuant to the Finance Act, 2018. The SEP provisions are an extension of the permanent establishment concept in that the SEP allows India to exercise taxing right if either of the following conditions is met by the non-resident: annual revenues exceeding ₹2 crores or systematic and continuous engagement with 300,000 users or more located in India.

India's tax policies regarding the digital economy were met by criticism from international organisations, especially the U.S. government. Indeed, Section 301 was enacted to investigate whether the Equalisation Levy was discriminatory against American businesses and contrary to the principle of international taxation. Based on the findings, retaliatory tariffs could be imposed on Indian goods exported to the U.S.

However, India announced the intention to phase out its Equalisation Levy. The 2% levy will cease to operate as of August 1, 2024, while the 6% levy will be phased out in 2025 as part of the effort to comply with the OECD Two-Pillar Solution to digital economy taxation.

The present dissertation will focus on conducting an extensive critique of the Indian taxation strategy concerning the digital economy, analysing both the SEP and the Equalisation Levy

instruments. Such an examination will include several perspectives on the measures in question, including statutory interpretation, legal precedent, constitutional implications, comparative analysis of international legislation and policy consideration. The dissertation will examine the history of international taxation rules, identifying the reasons behind the emergence of the concept of Permanent Establishment. It will also critically evaluate the structure of the Equalisation Levy and SEP provisions and analyse judicial rulings related to them. In addition, the dissertation will consider alternative models employed in other countries and assess the measures taken by India vis-a-vis emerging international consensus on digital taxation. Finally, it will consider the implications of unilateral measures from constitutional and policy perspectives and discuss India's move towards compliance with the Two-Pillar Solution.

4 OECD, Base Erosion and Profit Shifting Project: Explanatory Statement (OECD Publishing, 2013). The BEPS project was formally launched in July 2013 following the G8 summit in Northern Ireland.

5 India's internet user base crossed 900 million in 2024, making it the world's second-largest online population. See IAMAI-Kantar, 'Internet in India 2023' Report (2024).

6 The concept of Permanent Establishment (PE) traces its origins to the 1923 League of Nations Report on Double Taxation, authored by Professors Seligman, Stamp, Bruins, and Einaudi.

1.1 THE SCALE OF INDIA'S DIGITAL ECONOMY AND MARKET CONTEXT

India's digital economy has seen tremendous growth over the last decade. In India today, there are over 900 million internet users in 2024, becoming the second largest digital population on earth after China. The huge digital population represents massive opportunities for digital service providers.

The volume of economic activities in India's digital sector is massive. Transactions via ecommerce in India exceeded ₹8 lakh crores in 2023-2024, making it the second largest ecommerce economy in the world. Digital transaction via payments systems reached ₹348 lakh crores, proving the shift towards digital financial transactions. The digital services sector contributed roughly \$190 billion to the country's GDP, comprising software development, information technology consulting, business process outsourcing, and digital content providing.

Despite the tremendous economic activities and value creation by digital firms in India, the contribution of foreign digital companies to India's tax collection was extremely small relative to the value they create. This fact becomes clearer since 2010, after the rapid expansion of the digital economy.

1.2 THE GLOBAL CONTEXT AND INTERNATIONAL RECOGNITION

The introduction of digital taxes in India was not a unilateral action. Since 2016, the issue of digital economy taxation became a serious issue attracting the attention of major powers in the world. The OECD BEPS initiative introduced in 2013 focused on digital economy taxation in Action 1, demonstrating international awareness regarding the need for such taxes. It was not just an Indian issue; rather, it is an inherent problem of every tax jurisdiction around the world. Europe was leading in terms of introducing such tax policies. France introduced the Digital Services Tax in 2019. UK introduced Digital Service Tax in 2020. Austria, Belgium, and many others have done so too. All these actions provided legitimacy and examples for India to follow. India could observe what works, what does not, and which policy creates international disputes.

14 India's e-commerce market exceeded INR 8 lakh crore (approx. USD 96 billion) in FY 2023–24. See IBEF, 'E-commerce Industry in India' Sector Report (2024).

15 India's digital payments reached INR 348 lakh crore in FY 2023–24, reflecting a 90-fold increase over the decade. See Reserve Bank of India, Annual Report 2023–24.

1.3 THE STRUCTURAL INADEQUACY OF PERMANENT ESTABLISHMENT

The basic problem underlying every discussion on digital taxes is that the traditional model of the permanent establishment is inadequate to the needs of the modern digital economy. According to the principle of international tax law established in 1920s, a foreign enterprise can be taxed in another jurisdiction if and only if it has a permanent establishment, meaning its fixed place of business.

This was perfectly valid in 1920s when the principle was established by the League of Nations. To conduct international business, a firm needed some sort of physical infrastructure: office, factory, warehouse, and retail stores. They were tangible, obvious, and easy to prove and track. The location of a factory was enough evidence of where the business is conducted.

1.4 PRE-2016 INTERNATIONAL TAX PLANNING AND REVENUE LOSSES

Prior to India's move in 2016, the existing international tax framework had been causing massive revenue losses for developing nations like India. Digital corporations had been engaging in complex tax planning arrangements to limit their global tax obligations while maximizing profits in jurisdictions with lower taxes.

Typically, the digital corporation would set up an Indian subsidiary to conduct client-facing

functions, including sales, customer service, and marketing, while retaining ownership of the intellectual property that supported the digital platform in low-tax jurisdictions. The Indian subsidiary would then pay the parent or affiliate corporation high amounts as license fees (classified as "service income" or "royalties") for the right to use the technologies, trademarks, and patents. Royalty payments received favourable tax treatment under tax treaties with India, reducing the Indian subsidiary's profits.

Transfer pricing arrangements formed the backbone of tax avoidance by digital companies. The Indian subsidiary and the parent or affiliate company would negotiate arm's length prices for transactions between them. However, given the absence of comparable transactions between unrelated parties (how many third-party companies enter into licensing deals for a billion-dollar platform?), there was flexibility in pricing.

Tax avoidance practices by digital companies have been common in developed economies too. But digital companies were able to exploit gaps in the existing tax framework to an extent that no other company could. Essentially, a digital company could move huge amounts of revenue earned in India out of India legally.

16 France enacted the Digital Services Tax (taxe sur les services numériques) via Loi n° 2019-759 of 24 July 2019, levying 3% on revenues from digital interface and targeted advertising services.

17 The League of Nations Model Convention of 1927 and subsequent 1928 Model Treaties first codified the PE concept. See League of Nations, 'Draft Convention for the Prevention of Double Taxation' (1927).

1.5 INDIA'S FISCAL NEEDS AND PUBLIC SECTOR INVESTMENTS

India's decision to impose digital taxation measures was motivated by fiscal realities confronting the Indian state. In order to meet various needs for investments in infrastructure and social sectors, India requires large volumes of tax revenues.

Infrastructure projects include building new roads, railways, ports, airports, and other modes of transportation. Investments in healthcare, education, poverty eradication schemes, food security, environmental conservation, and energy infrastructure are all essential. Each of these projects and programs requires funding.

Funding is possible only through revenues generated by taxation. Foreign digital companies operating in India can evade paying their tax liabilities using tax avoidance measures, resulting in lost tax revenues. Unlike hypothetical tax revenues that may not be realized, these were real revenues flowing into India due to digital business but being diverted out of India using legitimate yet sophisticated tax planning strategies.

The discrepancy in growth between revenues from digital businesses and the economic value

created by these businesses in India between 2010 and 2016 was very clear. This was not an issue of inefficiency or under development in India. India has already emerged as a major consumer market where large sums of economic value were generated by these businesses. Rather, this issue arose out of the inadequacy of the existing tax framework to extract value from digital businesses.

Estimates indicate that large sums of revenue were being lost each year through profit shifting. Exact figures are hard to quantify (they reflect lost revenue) but conservative estimates pointed to losses amounting to thousands of crores annually. Such losses could not be tolerated by the Indian government given its development needs.

18 In FY 2019–20, Google India's reported taxable income was a fraction of the estimated INR 12,000+ crore in advertising revenues attributable to Indian users, illustrating the PE mismatch. See MCA filings, Google India Pvt. Ltd., FY 2019–20.

19 Transfer pricing rules in India are governed by ss. 92–92F of the Income-tax Act, 1961, read with the Transfer Pricing Rules under the Income-tax Rules, 1962.

20 The arm's length principle requires that intercompany transaction prices mirror those that independent entities would agree upon in comparable circumstances. See OECD Transfer Pricing Guidelines (2022), para. 1.1.

1.6 INDIA'S UNILATERAL SOLUTION TO A COMPLEX ISSUE

When India imposed the Equalisation Levy in 2016, it made the conscious decision to take unilateral action despite knowing that this would invite criticism from the international community. It reflected the urgent need for tax revenues on one hand and the realization that reaching international consensus takes time.

While OECD-BEPS had prioritized digital taxation, the process of achieving consensus would involve discussions among over 140 countries, each with differing positions. For countries whose national interests would be adversely affected by the introduction of digital taxation (mainly countries whose digital giants are exempted from paying taxes outside the US), the status quo would suit them. Countries like India suffering from tax losses would favor changes. OECD had published recommendations and reports regarding the implementation of BEPS during the period of 2013-2015. But the actual implementation of recommendations, through amendments to tax treaties, would still take decades because of the necessity to negotiate treaties with over 140 countries. India's political leadership felt it was better to take a unilateral solution to address the immediate problem.

What was needed was a practical solution – take a unilateral step to solve a pressing fiscal problem while simultaneously participating in international processes designed to find a multilateral solution. That is what India did – the move succeeded on both fronts.

21 India's gross tax-to-GDP ratio stood at approximately 11.6% in FY 2023–24, significantly below the OECD average of

1.7 THE TWO-PRONGED STRATEGY: TRANSACTION TAX AND NEXUS EXPANSION

India adopted an innovative strategy of addressing the issue of taxing digital companies by employing a combination of two measures. On the one hand, India applied the concept of Equalisation Levy, a tax levied on a particular type of transactions. On the other hand, India employed the concept of Significant Economic Presence as a fundamental revision of the existing nexus model.

While the Equalisation Levy was essentially a transaction-based tax, the Significant Economic Presence was a fundamentally new approach to taxing jurisdiction. It asked not whether there was any physical presence of a company within the territory of India, but rather whether there was a significant economic connection to India. Such a fundamental paradigm change was truly revolutionary.

In summary, these two approaches to addressing the problem of taxing digital business operations differed both in their aims and the way they functioned. In particular, the first method was relatively simple and straightforward – it was a tax calculated as a percentage of gross revenues from certain types of transactions. The second one, on the other hand, concerned establishing a basis for applying general income tax on the income attributed to such a nexus. The fact that both of these measures were employed is indicative of the profound insight into the complexity of digital taxation that the Indian government had. Firstly, Equalisation Levy provided a quick solution that allowed collecting the money from the digital giants which would be politically convenient. Secondly, Significant Economic Presence provided the means to address the long-term problem.

Namely, while Equalisation Levy provided an immediate solution to the problem of collecting money from high-profile firms, the Significant Economic Presence was an attempt to build up the legal foundation for taxing digital operations comprehensively. Therefore, when a company had a significant economic presence in India, India had the right to levy taxes on its income according to the established tax laws.

22 As of 2024, 145 countries and jurisdictions participate in the OECD/G20 Inclusive Framework on BEPS. See OECD, 'Inclusive Framework on BEPS: Progress Report' (2024).

CHAPTER 2: EVOLUTION OF INTERNATIONAL TAXATION PRINCIPLES

In order to comprehend the issues relating to digital taxation, we need to take a brief look at how international taxation laws came into being and developed. International taxation law has developed over more than a century. We must consider how it has evolved to understand not just what we have accomplished under international tax law and the problems that we are trying to solve by adopting new tax treaties. We should be aware of its basic limitations that come to light when faced with the problems of the digital era.

The origins of modern international tax cooperation lay in the problem of double taxation that occurred during the intensification of international trade in the nineteenth century. As capital started moving across national borders, multinational companies formed, and the problem became quite pressing. One could end up with being taxed both by a state where income was earned and the state where one resided.

However, it was after the Great War that modern international taxation law came to life. The League of Nations, concerned about international peace and cooperation, realized the necessity to create economic integration and attract investments to finance post-war reconstruction. The 1923 Report on Double Taxation Prepared by Experts Under the Auspices of the Financial Committee of the League of Nations and Signed by Professor Edwin R.A. Seligman et al was particularly important in this regard.

Among other things, this document laid down the following basic principles of international taxation: 1. The report defined the distinction between two main bases of taxation - the residence base and the source base of taxation; the former meant that a resident's tax liability extends to all income from whatever sources derived, whereas in the latter case a tax would be levied in the source country on the source of income; 2. When there was a conflict between residence and source, taxation in the source state would only occur if the foreign person had a "real and substantial" connection with the source state; 3. The concept of a Permanent Establishment – a fixed place of business through which business operations were conducted – was introduced to define the minimum standard for the connection.

23 The OECD Model Tax Convention on Income and on Capital was first published in 1963 and has been updated periodically; the most recent update is the 2017 version. See OECD Model Tax Convention (2017).

24 Edwin R.A. Seligman et al., 'Report on Double Taxation Submitted to the Financial Committee of the League of Nations' (Document E.F.S.73.F.19, Geneva, 1923).

The principles established by this report took account of the economic reality of those times.

Being active in foreign markets back then required having a physical presence. To distribute goods, one needed warehouses and salesrooms. Factories and plants were required to produce. Employees were necessary to carry out service operations. Hence, tying taxation to the concept of a Permanent Establishment proved justified.

Later on, the work of the League of Nations on international taxation issues was continued by the UN. Still, the Organization for Economic Co-operation and Development (the OECD), founded in 1961, became the leading international institution dealing with international tax issues. Based on the work of the UN, the OECD worked towards creating and perfecting the principles that would be included in the OECD Model Tax Convention that now serves as the model for tax agreements between states.

Accordingly, this document further developed the concept of Permanent Establishment. According to Art. 5 of the Convention: "A permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on." The provision provides further clarifications about the cases where an entity is not considered as a Permanent Establishment.

Thus, the importance of knowing the concept of Permanent Establishment cannot be overstated since the whole debate about digital taxation involves determining whether or not this principle is still applicable. The concept is purely nexus-based: only if a foreign entity has sufficient ties to the country in question does the latter gain the right to tax profits obtained by the former. Thus, a PE is the jurisdictional predicate of taxation authority.

First of all, for a foreign company to have a permanent establishment in a state, there must be some "place of business." There should be buildings – offices, workshops, factories, etc. Next, it must be "fixed." That is, it must be stationary and not mobile. Finally, the business of the enterprise must be "wholly or partly carried on" through this place.

25 Article 5(1) of the OECD Model Tax Convention (2017) defines PE as 'a fixed place of business through which the business of an enterprise is wholly or partly carried on.'

For a major part of the last century, the PE criterion proved effective. A company wanting to expand internationally had to set up an office, recruit employees in another country and do whatever else was required to make its profits. The fact that the office existed made the company visible and hence allowed enforcing taxes.

However, as the significance of services in international trade grew, it was necessary to revise the concept of a PE since the traditional PE definition related to industrial and commercial enterprises. What happens if a consultancy agency serves a client from abroad? What if an

architecture agency carries out a project in another country?

The OECD Convention addresses these questions in introducing the concepts of a "Service PE" and "Dependent Agent PE." If a non-resident conducts service activities in the State where it operates continuously beyond a certain period of time, the site of performance would be treated as a PE. Another example: the agent regularly represents the enterprise and concludes business deals on its behalf.

Still, despite its elasticity and the modifications it underwent throughout many years, the Permanent Establishment concept presupposes a presence in a country and people working there to conduct business. It does not seem to work in the digital age. Businesses can operate internationally using servers located elsewhere. They can employ people located anywhere outside the territory where their customers are situated. And all these operations require no physical presence in the territory in question.

26 The UN Model Double Taxation Convention between Developed and Developing Countries (2021 update) adopts a broader PE concept and shorter threshold periods than the OECD Model.

27 The 183-day service PE threshold is found in Art. 5(3)(b) of the UN Model Tax Convention (2021) and is adopted in many of India's bilateral tax treaties.

2.1 THE HISTORICAL DEVELOPMENT OF INTERNATIONAL TAXATION

An analysis of current international tax problems needs to consider how they have evolved throughout time. Prior to the formal establishment of international tax principles, there was no coordination in taxing foreign individuals and entities. In other words, the income of a businessman active in several territories could be taxable in those territories without any coherent rule regarding which of them could tax first or provide relief from double taxation.

The classical mercantilist regime was unilateral in nature. Each country tried to maximize its taxing power regardless of the taxation policy adopted by others. As the result of this lack of coordination, tensions emerged and prevented the flourishing of international commerce. The taxpayer could face the problem of paying multiple taxes related to the same income with no relief for the tax levied by the foreign nation.

As cross-border trade increased dramatically in the nineteenth century, the inefficiency of the existing approach to international tax matters came to the surface. In particular, countries recognized that taxing foreign-source income too heavily would make little sense because of the negative impact on investments from abroad and foreign engagements.

2.2 THE LEAGUE OF NATIONS AND THE RISE OF INTERNATIONAL PRINCIPLES

The League of Nations, created after the end of World War I in order to promote peace in the international community, understood the importance of integrating the economies and therefore needed a mechanism of allocating taxing rights among states and avoiding international tax disputes. In 1921, it appointed a committee to review and analyze the emerging issue of double taxation.

Edwin Seligman and other economists participated in this work that resulted in the 1923 publication "Report on Double Taxation Submitted to the Financial Committee of the League of Nations." Several basic principles outlined in this document have governed the realm of international taxation for decades to come.

First, the report suggested differentiating between the two grounds for taxing foreign source income. These included, respectively, the country of residence and the country of source. While the former one had the taxing right on its resident taxpayers' worldwide income, the latter one had the taxing right on the income generated within the territory.

Second, the report argued that in case of the simultaneous existence of the residence and source states, preference in taxing rights should be granted to the latter. The reason is that income is always directly linked to its source and depends on the provision of infrastructure and other services within it.

Third, the report emphasized the limited character of taxing rights of the source state. In other words, the source state was supposed to impose taxes only on income that was sufficiently connected with that jurisdiction. The source state's taxing right depended on the presence of a "permanent establishment," which referred to a "fixed place of business through which the business of an enterprise is wholly or partly carried on."

28 By 2024 there were approximately 3,000 bilateral tax treaties in force globally, the vast majority modelled on the OECD Convention. See IBFD, 'Tax Treaty Monitor' (2024).

2.3 THE PERMANENT ESTABLISHMENT CONCEPT

The key features of the concept introduced in 1923 were the following: (i) there had to be a place of business. Such a place included an office, workshop, factory, warehouse, or similar premises; (ii) such place had to be fixed and have a relatively long-lasting character; and (iii) the business of the enterprise had to be fully or partially conducted through that place of business.

These features of the definition helped effectively deal with the problem of international

taxation for several decades. In fact, the PE concept worked properly until the middle of the twentieth century. For any company willing to engage in business in a country, establishing a place of business there was necessary.

29 OECD, 'Electronic Commerce: Taxation Framework Conditions' (Ottawa Taxation Framework, 1998); OECD, 'Are the Current Treaty Rules for Taxing Business Profits Appropriate for E-Commerce?' (2003); OECD, BEPS Action 1 Final Report (2015).

2.4 REFINEMENT OF THE PE CONCEPT: THE SERVICE PE CONCEPT

Starting from the middle of the twentieth century, service sector businesses started to play a crucial role in the economy. In other words, the definition of a PE had to be refined to take into consideration the peculiarities of that kind of enterprises. The classic definition of PE referred to manufacturing or trading businesses.

A professional, legal, architectural, or some other consultant may provide services in a certain country and generate income there without maintaining an office or other PE related premises. To resolve this problem, the OECD developed the so-called service PE concept.

Under this approach, the place of business of a service provider in a foreign country would arise when the following conditions met: (i) the provider of services was engaged in business activity in the host country and (ii) such services were performed in the country concerned for more than a certain period of time, say, for 183 days per year.

This approach proved rather effective as a step towards improvement of the initial PE definition. The "place of business" in this context meant the actual location of the service provider. Therefore, a consultant working in India for six months and offering services there would have a PE in India. Still, the service PE concept had critical flaws: in particular, it required the service provider to perform services physically within the foreign country. An enterprise providing its services completely online would not have a PE.

30 The digital economy's capital-light nature is discussed in detail in OECD, BEPS Action 1 Final Report (2015), Chapter 3, 'Identifying Opportunities for BEPS in the Digital Economy'.

2.5 THE OECD MODEL TREATY

After the World War II, the responsibility for further developing principles of international tax relations shifted from the United Nations to the OECD. Starting from the second half of the twentieth century, the organization has been doing pioneering work in this field, creating a technically elaborate treaty model. The current OECD Model Treaty has been in effect since

1963. Its Article 5 defines a permanent establishment as follows: "A permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on."

In addition to defining the term of PE, this article provides a great number of examples of situations constituting a PE and situations not constituting a PE. In addition, the article mentions the notion of a dependent agent PE that arises if an agent authorized to conclude contracts on behalf of an enterprise exists. By the year of 2024, there existed approximately 3,000 bilateral tax treaties, most of them based on the OECD Model Treaty.

31 Multi-sided platform economics was formally theorised by Rochet & Tirole, 'Platform Competition in Two-Sided Markets' (2003) 1(4) Journal of the European Economic Association 990.

2.6 THE INADEQUACY BECOMES APPARENT

By the early 2000s, with the growth of the digital economy, it had become increasingly clear how insufficient the PE doctrine had become. A software company could create complex software products in one jurisdiction and use servers located in another jurisdiction to license the software to customers all around the world. In many cases, such a company would have no need to set up a physical presence in any of the jurisdictions where its customers resided. Yet, value was generated within the software which benefited the customers residing in these jurisdictions.

The very premise of PE was incapable of solving this problem because it assumed that business is done in one physical location and that business is done by people that are physically present there. The digital economy completely challenged both of these premises.

Indeed, even the OECD was already taking note of this problem. Three different reports, released in 1998, 2003, and 2015 respectively, focused on issues related to digital trade. The latest 2015 report on Action 1 of BEPS made clear that the current PE concept is incapable of addressing digital taxation and that supplementary solutions will be needed. This development from acknowledging PE's adequacy in 1923 to recognizing its insufficiency in 2015 is critical for understanding the development of the Equalisation Levy and SEP doctrines of India. They were far from revolutionary changes but rather quite reasonable evolutions that other countries were working on.

CHAPTER 3: DIGITAL ECONOMY AND TAX CHALLENGES

The rise of the digital economy as a driving force behind global commerce poses serious problems for the international taxation system. Unlike previous instances of technological

advancement that had to be integrated into the existing system of taxation through amendments, the current situation necessitates a complete paradigm shift because the characteristics of the digital economy are fundamentally different from those assumed by the traditional tax system. First and foremost, the digital economy is very capital-light. While a manufacturing enterprise would require investments in factories and heavy equipment as well as substantial physical infrastructure to operate, the capital-light nature of digital companies means that a massive scale can be achieved with little money invested in tangible assets. Google processes billions of searches per day in a few data centers. Amazon serves global customers from selected warehouses. Netflix delivers videos to millions of subscribers through limited infrastructure. Since digital enterprises can operate without establishing physical infrastructure and presence, they are not subject to the nexus principle and hence cannot be taxed under the old framework. Secondly, the digital economy relies heavily on intangible assets such as patents, copyrights, software code, algorithms, brand value, and the accumulation of information and user generated data. A major part of the value created by these companies is intangible and is produced by the IP that digital enterprises develop and store on their servers. The intangible nature of the product makes profit shifting extremely easy as valuable income generating IP can be easily moved to a different jurisdiction to avoid taxes.

Thirdly, many digital companies operate platforms, often multi-sided platforms, where two or more types of participants interact. The platforms include users, businesses, or a combination of the two. Facebook connects billions of users, Uber connects drivers with customers, while Amazon connects buyers with sellers. Multi-sided platforms do not have their source of value in a single jurisdiction – it emerges in the interactions of participants from different countries. Finally, digital enterprises are very mobile. The company can move its assets, servers, employees, and IP to another jurisdiction with relative ease, making tax planning easier than ever before and further reducing the effectiveness of nexus and permanent establishment principles.

Base Erosion and Profit Shifting (BEPS) refers to the methods employed by multinational enterprises to minimize their overall tax bill by relocating profits from high-tax to low-tax jurisdictions. Though some form of profit shifting has always been a practice in international business, the characteristics of the digital economy make the implementation of BEPS easier at a much bigger scale. According to the OECD's 2015 report on Action 1 of the BEPS project, globally each year countries miss out on revenues amounting to \$4 billion–\$10 billion due to BEPS.

The strategies of BEPS include transfer pricing (charging excessive fees for transfers of IP or

services between related parties), interest deduction rules abuse (structuring intercompany financing such that the high-tax jurisdiction records a high interest deduction), hybrid mismatches (creating a double non-taxation of transactions by defining them in accordance with two jurisdictions' rules), and intellectual property migration (relocating valuable IP from high-tax to low-tax jurisdiction prior to its becoming highly valuable).

As far as India goes, the loss of tax revenue from digital companies' operations and BEPS activities has serious fiscal consequences. India, being a developing country, needs substantial public investment in its development. These investments require funds which should come from tax revenues. By failing to properly collect taxes from foreign digital companies which conduct operations in India, the country misses out on considerable amounts of money.

Furthermore, BEPS creates an imbalance between taxing traditional enterprises and digital companies. The former need to establish their presence in India, pay for physical infrastructure, employ people who they should pay a salary to – and thus incur expenses – while the latter earn a similar profit without establishing their presence or spending almost anything on operations in India. Consequently, the former are taxed, while the latter pay much less taxes.

According to traditional rules of international taxation, a source country has a taxing right only where an enterprise has established a permanent establishment there. Since a digital company with no physical presence in India has no permanent establishment, the traditional framework does not grant India a right to tax the company's profits even if the latter derives solely from operations within the jurisdiction.

Suppose there is an enterprise that provides a platform for advertising services. Advertisers in India can use this platform to reach their customers with minimal expenses and maximum efficiency. The platform generates revenues in India of billions of rupees per year. Yet since the enterprise maintains no permanent establishment in India, according to the traditional international tax framework, the company pays no Indian taxes. That was the reason for India coming up with equalization levy and the SEP.

By the 2010s, there was recognition from the developed and developing countries that the current international tax framework was outdated with regard to taxing digital commerce. As a response, the OECD started its BEPS project with an acknowledgment that the international tax framework needed to be changed to address the emerging issues of taxing digital business.

32 On data as economic input and its tax implications, see OECD, 'Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Tax Policy Issues' (2020), and OECD, BEPS Action 1 Final Report (2015), Chapter 2.

3.1 THE DISTINCTIVE CHARACTERISTICS OF DIGITAL BUSINESS MODELS

The unique nature of digital businesses has been a significant reason behind why traditional tax principles have failed to cope with them. Digital businesses differ profoundly from traditional businesses in several aspects, which has important implications for taxation.

First of all, digital businesses enjoy a much greater degree of capital-lightness compared to traditional businesses. A manufacturing company needs a significant amount of capital to purchase equipment, build factories, and buy other physical assets needed to conduct its operations. In the case of a retail business, significant investments are needed in opening stores and building warehouses. The hotel business also requires substantial investments into its physical facilities. On the contrary, a digital business enjoys almost unlimited scalability with virtually zero investments.

Take Google, the most valuable company on Earth at the moment of writing this text. Google doesn't need much in terms of physical investments: it can produce massive amounts of goods or services with the help of a handful of data centers scattered across the globe where powerful computers process search queries. Facebook, one of the leading social networks on Earth, connects billions of people from around the world. The platform itself can work with the help of several servers located in a few locations. Likewise, Amazon connects millions of sellers and buyers using only a small number of warehouses where products are delivered from sellers to buyers.

The lightness of capital required to conduct digital business creates special opportunities for tax planning. Since there are no expensive physical facilities involved in the process of production of goods or services provided by a digital company, the company can provide its services to the residents of a jurisdiction without setting up a physical presence and, hence, without creating a permanent establishment and subjecting its profits to tax in that jurisdiction. In the case of a traditional business, such as manufacturing or retail, it would be necessary to open a store or factory, and the mere existence of such a facility in a jurisdiction establishes a permanent establishment there.

The second characteristic peculiar to digital businesses is the reliance on intangibles. For digital businesses, patents, copyrights, software, intellectual property, brand value, customer relationships, data – all these intangibles make up the economic value. Indeed, most digital businesses do not produce anything tangible at all – all they produce is services rendered to the clients.

As a result of heavy reliance on intangible inputs, digital businesses have access to an extremely efficient and effective tool for tax avoidance called profit shifting. Since all these intangibles are easy to shift to another jurisdiction without much effort, it is possible to allocate income-producing assets in low-tax jurisdictions. Once those assets are located there, it becomes possible to allocate income produced there using intercompany payments.

Finally, the digital economy has unique features of network effect and multi-sidedness. Many digital companies provide their users with opportunities to interact within their platform and with each other. The value of a platform increases as the number of participants interacting with each other increases exponentially. For instance, Facebook makes money off its users by connecting them to each other and to advertisers. Uber benefits from connecting its two sides – drivers and passengers.

Multi-sided platforms face a specific challenge when it comes to taxing. When a platform brings value to its customers, the source of this value can hardly be pinpointed to one jurisdiction since the value originates from the interaction of participants from different jurisdictions. For instance, Facebook benefits from the connection of its users who are distributed worldwide. Thus, it is impossible to say in which country the value created by Facebook comes from since it is a result of global interactions.

However, taxation by definition relies on the notion of jurisdiction. Income needs to be allocated between jurisdictions in order to tax this income appropriately. In the case of a multi-sided platform, this allocation is impossible because of lack of any rational criteria for doing so.

3.2 DATA AS A UNIQUE ECONOMIC INPUT AND OUTPUT

A unique feature of digital commerce is the role of data. Data is both a critical element in the production of digital products or services and a product itself. Personal data collected from users is analyzed to improve products and generate additional income. Some companies sell aggregated and anonymized insights generated during the processing of data directly to third parties. Other companies use data for product improvement or ad targeting. Finally, other companies use data for their internal research and development purposes.

How should one treat the generation of revenue using data for tax purposes? Is India entitled to taxing the value generated from data collected from Indians or from their transactions made using an online platform? Should the sale of aggregated insights obtained from Indian data be taxed in India as income generated from an Indian source?

Is data gathering from a client's computer a taxable transaction? Does the payment for a digital

service imply that users pay data as its consideration? All these questions show that digital commerce generates certain forms of value creation that traditional tax principles fail to regulate properly. Data did not appear as an element of economic activity at the beginning of the twentieth century when modern tax principles started to develop. Yet, in contemporary digital economy, data appears as the most valuable asset ever invented by mankind. However, how should it be taxed?

3.3 THE STRATEGIC VULNERABILITY TO TRANSFER PRICING MANIPULATION

As was already mentioned before, the value of a digital company consists of intangibles such as brand name, intellectual property rights, software. Intangible value makes digital businesses especially susceptible to transfer pricing manipulations. Transfer price stands for the price charged for transactions between related entities. According to international principles, transfer prices should be determined on an arm's length basis – the same prices should be applied if these entities were unrelated.

When it comes to determining the correct price for a digital product or service sold by the parent entity to a subsidiary, it becomes especially difficult. Imagine that a subsidiary works in India collecting payments from Indian clients for the delivery of products on behalf of a parent company owning technology in the USA. What arm's length price should the parent charge for granting the subsidiary the rights to use its technology?

When the transfer price is low (for example, a nominal fee charged for using technology), then all the profits will remain with the subsidiary, and these profits should be taxed in India. However, when the transfer price is high (say, a percentage of total revenues earned by the subsidiary in India), then most profits will be received by the parent in the form of royalties. Finding out the right arm's length price becomes difficult due to the absence of comparable transactions between unrelated parties involving such assets. How many unrelated parties negotiate licenses for such valuable platforms?

Thus, digital companies have a large opportunity to engage in transfer pricing manipulations by choosing the right price that will allocate profits between jurisdictions. Tax authorities find it difficult to prove otherwise.

CHAPTER 4: EQUALISATION LEVY IN INDIA

Among numerous approaches developed across the world, one can highlight the Equalisation Levy implemented in India in the year 2016, revised in 2020. Indeed, the Equalisation Levy remains one of the most significant and interesting approaches to closing the gap between the value created by digital business in India and the taxes paid by such companies.

The introduction of the Equalisation Levy took place in accordance with provisions of the Finance Act, 2016. The relevant tax came into force from 1st June, 2016. As noted earlier, the initial concept of the Equalisation Levy appeared to be rather narrow and was limited exclusively to online advertisements. For this reason, the relevant tax was called "Google Tax" as Google, which enjoyed great popularity in India and earned millions from advertising, was considered the major target of the tax. The provisions related to Equalisation Levy were incorporated into Chapter X- A of Income-tax Act, 1961.

Specifically, the initial concept of the Equalisation Levy referred to "online advertisement services". According to the statute, the levy applied to payment made to the non-resident for providing digital advertising space or related services. In general, the levy was equal to 6% of the gross amount of payments made for online advertisement services. However, the tax applied to the online advertisements only if the yearly amount of payments exceeded the sum of one lakh rupees (approximately \$1,200). The obligation to deduct the tax was vested to Indian residents/Indian companies who paid money to foreigners for online advertisement services.

Nevertheless, realizing that the Equalisation Levy cannot solve the problem of taxing the digital sector properly, the Government of India decided to revise the tax significantly by introducing the Finance Act, 2020. Namely, according to the Act, the Equalisation Levy was applied to "e-commerce supply of goods or provision of services" as opposed to online advertisements. In addition to digital advertising, the tax started to apply to online retail, online sales services, etc.

33 Chapter VIII of the Finance Act, 2016 (ss. 163–172) contains the operative Equalisation Levy provisions, while Chapter X-A of the Income-tax Act, 1961 houses related income-tax exemptions.

34 The 6% levy applied only where aggregate consideration exceeded INR 1 lakh in a financial year. Finance Act, 2016, s. 165(1) proviso.

35 Section 10(50) of the Income-tax Act, 1961 (inserted by Finance Act, 2016) exempts from income-tax any income subject to the Equalisation Levy, preventing juridical double taxation.

Statutory definition of "e-commerce supply of goods or provision of services" includes: supply of goods or services, excluding supply made by a person having a permanent establishment in India, supply of goods or services by a non-resident via electronic network, as well as sale of

advertisement targeting people living in India, facilitation of online purchase or sale of goods or services, sale of information collected from the residents of India and provision of cloud services or digital platform services.

While the rate of the Equalisation Levy was reduced to 2% of the gross amount of money paid for the above mentioned services, the threshold for applicability was increased to two crores annually. Thus, the non-residents with annual revenues from e-commerce less than two crores did not need to pay the Equalisation Levy.

However, the 2020 revision caused certain issues concerning proper interpretation of the Equalisation Levy as the scope of its application seemed to be rather ambiguous. Namely, the question arose what should be understood as e-commerce supply or services since the term may refer to almost any business engaged in online operations.

It is important to note that Equalisation Levy was designed to serve as an additional tax imposed on transactional revenues in addition to income-tax. In order to avoid double taxation, the government added to Section 10(5) of the Income-tax Act that all revenues on which the Equalisation Levy had been paid were exempt from income tax. In general, it means that if a certain transaction falls under the concept of Equalisation Levy, such transaction will not be subjected to income tax.

The experience of applying Equalisation Levy showed that several problems existed in regard to the relevant tax. Namely, firstly, it was difficult to define the scope of the levy due to insufficient explanation. Specifically, what should be understood as e-commerce supply of goods or services? Is it necessary to consider the presence of intermediaries?

The Equalisation Levy is characterized by several limitations which should also be considered as weaknesses. Firstly, it refers only to non-residents. Secondly, the tax applies at a fixed rate (2%) regardless of the profitability of a certain company. Thirdly, the amount of money that a certain firm has to earn to become a target of the tax seems to be rather large (two crores annually). Fourthly, Equalisation Levy may be criticized as discriminatory since it affects non-residents exclusively.

Finally, on July 18, 2023, India adopted a resolution regarding the phase out of the Equalisation Levy. Namely, 2% equalization levy on supply of e-commerce was abolished as from 1st of August, 2024. Also, the 6% equalization levy on online advertisements was planned to be abolished as of April 1, 2025. It can be explained by the country's commitment to the OECD's Two-pillar Solution.

36 The Equalisation Levy was characterised as a 'gross receipts tax' rather than an income tax, keeping it outside the scope of India's Double Taxation Avoidance Agreements. See Shende, P., 'India's Equalisation Levy: Constitutional and Treaty

4.1 THE LEGISLATIVE DESIGN AND POLICY RATIONALE

Thus, when introducing the Equalisation Levy, the Indian government chose to adopt an excessively narrow approach. Rather than developing a comprehensive digital tax system, the government chose a narrowly tailored tax system targeting one aspect of the digital market – advertising services provided online by non- resident companies to Indian residents.

There were several reasons for this approach. Firstly, the narrow scope of this levy provided for a simple and understandable jurisdictional basis. Clearly, an ad delivered to the screen of an Indian person was a transaction taking place in India. The customer of this transaction was an Indian citizen, hence the transaction took place in Indian tax jurisdiction.

Secondly, this tax addressed the most prominent and offensive example of tax abuse of nonresident companies. Namely, this tax targeted companies like Google, which earned billions of rupees in annual income through the provision of advertisement services, but were paying very little in Indian taxes due to aggressive transfer pricing. In any case, despite the lack of income tax liability, such companies would still have to pay something in levies, which would contribute to the state budget.

Thirdly, this measure was administratively easier. Determining what constitutes an online advertising service and collecting taxes in connection to that service proved simpler than developing a more complex scheme for taxing other forms of digital services.

4.2 THE OPERATIONAL MECHANICS AND COMPLIANCE FRAMEWORK

As mentioned above, the first Equalisation Levy involved the use of a withholding mechanism. According to it, an Indian company buying online advertisement services from a non-resident company had to make a 6% withholding from this payment.

Such a mechanism proved quite beneficial from the point of view of practical administration of the tax. It became unnecessary to audit the foreign companies and seek payment from them. Instead, it became possible to audit local companies, which in any case would cooperate and provide the necessary data since withholding was built into the process of payments.

At the same time, the introduction of the withholding mechanism also created a compliance issue. Indeed, an Indian company was required to determine whether or not the payment involved "online advertising services" defined under the Act. The company needed to develop

the appropriate training programs and accounting systems for this purpose. In addition, the company had to keep accurate records and remit the withheld money to the government. Failure to do so incurred penalties for the Indian company.

4.3 THE EXPANSION AND REFINEMENT PROCESS

As of 2019, it became evident that the above-discussed Equalisation Levy proved insufficient to address the issue of digital taxation comprehensively. Several problems could be identified in relation to it. Firstly, it applied only to online advertising services. In fact, Google and other big technology companies were deriving large sums from other types of activities like search services or cloud computing. Amazon derived its revenues from its online marketplace services. Netflix derived its revenues from delivering video content online. Digital payment providers earned from providing financial transaction services.

Secondly, the definitions of the taxable activities and applicable revenue levels allowed companies to easily avoid the tax. Indeed, it may be claimed that there was a particular activity that fell outside the scope of online advertising services.

Thirdly, a 6% levy on the gross income was considered excessive. Though companies should definitely pay taxes on the revenue from advertisements, a tax of 6% regardless of the profitability of the company is too much. Indeed, a 10%-profitable company will pay a tax of 6% on gross revenues, thus reducing its net profitability to only 4%.

Fourthly, the tax applied only to non-residents. This created certain issues with respect to non-discrimination principle under India's tax treaties.

All of the above-discussed problems were addressed by the Finance Act, 2020. The scope was significantly widened, and instead of the term "online advertising services," the concept of "e-commerce supply of goods or provision of services" was used. Such a change greatly expanded the list of taxed activities. They now covered such things as digital retail transactions, digital services provision, data sales, cloud services, and any other ecommerce activities.

The second significant amendment was a reduction of the tax level. As noted above, 6% tax seemed excessive, so the legislature reduced the tax rate to 2%. Such a tax appeared to be comparable with standard sales taxes in developed countries. The third amendment involved an increase in the annual revenue threshold, which was raised from 1 lakh to 2 crores per annum. Such a change ensured that the tax burden shifted from small providers of digital services onto significant players.

37 Finance Act, 2020, s. 153 substituted a new clause (1B) in the Finance Act, 2016, expanding the levy to 'e-commerce supply of goods or provision of services' effective 1 April 2020.

38 USTR, 'Report on India's Digital Services Tax' (2021) concluded that the 2% EL on e-commerce was 'unreasonable or discriminatory' and 'burdens or restricts U.S. commerce' within the meaning of s. 301 of the Trade Act of 1974.

39 The US Section 301 investigation into France's DST similarly concluded it was discriminatory; retaliatory tariffs of 25% on French goods were proposed but ultimately suspended pending OECD negotiations. See USTR, 'France DST Section 301 Report' (2020).

4.4 THE INTERNATIONAL TRADE AND DISPUTE DIMENSIONS

The Equalisation Levy became a matter of international concern as soon as the 2020 version was introduced. Indeed, India's major trading partner – the United States – viewed it as discriminatory towards U.S.-based firms. For this reason, the USTR initiated a Section 301 investigation related to the Equalisation Levy. It resulted in the conclusion that the tax was discriminatory and thus, it violated the principles of international trade. As a result, USTR threatened retaliatory tariffs on affected Indian products exported to the USA.

Obviously, this threatened a real economic loss for Indian firms, since it exports significant amounts of automobile parts, pharmaceuticals, agricultural products, textiles, and clothing items to America. Similar tensions arose in connection with France, another country that had introduced the Digital Services Tax in 2019. The US conducted a Section 301 investigation and declared this tax to be discriminatory. As a result, USTR threatened retaliatory tariffs on French products.

In this context, it becomes clear why countries started reconsidering their policies with regard to introducing unilateral digital services taxes.

4.5 THE PHASE-OUT DECISION AND TRANSITION STRATEGY

Eventually, in 2024, the Indian government announced that it would phase out the use of digital taxation measures, including Equalisation Levy. Thus, starting from August 1, 2024, the 2% tax on e-commerce supplies was abolished. In turn, as of April 1, 2025, the 6% levy on digital advertisement was abolished.

The phase-out of this measure was caused by its disadvantages outweighing its benefits. Among the disadvantages was international friction, tensions and threats of retaliation from the side of India's trading partners, uncertainties created by this measure, and difficulties in treaty compliance. The benefits included additional tax revenue and the declaration of India's rights over taxing of the digital economy.

Nevertheless, the government concluded that the above benefits could be more successfully obtained through application of the OECD's Two-Pillar Solution in which 140+ countries

participate. In general, the phase-out became possible because unilateral measures became increasingly difficult to justify once the problem of digital taxation attracted global attention.

40 Finance (No. 2) Act, 2024, s. 110 abolished the 2% Equalisation Levy on e-commerce supplies effective 1 August 2024. The 6% advertising levy ceased from 1 April 2025.

CHAPTER 5: SIGNIFICANT ECONOMIC PRESENCE AND NEXUS REDEFINITION

Whereas Equalisation Levy focused on tax for specific transactions, Significant Economic Presence or "SEP" is an attempt to change the very nature of the nexus principle. While Equalisation Levy can be said to have introduced a transactional tax, SEP tries to introduce a new ground for income taxation, i.e., Significant Economic Presence. The Significant Economic Presence Doctrine provides grounds for taxing the income of a foreign person under the Indian income-tax rules.

Significant Economic Presence (SEP) was defined by the Finance Act, 2018 and inserted into Section 9(1)(i) of the Income Tax Act, 1961. As per the relevant section, the income earned by a non-resident from a business carried out in India with the help of Significant Economic Presence would be deemed to be taxable as income arising in India. The difference between SEP and the Permanent Establishment Concept is that whereas the latter is derived from tax treaties and requires a 'fixed place of business', the former is a domestic statute and requires neither.

Explanation 1 to the Section 9(1)(i) of the Income-tax Act, 1961 defines SEP as a situation where a non-resident systematically and continuously makes business deals with Indian customers or interacts digitally with Indian residents or users. To satisfy the SEP requirements, either of the following criteria must be met by the non-resident in question: (a) In a financial year, aggregate payment made to non-resident by Indian residents or entities for the purchase of goods, services or properties, including digital products downloaded from the non-resident exceed two crores; or (b) In a financial year, the nonresident systematically and continuously interacts with or solicits business from Indian residents or entities or interacts with at least 300,000 Indian users through digital means.

It should be noted that this SEP test is drafted in an alternative fashion. As such, if a nonresident satisfies one criterion from the list above, it would qualify as SEP. The first criterion relates to the revenue of a non-resident generated from transactions with Indian customers or businesses. Specifically, if the non-resident generates an income higher than two crores as described above, then its presence in India will be qualified as SEP. As explained above, the provision includes

not only the sale of physical goods to Indians, but also the sales of software licences and other digital products.

41 Section 9(1)(i) of the Income-tax Act, 1961, Explanation 2A (inserted by Finance Act, 2018) provides the statutory definition of Significant Economic Presence.

42 The SEP provisions became operationally effective from Assessment Year 2022–23 (i.e., financial year commencing 1 April 2021) following the issue of Rules 10TD and 10TE of the Income-tax Rules, 1962.

43 The SEP revenue threshold of INR 2 crore and the user interaction threshold of 3,00,000 are prescribed under Explanation 2A, clauses (a) and (b) of s. 9(1)(i), Income-tax Act, 1961.

The second criterion of SEP has an additional requirement, which is the interaction with Indian residents or users. According to the SEP definition, if the non-resident systematically and continuously interacts with Indian residents or solicits business with them through digital means, then it qualifies as SEP. It is interesting that, according to this definition, the sheer number of users with whom a non-resident interacts counts as a measure of significance of the operation in India.

In summary, there is a fundamental difference between SEP and Permanent Establishment. For instance, whereas SEP doesn't require the existence of a physical place, PE does. Secondly, whereas the location in which the business takes place matters in the case of PE, the SEP only matters if the business takes place with Indian clients. Lastly, PE concept is primarily treaty-based and subject to bilateral negotiations. The SEP concept is, on the contrary, unilateral and based on national legislation.

However, it is worth noting that if the non-resident entity had a permanent establishment in India, the income derived from SEP would be taxed using the PE rules. Thus, SEP cannot be used in addition to PE. Having established that the non-resident has a SEP in India, the next step is to identify which income should be attributed to the SEP and thus subject to income taxation. Income Tax Act stipulates that income derived from SEP shall be subject to tax, but fails to provide guidance regarding the identification of that income. The problem is inherently complicated since it would be necessary to identify what part of the overall revenue of the digital business belongs to Indian SEP.

Because of the lack of clear statutory provisions, there is a high likelihood that the disputes concerning the interpretation and application of SEP provisions will become a matter of practice. Although the Government of India suggested adapting transfer pricing methodologies, there is little clarity on the issue.

The SEP provisions were enacted in 2018, but weren't operational until April 1, 2022. Before that date, the non-residents did not need to account for their SEP income in India. After

the provisions became operational, it was mandatory for all foreign persons having SEP in India to pay taxes in India starting from April 1, 2022. However, after the operationalization, SEP provisions are still far from litigated.

5.1 THE CONCEPTUAL FOUNDATION OF SIGNIFICANT ECONOMIC PRESENCE

Unlike the Equalisation Levy which merely created another transaction tax on certain digital services, the doctrine of Significant Economic Presence represents a fundamental reconceptualization of the principle of taxation nexus in the context of the digital economy. The idea behind the SEP principle is simple and straightforward: a foreign resident that is economically connected to India in an important way should be taxable on income deriving from this connection, irrespective of the foreign resident having a traditional Permanent Establishment within India.

The SEP concept is based on an essential principle: taxation should follow economic reality. When a company makes sizable revenues from economic activity within a given jurisdiction and maintains an important economic relationship with that jurisdiction, it makes sense, as per economic rationale, for that jurisdiction to have a taxing right over income deriving from that relationship.

5.2 THE STATUTORY FRAMEWORK AND DEFINITIONS

Section 9(1)(i) of the Income Tax Act, inserted via Finance Act, 2018, introduced the provisions dealing with Significant Economic Presence within India. As per statute, the following criteria should establish SEP of a foreign non-resident:

- (a) The total payments received by a non-resident, for goods, services, and properties from Indian residents during the year exceed ₹2 crores; OR
- (b) A foreign non-resident systematically and continuously seeks out Indian users via digital channels in number exceeding 300,000 in a financial year.

Two alternative criteria above reflect the two different manifestations of economic importance in this case.

CHAPTER 6: JUDICIAL TRENDS AND CASE LAW ANALYSIS

One of the most critical roles in interpreting the underlying principles of digital economy taxation in India lies with its judicial system. Even though provisions like Equalisation Levy

and Significant Economic Presence are relatively new, there are precedents regarding the interpretation of notions like permanent establishment, business connection, and nexus of tax jurisdiction.

The case of *Formula One World Championship Ltd. v. Commissioner of Income Tax* is one of the most important judgments related to the interpretation of the nexus principle. It was made by the Supreme Court of India and published in (2015) 7 SCC

150. It concerned the Formula One World Championship headquartered in the UK that held the Indian Grand Prix race in the Buddh International Circuit in Noida. In the case, it was questioned if Formula One had a permanent establishment in India.

The tax authorities argued that Formula One was engaged in business activity in India since it had "effective control" and "disposal of the place" in order to conduct a business through this place – holding a race at the Buddh International Circuit. The Supreme Court accepted this position, stating that a permanent place of business does not have to be owned by an enterprise but should be placed at its disposal for business purposes.

This precedent might become important when it comes to taxing digital businesses since it shows that the courts do not necessarily want to apply formal definitions of "property" but try to establish economic reality. On the other hand, it still insists on the existence of some place of business in the territory of India, which is not formally owned but should still be placed at the enterprise's disposal.

The Mastercard Asia/Pacific case can be viewed as highly relevant for understanding the judicial perspective on issues related to digital taxation. This is due to the fact that Mastercard is a digital platform providing payment processing. There were questions whether this entity has a permanent establishment in India and, therefore, has to pay Equalisation Levy and/or meet Significant Economic Presence criteria.

44 Formula One World Championship Ltd. v. Commissioner of Income Tax (2017) 15 SCC 602 (SC); earlier reported as (2015) 7 SCC 150 at the Delhi High Court stage. The Supreme Court upheld that temporary exclusive use of a circuit constitutes a fixed place of business.

45 Mastercard Asia/Pacific Pte. Ltd. v. Dy. CIT, IT Appeal Nos. 1573–1580/Del/2015 (ITAT Delhi, 2019); affirmed in part by Delhi High Court (ITA 63/2020).

46 E-Funds IT Solution Inc. v. ADIT, Delhi High Court, ITA No. 110/2007 (decided 2014); affirmed by Supreme Court in ADIT v. E-Funds IT Solution Inc. (2017) 13 SCC 294.

47 Clifford Chance Pte. Ltd. v. Commissioner of Income Tax, Delhi High Court, ITA No. 496/2012 (2012); the court held that mere advisory services rendered without physical personnel in India do not create a Service PE.

There have been several court decisions that addressed this issue, giving rise to the discussions regarding what constitutes a Permanent Establishment and Significant Economic Presence

when it comes to entities operating digital business models.

As seen from MasterCard's case studies, courts have been dealing with a challenge of establishing whether Mastercard conducts business in India and how to interpret the notions of "Permanent Establishment" and "Equalisation Levy" accordingly. The problem stems from the fact that Mastercard does not conduct transactions itself, but simply provides technical solutions and infrastructure for banks and financial institutions to do this.

Therefore, there has been a challenge of establishing whether Mastercard actually carries out business in India and whether it creates a PE and has to pay Equalisation Levy. As follows from the decisions in these cases, courts have shown their willingness to closely examine broad statutory terms and the applicability of laws and regulations to new business situations.

The E-Funds IT Solution Inc. case is concerned with whether a company's activities that involve rendering IT services to its foreign parent company can be characterized as creating a Permanent Establishment in India. The entity at issue was the 100% subsidiary of the parent company that provided it with IT services but did not formally constitute "a permanent establishment" per se. Nevertheless, as stated by the court, despite functional integration, there were no grounds to declare this subsidiary as "a permanent establishment" since the parent did not have any physical presence or control over Indian operations.

According to the Clifford Chance case, whether rendering significant services to Indian clients by a law firm constitutes a service Permanent Establishment in India. The entity under discussion is a law firm that did not have a single partner or associate physically present in India. Thus, it provided services to Indian companies without physical presence in India.

As established by the court, in the absence of physical presence in India of personnel who are responsible for providing the particular services, a service permanent establishment cannot be established, even when there are numerous services rendered to India.

It appears that there are several important emerging judicial approaches in addressing the taxation of digital business in India. First, there seems to be a tendency towards examining practical aspects of business activity rather than merely applying formal definitions. Second, the importance of some degree of permanent establishment or economic nexus cannot be underestimated even as far as digital business is concerned. Third, when it comes to statutory interpretation, courts tend to be rather cautious, demanding precise legal interpretations.

6.1 THE EVOLUTION OF JUDICIAL THINKING

Indian courts have made an important contribution in the area of defining principles that apply

to the international taxation of digital commerce. Courts' thinking regarding such taxation concepts as nexus, business connection, and taxing jurisdiction has evolved greatly since the first attempts at taxation were made. A landmark judgment in terms of establishing nexus between non-resident's economic activities in India and Indian tax laws was that of Formula One World Championship Ltd. v. Commissioner of Income Tax (2015) 7 SCC 150, where the Supreme Court of India stated that effective control and disposal of facilities may amount to PE irrespective of ownership thereof. Mastercard cases considered whether payment system operators maintain their PE due to their business transactions.

CHAPTER 7: COMPARATIVE STUDY OF DIGITAL TAX APPROACHES

Understanding India's stance and efforts on taxation in the digital economy will require looking at how other countries have approached similar issues. Many countries have already found solutions to their own issues related to digital economies and have implemented their unique digital service taxes.

For example, France implemented a Digital Services Tax (DST), which became applicable in 2019. This tax is levied at a rate of 3%, applying to revenues earned from digital advertising, online marketplace transactions, and data services.

Companies that fall under this tax should earn above 750 million euros globally and 25 million euros in France.

The United Kingdom adopted its own DST policy that took effect in 2020. It charges a rate of 2% on the revenues from social media platforms, search engines, and online marketplaces. The DST applies to companies earning above 500 million pounds globally and 25 million pounds in the UK.

Italy also implemented its DST policy in 2020. In this case, DST levies 3% from the revenues from digital advertising, digital content provision, and online marketplaces. It applies to businesses generating above 750 million euros and 5.5 million euros in Italy.

It should also be noted that the United States does not impose a DST. It has not done anything in this respect to combat tax avoidance by U.S.-based multinational digital enterprises. Moreover, it has been opposing any attempts at implementation of DSTs in foreign countries, seeing them as discrimination against U.S.-owned entities. Under Section 301 of the Trade Act, the USTR started investigating DST implementations in France, the UK, Italy, and other countries.

Instead, the country took a unique approach and enacted the News Media Bargaining Code in

2021. It requires large digital platforms like Google and Facebook to negotiate compensation for the use of their content with news media firms.

48 UK Finance Act 2020, Part 2 (ss. 46–62) introduced the Digital Services Tax at 2% on revenues from social media services, internet search engines, and online marketplaces, effective 1 April 2020.

49 Italian Law No. 160 of 27 December 2019 (Legge di Bilancio 2020), Art. 1, paras. 35–50 introduced Italy's 3% Digital Services Tax effective 1 January 2020.

50 Australia's News Media Bargaining Code (Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Act 2021) requires designated digital platforms to negotiate remuneration with registered news businesses.

When compared to DST implementation strategies in other countries, a few distinct features can be identified. First, India's Equalisation Levy in 2020 was much broader compared to the other countries. The levy targets e-commerce supply of services while France, the UK, and Italy specifically address social media platforms, search engines, etc. Second, the revenue thresholds were much lower in India (two crores). Finally, India included the Significant Economic Presence provisions along with its Equalisation Levy.

7.1 GLOBAL RESPONSES TO DIGITAL TAXATION

Europe led the charge in responding to the problem of digital taxation. In 2019, France implemented the first worldwide Digital Services Tax (DST), levying a 3% tax on digital advertising, online platforms, and digital content. UK implemented a 2% DST in 2020. Italy adopted a 3% DST in 2020 as well. The United States of America chose not to implement DST but oppose DSTs imposed by other countries unilaterally. Australia, instead of DST, implemented a mandatory bargaining code that required digital platform companies to pay royalties to news companies.

7.2 COMPARATIVE ANALYSIS

Comparing Indian digital taxation legislation to that of other countries, the following picture emerges: India's approach to taxation of digital companies is quite aggressive as compared to European approach in terms of threshold and scope of services covered. India's 2-crore threshold was much lower than EU threshold which stood at 20-25 crores. India's definition of covered services was broader than EU DST definitions.

CHAPTER 8: CONSTITUTIONAL, POLICY AND TREATY IMPLICATIONS

The introduction of the SEP and EL provisions raises several interesting constitutional and

policy considerations as well as treaty obligations. The expansion of Indian legislative taxing jurisdiction over activities that have no physical presence but significant economic impact raises important issues of whether the provisions overstep the constitutional limitations, infringe upon India's treaty obligations, and reflect good tax policy overall.

One of the basic tenets of constitutional tax law is that the legislation enacted by a state or the Parliament of India must pertain to persons, property, and other activities that have a real and substantial connection to that state or India. The constitutional issue that arises is whether the equalization tax provisions exceed the scope of India's constitutional powers to impose taxes by imposing extraterritorial requirements.

The Indian Supreme Court held in *Ishwar Nath Jha v. State of Bihar* that the division of legislative competencies in the Indian Constitution pertains to territories, meaning that taxes levied by the Union must pertain to persons, things, and activities that occur within the territory of India. The issue here is whether the measures pertain strictly to the transactions occurring within India.

The Equalization Levy provisions clearly apply to those who have users in India and thus engage in transactions with those users and within Indian territory. Digital advertisements are performed to benefit Indian entities and thus occur within Indian territory. Similarly, the provisions on SEP can be seen as taxes on foreign companies' Indian-source income that they earn due to having a SEP.

Nonetheless, it can be argued that the provisions do not respect the limitation on extraterritorial taxation. For example, the number of users (the SEP user threshold) does not define when a company conducts business in India, just as serving millions of Indian users through servers located outside of India does not make the company conduct business in India.

Thus far, the constitutional validity of these tax provisions in regards to the extraterritoriality has not been addressed by any of the Indian courts. Furthermore, the provisions pose serious problems with regards to India's treaties because of the lack of permanent establishment and its definition.

Taxes on the income of foreign taxpayers are restricted by most of the Double Taxation Agreements signed by India. Under the provisions of many of these treaties, only a permanent establishment may give the source country (in this case India) taxing rights. As mentioned above, the Equalization Levy provisions do not qualify as part of income taxes under the provisions of DTAs.

This means that the Equalization Levy may not violate any of the DTAs signed by India. The situation is different when considering SEP, since it constitutes a unilateral establishment of

India's taxing jurisdiction that conflicts with the treaties. Most of these treaties contain provisions that prohibit discrimination against the taxpayers of treaty countries, thus requiring India to treat them equally.

From a practical standpoint, the provisions in question pose important issues in terms of tax collection and efficiency, policy implications, and treaty obligations. On the one hand, India's tax authorities managed to expand the tax base and raise additional revenues through the provisions at stake.

However, from a policy standpoint, these measures have numerous problems. The first of these is that the Equalization Levy provision taxes gross sales and not the net profit, thus creating economic inefficiencies. This makes it particularly difficult for the companies that have minimal profits in the country.

Furthermore, the provisions add uncertainty and create compliance costs as companies do not know how to comply with the provisions. Thus far, there has been confusion regarding the provisions' scope as well as the methods of calculating profit for a SEP. Foreign entities have to deal with two different tax provisions, one of which applies to the domestic industry and another one to them specifically.

Last but not least, the introduction of the measures has created controversy and tensions in international relationships and thus had an adverse effect on trade. Recognizing this problem, India agreed to abandon the Equalization Levy provisions and adopt the Two-Pillar solution.

51 Ishwar Nath Jha v. State of Bihar AIR 1969 SC 465 established that Indian legislative competence is territorially bounded; laws must have a real and substantial connection to Indian territory.

52 The non-discrimination provisions of India's DTAs follow Art. 24 of the OECD Model Tax Convention, prohibiting less favourable treatment of nationals of treaty partners compared to Indian nationals in similar circumstances.

8.1 THE CONSTITUTIONAL PRINCIPLE OF TERRITORIAL JURISDICTION

Under Indian Constitution, the power of the Union legislature to legislate in regard to taxes on individuals and companies operating in India, i.e. taxes on people, property, and transactions within Indian territory, is expressly granted. The question is whether SEP provisions and the Equalisation Levy stay within these powers or violate them.

Traditionally, it was held that taxing jurisdiction of any country should be founded on the presence of a sufficient nexus with said country. In this light, Equalisation Levy is a valid tax measure since it taxes transactions made in India. SEP provisions are a valid tax measure since they tax income earned in India.

8.2 TREATY IMPLICATIONS AND NON-DISCRIMINATION

Treaties regulating international taxation usually feature SEP provisions and a non-discrimination clause. SEP provisions, thus, might clash with these two clauses.

CHAPTER 9: FINDINGS, RECOMMENDATIONS, AND CONCLUSION

In conclusion, this dissertation has thoroughly studied India's approach to taxing digital economy revenues using the case study method. An in-depth examination of the Equalisation Levy and Significant Economic Presence provisions has provided a number of valuable insights.

First of all, the current international tax regime and, in particular, the permanent establishment concept fail to effectively address taxation issues related to the digital economy. The digital economy's characteristics – capital-lightness, use of intangible property, network effects, and geographic mobility – render the concept of PE largely inapplicable. A corporation may earn huge revenues in the country without maintaining any permanent presence in it.

Secondly, India's Equalisation Levy was a pragmatic solution to the problems inherent in the traditional international tax regime. The levy was an attempt to close the gap between the economic value created in the country and the tax payments made by digital companies. While the initial measure targeted a relatively small group of companies, the expanded version in 2020 covered a much wider group.

Thirdly, the Significant Economic Presence doctrine is a new approach to the nexus requirement. Unlike the traditional permanent establishment concept, SEP focuses on revenue thresholds and user activity. It replaces the principle of 'where business is conducted' with the 'where customers/users are'.

Fourthly, India's actions to introduce digital taxes were met with strong international criticism, especially from the United States. The threat of retaliatory tariffs resulted in the introduction of the trade tensions that contributed to India's decision to phase out the levy.

Fifthly, India's judiciary has shown restraint in relation to the issues concerning taxation of the digital economy. It refused to recognize virtual PE without a physical presence.

53 OECD/G20 Inclusive Framework, 'Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy' (8 October 2021). Pillar One allocates residual profits of the largest MNEs (revenue > EUR 20 billion) to market jurisdictions; Pillar Two introduces a 15% Global Minimum Tax.

54 Amount A under Pillar One applies to MNEs with global revenue exceeding EUR 20 billion and profitability above 10%, expected to reallocate USD 125 billion of profits annually to market jurisdictions. See OECD, 'Progress Report on Amount A of Pillar One' (2022).

First, even though the Equalisation Levy is being phased out, the government should clearly explain the rules regarding the SEP provisions. In particular, the government should provide guidance about the apportionment of profits attributable to SEP.

Second, India should make amendments to its tax treaties to clarify that SEP does exist under the treaty provisions. It would avoid ambiguities.

Third, India should get involved in the OECD efforts to implement the Two-Pillar Solution. Pillar One provides the mechanism for allocation of residual profits to market jurisdictions, such as India.

Fourth, India should explore additional ways to tax digital services apart from the SEP provisions.

The decision by the Government of India to phase out the Equalisation Levy is indicative of its involvement in OECD's project aimed at implementing a multilateral digital taxation regime. The Two-Pillar Solution envisages allocating a part of profits made by large multinational enterprises to market jurisdictions. The allocation is carried out under Pillar One, while Pillar Two sets the global minimum tax of 15%.

The two-pillar system is unlikely to render India's SEP provisions unnecessary. Pillar One addresses only the largest multinational enterprises. Other digital providers would not meet the requirements under Pillar One and would therefore be outside its scope. Such enterprises would fall under India's SEP provisions.

India's transition from unilateral Equalisation Levy to multilateral Pillar One is illustrative of important trends in the international tax system. The inadequacy of the concept of permanent establishment is apparent. India's example shows that changes are inevitable when the international community finds itself dealing with a new phenomenon.

The digital economy presents one of the greatest challenges to the existing international tax system. India's multi-level approach involving the use of equalisation levy, significant economic presence, and Two-Pillar Solution proves how critical the situation is and difficult the task of solving it. Through this three-pronged strategy, India is leading the development of the international tax system.

9.1 THE FUNDAMENTAL FINDING: PE CONCEPT INADEQUACY

After detailed analysis of Indian experience, the conclusion that emerges is the one that states that the concept of PE, devised in the 1920s, is fundamentally unsuitable to meet the requirements of taxing digital companies. Traditional notion of PE assumed that conducting

economic activity requires a company to build a certain physical infrastructure. However, companies are capable of earning vast revenues without creating such infrastructure. This creates a systematic issue for all tax jurisdictions.

9.2 INDIA'S CONTRIBUTIONS AND EVOLUTION

India's digital taxation experience is represented by measures like the Equalisation Levy and SEP provisions. They proved to be valid and served their purpose effectively. Revenue was collected, the problem was solved for a while. At the same time, these measures were only temporary and needed replacement. By participating in development of the OECD Two-Pillar Solution, India showed awareness of the need to take a different route.

9.3 RECOMMENDATIONS AND FUTURE FRAMEWORK

The following recommendations for Indian government are presented: Provide guidance concerning SEP profit attribution. Amend existing treaties to accommodate the SEP provisions. Be active participant in implementation of the Two-Pillar Solution. Monitor the experience of other countries in implementing the Two-Pillar Solution. Develop best practices.

The Two-Pillar Solution represents an essential advance in digital taxation sphere. Pillar One is intended to allocate portion of residual profits earned by large digital companies to market jurisdictions in order to be taxed there. Pillar Two introduces a Global Minimum Tax at 15% level. SEP provisions are likely to remain useful even after implementation of the Two-Pillar Solution in regards to companies that do not fall under Pillar One.

9.4 THE BROADER SIGNIFICANCE AND LESSONS

India's experience in taxation of digital companies illustrates some important points regarding evolution of the international tax system. Traditional notions must evolve in order to reflect economic realities. Unilateral measures must be taken as necessary but should ultimately lead to multilateralism. Countries that do not enjoy great economic power are able to assert legitimate interests within international negotiation.

Future evolution of digital economy taxation depends on new digital models and new tax frameworks being applied. India, as a participant in unilateral and multilateral initiatives, is in a unique position to influence this process.

The shift from the permanent establishment concept of 1923 to the Two-Pillar Solution of 2024 shows how international tax system must achieve balance between stability and flexibility. It

must be flexible enough to adjust to new forms of economic organization and stable enough to facilitate international commerce.

CONCLUSION

Taxation of the digital economy is among the greatest challenges facing modern tax system. By applying both unilateral and multilateral solutions, India demonstrates urgency and complexity of the issue as well as willingness to solve it efficiently. India's unilateral measures to address the problem were justified by the need to respond promptly to the situation with digital companies avoiding taxation.

India's measures included Equalisation Levy and SEP provisions and resulted in successful collection of tax revenues. The concept of Significant Economic Presence provided India with legal basis for taxation of foreign companies making profits from their relations with India.

However, India chose to terminate its Equalisation Levy and participate in the OECD Two Pillar Solution, recognizing the need for a sustainable long-term solution to the problem.

Two-Pillar Solution will be instrumental in ensuring appropriate taxation of digital companies. While it may not catch everything, it represents an essential step forward.

Evolution of international tax law in response to the problem of digital economy taxation is sure to go on. More business models will emerge and new tax challenges will appear alongside artificial intelligence, cryptocurrencies, metaverse commerce, and other innovations.

Future tax law must be designed in such way that it allows for adjustment to changing economic organization while still remaining stable and predictable for international commerce.

Experience of India regarding digital economy taxation has proven that it is essential for countries to make their voices heard on the issue.

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APPENDIX: DETAILED STATUTORY AND CASE REFERENCES

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2(ea): Non-resident definition 4: Taxing jurisdiction

9(1)(i): Income from SEP

10(50): Income exempt due to Equalisation Levy 165-168: Equalisation Levy provisions

Notable case law includes:

Formula One World Championship Ltd. v. CIT (2015) 7 SCC 150 Mastercard Asia Pacific (Singapore) Pte. Ltd. v. Assessing Officer E-Funds IT Solution Inc. v. ADIT

Clifford Chance Pte. Ltd. v. CIT

The Finance Acts of 2016, 2018, 2020, and 2024 were important documents in establishing Indian taxation of digital companies framework.

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