

# Recent Developments in International Taxation: Indian Perspective, Global Perspective

December 20, 2019

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## Global tax landscape

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# Global tax landscape

# Tax – Dominating the headlines!!

Facebook, WhatsApp users to pay new tax in Uganda

16 October 2012 EST  
**THE HUFFINGTON POST**  
 UNITED KINGDOM 

Starbucks Coffee Chain Pays 1% UK Corporation Tax Over 14 Years



**Amazon and Google, the tarnished brands**  
 Their popularity plummets after row over tax payments  
THE SUNDAY HERALD OF THE YEAR  
 Mail, December 27, 2012

**Don't click on companies that treat Britain with contempt**  
 December 3, 2012

**Targeting the tax dodgers**  
 December 4, 2012

**THE 'IMMORAL' TAX AVOIDERS**  
 November 13, 2012

**Daily Record**   
 News • UK & World  
**Fury as Amazon pay less than £10m in company tax despite raking in £4.3bn worth of sales in UK**

Regional Newspaper of The Year  
**Express & Star**

Amazon in fresh corporation tax row


The UK arm of internet shopping giant Amazon paid corporation tax of less than £10 million last year despite generating sales of £4.3 billion.

**Amazon's 0.1% tax bill: MPs call for boycott after firm rakes in £4bn in UK... but hands taxman just £4m**

- Amazon made sales of £4.3bn last year but paid just £4.2million in tax
- That means company paid a nominal tax rate of just 0.1 per cent
- Margaret Hodge, chairman of public accounts committee, calls for boycott
- Added figures were an 'outrage' and said she has stopped using company

 This is **MONEY**.co.uk  
 FINANCIAL WEBSITE OF THE YEAR



 **STARBUCKS®**

- Domicile: UK
- UK turnover: £398m
- UK corporation tax paid: None
- Year: 2011

 **Google**

- Domicile: Ireland
- UK turnover: £2.6bn
- UK corporation tax paid: £6million
- Year: 2011

 **amazon.com**

- Domicile: Luxembourg
- UK turnover: £3.3bn
- UK corporation tax paid: None
- Year: 2010

# Tax – Dominating the headlines!!

World markets dip as Trump ratchets up China trade war



Spain parties agree on green boost, tax cut ahead of poll

Italy elections:  
Populists Salvini and Di Maio vow tax cuts



France just put a digital tax on our great American technology companies. If anybody taxes them, it should be their home Country, the USA. We will announce a substantial reciprocal action on Macron's foolishness shortly. I've always said American wine is better than French wine!

# Tax – Dominating the headlines!!

**The Washington Post**  
*Democracy Dies in Darkness*

Corporations paid 11.3 percent tax rate last year, in steep drop under Trump's law

## Boo-hoo billionaires: why America's super-wealthy are afraid for 2020

As Warren and Sanders have gone on the attack, some plutocrats are getting angry at the billionaire-bashing - and others are running for the White House

**India hits back at Donald Trump's tariffs, raises import duties on agri, steel products**

India loses export incentive case filed by US at WTO, to appeal against the ruling

BY KIRTIKA SUNEJA, ET BUREAU | UPDATED: NOV 01, 2019, 06.30 AM IST

Post a Comment

# Global convergence in the world of taxes (1/2)

- Reduction of corporate tax rates to attract investments and discourage profit shifting – a global phenomenon
  - Significant tax rate cuts in the US for individuals and corporations
  - China retaliates and is poised to reduce taxes on businesses and individuals - perceived to be largest ever fiscal stimulus (~ USD 300 bn!!)
  - France and Netherlands follow suit
  - Significant corporate tax cuts in India as well
- Tax reforms playing a significant role in Italy and Spain's general election
- Trade wars – No more free trade!
  - US - China Trade war: Some respite seen amid increasing tensions
    - Framework for formalized agreement agreed upon – expected to be signed by January 2020



# Global convergence in the world of taxes (2/2)

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- India introduces Equalisation Levy – A big uproar!
  - Many countries following suit (UK, Australia, Italy, France, Brazil, etc)
  - Office of US Trade Representative issues report opposing French digital taxes and proposes retaliatory duties of up to 100% on French products (an anti-trade measure)
- India asserts rights to tax capital gains from offshore deals (indirect transfers)
  - Several other countries now following suit (China, Malaysia, Nepal, etc)
- US Treasury recently released the final BEAT regulations
  - Regulations largely consistent with proposed regulations in 2018, no major reliefs on application of the regulations
- More and more cases of State Aid tax rulings being investigated/challenged
  - EU Commission order in Fiat Tax State Aid case upheld by the General Court
  - Order annulled by the General Court in Starbucks Tax State Aid case, however principles of EU Commission order upheld

**A connected world! – country specific changes creating a global impact!**



# New dimensions to the tax transparency environment

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- Tax transparency - one of the leading themes of international tax in 2019
  - Focus of governments worldwide to collect more data from corporations (CbCr, Fin 48 disclosures, etc)
  - Combination of multilateral transparency reforms (CRS, automatic exchange of information, etc), digitization, vast data collection, and enhanced data analysis to identify and combat tax evasion
- Country-by-Country reporting could potentially provide a further fillip to convergence on taxes across the world
  - Ongoing EU debate on whether to make CbCr filings public
- New European Union) Mandatory Disclosure Directive leading to reporting of cross-border reportable arrangements applicable from July 2020
- Tax directors relying on risk analysts to sift through their corporate tax returns and identify gaps across their disclosures
  - Misinterpretation of tax data can cost a company its reputation, investor relations and hit its balance sheet

**Tax controversy rapidly evolving from two-sided disputes in specific countries into a multi-dimensional, multi-country dynamic**

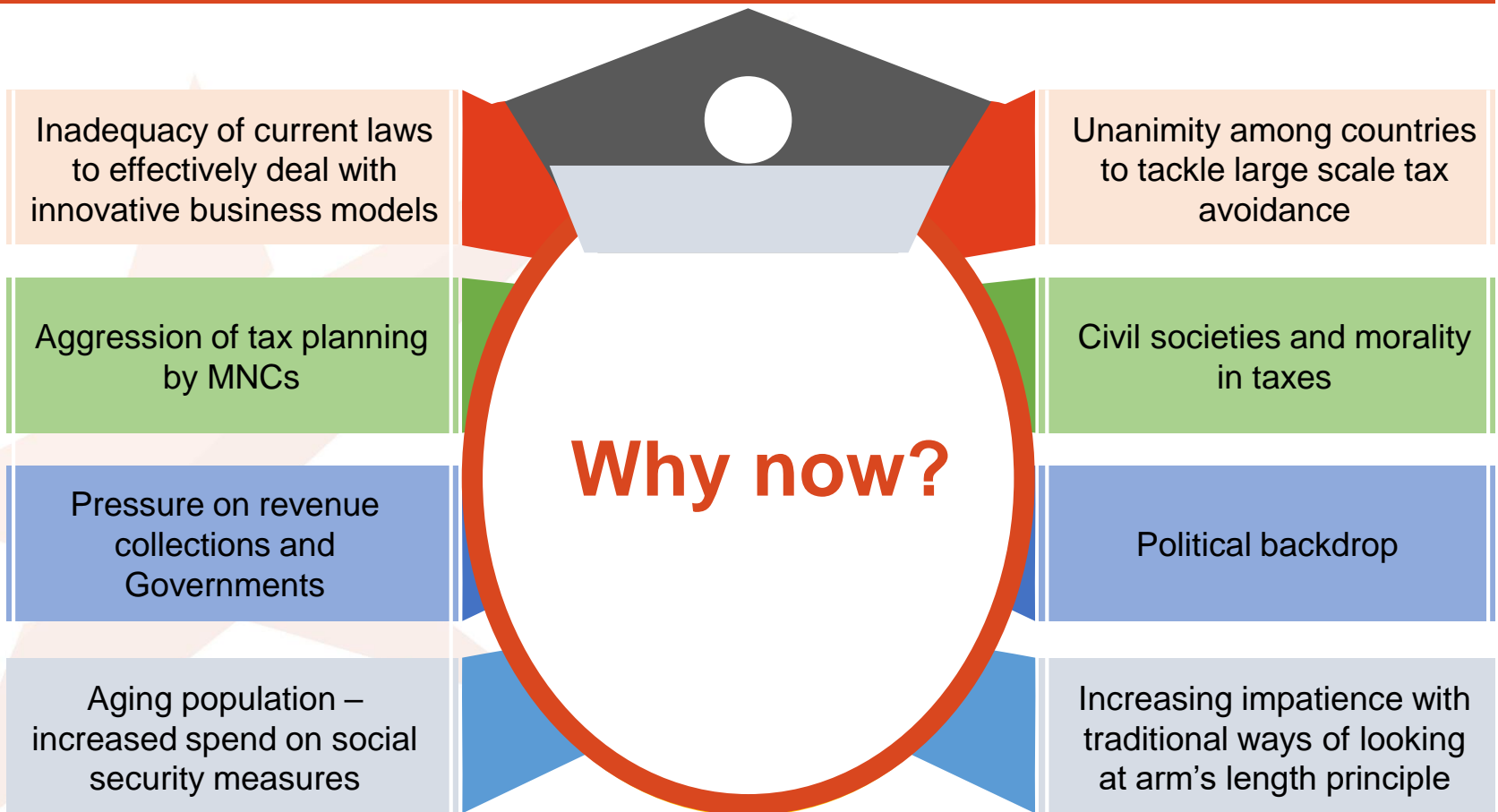
# Changing tax landscape... around the world

- Increased expectation from stakeholders (Governments, investors and consumers) that businesses must pay their ‘fair share of taxes’
  - Strict compliance with letter of law widely seen as inadequate
- Tax issues now firmly part of the public debate
  - Tax policies of Google, Apple, Amazon and Starbucks – widely reported in the mainstream media
  - Red flags raised over Amazon’s Australian tax arrangements
- Spotlight on “tax havens” - increased pressure on countries to adopt higher standards of transparency and exchange of information



**OECD’s BEPS initiative – an outcome of the above**

# Why now?



**Is the principle that there is no 'equity' in taxes a relic?**

**OECD  
Proposals:  
Pillar One and  
Pillar Two**

# Backdrop

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- Entire thought process basis which the tax community, Revenue and the judiciary understood taxes is undergoing a sea change
  - Traditional definition and understanding of Permanent Establishment ('PE') rule under scrutiny in light of 'nexus' theory
  - The principle of "Arms Length Price" if sufficient being questioned
  - Rapid penetration of digitization across virtually all sectors of economy making it impossible to ring-fence digital economy from rest of the economy for tax purposes
  - Adoption of 'Principal Purpose Test' as a minimum standard in treaties
- Tax is becoming a far more important "risk factor" for Directors to be alive to

**Is this a new era of certainty or another era of uncertainty?**



# OECD – Pillar One proposals

## *Unified approach*

### Key features:

- Focussed on large consumer [including user] facing businesses
- Potential size thresholds
- New nexus rules - not dependent on physical presence
- New profit allocation rule – goes beyond arm's length principle
- Increased tax certainty

US hitherto not participating in BEPS program recently advocated:

*“We believe that taxpayer concerns could be addressed, and the goals of Pillar 1 could be substantially achieved by making Pillar 1 a safe-harbor regime”*

OECD's response letter expressed surprise with this unexpected turn



# OECD – Pillar One proposals

## *Unified approach*

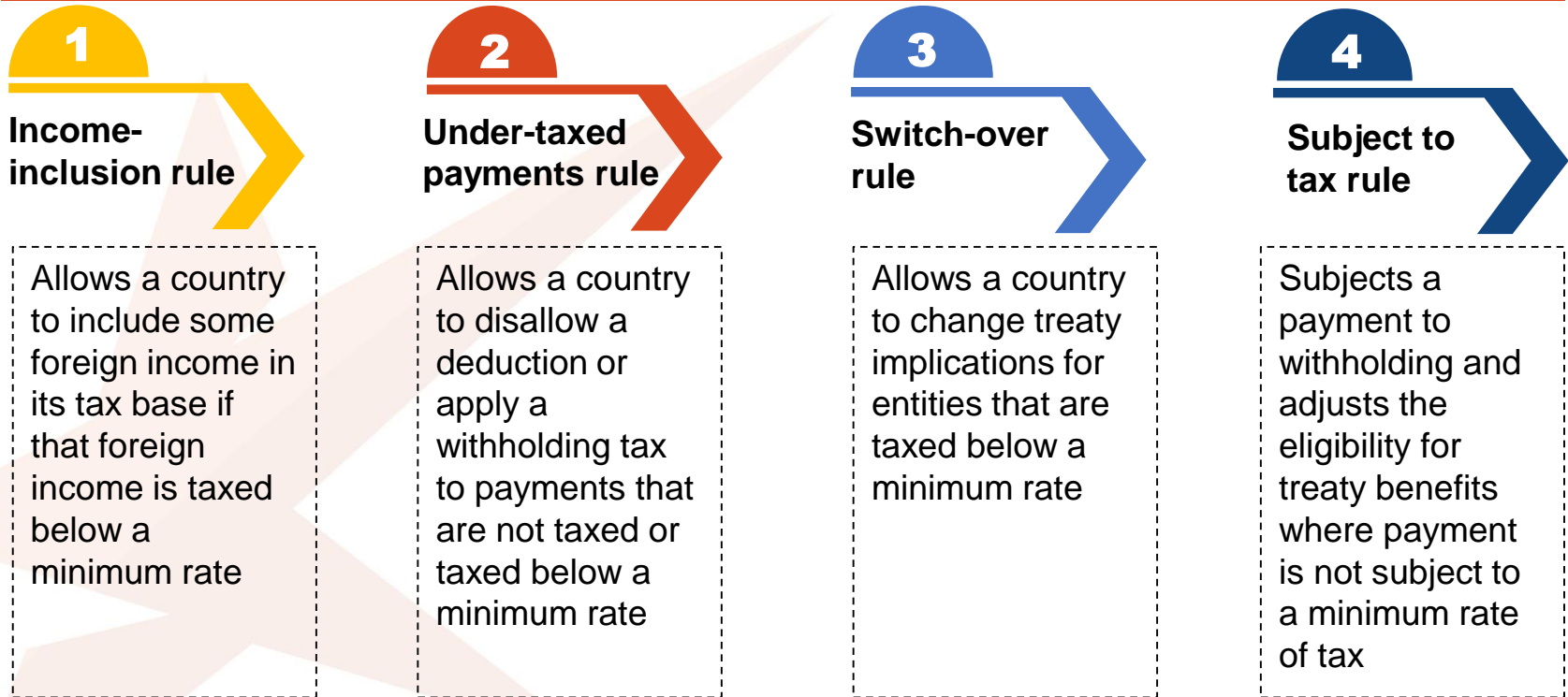
### Taxable profits to market jurisdictions based on three amounts

- **Amount A** – Amount allocated to ‘market’ jurisdiction under new taxing rights
  - Representation received from stakeholders that amount allocated should be calculated basis revenue earned and not sales collection
  - No uniform accounting rules to calculate revenue
- **Amount B** – Fixed remuneration for baseline marketing and distribution activity
- **Amount C** – Compensation for additional market jurisdiction functions beyond baseline



# OECD – Pillar Two proposals (GloBE proposals)

## *Addressing tax challenges of digitalisation*



GloBE proposals principally aligned with GILTI and BEAT provisions introduced by the US. The US fully supports a GILTI-like Pillar 2 solution

In light of these exchanges between US & OECD, it will be interesting to see the outcome of the meeting of the 135 countries of the Inclusive Framework on BEPS at the end of January 2020, wherein the countries are supposed to reach consensus on a unified approach



# What's next – India perspective

- India believes that MNC firms with digitised business do not pay adequate proportion of taxes on their profits.
  - India actively involved in adopting unilateral approaches - introduction of equalization levy, concept of significant economic presence and recent draft rules released for profit attribution
- Directionally the OECD proposals are in India's interest. However India's approach differs on the following key counts
  - CBDT recommendation gives appropriate weightage to the entire profits derived from the market jurisdiction (and not just the 'deemed residual profits')
  - Recommends a profit allocation even in a situation where there are global losses
- Adoption of 'Principal Purpose Test' as a minimum standard in most treaties India has entered into
- Advance Pricing Agreements have gained momentum –
  - Bilateral APAs becoming India's preferred method of dispute resolution



# Indian tax landscape

# Indian tax landscape

## *In the news*

### Director of dry fruit firm in south Mumbai gets six months for 'wilful' tax default

TNN | Dec 2, 2019, 05:44 AM IST



MUMBAI: In the first such conviction in the country, the director of a dry fruit store in south Mumbai has been found guilty of 'wilful evasion of income tax' in four cases and sentenced to six months' rigorous imprisonment.

The magistrate's court at Ballard Pier on Saturday found Rajesh Mewawala, director of Fountain Dryfruits Stores had defaulted on around Rs 2.35 crore in all four cases. Mewawala, a Walkeshwar resident, and his companies were accused of failing to deposit self-assessed tax despite falsely claiming that it had been paid.

## Business Today

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### Delhi High Court raps taxmen for arrest of Makemytrip.com executive

**IT Dept. to SC - Cognizant a tax 'evader', resorted to 'dubious' scheme, now hiding behind 'frivolous' technicalities**

Nov 22, 2019

# Indian tax landscape

## *Big ticket changes in recent past*

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- Multilateral Convention has entered into force from October 1, 2019
  - Impact on existing structures?
  - Availability of GAAR grandfathering and treaty grandfathering?
  - Interplay of Principal Purpose Test vs. Treaty LOB
  - Impact on holding company structures (separate entity test & location test)
- Introduction of GAAR – minimise tax evasion
- Introduction of thin capitalisation norms
- Place of Effective Management – a key challenge for Indian companies having overseas operations



# Indian tax landscape

## *Big ticket changes in recent past*

- Significant Economic Presence Test
  - Whilst the same has been brought in statute, Rules for objective determination are not yet introduced!!
- Equalisation levy – For how long can it continue to be an interim measure?
- India tax rate globally uncompetitive, hurting investments and exports

- FM introduces 4<sup>th</sup> round of booster measures via Taxation Laws (Amendment) Act, 2019
- To encourage investment and manufacturing under 'Make in India' initiative
- Roll-back on enhanced surcharge for FPIs
- Tax revenue foregone ~ INR 1.45 tn



# Indian tax landscape

## *Audit & Controversy Trends*

- Strong policy and administrative bias towards source-based taxation – leading to aggressive scrutiny audits of foreign multinationals
- Aggressive tax assessments and increasing tax disputes
- Recourse to parallel legislations – Prevention of Money Laundering and Benami law to crackdown money laundering and tax evasion
- Launch of e-assessment scheme to eliminate interface between taxpayer and tax department
- Typical challenges in tax audits
  - Documentation / evidence
  - Treaty availability – focus on beneficial ownership
  - Anti-abuse and GAAR
  - Transfer Pricing
  - Characterisation of Income streams
  - PE Assertions



# Indian tax landscape

## Where we are

- India's Tax-GDP ratio still at abysmally low levels
  - Gross tax revenue over next 5 years ~Rs 15 lakh crore less than original estimate given to Finance Commission\*
- Recent developments indicate maturing of India as a tax jurisdiction
  - However, jury is still out on whether 'tax terrorism' has ended or been curtailed
- India not only playing a key role in the evolving global tax environment but also influencing it
- Significant focus on anti avoidance and curbing of treaty abuse
- Traditional approaches to tax planning may no longer work

\* ET article dated December 17, 2019

## Missing the Target

	Budget 2019-20*	2018-19*
Income tax	5,69,000	5,29,000
Corporation tax	7,66,000	6,71,000
Direct tax	13,35,000	12,00,000
GST	6,63,343	6,43,900
Indirect tax	11,19,247	10,42,833
Gross Tax Revenue	24,61,195	22,48,175



For FFC	2018-19	2019-20	2020-21	2018-19^	2019-20^	2020-21^
Income tax	5,29,000	6,20,000	7,34,000	4,72,523	5,53,808	6,55,637
Corporation tax	6,71,000	7,60,000	8,51,000	6,63,514	7,51,521	8,41,506
Direct tax	12,00,000	13,80,000	15,85,000	11,36,037	13,05,329	14,97,143
GST	6,46,430	7,64,021	8,56,582	5,71,743	6,75,748	7,57,614
Indirect tax	10,48,175	11,72,131	12,98,348	9,44,460	10,56,506	11,70,405
Gross tax revenue	22,48,175	25,52,131	28,83,348	20,80,497	23,61,834	26,67,548

\*Revised estimate | ^Reassessed | Figure in ₹ cr



# Indian tax landscape

## *Wishlist*

- Significant reforms needed to ensure that tax creates a positive vibrancy and is used as a way of promoting business and not an end in itself
- Certainty in scope of tax levies and rates
  - Hanging sword of re-introduction of estate duty
- Degree of trust deficit currently existing between the tax community and the Revenue ought to be bridged
- Dire need for oversight and accountability on part of the Revenue
  - Should we have a Tax Ombudsman who is designated with a fair degree of authority and who functions independently from the Ministry of Finance?
- Consistency in administration and interpretation of tax laws
- Considerable strides ought to be made in order to take India several notches above in the Ease of Doing Business rankings
- Introduce social security measures - quid pro quo for voluntary payment of taxes







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