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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **“THE GLOBAL MINIMUM CORPORATE TAX- AN INDIAN PERSPECTIVE”**

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## **INTRODUCTION**

The phenomenon of globalisation has presented a dual set of challenges, serving as both a boon and a bane for nations attempting to enact advantageous tax policies. On one side of the argument, there exists a greater potential for attracting foreign investment, thereby facilitating the acquisition of advantages such as heightened employment rates and increased tax revenue within the local region. Increased foreign direct investment (FDI) can lead to higher-paying employment opportunities, economic expansion, and the advantages of a larger tax base for society. However, the positive outcomes associated with FDI are significantly reduced when a nation is compelled to provide exceptionally low tax rates or tax holidays as incentives to attract FDI. But this has led to escalation of tax competition has resulted in a steady decline in global effective corporate tax rates. Consequently, a phenomenon known as the “race-to-the-bottom”<sup>1</sup> has emerged, wherein the tax rate required to attract foreign investment has reached such minimal levels that the host society fails to derive substantial benefits from the influx of foreign capital. Nevertheless, it is important to note that there exists a significant level of tax competition among nations, driven by the desire to attract foreign investment and capital. The phenomenon of tax competition has led to a notable decrease in effective corporate tax rates, thereby giving rise to the concern commonly referred to as the “race-to-the-bottom” problem.

In order to address the threats posed by the emerging global economic order, a milestone was achieved by collective efforts of global community. On October 8, 2021, the Base Erosion and Profit Shifting (“BEPS”) memorandum, proposed by the Organisation for Economic Co-operation and Development (“OECD”) and led by the United States and European Union, was

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<sup>1</sup> Johnson, M. (2023) *A global minimum tax on firms is finally taking shape*, *The Economist*. Available at: <https://www.economist.com/the-world-ahead/2023/11/13/a-global-minimum-tax-on-firms-is-finally-taking-shape> (Accessed: 14 November 2023).

signed by 136 countries.<sup>2</sup> The largest transformation in international taxation has occurred since the 19th century. The publication of the memorandum marked the establishment of a unique international tax framework tailored for today's global economy. The provided memorandum advocates for the implementation of corporate tax harmonisation to address the prevalent trend of decreasing tax rates in international taxation since the 1980s. It argues that such an approach is suitable for the contemporary globally interconnected and technologically advanced world.

The proposed tax system aims to address the issue of multinational corporations evading taxes in the countries where they operate. The proposal mandates that all nations impose a minimum tax rate of fifteen percent on multinational corporations. The objective of this initiative is to establish tax frameworks that are suitable for the contemporary digital and globalised world. The G20 and the Organisation for Economic Cooperation and Development have reached a consensus on a comprehensive framework that addresses benefit transfers and the depletion of tax bases. The two primary foundations of this system are the implementation of a minimum tax and the allocation of surplus profit shares to the respective market jurisdictions. In accordance with the inclusive framework of profit shifting and base erosion established by the OECD and G20. One proposed policy entails the establishment of a global minimum corporate profit tax rate, while the other involves the implementation of a tax on base erosion payments.

The objective of the new system is to incorporate major technology companies into the tax network. Due to the absence of significant physical establishments such as factories or business premises in any particular country, these corporations are able to directly channel the profits generated from their digital operations to jurisdictions with lower tax rates, thereby reducing their liability for profit taxes. The effort was made to establish a universal minimum tax rate in response to mounting apprehensions regarding the substantial profits generated by major corporations such as Facebook and Alphabet. This framework proposes a revision of the existing international tax system, which was established a century ago and is deemed inadequate for the contemporary globalised and digitised world economy in the twenty-first century. The objective of the two-pillar package is to ensure that significant multinational enterprises (MNEs) fulfil their tax obligations and generate revenue in the jurisdictions where they operate, while simultaneously offering the international tax system the necessary

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<sup>2</sup> Ibid.

confidence and stability.

The first pillar aims to promote a fairer allocation of profits and taxes among major multinational corporations in every country, including those engaged in digital activities. The tax rights pertaining to multinational corporations will be redistributed from their respective home countries to the markets in which these enterprises operate, irrespective of their physical presence in said markets. The initial pillar suggests the redistribution of over \$100 billion in annual tax revenue to market jurisdictions.<sup>3</sup> Countries could utilise it as a means of safeguarding their tax revenues. The second pillar is expected to encompass a worldwide minimum corporate income tax rate of no less than 15%, resulting in an approximate annual increase of global tax revenues by US\$150 billion.<sup>4</sup> An additional advantage of the international tax system is its ability to provide stability and tax certainty for both tax authorities and taxpayers.

The second-pillar aims to offer governments the essential support required to enhance their financial position and fiscal plans, allocate resources towards critical public services and infrastructure, and enhance the quality and reliability of these services. The outcome presented here is the culmination of extensive and arduous efforts and a protracted process of negotiation. In addition to addressing the issue of tax competition, the proposed package incorporates thresholds that have been established through consensus among multiple stakeholders.

## **THE HISTORY OF EVOLUTION OF GLOBAL MINIMUM CORPORATE TAX**

In the year 1992, the member states of the European Union put forth an idea regarding the establishment of a minimum corporate tax rate within the region.<sup>5</sup> The Ruding Committee, a distinguished panel from the European Commission headed by Onno Ruding, introduced the proposal in 1992. Nevertheless, the committee opted not to implement its recommendation, which proposed a minimum tax rate of thirty percent.<sup>6</sup> In the year 2019, the affluent nations constituting the Organisation for Economic Co-operation and Development (OECD), an

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<sup>3</sup> Bird, R.M. (2008) 'Tax challenges facing developing countries', *SSRN Electronic Journal* [Preprint]. doi:10.2139/ssrn.1114084.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Kapoor, A. (2021) 'Global Minimum Tax with a Focus on Developing Countries India as a Case Study', *International Journal of Law) Management & Humanities*, 4(4).

intergovernmental entity, engaged in a collaborative effort to establish the Inclusive Framework. Subsequently, the Inclusive Framework of the Organisation for Economic Co-operation and Development (OECD) has undertaken an examination of the minimum tax rates pertaining to its constituent nations.

The proposal initially put forth was for a universally applicable minimum rate of corporate taxation. The proposal was formulated with the aim of addressing a future scenario wherein the global economy would exhibit a growing reliance on digital goods and services. It is crucial to update tax laws to mitigate the practise of profit shifting by companies to jurisdictions with lower corporate tax rates. In May 2019, Germany and France collectively introduced Pillar Two, a proposition aimed at impeding the downward spiral of competitive tax rates among nations.<sup>7</sup> The proposal received global support, as evidenced by the endorsements received from esteemed individuals such as former Secretary-General of the OECD, Angel Guriá, and President of the IMF, Christina Lagarde. In 2020, the US entered the OECD/G20 group's tax base erosion and profit shifting negotiations. In April 2021, the proposal put forth by France and Germany was granted approval by Janet Yellen, the Secretary of the United States Treasury. In 2020, after the G20's acceptance, 137 other nations at the time, supported the idea that the plan of Pillar Two provide a robust foundation for a comprehensive resolution aimed at tackling the persisting issues related to base erosion and profit shifting (BEPS).<sup>8</sup> With the exception of a minority of seven nations, the remainder of the members expressed their agreement towards endorsing the two-pillar plan.<sup>9</sup> Multinational enterprises (MNEs) employ profit shifting and base erosion strategies as a means of diminishing their tax liabilities, thereby engaging in a form of tax avoidance. The authors restated the importance of corporations being obligated to pay taxes in accordance with their profits. The concerns expressed by individuals are justified. Multinational corporations have been employing progressively intricate and sophisticated tax planning methodologies to redirect their revenue and profits to alternative jurisdictions, particularly those designated as tax havens, with the intention of evading tax obligations. The practises have resulted in the erosion of the tax base in numerous countries that possess relatively high corporate tax rates.

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<sup>7</sup> Avi-Yonah, R. and Kim, Y.R. (2022) 'Tax harmony: The promise and pitfalls of the global minimum tax', *Michigan Journal of International Law*, (43.3), p. 505. doi:10.36642/mjil.43.3.tax.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

## NECESSITY OF GLOBAL MINIMUM CORPORATE TAX

The current age of globalization has made countries face the trilemma of balancing (1) FDI-driven job creation and economic growth, (2) economic openness and competition from peers, and (3) securing a social safety net.<sup>10</sup> Firstly, the globalisation has facilitated the utilisation of Foreign Direct Investment (FDI) by numerous nations to advance their economies, adopt technologies that foster progress, and provide their citizens with increased access to higher-paying employment opportunities. Several Asian countries, including Singapore, Hong Kong,

Taiwan, South Korea, and Taiwan, ascribe a significant portion of their economic growth during the 1950s to the inflow of foreign direct investment (FDI).<sup>11</sup> Subsequently, the economies of these nations have undergone significant growth and achieved prosperity, in contrast to other countries that were experiencing comparable levels of development during the 1950s but have since experienced a lack of progress. The disparity in economic performance between these Asian nations can be attributed to their ability to attract and effectively utilise foreign direct investment.

Secondly, a country that permits foreign direct investment (FDI) in its economy faces the potential drawback of developing a reliance on capital that could otherwise be allocated to alternative purposes. These hazards arise from the competition between nations in attracting foreign investment to bolster their economies. Tax competition, a phenomenon that emerged in the 20th century, represents the epitome of this form of rivalry. To incentivize foreign direct investment (FDI), numerous developing nations adopt a strategy of providing foreign investors with reduced tax rates. These measures can manifest as tax holidays, wherein foreign investors are granted exemptions from tax obligations for a specified duration, or as generally reduced corporate tax rates. Developing nations, which exhibit a greater dependence on corporate taxes compared to developed nations, experience adverse consequences resulting from the phenomenon of tax competition.

In a general sense, it can be observed that corporate taxation constitutes approximately twenty-four percent of the overall tax revenue in developing nations, whereas in developed nations, this proportion is merely eight percent.<sup>12</sup> The issue at hand has been aggravated by the

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<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Mintz, J.M. (2022) 'The global corporate minimum tax: A cure or not?', *Canadian Tax Journal/Revue fiscale*

implementation of tax competition by developed nations, exemplified by Ireland, which has resulted in a further reduction of corporate tax rates. Ireland presently maintains a corporate tax rate of 12.5%, which stands in contrast to the average corporate tax rate of 23.51% observed across OECD member countries.<sup>13</sup> In order to enhance their competitiveness, developing nations may need to further decrease their rates. Tax competition incentivizes governments to continuously reduce tax rates or provide additional tax incentives with the aim of attracting greater inflows of foreign direct investment (FDI). The potential reduction of these tax incentives could result in a decrease to the extent that foreign direct investment (FDI) may yield minimal or negligible net revenue for the governing authority. However, upon examination of the effective tax rates, which represent the actual rates paid by foreign corporations, it becomes apparent that the effective tax rates of lower-income countries were reduced by approximately 50% from 1996 to 2007.<sup>14</sup>

Thirdly, it is imperative for a nation to uphold a resilient social safety net and diverse welfare initiatives in order to safeguard its economically disadvantaged population from destitution and unforeseen misfortunes. In the United States, examples of social safety net programmes include the Earned Income Tax Credit, Child Tax Credits, and the Temporary Assistance for Needy Families (TANF) cash transfer programme.<sup>15</sup> The social welfare systems in Europe encompass provisions for covering housing, education, and medical costs. The implementation of extensive safety nets necessitates a substantial amount of tax revenue. However, in cases where a nation's revenue stream is susceptible to significant fluctuations, the sustainability of a comprehensive social safety net becomes more challenging. This phenomenon holds particular significance for countries that reduce their corporate tax rates or implement tax holidays as a means to attract foreign investment.

Hence, adopting strategies to efficiently regulate tax competition emerges as the preferable strategy for addressing this trilemma. A viable solution to the trilemma and one that would yield benefits for all participating nations is the cessation of detrimental tax competition that perpetuates a race to the bottom. One issue pertains to the inability of source countries of

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*canadienne*, 70(Supp), pp. 231–255. doi:10.32721/ctj.2022.70.supp.mintz.

<sup>13</sup> Ibid.

<sup>14</sup> Öner, C. (2020) 'Comparative analysis of the general anti-abuse rule of the anti-tax avoidance directive: An effective tool to tackle tax avoidance?', *EC Tax Review*, 29(Issue 1), pp. 38–52. doi:10.54648/ecta2020005.

<sup>15</sup> Nathan, J. (2023) 'Global Minimum Tax on Corporate Profits and Way Ahead', *Emerald Expert Briefings*. doi:10.1108/oxan-db275316.

Foreign Direct Investment (FDI) to unilaterally impose restrictions on tax competition. In the event that a nation proclaims its abstention from participating in tax competition through the provision of tax holidays or other fiscal incentives to multinational enterprises (MNEs), said enterprises will seek alternative investment destinations. As an illustration, when the Philippines declined to grant General Motors a tax exemption and tax incentives amounting to fifteen million USD, foreign direct investment (FDI) was redirected towards Thailand.<sup>16</sup> The primary issue lies in the high mobility exhibited by contemporary MNEs. These events have the potential to be hosted by any nation that possesses sufficient infrastructure and a highly skilled workforce. The geographical proximity of the investment holds no significance as intellectual property can be easily transferred across different locations without any constraints. The necessity for periodic updates or retrofitting of manufacturing facilities to accommodate novel innovations or processes contributes to the facilitation of relocation.

Developing nations encounter more pronounced challenges pertaining to tax competition in comparison to affluent nations due to their heightened reliance on corporate tax revenues. Corporate tax constitutes approximately 7-8% of the overall revenue in countries that are members of the Organisation for Economic Cooperation and Development (OECD), while in developing nations, this proportion rises to approximately 24%.<sup>17</sup> Tax competition is a phenomenon that affects both developed and developing countries alike. Tax competition leads to a decrease in corporate tax revenues, which has adverse consequences for even OECD member states. This is due to their limited ability to generate additional taxes in addition to their already elevated tax rates. One of the key questions raised by proposed tax competition reductions is whether they effectively address genuine international investment shopping as well as artificial profit shifting to low-tax jurisdictions such as tax havens.

After extensive consideration and realisation of these significant challenges, major economies are now seeking to proactively deter multinational corporations, irrespective of the location of their sales, from engaging in profit and tax revenue shifting to low-tax jurisdictions. Intangible sources of income, such as software, drug patents, and intellectual property royalties, are progressively being relocated to low-tax jurisdictions, enabling enterprises to circumvent elevated tax obligations in their conventional host nations. The member countries of the G20

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<sup>16</sup> Suarez, F.M. (2022) 'The Minimum Rate Tax of Corporate Tax: The deal of G7', *Annals of Bioethics & Clinical Applications*, 5(1). doi:10.23880/abca-16000216.

<sup>17</sup> Ibid.

have put forth a proposition to establish a minimum tax rate of 15% as a means to counteract the erosion of the tax base, while simultaneously ensuring that local businesses are not adversely affected.<sup>18</sup> This will create avenues for competition in sectors such as innovation and infrastructure. The primary aim is to exert pressure on multinational corporations (MNCs) to ensure equitable taxation of their substantial profits in the countries where they operate.

It is anticipated that the minimum suggested tax will constitute a significant portion of the estimated \$50 billion to \$80 billion in supplementary taxes that businesses are projected to pay worldwide,<sup>19</sup> as per the assessments made by the OECD, consequent to the agreements reached on these matters. The imposition of a global minimum tax rate would apply to profits generated from international operations. The elimination of profit shifting incentives would occur if corporations were subject to lower tax rates in a specific country. Conversely, domestic governments could supplement their taxes to meet the minimum rate. Local governments retain the autonomy to exercise discretion in determining the level of taxation imposed upon corporations.

The Organisation for Economic Cooperation and Development (OECD) reiterated that although member governments have generally reached a consensus on the fundamental principles of the minimum tax, certain countries have expressed reservations regarding its implementation. Additional matters that necessitate resolution encompass the inclusion of real estate investment trusts and investment funds within the purview of the proposed measures, determination of the timeline for implementation of the revised rate, and establishment of a harmonious relationship between the proposed measures and the ongoing tax reform initiatives undertaken by participating nations to counteract erosion. Subsequent to that, deliberations have been conducted to resolve any remaining intricacies prior to the aforementioned proposition, scheduled to be enforced in 2023, being put into action, with the fundamental structure of the proposal having garnered approval from 130 nations.<sup>20</sup> The proposal put forth by the United States to establish a minimum global corporate tax rate of 15% has garnered significant attention and has been a subject of extensive deliberations.<sup>21</sup> This proposed rate surpasses the tax rates currently in place in Singapore and Ireland, yet remains lower than the

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<sup>18</sup> Ibid.

<sup>19</sup> Supra at note 12

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

lowest rate observed among the Group of Seven (G7) nations.<sup>22</sup>

The final framework could potentially impose significant influence on low-tax jurisdictions such as Ireland and offshore financial centres. The Irish economy has experienced a significant boost as a result of substantial investments amounting to billions of dollars from various multinational corporations. Dublin has previously demonstrated its resistance towards the European Union's endeavours to standardise its tax legislation, thus making it improbable for Dublin to acquiesce to an elevated minimum rate without engaging in opposition. According to the authorised proposal, instead of jeopardising the overall negotiations, the low-tax nations are expected to focus on garnering backing for a minimum rate that closely aligns with their current rate of 12.5% or pursuing specific exemptions.<sup>23</sup>

### **IMPACT ON GLOBAL ECONOMY**

When progressing towards the implementation phase, it is pertinent to contemplate the potential effects of a global minimum tax on tax incentives and policy decisions. According to the proposal for a global minimum tax by the OECD, the parent company will be required to make payment of a "top-up tax" in the event that income is generated at a lower tax rate further down the ownership hierarchy.<sup>24</sup> The implementation of a global minimum tax would significantly impact the utilisation of tax incentives. Countries with headline tax rates below the global minimum will inevitably encounter heightened pressure to increase their domestic tax rates in the event of the implementation of a global minimum tax. This pressure is particularly pronounced when such an increase would effectively result in the outflow of tax revenues.

Some governments argue that a global minimum tax system should incorporate provisions for limited tax competition, particularly for smaller nations seeking to compete with larger nations that possess inherent economic advantages. However, the capacity to provide tax incentives will be fundamentally influenced by the magnitude of any global minimum tax framework. Opposition from political parties and public interest groups is expected to be significant towards tax incentives that target employer social security contributions or property taxes, as

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<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Avi-Yonah, R.S. (2023) 'Why 15%? Justifying the Global Corporate Minimum Tax', *SSRN Electronic Journal* doi:10.2139/ssrn.4392468.

there are concerns that such measures may still enable large corporations to establish tax havens. It is worth noting that these taxes are not included in any global minimum tax regime. Conversely, it is possible to observe the implementation of supplementary policy measures that focus on the establishment of tax incentives within economically beneficial zones. Instead of pursuing tax harmonisation, the proposed global minimum tax regime aims to mitigate the prevalence of tax havens and establish parameters within which nations are anticipated to function.

Nevertheless, the implementation of a global minimum tax rate will inevitably necessitate a revision of the criteria used to determine a justifiable tax base and rate. There is a possibility of observing an increasing convergence in tax bases and tax types among nations, driven by their efforts to safeguard their tax systems from any negative impact arising from the minimum tax calculation methodology. The inclusion of a broad local tax base in the calculation of the global minimum tax is advantageous, as the application of a low tax rate to a wide range of taxable entities will result in an augmented local effective tax rate. Due to the implications of the calculations, it is plausible that governments will potentially implement tax policies aimed at expanding the tax base, or at the very least, harmonising it with the calculation methodology employed by the Organisation for Economic Cooperation and Development (OECD).<sup>25</sup> This would facilitate the adoption of taxes that are universally applicable in the computation of the global minimum tax.

However, the imposition of local tax preferences towards nonprofit organisations, coupled with the implementation of global minimum tax measures on the nation's primary corporate tax system, would have a detrimental impact on the overall national investment tax burden. Revising the tax structure to garner recognition for its intended objectives would enhance the jurisdiction's overall position in relation to the global minimum tax framework.<sup>26</sup> If feasible, this restructuring could additionally create space for specific, restricted tax incentives. In the aftermath of the Covid-19 pandemic, as nations worldwide strive to revive their economies, apprehensions may arise regarding the potential hindrance posed by a global minimum tax to the process of economic recovery. This concern is particularly relevant for countries heavily reliant on foreign investment, which has been incentivized through tax incentives.

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<sup>25</sup> Ibid.

<sup>26</sup> Supra at note 7.

Moreover, the concept of implementing a global minimum corporate tax considerably diminishes the motivations for multinational enterprises (MNEs) to relocate their domicile or central offices in order to exploit tax competition offered by host countries. It is imperative to consider that Pillar Two also encompasses strategies for residence-based taxation. This section provides an analysis of the benefits and drawbacks associated with Pillar Two. The initial focus of this discussion centres around the potential benefits associated with international tax reform, particularly its ability to enhance revenue generation and mitigate the practise of profit shifting.<sup>27</sup> Subsequently, we proceed to examine the diverse obstacles encountered by Pillar Two, encompassing apprehensions specific to developing nations, exemptions, and logistical hurdles associated with its implementation.

It is projected that the implementation of a global minimum corporate income tax rate of fifteen percent will result in an estimated annual increase of \$150 billion USD in worldwide tax revenue.<sup>28</sup> The primary source of revenue effects will arise from the redistribution of profits, which are estimated to have an annual value of \$100 billion USD, to the countries of origin.<sup>29</sup> Consequently, the implementation of global tax reform is anticipated to yield substantial revenue that will have widespread benefits for individuals across the globe. The proposal is additionally endorsed by the International Monetary Fund (IMF), which represents an additional 51 nations and indicates the existence of broader international backing for it beyond the Inclusive Framework.<sup>30</sup> The implementation of a worldwide minimum tax rate of 15% would effectively curtail tax competition and mitigate the phenomenon of nations engaging in a race to the bottom. If enough major economies reach a consensus to adopt this measure, it is likely that businesses will be disincentivized from relocating to jurisdictions with lower tax rates.

## **INDIA AND THE GLOBAL MINIMUM CORPORATE TAX**

Justice Chinnapa Reddy has elucidated in the case of *Mcdowell & Co Limited vs Commercial Tax Officer* how the difference between tax evasion and tax avoidance is very less.<sup>31</sup> He says the “art of dodging tax without breaking the law” is tax avoidance.<sup>32</sup> The main goal of this

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<sup>27</sup> Supra at note 7.

<sup>28</sup> 1985 SCR (3) 791

<sup>29</sup> Das, A. and Boorah, R. (2021) Global Minimum Tax Rate Solution for Tax Avoidance Woes in India?, *Indian Journal of Law and Legal Research*, 2(2).

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

process is to safeguard the company from potentially burdensome tax liabilities in foreign jurisdictions. The decisions undertaken by the company have the potential to result in the transfer of liabilities across different nations. In contrast, tax evasion involves the deliberate violation of legal statutes through deceptive methods such as concealing funds, exaggerating deductions or expenses, and misappropriating assets. Tax evasion has numerous adverse consequences. Initially, it is crucial to acknowledge that a considerable portion of public funds is forfeited, posing challenges within the context of our present welfare state. Consequently, the accumulation of substantial amounts of undisclosed income leads to a significant disruption in the national economy, ultimately leading to inflationary pressures. Although tax avoidance, tax planning, and tax evasion are distinct concepts, they often exhibit discernible disparities. The distinctions are a cause for concern as they are frequently exploited by companies.

The concept contains a mutually beneficial scenario in which the government aims to acquire a specific amount of capital tax, while businesses are relieved from the necessity of establishing intricate frameworks to evade elevated tax rates. India is expected to benefit from the international consensus on implementing a minimum corporate tax rate of 15%.<sup>33</sup> The country's effective domestic tax rate surpasses the established threshold, except for instances pertaining to Special Economic Zones. There is a strong likelihood that both foreign investment and India's tax structure will remain advantageous. India stands to benefit from these rates as its tax rates have decreased to a level that enables the provision of concessions to large corporations while maintaining global competitiveness. While the implementation of the 15% General Minimum Corporate Tax Rate (GMCTR) is not expected to have any impact on current investments in India, it is anticipated that the establishment of additional Special Economic Zones (SEZs) and the provision of incentives to encourage firms to invest in the country will face challenges.<sup>34</sup>

Over the course of time, endeavours have been undertaken to redirect international tax regulations in response to the economic expansion witnessed in China and India. However, the main objective of these initiatives has been to surpass well-established business models by striving to implement uniform tax rates on various sources of income, such as dividends, interest, royalties, and technical service fees.<sup>35</sup> These are typically paid by businesses in

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<sup>33</sup> Supra at note 24.

<sup>34</sup> Ibid.

<sup>35</sup> Supra at 29.

developing nations to capital owners or technology providers in more advanced economies. The rate of progress has experienced a notable increase in recent times, primarily attributed to the significant growth of digital commerce. India stands to benefit from the revisions made to the international tax code. Developed nations have generally experienced greater tax benefits from international trade and transactions. The reason for this phenomenon is that historically, “resident” (developed) countries have imposed lower tax rates on income derived from “source” (developing) countries in accordance with international tax regulations.<sup>36</sup> The transfer of trade, services, and technology has predominantly occurred from developed nations to developing nations throughout the recent era of industrialization.

India has the potential to benefit from tax revenue due to the size of its market and the growth opportunities it presents. The nation in question has been at the forefront of incorporating the notion of “significant economic presence” into its domestic tax laws. This development has granted international digital commerce companies the authority to levy taxes on the income they generate from their Indian clientele within India. Moreover, it is anticipated that India will benefit from the proposed global minimum corporate tax rate of 15%. According to the Tax Justice Network, it is estimated that the country would experience a minimum gain of \$4 billion (approximately Rs 300 billion), which accounts for approximately 6% of corporate tax revenues for the fiscal year 2021.<sup>37</sup> Nevertheless, it is imperative for India to prioritise the enhancement of its capabilities and expeditious resolution of conflicts. Moreover, the implementation of a minimum tax rate of 15% (plus surcharges) for new manufacturing businesses in India would not adversely impact foreign direct investment or impose burdensome tax obligations on foreign investors.

Nevertheless, it would be necessary for countries such as India to relinquish the 2 percent equalisation tax imposed on foreign internet companies.<sup>38</sup> In September 2019, the government implemented a reduction in corporate tax rates, setting them at 25% for newly incorporated businesses and 15% for established businesses.<sup>39</sup> The government has articulated apprehensions regarding the OECD’s proposition for a worldwide minimum tax due to its recognition that additional modifications aimed at establishing a tax rate across G20 nations

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<sup>36</sup> Ibid.

<sup>37</sup> Supra at note 12.

<sup>38</sup> Supra at note 9.

<sup>39</sup> Grimm, L. (2022) ‘G20 and Global Minimum Tax Rate’, *Historic Documents of 2021*, pp. 719–728. doi:10.4135/9781071853429.n53.

will not effectively enhance business sentiment, particularly in the context of the economic uncertainty engendered by the COVID-19 pandemic.

However, it should be noted that despite recent tax reforms, India's effective tax rate remains higher than the globally recommended minimum tax rate. Consequently, this disparity is unlikely to significantly affect companies engaged in business activities within the country. The recently announced reduction in tax rate to 15% for newly established manufacturing facilities in India is expected to provide a significant impetus to the manufacturing sector, which has been in need of such support. Consequently, it can be inferred that the proposal will not yield any discernible impact on the manufacturing sector of India. In addition, the implementation of the global threshold rule will enable the government to recoup any tax deficit below 15% that is incurred by a foreign company owned by an Indian resident. This measure serves to safeguard against the erosion of tax revenues in the nation in relation to outbound investments.

## CONCLUSION

The implementation of an international minimum tax remains a formidable task, indicating that significant progress is yet to be made in this regard. With respect to the fulfilment of the technical components of the tax and the implementation strategy for its enforcement commencing in 2023. The proposal is expected to exert an influence on the course of the discussion and bring about a reorientation of stances in the negotiation process, particularly in nations where the imposition of increased taxes is likely to yield adverse consequences. However, a significant amount of uncertainty persists regarding the potential approval of President Biden's proposed domestic tax reform agenda by the United States Congress.<sup>40</sup> If not, it remains uncertain how his proposals for a universal minimum tax would be received. The package comprising Pillar One and Pillar Two encompasses the proposition. Different economies prioritise the pillars in varying ways. As an illustration, the United Kingdom places a high priority on addressing the digital issue, which is categorised within Pillar One. The consideration of tax payment location is regarded as a fundamental element in any proposed solution, extending beyond the mere determination of tax rates. The United Kingdom has expressed its intention to endorse both Pillar One and Pillar Two within a consensus agreement,

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<sup>40</sup> Avi-Yonah, R. and Kim, Y.R. (2022) 'Tax harmony: The promise and pitfalls of the global minimum tax', *Michigan Journal of International Law*, (43.3), p. 505. doi:10.36642/mjil.43.3.tax.

contingent upon the satisfactory resolution of digital matters.<sup>41</sup> Certain nations regard Pillar Two as being of greater importance. Nevertheless, the overall appeal is enhanced by the amalgamation of both pillars in their entirety.

The purpose of this idea is to demonstrate widespread endorsement of the proposal and emphasise the necessity of addressing tax issues in a manner that ensures fairness among all stakeholders, considering the growing prevalence of digitalization in the business ecosystem. Estimates provided by the Tax Justice Network of the United Kingdom indicate that the implementation of a 15% global minimum corporate tax rate would result in a substantial increase of \$168 billion in corporate income tax revenue for the G7 countries, with an additional \$107 billion projected for all other nations.<sup>42</sup> International tax laws often result in the curtailment of taxation privileges for developing nations, in favour of “resident” countries that are more economically advanced. This preference is due to the fact that developed countries have predominantly benefited from valuable trade, services, and technology transfers, which have occurred primarily from developed to developing nations throughout the majority of recent industrial history. It is expected that the implementation of such taxation policies will have a positive impact on nations such as India. According to the Tax Justice Network’s estimation, it is anticipated that India will experience a minimum increase of US\$4 billion in its corporate tax collections for the fiscal year 2021, which would account for approximately -6% of the total.<sup>43</sup> In general, nations that possess moderate tax systems tend to exhibit superior performance when compared to “tax havens” characterised by low or non-existent tax rates. It is expected that developing nations, including India, stand to benefit from proposals that advocate for their taxation.

Whereas implementation may pose significant challenges, particularly considering the potential disruptions of alternative approaches, there seems to be a prevailing agreement that a global minimum tax will be approved. In the absence of intervention, a multitude of unilateral measures are likely to be undertaken, aiming to tackle national concerns without adherence to an international framework. The scenario is likely to result in the occurrence of dual taxation and intricate international conflicts.<sup>44</sup> Additionally, this phenomenon has the potential to

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<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Supra at note 15.

initiate trade conflicts or give rise to various adverse political and economic consequences. There have been suggestions put forth advocating for the implementation of a global minimum tax as a means to establish equitable taxation of multinational corporations, thereby addressing the complex issue at hand in a straightforward manner. Tax regulations are characterised by their intricate nature, and comprehending the interplay between various tax frameworks can be likened to engaging in a game of three-dimensional chess. This analogy highlights the non-intuitive nature of the subject matter, the presence of numerous dynamic components, and the interdependence of strategic moves.

Considering potential limitations, the proposed plan is expected to provide a measure of reassurance, enabling governments to prioritise the restoration of economies that have been severely impacted by the global pandemic. The implementation of a global minimum tax will inevitably entail various expenditures. Furthermore, in the scenario where the source country lacks the capacity or willingness to establish a corporate income tax (CIT) system, if it does not already have one in place, or increase its CIT rate to the suggested level, the host country of the foreign multinational corporations will receive the supplementary tax revenues. The source country does not derive any benefits from the implementation of the minimum tax. Moreover, if the global minimum tax is established in an unjust, inaccurate, or manipulable fashion, it could potentially have adverse effects on both distribution and efficiency. Taking all factors into consideration, there exists a certain degree of backing for the implementation of a worldwide minimum effective tax rate, albeit with certain restrictions. Despite potential drawbacks, the continuation of countries' practise of exempting income from foreign sources from taxation may serve as a valuable and indispensable safeguard. Furthermore, alongside the implementation of a fundamental minimum tax on the substantial profits of multinational corporations (MNCs), the proposition aims to grant authority over the jurisdictions commonly referred to as "Tax Havens."