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Taxation of the Digital Economy in India and the Need for a Multilateral Framework

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The rapid expansion of the digital economy has disrupted traditional principles of international taxation, particularly those based on physical presence and territorial nexus. In jurisdictions like India, where digital consumption has grown exponentially, multinational enterprises derive significant value without establishing a corresponding taxable presence. This has led to substantial revenue challenges and prompted the adoption of unilateral tax measures such as the Equalisation Levy and the concept of Significant Economic Presence (SEP). This article critically examines India's approach to digital taxation within the broader framework of international tax law. It analyses the legal foundations of India's measures, relevant judicial interpretations, and global developments, particularly the OECD's Base Erosion and Profit Shifting (BEPS) initiative. While India's unilateral measures reflect legitimate concerns regarding fiscal sovereignty and revenue protection, they remain fragmented and potentially inconsistent with international obligations. The article argues that a multilateral framework offers a more coherent and sustainable solution to the challenges posed by the digital economy. However, such a framework must be inclusive and responsive to the concerns of developing economies. Ultimately, the article advocates for a balanced approach that integrates domestic reforms with active participation in global tax negotiations.

Keywords: *digital economy, equalisation levy, significant economic presence.*

INTRODUCTION

Can a country fairly tax a business that operates extensively within its borders but has no physical presence there? This question, once largely theoretical, has become central to modern tax debates. In India, global digital giants generate substantial revenues from millions of users, yet their tax contributions often appear disproportionately low. This disconnect has sparked both legal innovation and international controversy. The emergence of the digital economy has fundamentally altered how value is created, distributed, and taxed. Traditional tax frameworks were designed in an era of brick-and-mortar businesses that relied heavily on physical presence to establish taxing rights. However, digital enterprises operate through algorithms, data, and user networks, rendering these frameworks increasingly inadequate.[1]

India, as one of the largest digital markets globally, faces a unique dilemma. On one hand, it must safeguard its tax base against erosion caused by multinational corporations. On the other hand, it must navigate a complex web of international tax norms and treaty obligations.[2] In response, India has adopted unilateral measures such as the Equalisation Levy and introduced the concept of Significant Economic Presence (SEP). While these steps demonstrate regulatory assertiveness, they also raise concerns about fragmentation, double taxation, and trade disputes.

At the same time, international efforts, most notably the OECD's Base Erosion and Profit Shifting (BEPS) project, seek to establish a coordinated framework for taxing the digital economy. These initiatives reflect a growing consensus that unilateral approaches may not be sufficient in an interconnected global system. This article argues that while India's unilateral measures are understandable and, to some extent, necessary, they fall short of providing a sustainable solution. A multilateral framework, grounded in international cooperation and equitable principles, offers a more viable path forward. However, such a framework must be carefully designed to accommodate the interests of developing economies like India.

THE EVOLUTION OF THE DIGITAL ECONOMY AND TAXATION CHALLENGES

The digital economy is characterised by the increasing reliance on intangible assets, data-driven business models, and user participation. Companies such as social media platforms, search

[1] *Addressing the Tax Challenges of the Digital Economy* (OECD, 2015)
[2] *Tax Challenges Arising from Digitalisation – Interim Report 2018* (OECD, 2018)

engines, and e-commerce marketplaces generate value not merely through transactions but through the collection and monetisation of user data.

This shift has created significant challenges for traditional tax systems. The concept of permanent establishment (PE), a cornerstone of international taxation, requires a fixed place of business in a jurisdiction.[3] Digital enterprises, however, can operate across borders without establishing such a presence, thereby avoiding taxation in market jurisdictions. Moreover, the phenomenon of base erosion and profit shifting (BEPS) allows multinational corporations to allocate profits to low-tax jurisdictions, further reducing their tax liabilities. The OECD has identified this as a major concern, particularly for developing countries that rely heavily on corporate tax revenues.[4]

India's experience reflects these global trends. The country's large and growing digital user base makes it an attractive market for multinational enterprises, yet the existing tax framework struggles to capture the value generated within its borders.

INDIA'S LEGAL FRAMEWORK FOR DIGITAL TAXATION

Equalisation Levy: The Equalisation Levy, introduced through the Finance Act 2016, represents India's first significant attempt to tax the digital economy. Initially applicable to online advertising services, it was expanded in 2020 to cover e-commerce operators.[5] Unlike traditional income tax, the levy operates as a separate charge on specified transactions. This allows India to bypass limitations imposed by tax treaties, which are generally based on the PE concept. However, this approach has been criticised for creating legal uncertainty.[6] Since the levy exists outside the income tax framework, it may lead to overlapping tax obligations and increased compliance burdens.[7]

Significant Economic Presence (SEP): The concept of SEP, introduced through amendments to the Income Tax Act 1961, seeks to redefine nexus based on economic activity

[3] Model Tax Convention on Income and on Capital 2017, art 5
[4] *Base Erosion and Profit Shifting* (OECD, 2013)
[5] Finance Act 2016
[6] Reuven S Avi-Yonah, 'GLOBALIZATION AND TAX COMPETITION: IMPLICATIONS FOR DEVELOPING COUNTRIES' (*Inter-American Development Bank,* 10 November 2010) <http://dx.doi.org/10.18235/0008545> accessed 20 March 2026
[7] Income Tax Act 1961

rather than physical presence.[8] SEP aims to establish tax liability where a non-resident engages in significant economic interactions within India, such as through digital transactions or user engagement. However, its practical implementation is limited by existing tax treaties, which continue to rely on traditional PE standards.

Constitutional and Policy Considerations: India's taxation powers are derived from its Constitution, which allocates legislative competence between the Union and the States. While the Union has authority over income tax, digital taxation raises broader questions about fairness, equity, and economic policy.

JUDICIAL INTERPRETATION AND ITS IMPLICATIONS

The role of the judiciary in shaping India's international tax jurisprudence has been both significant and, at times, deliberately restrained. Faced with increasingly complex cross-border transactions, Indian courts have often preferred to adhere closely to established legal principles rather than expand tax jurisdiction through interpretative innovation. This cautious approach reflects a broader judicial philosophy that prioritises legal certainty and legislative intent over policy-driven expansion of taxing powers. While such restraint safeguards taxpayers against arbitrary imposition, it also exposes the limitations of traditional doctrines in addressing the realities of a digitalised economy.

A landmark decision in this context is *CIT v Vodafone International Holdings BV*, where the Supreme Court was confronted with the taxation of an offshore transaction involving the indirect transfer of Indian assets. The Revenue sought to tax the transaction on the basis that it effectively resulted in the transfer of controlling interest in an Indian company. However, the Court rejected this argument, holding that the transaction lacked sufficient territorial nexus with India to attract tax liability. The judgment emphasised that tax statutes must be interpreted strictly and that any extension of jurisdiction must be clearly grounded in legislative language rather than inferred from economic consequences. In doing so, the Court reinforced the principle that taxation cannot be imposed merely because a transaction has some indirect economic impact within India.

[8] Income Tax Act 1961

This reasoning, while doctrinally sound, reveals an important tension. On one hand, it protects the integrity of the legal system by preventing overreach; on the other, it highlights the inadequacy of existing statutory frameworks in capturing complex, multi-jurisdictional transactions. The Vodafone case ultimately prompted legislative intervention through retrospective amendments, illustrating how judicial restraint can shift the burden of reform back to the legislature. However, such retrospective measures have themselves been criticised for undermining investor confidence and creating legal uncertainty.

A similar emphasis on statutory clarity is evident in *GE India Technology Centre Pvt Ltd v CIT*.[9] In this case, the Supreme Court examined whether a payer was obligated to withhold tax on payments made to a non-resident. The Court held that withholding obligations arise only when the payment is chargeable to tax in India under the Income Tax Act. This interpretation rejected the Revenue's broader reading of withholding provisions and reaffirmed the principle that tax liability must be clearly established before compliance obligations can be imposed. The decision is particularly relevant in the digital context, where cross-border payments for services, royalties, and data usage are increasingly common.

Taken together, these decisions illustrate a consistent judicial approach that resists expanding the scope of taxation beyond the clear wording of statutes. Courts have been reluctant to adopt purposive interpretations that might accommodate evolving economic realities, especially in the absence of explicit legislative guidance. While this approach ensures predictability and aligns with the rule of law, it also limits the judiciary's ability to address emerging challenges posed by digital business models.

The implications of this judicial stance are multifaceted. First, it underscores the urgent need for legislative reform. As digital transactions continue to outpace traditional legal categories, reliance on judicial interpretation alone is unlikely to produce satisfactory outcomes. Second, it creates a structural gap between economic activity and taxability, allowing multinational enterprises to exploit ambiguities in the law. Third, it places India in a reactive position, where legal reforms often follow, rather than anticipate, developments in global commerce.

[9] *GE India Technology Centre Pvt Ltd v CIT* (2010) 10 SCC 29

At the same time, it would be overly simplistic to criticise the judiciary for failing to adapt tax law to the digital age. Courts operate within the confines of statutory interpretation and cannot assume the role of policymakers. In fact, their insistence on legislative clarity serves as a reminder that meaningful reform must originate from the legislature and, increasingly, from international cooperation.

In the context of digital taxation, this dynamic becomes even more pronounced. Concepts such as Significant Economic Presence (SEP) represent attempts to bridge the gap between traditional nexus rules and modern economic realities. However, unless such concepts are integrated into bilateral treaties and supported by a broader international consensus, their effectiveness will remain limited. Judicial interpretation alone cannot reconcile these inconsistencies.

Ultimately, the Indian judiciary's approach highlights both the strengths and limitations of legal formalism in a rapidly evolving economic landscape. It reinforces the need for a coherent, forward-looking framework that aligns domestic law with global developments. Without such alignment, courts will continue to grapple with disputes that expose the mismatch between outdated legal principles and contemporary modes of value creation.

INTERNATIONAL DEVELOPMENTS AND THE OECD FRAMEWORK

The challenges posed by the digital economy are inherently transnational, making unilateral solutions both limited and potentially disruptive. Recognising this, the international community, led primarily by the Organisation for Economic Co-operation and Development (OECD), has undertaken extensive efforts to reform the global tax architecture. The OECD's Base Erosion and Profit Shifting (BEPS) initiative represents the most significant attempt to address the structural weaknesses in international taxation, particularly those exacerbated by digitalisation. While not without its critics, the BEPS framework reflects a growing consensus that coordinated, multilateral solutions are essential to ensure fairness, efficiency, and stability in the global tax system.

The BEPS project, launched in 2013, initially focused on curbing tax avoidance strategies that exploit gaps and mismatches in domestic tax laws. However, as digital business models gained prominence, it became increasingly clear that the existing framework required more fundamental reform. This led to the development of the so-called "Two-Pillar Solution," which

seeks to redefine the allocation of taxing rights and establish minimum standards for corporate taxation across jurisdictions.

Pillar One represents a significant departure from traditional tax principles. It seeks to allocate a portion of multinational enterprises' profits to market jurisdictions, countries where users or consumers are located, irrespective of physical presence. This approach directly challenges the long-standing reliance on the concept of permanent establishment. Under Pillar One, highly digitalised and consumer-facing businesses would be required to pay taxes in jurisdictions where they derive substantial revenues, even if they lack a tangible presence there. For countries like India, this proposal is particularly relevant, as it acknowledges the economic value generated by user participation and market engagement.

However, the implementation of Pillar One has proven to be complex. Determining which companies fall within its scope, calculating the share of profits to be reallocated, and resolving disputes between jurisdictions are all contentious issues.[10] Moreover, developing countries have expressed concerns that the allocation formula may not adequately reflect their contributions as significant markets. There is also apprehension that the administrative burden associated with the new rules could outweigh their benefits, particularly for tax authorities with limited resources.

Pillar Two, by contrast, focuses on establishing a global minimum tax to address profit shifting. It aims to ensure that multinational enterprises pay a minimum level of tax, regardless of where they are headquartered or operate. This is achieved through mechanisms such as the Income Inclusion Rule (IIR) and the Undertaxed Payments Rule (UTPR), which allow countries to impose additional taxes where income is subject to low effective tax rates. While Pillar Two does not directly address nexus issues, it complements Pillar One by reducing the incentive to shift profits to low-tax jurisdictions.

From India's perspective, Pillar Two offers both opportunities and challenges. On one hand, it aligns with India's long-standing concerns about tax base erosion and aggressive tax planning. On the other hand, it raises questions about how the global minimum tax will interact with

[10] Siona Listokin, 'New rationales for taxing the digital economy: lessons from the OECD Pillar One consultations' (2025) 7 Frontiers in Political Science <https://doi.org/10.3389/fpos.2025.1561283> accessed 20 March 2026

existing domestic provisions and whether it will disproportionately benefit developed economies where many multinational enterprises are headquartered.

India's engagement with the OECD framework has been both active and cautious. As a member of the Inclusive Framework on BEPS, India has participated in negotiations and contributed to shaping the proposals. At the same time, it has maintained unilateral measures such as the Equalisation Levy, reflecting a degree of scepticism about the pace and adequacy of multilateral reforms.[11] This dual approach illustrates a broader tension: while India recognises the necessity of international cooperation, it remains unwilling to fully relinquish its policy autonomy in the absence of guaranteed benefits.

Beyond the OECD, other international developments further underscore the fragmented nature of digital taxation. The European Union has proposed its own Digital Services Tax (DST), although implementation has been inconsistent across member states. Similarly, countries such as France and the United Kingdom have introduced unilateral digital taxes, often leading to diplomatic tensions, particularly with the United States. These developments highlight the risks of a "patchwork" global tax regime, where overlapping and sometimes conflicting measures create uncertainty for businesses and governments alike.

In this context, the OECD framework serves as an attempt to harmonise competing approaches and prevent the escalation of tax disputes. However, its success depends on widespread adoption and effective implementation. The voluntary nature of the framework and the need for domestic legislative changes in participating countries pose significant challenges. Furthermore, geopolitical considerations and differing national interests continue to complicate negotiations.

Critically, the OECD's proposals also raise normative questions about equity and representation. Developing countries, including India, have argued that existing international tax rules disproportionately favour developed economies. While the Two-Pillar Solution seeks to address some of these imbalances, concerns remain regarding the distribution of taxing rights and the extent to which the framework accommodates diverse economic realities.

[11] Michael Ajayi, 'Taxation of the Digital Economy: An Appraisal of the Effectiveness of the OECD Tax Deal on Low-and-Middle Income Countries' (2024) SSRN <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4925227> accessed 20 May 2026

Ultimately, the OECD framework represents both progress and compromise. It acknowledges the inadequacy of traditional tax principles in the digital age and offers a pathway towards reform. Yet, it also reflects the constraints of achieving consensus in a heterogeneous international system. For India, the challenge lies in navigating this evolving landscape—balancing immediate fiscal needs with the long-term benefits of a stable and coordinated global tax regime.

CRITICAL EVALUATION: UNILATERALISM VS MULTILATERALISM

India's unilateral measures reflect a pragmatic response to immediate revenue challenges. However, they raise several concerns.[12]

First, fragmentation of tax rules creates complexity and uncertainty. Multiple overlapping provisions increase compliance costs and hinder effective enforcement.

Second, double taxation risks arise when unilateral measures conflict with international tax treaties. This may discourage foreign investment and lead to disputes.

Third, international tensions may result from perceived discriminatory practices. For instance, the United States has criticised digital taxes imposed by several countries, including India.

At the same time, multilateral frameworks are not without challenges. Negotiations are often slow and require significant compromise. Moreover, there is a risk that the interests of developing countries may be underrepresented.

Nevertheless, a coordinated approach offers greater stability and predictability, making it a more sustainable solution in the long term.

COMPARATIVE PERSPECTIVES

The global response to the taxation of the digital economy has been far from uniform. Different jurisdictions have adoped divergent strategies, shaped by their economic priorities, political considerations, and positions within the international tax order. A comparative analysis of these

[12] Yariv Brauner and Pasquale Pistone, 'Adapting Current International Taxation to New Business Models: Two Proposals for the European Union' (2017) 71(12) International Bureau of Fiscal Documentation <https://doi.org/10.59403/18y0t4v> accessed 20 March 2026

approaches not only highlights the complexity of the issue but also provides valuable insights into the strengths and limitations of India's own framework.

Within the European Union, efforts to tax the digital economy have largely centred around the concept of a Digital Services Tax (DST). The European Commission initially proposed a harmonised DST applicable across member states, targeting revenues generated from digital advertising, online marketplaces, and user data monetisation. However, the absence of unanimous agreement among member states has led to a fragmented outcome, with countries such as France, Italy, and Spain implementing their own versions of the tax. These unilateral measures were intended as interim solutions pending broader international consensus, yet they have been met with criticism for potentially discriminating against large multinational, often American Technology Firms. The resulting tensions, particularly with the United States, underscore the diplomatic risks associated with unilateral digital taxation.

At the same time, the European approach demonstrates a willingness to rethink traditional nexus rules by linking taxation to user participation and market engagement. In this respect, it shares conceptual similarities with India's Equalisation Levy. However, the EU's experience also illustrates the practical difficulties of achieving coordination even within a relatively integrated economic bloc, raising questions about the feasibility of global consensus.

In contrast, the United States has adopted a markedly different strategy. Rather than introducing a DST, it has focused on reforming its domestic tax system through measures such as the Global Intangible Low-Taxed Income (GILTI) regime and the Base Erosion and Anti-Abuse Tax (BEAT). These provisions aim to curb profit shifting and ensure that multinational enterprises pay a minimum level of tax on foreign income. While effective in addressing certain aspects of BEPS, the US approach does not directly tackle the issue of market-based taxation. Instead, it reflects a preference for maintaining the traditional allocation of taxing rights while strengthening anti-avoidance mechanisms.

The United States has also been a vocal critic of unilateral digital taxes imposed by other countries, viewing them as discriminatory and inconsistent with international trade obligations. This stance has led to investigations and threats of retaliatory tariffs, further complicating the global tax landscape. From India's perspective, this highlights the geopolitical dimension of digital taxation, where legal measures can quickly escalate into trade disputes.

Other jurisdictions, including the United Kingdom and Australia, have adopted hybrid approaches. The UK's Digital Services Tax, for instance, imposes a levy on revenues derived from UK users, while simultaneously supporting the OECD's multilateral efforts. Similarly, Australia has focused on strengthening its anti-avoidance rules, such as the Multinational Anti-Avoidance Law (MAAL), while actively participating in international negotiations. These approaches reflect an attempt to balance immediate revenue concerns with long-term commitment to global cooperation.

For developing countries, the challenges are particularly acute. Many lack the administrative capacity to implement complex tax rules and are more vulnerable to revenue losses from digital activities.[13] As a result, some have been more inclined to adopt unilateral measures, despite the associated risks. India's strategy can be understood within this broader context as an effort to assert taxing rights in the absence of an effective international framework.

The comparative analysis reveals a fundamental tension between national sovereignty and international coordination. While unilateral measures offer short-term solutions, they contribute to a fragmented global tax system characterised by overlapping rules and increased compliance burdens. On the other hand, multilateral approaches, though more coherent, require significant compromise and may not fully address the concerns of all stakeholders.

For India, these global experiences offer important lessons. The European Union's fragmented DST regime illustrates the risks of partial coordination, while the United States' resistance to market-based taxation highlights the political challenges of reform. Meanwhile, hybrid approaches adopted by countries like the UK suggest that a combination of domestic measures and international engagement may be the most pragmatic path forward.

Ultimately, the comparative perspective underscores that there is no single, universally accepted solution to the challenges of digital taxation. However, it also reinforces the idea that isolated national measures are unlikely to provide a sustainable long-term answer. In an increasingly

[13] Wolfgang Schön, 'One Answer to Why and How to Tax the Digitalised Economy' (2019) 47(12) Intertax <https://doi.org/10.54648/taxi2019105> accessed 20 March 2026

interconnected digital economy, the effectiveness of any tax regime[14] depends not only on its domestic design but also on its compatibility with the broader international framework.

TOWARDS A BALANCED APPROACH

The preceding discussion makes it evident that neither strict unilateralism nor complete reliance on multilateral consensus offers a wholly satisfactory solution to the challenges of taxing the digital economy. For a country like India, positioned simultaneously as a major market jurisdiction and a developing economy, the path forward lies in striking a careful balance between protecting its fiscal interests and engaging constructively with international tax reforms.

A first step towards such a balance involves rationalising the existing domestic framework. At present, India's approach is characterised by the coexistence of multiple mechanisms, including the Equalisation Levy, Significant Economic Presence (SEP), and traditional income tax provisions. While each of these serves a distinct purpose, their overlapping application creates uncertainty and increases compliance burdens. Streamlining these measures into a more coherent framework would enhance legal clarity and reduce the risk of disputes. In particular, greater alignment between the Equalisation Levy and income tax provisions could help integrate digital taxation into the broader tax system rather than treating it as an exceptional category.

Second, India must continue to actively participate in and shape multilateral initiatives, particularly those under the OECD's Inclusive Framework. Participation should not be passive; rather, India must advocate for rules that reflect the interests of developing economies. This includes ensuring that market jurisdictions receive a fair share of taxing rights and that allocation formulas adequately account for user-based value creation. At the same time, India must remain cautious about prematurely dismantling its unilateral measures until there is sufficient certainty regarding the implementation and effectiveness of global reforms.

Another critical dimension is the modernisation of tax administration. Digital taxation is inherently complex, involving issues such as data tracking, valuation of intangible assets, and cross-border information exchange. Strengthening administrative capacity through

[14] Reuven S Avi-Yonah et al., 'A New Framework for Digital Taxation' (2022) 63(2) Harvard International Law Journal <https://journals.law.harvard.edu/ilj/wp-content/uploads/sites/84/HLI204_crop-3.pdf> accessed 20 March 2026

technological tools, skilled personnel, and international cooperation is essential for effective enforcement. Without such capacity, even well-designed legal frameworks may fail in practice.

Furthermore, India should focus on updating its treaty network to reflect emerging concepts such as digital nexus. Bilateral tax treaties continue to rely heavily on the permanent establishment standard, limiting the applicability of domestic innovations like SEP. Renegotiating treaties or adopting multilateral instruments that incorporate digital taxation principles would help bridge this gap. In this regard, India's engagement with the OECD's Multilateral Instrument (MLI) provides a useful starting point, but further efforts are needed to address the specific challenges posed by the digital economy.

It is also important to recognise that taxation policy cannot be divorced from broader economic considerations. Overly aggressive tax measures may deter foreign investment and hinder innovation, while overly lenient policies risk eroding the tax base. A balanced approach must therefore be guided by principles of fairness, neutrality, and efficiency, ensuring that taxation neither distorts economic behaviour nor disproportionately burdens particular sectors.

Finally, India's approach should be informed by a long-term perspective. The digital economy is not a transient phenomenon but a defining feature of modern economic activity. As such, tax policy must evolve in a manner that is adaptable and forward-looking. This requires continuous engagement with technological developments, international best practices, and academic scholarship.

CONCLUSION

The taxation of the digital economy represents one of the most complex and consequential challenges in contemporary international law. As this article has demonstrated, India's response, marked by the introduction of the Equalisation Levy and the concept of Significant Economic Presence, reflects a proactive attempt to address the limitations of traditional tax principles. Yet, these measures, while innovative, remain inherently constrained by their unilateral nature and the broader structure of international tax rules.

The analysis of judicial decisions further reveals that courts, bound by statutory interpretation, are unlikely to bridge the gap between outdated legal doctrines and evolving economic realities. Similarly, comparative experiences across jurisdictions highlight the risks of fragmented

approaches and the difficulties of achieving consensus in a politically diverse global landscape. Against this backdrop, the OECD's multilateral framework emerges as a necessary, albeit imperfect, step towards harmonising digital taxation.

The central takeaway is clear: no single jurisdiction can effectively tax the digital economy in isolation. Sustainable solutions require a delicate balance between domestic innovation and international cooperation. For India, this means not only refining its internal tax architecture but also playing an active role in shaping global norms that reflect the interests of emerging economies.

Looking ahead, several questions remain unresolved. Will the OECD's Two-Pillar Solution achieve meaningful implementation across jurisdictions? Can developing countries secure a fair share of taxing rights in a system historically dominated by developed economies? And perhaps most importantly, can international tax law evolve at a pace that matches the rapid transformation of the digital economy?

These questions are not merely academic; they have profound implications for economic justice, state sovereignty, and the future of global governance. As digitalisation continues to blur traditional boundaries, the need for thoughtful, coordinated, and inclusive reform becomes ever more urgent. The conversation, therefore, does not end here. It invites further inquiry, debate, and engagement because the future of taxation in a digital world will ultimately be shaped not just by policymakers, but by the ideas and critiques that emerge from discussions such as this.