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A comparison of the United Kingdom's Digital Services Tax regime and the OECD Two-pillar approach: Is this unilateral measure hindering the implementation of the Pillar Two model?

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A comparison of the United Kingdom's Digital Services Tax regime and the OECD Two-pillar approach: Is this unilateral measure hindering the implementation of the Pillar Two model?

A research report submitted to the Faculty of Commerce, Law and Management, University of the Witwatersrand, Johannesburg, in partial fulfilment of the requirements for the degree of Master of Commerce (specialising in Taxation)

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DECLARATION

I, Thato Nong, declare that this research report is my own unaided work. It has never been submitted for any other degree or examination to any institution before. It is submitted in partial fulfilment of the requirements for the degree of Master of Commerce (specialising in Taxation) at the University of the Witwatersrand, Johannesburg. To my best knowledge, all the relevant standards and guidelines in terms of referencing have been adhered to, and all sources used in this study have been acknowledged.



Thato Nong
June 2023

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ABSTRACT

Base Erosion and Profit Shifting (BEPS) has become the focal point for Multinational Enterprises (MNEs) with the aim of maximising their profits and minimising or totally avoiding their tax payable to a jurisdiction. The goal of this study is to highlight the tax concerns that have arisen as a result of digitisation, which have exacerbated the erosion of the tax base and profit shifting in the United Kingdom from the standpoint of Corporate Income Taxes (CIT). It will examine the Digital Services Tax in further depth, contrast it to the OECD Pillar Two, and provide a proposal on whether the DST impedes a global solution. BEPS has left several governments concerned about their revenue collection regulations, especially as the world commerce economy becomes more computerised. The research methodology used for this study is qualitative and interpretive of the UK's Digital Services Tax Act and the OECD Two-Pillar model. The introduction of the Digital Services Tax in the United Kingdom to tax in-scope earnings is an appropriate interim solution; nonetheless, multinational corporations face the possibility of being double-taxed, with no easily available redress, thus not aligning with global best practices as explained in the study. In order to combat BEPS, the Organisation for Economic Cooperation and Development (OECD), in collaboration with the Group of Twenty (G20) forum and other developing countries, established a two-pillar approach, which, before implementation, will require the rejection of all unilateral measures such as DSTs. This study supports the worldwide proposal that unilateral actions adopted by jurisdictions such as the UK to safeguard their tax base must be opposed in the context of direct taxes.

Key Words: Transfer Pricing, OECD, BEPS, Dual Residency, Permanent Establishment, Valued Added Tax, Tax Treaties, Intellectual Property, Royalties, Holding Company, Interest payments, Exemptions, Modern Tax Framework, Aggressive Tax Planning, Multilateral Conventions, Unilateral Conventions.

1. BACKGROUND

Trading has, in the past, been a personal interaction between two or more parties, which in practice can be regarded as a *traditional* trading system (ThoughtCo, 2021). People would move from one place to another to purchase the supplies they need, and businesses would need to be near their customers to sell them goods or render a particular service (ThoughtCo, 2021). With the growing demand of goods and services, and high expectations of customers who want things promptly, companies either had to increase their work force or expand to different locations to meet the increasing demand and this would cost them more and ultimately reduce their profits (Springer Link, 2020).

It then meant businesses had to re-strategize on their models and transform themselves in a way that will be profitable for them and beneficial to their customers (Springer Link, 2020). In doing this, businesses are now moving to an online approach and adopting new digital transformations (Techylem, 2020). This act of modifying business models by adopting digital technologies in value creation by using advanced technologies, is called digitalisation (Techylem, 2020). Today, most businesses are operating in digital economies (OECD, 2015). A digital economy is defined as an "economic activity generated by billions of regular online interactions between individuals, companies, machines, data, and processes" (Deloitte, 2021).

This electronic economy is distinguished by an over-reliance on e-commerce and abstract concepts, widespread accessibility of information (particularly personal information), widespread use of many risk models that leverage external products generated by freeware, and difficulty in identifying the jurisdiction where value is created (OECD, 2015).

Although digitalisation has been of great assistance to businesses, particularly Multinational Enterprises (MNEs), there is a great deal of tax consequences that jurisdictions face, which, *inter alia*, includes BEPS.

What is Base Erosion and Profit Shifting?

Base Erosion and Profit Shifting *"refers to tax developed strategies that take advantage of gaps and mismatches in tax laws to artificially move profits to low or no-tax jurisdictions where there is barely any economic activity or to erode tax bases through deductible transactions such as interest or royalties"* (OECD, 2013).

BEPS undermines the judgment and reasonableness of assess frameworks since companies that do commerce over borders can utilise its strategies to gain a competitive advantage over companies that trade locally (OECD, 2015).

Developing countries rely more heavily on corporate income tax, which means they are disproportionately affected by BEPS when compared to developed countries (OECD, 2015). Weak tax rules are being targeted by Multinational Enterprises and, to this point prove to induce the shifting of profits and erosion of the tax base (OECD, 2015). BEPS strategies cost governments between $100 to $240 billion in lost revenue each year, which is estimated to be between four to ten percent of worldwide corporate income tax revenue losses (OECD, 2015). This strained the international tax structure; therefore, policymakers took a risk-mitigating move to guarantee that earnings be taxed where economic activity occurs (OECD, 2015). The determination of where value-creation took place, which thus gave jurisdictions taxing rights, was, in the past, easily detectable (OECD, 2015). This is because a business either had to have a physical structure (Permanent Establishment) where it operates or will be deemed to be a resident of a jurisdiction simply by its place of incorporation or effective management (OECD, 2015). Digitalisation has, in recent times, blurred the lines of detecting this, thus giving digital MNEs an advantage to erode tax base and shift their profits to low tax jurisdictions (OECD, 2015).

Forecasts of BEPS' impact on emerging nations as a share of tax revenue are higher than in established ones, owing to developing countries' greater dependence on corporate income tax collections (OECD, 2015).

In the United Kingdom, the digital sector typifies an intrinsic part of their economy (UK Government, 2017). This is supported by stats, denoting that the sector contributed 118-billion pounds to their economy in 2015 (UK Government, 2017).

With the assistance of the OECD and other developing nations, the G20 Leaders recognised in September 2013, a formidable and broad-based strategy on BEPS, the goal of which is not to induce double taxation, but rather to create a level playing field for all (OECD, 2015). Profits ought to be taxed wherever economic activities occur; however, there is a fine line between double non-taxation and double taxation that should be scrutinised in this respect (OECD – Action 1, 2015). Double taxation has the capacity to harm Multinational Enterprises, which

have helped contribute to the globalisation of trade and investment, fostering growth, generating employment, developing creativity, and giving avenues out of poverty (OECD, 2015).

Although much work has been done on the action plans to date, the broader tax challenges, including, but not limited to the issue of nexus, extensive reliance on intangibles and the increase in sophistication of information technology, because of digitalisation, are becoming more complex for policy makers to address them (OECD – Action 1, 2015). Multinational Enterprises are benefiting from the digital economy, as this new world of trade allows them to conduct business anywhere in the world without being physically close to their clients, again, making it hard for jurisdictions to determine their taxing rights (OECD – Action 1, 2015).

Eight large United States – based technology companies in the UK, have avoided an estimated tax of 1.5 billion pounds in 2019 (Taxwatch, 2021). This is because these tech giants have companies registered in most parts of the world, which allows them to legally move money between their operations in ways that reduce their tax liability (Itvnews, 2021).

In 2018, the United Kingdom government proposed a digital services tax, to take effect from April 2020, due to challenges that arose because of digitalisation (UK Government, 2017). In proposing this, it emphasised the need of ensuring that the tax system is fair, adaptable to developments in the digital economy, and earnings are taxed where value is produced (UK Finance Bill report, 2018). The introduction of this tax is motivated by misalignments in the corporate tax rules (UK Finance Bill report, 2018). The biggest concern for firms is whether their revenues are included in the scope (Tax journal, 2020). In this regard, the tax is only applicable to online services (Tax journal, 2020). For groups to fall within this scope, they must have worldwide digital services aggregate revenue of 500 million pounds and 25 million pounds in UK-user-generated digital services revenue (Lawcareers.net, 2021).

1.1. RESEARCH PROBLEM

1.1.1) The Research Question

It can be agreed that digitalisation results in benefits for digital MNEs operating in the United Kingdom (UK Government, 2017). However, consequently, it has put the aforementioned jurisdiction in a tax predicament, as most of their tax laws, including those of treaty agreements had to be amended to cater for digitalisation (UK Government, 2017). The digital economy tax challenges compromised the UK's fiscus, hence the government introduced an interim response to address them (UK Government, 2017). The OECD, however, believes that the unilateral measure imposed by the revenue authority impedes on the development of a multilateral convention to combat BEPS (OECD, 2015). The question that we are now posed with is: How does the application of the UK's digital services tax impede the OECD's multilateral BEPS convention?

1.2) The sub-questions

To answer the research question, the following sub-questions should first be answered:

1.2.1) What is the digital economy strategy of the United Kingdom?

- This question will be answered by outlining the government's plan for Britain in their digital economy following their exit from the European Union. This will be followed by highlighting the traditional and new business models. A discussion of the formulation of tax policies will also be outlined to get a clear picture of the tax policies that have not kept pace with digitalisation.

1.2.2) What is a Digital Services Tax implemented by the United Kingdom?

- This question will be answered by performing a comprehensive analysis of the United Kingdom's Digital Services Tax Act and outline the challenges that tech giants impose to the UK's fiscus, precisely the in-scope business activities.

1.2.3) What is the OECD Two-Pillar approach?

- This question will be answered by analysing the BEPS Two-Pillars, which, *inter alia*, highlights issues of the electronic economy and the harmonisation of the global tax rate. The analysis will be affiliated with how digital platform businesses in the UK can cultivate a distinctive value without paying tax there or paying as little tax as possible.

1.2.4) What is the contrast between a domestic digital services tax and the OECD Pillar Two?

- This question will be answered by performing a detailed contrast of the UK's digital services tax and the OECD Pillar Two as both these measures are implemented to combat BEPS, leading to a possible proposition of a comprehensive solution which answers the research question.

1.3. RESEARCH METHODOLOGY

For purposes of this study, the research methodology adopted is of a qualitative and interpretative nature of the UK's Digital Services Tax Act and the OECD Two-Pillar model. The literature review will include reference to the following sources:

Books

Electronic resources – internet

Journals

Government publications

Legislation: Acts

1.4. LIMITATION OF SCOPE

The study will not address tax challenges of the digital economy from an indirect tax perspective. In relation to the OECD Two-Pillar approach, the study is limited to only outlining the taxing of amount A (from Pillar One's perspective) and Pillar Two.

1.5 MOTIVATION FOR SELECTING THE UNITED KINGDOM

The United Kingdom was chosen for this study because its digital industry is so important to the country's economy (Statista, 2022). The rapid use of technology that began with the advent of the coronavirus (COVID-19) pandemic has also boosted the country's GDP (Statista, 2022). For example, the UK's GDP is expected to rise by 2.8 percent in 2025 as a result of technological investments (Statista, 2022). When it comes to the market value of the digital industry, one of the most important areas is IT, software, and computer services, which is expected to be worth more than 42 billion British pounds in 2021, while the software publishing sector is expected to be worth just 1.46 billion British pounds (Statista, 2022).

2.CHAPTER 1: INTRODUCTION

2.1 THE DIGITAL ECONOMY STRATEGY OF THE UNITED KINGDOM

The United Kingdom's government has a plan for Britain to build a powerful state which works for all its citizens and is non-discriminatory, all this with the aim of fairly distributing opportunities and wealth across the state and countering arrangements that are deemed to be diverting profits from the UK (UK Government, 2017). The latter is not a new concept for the UK as the jurisdiction has always been proactive on anti-avoidance (UK Government, 2017).

Following Britain's withdrawal from the European Union, often known as "*Brexit*", the UK government has unveiled its industrial policy, in which it would increase its support for long-term investment by corporations (UK Government, 2017). The industrial strategy will also have an impact in ensuring that corporate tax rules are responding accordingly to the digitised economy and delivers appropriate results for digital entities that generate value in eccentric ways (UK Government, 2017). The pace and scope of change brought about by digitisation has largely had an impact on the UK tax system (HM Treasury, 2018).

The digital strategy of the UK is formulated by these seven factors:

2.1.1 Creating a futuristic digital infrastructure.

- In recent times, digital connectivity as a utility, has become an integral part of daily living (UK Government, 2017). Connectivity is the physical underpinning of a digital nation, conveying productivity and creativity (UK Government, 2017). Government intervention in the creation of a framework for investment and an up-to-date digital infrastructure is required for corporations to develop (UK Government, 2017). As part of its plan, it is determined to have the entire country equipped with sufficient connectivity (UK Government 2017). This will also be endorsed by creating a **Universal Service Obligation**, which will grant all members of society and state premises the right to request reasonable high speed broadband connection (UK Government 2017). In ensuring that business connectivity is fully harmonised, the government will inaugurate a new **Business Connectivity Forum** that will gather business consortiums, local government, and communication providers to establish distinct resolutions to issues surrounding connectivity (UK Government 2017).

2.1.2 Digital skills and inclusion.

- The world has evolved from manual to a more digital way of doing things (UK Government 2017). However, statistics from the Office for National Statistics (ONS) show that one in ten adults has never used the internet and most miss out on the opportunities the digital world offers (UK Government 2017). It is for that reason the government wants to close the gap caused by the digital divide and ensuring that all members of society have adequate digital skills and are thus able to engage in the economy (UK Government 2017).

2.1.3 Making the United Kingdom the finest place in the world to start and develop a digital business.

- In 2015, digital industries generated 118 billion pounds to the economy, while digital products and services exports already total more than 50 billion pounds (UK Government 2017). The UK is aiming to build the digital economy and eventually contribute £200 billion to the GDP by 2025 (UK Government 2017). Although the private sector will drive this contribution, the government should help ensure that it manifests by encouraging innovation (UK Government 2017). The Industrial Strategy green paper outlines the government's plan to supporting world leading digital businesses to prosper in the UK (UK Government 2017). *Inter alia*, the government plans to have an effective tax structure for such businesses (UK Government 2017). This is due to the UK having one of the most entrepreneur-friendly tax regimes in the world, which has aided the government in achieving very competitive headline corporate tax rates (UK Government, 2017). The Government accomplished this by establishing, *inter alia*, a Patent Box, which permits corporations to apply a 10 percent corporate tax rate to revenues earned by patented innovations (UK Government 2017).
- The government has also made it easier for small firms to obtain equity financing under the Seed Enterprise Investment Scheme (SEIS), which will provide tax relief to natural persons who acquire shares in such companies solely for investment purposes (UK Government 2017).

2.1.4 The wider economy.

- It is the government's plan to help every business in its state become a digital business, as this could potentially boost the businesses productivity (UK Government 2017). This is supported by a survey that was conducted on one thousand UK based businesses, which showed that digital aptitudes assisted in enhancing revenues by 4.4 percent and reduced costs by 4.3 percent (UK Government 2017). The government has also noted that there are four essential digital activities that most businesses need to become and remain competitive: Maintaining a web presence, selling online, using cloud and digitising back-office functions like payroll (UK Government 2017).

2.1.5 Creating a safe and secure cyberspace.

The internet is and will continue being an integral part of a society's advancement. Due to its broadness and universal nature, it has become a phenomenal instrument for modernisation, philosophy, and development. Consequently, heavily relying on this phenomenal instrument creates a margin for persons to compromise and infiltrate state systems and data (UK Government 2017). The government's response to this threat, is ensuring that there is a sophisticated cyber security system in place (UK Government 2017).

2.1.6 Digital government.

- The United Nations (UN) has declared the United Kingdom as an international leader in digital governance (UN E-Government survey 2016). The main objective of having a digital government, is to improve services and controlling how and when government services can be accessed (UK Government 2017). What is critical at this point is that the government develops the tools necessary not just to design, manufacture, and operate modern digital public services, but also to restore current government infrastructure (UK Government 2017).

2.1.7 Improving public confidence in the power of data.

- The increasing use of social media means more data is being processed than ever before (UK Government 2017). The UK is at the spearhead of data modernism (UK Government 2017). The adoption of the Data Protection Act of 1998, which sets out a regulatory framework for the use of personal data, may be cited as a global gold standard in this respect (UK Government 2017). The government plans to strengthen 'data infrastructure' (which is the resources, methods, and organisations that not only create data, but also open it up and permit it to be shared), which will assist in the creation of new opportunities for consortiums to employ data to produce market-changing products and enhanced public services (UK Government 2017).

2.2 THE DIFFERENT TYPES OF BUSINESS MODELS:

The ratification of Information and Communication Technology (ICT) has been an economic booster for the UK (UK Government 2017). The employment of such advanced technology has changed the way services and products are created and distributed, along with the many commercial models employed by various businesses (OECD, 2014). These technologies have also resulted in the development of new payment mechanisms, as well as new types of digital currency (OECD, 2014). Businesses across several industries are increasingly basing their operational models on technology capabilities to boost versatility and effectiveness while expanding their global market exposure (OECD 2014). The business models that are going to be discussed in this chapter are not exhaustive and some may seem to overlap with each other.

Traditional Business models that guided electronic commerce transactions.

2.2.1 Business-to-business model

- The OECD Working Party on Indicators for the Information Society has extensively defined electronic commerce (e-commerce) as the "purchase or sale of products or services, carried out through computer networks by methods specifically designed for the purpose of placing or receiving of orders" (OECD, 2011). Products and services are

bought through such means, but payment and delivery do not need to be facilitated or carried out online (OECD, 2011). The vast majority of e-commerce transactions involve a company selling goods or services to another company, generally known as a business-to-business model (OECD, 2011). One of the digital service activities facilitated through this model is an online marketplace. An online marketplace is an '*online*' version of a traditional transaction where companies can purchase consignments of goods online to later sell them through retail outlets (OECD, 2015)

2.2.2 Advertising-based business model.

- An advertising-based business model is one which publishers of a specific type of content are typically prepared to subsidise or provide free services to customers in order to draw in advertisers (OECD, 2015).
- Online advertising involves a variety of participants, including marketers that design adverts to be displayed in the content of web publishers; web publishers who are concerned with integrating advertisements into online content in exchange for a fee; and advertising network intermediaries, who are concerned with connecting web publishers with marketers who seek to contact a web-based audience (OECD, 2015). These intermediaries also include several players being technology vendors, media companies and search engines (OECD, 2015).
- A digital service activity that is carried out through this model, is, in most instances, the use of internet search engines. Through online marketing, the internet is utilised as a channel for reaching and distributing promotional material to clients (OECD, 2014). Online advertising transacts in various ways, amongst them, is the use of search engine advertisements, where an advertiser pays to be seen amongst different search results (OECD, 2014).

2.2.3 Participative networked platform model.

- This platform is a mediator which allows users to associate and confer to constructing, expanding, grading, reflecting on and administering user-created content "UCC" (OECD 2014). A digital service activity facilitated through this model is the use of social media. In general, UCC is formed without expecting profit, however, the

intermediary can monetise the UCC in different ways, including billing viewers for access per content or subscription, advertising-based models, through voluntary contributions, *et cetera.*

New business models arising from using cloud computing.

2.2.4 Infrastructure-as-a-service model.

- This is a cloud computing service paradigm, where the providers of this service provide computers, or more commonly, virtual devices, and other needed hardware for computing (OECD, 2015). Infrastructure-as-a-service clouds frequently include additional resources such as a software bundle, firewall, digital local area network, Internet Protocol address, load balancer, raw file-based archive, and real-machine disk image library (OECD, 2015). Customers in this model do not control or maintain the cloud platform itself, but they do have the administration role over the installed applications, storage, and system, and they may be awarded some control over network component selection (OECD, 2015).

2.2.5 Software-as-a-service model.

This model is specially designed for payment service providers (OECD – Action 1, 2015). Parties to a transaction meet online in this model, and the payment service provider acts as a liaison between the online consumer and seller, accepts payments from buyers via various payment methods, processes those payments, and finally transfers money into the seller's bank account using a specific software (OECD, 2015). Online payment service providers play a vital role in facilitating such transaction (OECD, 2015). Because online buyers and sellers frequently do not know each other, service providers provide a secure method for enabling online payments without the necessity for parties to disclose financial data with each other, as was the case with conventional online transactions (OECD, 2015). For each completed transaction, online service providers frequently charge a fee (OECD, 2015).

2.2.6 Platform-as-a-service.

- This is a set of cloud computing services that offer programming tools and computing platforms as services to software developers (OECD, 2015). Software resources that are provided by this platform are rooted in the software application code that is meant to be enjoyed by the end user (OECD, 2015). The end-user has no control over the underlying cloud infrastructure such as storage, operating systems, servers, or networks, but is given control over the installed applications (OECD, 2015).

2.2.7 Content-as-a-service.

- Where a software is provided, and rights are assumed to permit clients to consume content, that content can be acquired as a service (OECD, 2015). This is frequently employed in user-created content (OECD, 2015).

2.3 HOW DOES THE DIGITAL STRATEGY ADDRESS TAX AVOIDANCE?

The efficient operation and management of the UK tax system relies on taxpayers furnishing Her Majesty's Revenue and Custom (HMRC) with accurate information and meeting their obligations timeously (HMRC, 2018). The digital strategy assists HMRC in using the most cost-effective and appropriate way to stimulate and assist taxpayers in complying with their obligations, and to promulgate sanctions to those who are not complying (HMRC, 2018). To respond to the different circumstances and risks appropriately, the HMRC uses tools which helps provide it with the information it needs (HMRC, 2018). The Strategic Picture of Risk (SPR) is one of HMRC's high-level assessment tool used to understand what drives non-compliance and how government can tackle the cause (HMRC, 2018). The SPR is driven by business insight, analytics and data and informs the development of policies to address, *inter alia*, risks arising from the new business models outlined above and broader economic changes, such as an online marketplace (HMRC, 2018).

Although the digital strategy seems like an ideal way of doing things in the current economy, it poses other tax threats, which to a certain degree, are effected by tax policies for cross-border

transactions under domestic law and for cross-border transactions under tax treaties which have failed to keep pace with the evolving business models in today's digital economy, resulting in multinational entities exploiting gaps and mismatches of those laws (UK Government, 2017).

2.4 WIDESPREAD PRINCIPLES OF TAX POLICY

Technological advancements have resulted in significant benefits for the UK economy; however, they have also created opportunities for digital multinational companies to erode the tax base and shift their profits to low tax jurisdiction (HMRC, 2018). The evolution of digital communication, in recent times, means marketed avoidance schemes can reach a large audience, and the increase in online marketplaces and platforms has facilitated tax avoidance and opportunities for more opaque offshore tax arrangements (HMRC, 2018).

A priority in a jurisdiction undergoing severe fiscal consolidation is to guarantee that all taxpayers pay their fair amount of tax (UK Government, 2017). The growth of digitalisation poses risks for the international economy (OECD – Action 1, 2015). In addition to this, it also raises cardinal questions regarding how MNEs in the digital economy make their profits, add value and how the classification of income for purposes of tax or the concepts of residency and source, relate to the digital economy (OECD – Action 1, 2015).

Taxes serve as a primary function to finance public goods and services (OECD – Action 1, 2015). Policies that guided the drafting and implementation of taxes were, in the past, embedded in these principles (OECD – Action 1, 2015):

- **Neutrality**: Tax ought to be equitable and neutral between the different forms of business activities so that an ideal allocation of the factors of production is achieved efficiently. This principle warrants that a tax system raises revenues without discriminating against, or in favour of a certain economic group.
- **Efficiency**: This principle warrants that the cost of compliance for businesses, and administrative expenditures for government be kept to a minimum.
- **Certainty**: This principle concerns itself with ensuring that tax rules are clear and concise, so that taxpayers understand their obligations and entitlements. Complex tax rules have the potential to effectuate aggressive tax planning by businesses.

- **Fairness**: A tax system ought to produce the precise amount of tax due and when is it payable, simultaneously avoiding double taxation and unintentional non-taxation.
- **Flexibility**: Tax systems ought to be dynamic and well receptive to ensure that they keep up with commercial and technological advancements. This means that system structural elements need to be sturdy in amending policy context, but dynamic and elastic enough to enable government to keep up with these commercial and technological advancements.

Equity is another significant consideration in determining a tax policy framework. Equity in this context, refers to inter-nation equity (OECD – Action 1, 2015). This concerns itself with the distribution of national gains and losses and ensures that each jurisdiction inherits an appropriate portion of the tax money generated by foreign business transactions (OECD, 2015).

When these canons were formulated, they were considered to be suitable in evaluating tax issues relating to electronic commerce (OECD – Action 1, 2015). However, most of the recent business models that exist today, were not in existence at that time, resulting in these principles being somewhat inefficient today (OECD – Action 1, 2015).

2.5 CROSS-BORDER REVENUES TAXATION UNDER LOCAL CORPORATE INCOME TAX LAWS

A jurisdiction's supremacy is typically divided into two aspects: control over a region - "enforcement jurisdiction" - and authority over a certain set of people - "political adherence." (OECD, 2015). This dual character of supremacy was deeply embedded in the minds of constituents during the nineteenth and twentieth centuries, and had a notable impact in the formulation of a jurisdiction’s tax policy (OECD, 2015). In addition to this, the dual character of supremacy aided in the pioneering of the rational canon, which is steered by considerations for the collection, administration, and enforcement of taxes (Tadmore, 2007).

Under the rational canon, a contrast is made between the jurisdiction that imposes the tax, and the jurisdiction that enforces it, and insistency is thus placed on practicality over theory (OECD, 2015). In taxing cross-border transactions, domestic tax rules generally address the taxing of inbound investment of non-resident entities, and the taxing of outbound investments

of resident entities (OECD, 2015). In terms of the latter, the definition of residency is key (OECD, 2015). Other jurisdictions determine the residency of an entity using a formal criterion like a place of incorporation, while some jurisdictions determine it by a reference criteria like place of effective management or an indistinguishable concept (OECD, 2015). Other jurisdictions use hybrid systems, that consists of a place of effective management and a place of incorporation test (OECD, 2015).

Regarding the taxing of outbound investment of a resident entity, there are two broad models that can be identified – the Territorial model and the Worldwide model (OECD, 2015). The United Kingdom follows a global approach, taxing its inhabitants on their international income (Taxadviser, 2023). Other jurisdictions applying the territorial model, subject its residents to tax exclusively on revenue generated form sources within its region (OECD, 2015).

In terms of taxing a non-resident entity's inward investment, a territorial tax model and a global tax model may both subject the revenue earned locally to tax (OECD, 2015). Thus, determining the source of income is key (OECD, 2015). The United Kingdom taxes non-resident entities on specific sources of income, such as earnings from dealing with or developing UK land (LexisNexis, 2023). This can be paralleled to the concept of a Permanent Establishment (PE), and such earnings are often taxed on a net basis (OECD, 2015).

2.6 THE TAXING OF CROSS-BORDER REVENUES UNDER TREATY AGREEMENTS

Exercising the tax advantage would require different jurisdictions to claim the same amount, r esulting in double taxation (OECD, 2015). Bilateral tax treaties tackle occasions of double taxation by providing a contracting jurisdiction taxing rights (OECD, 2015). Almost all extant bilateral tax treaties are centered around the United Nations Model or the OECD Model Tax Convention, which both stem from the League of Nations' first Model of Bilateral Tax Treaty, which was drafted in 1928 (OECD, 2015). Tax treaties are formulated in such a way that they emulate a reasonably mimicked framework, which is regarded as a series of provisions effecting distinct and separate activities: *(i)* articles tackling the conflict of taxing jurisdictions, *(ii)* articles addressing the application and scope of the tax treaty, *(iii)* articles tackling other administrative matters (miscellaneous matters), *(iv)* articles granting double taxation reliefs and *(v)* articles concerned with intercepting fiscal evasion and tax avoidance (OECD, 2015).

When worries about double taxation developed in the early twentieth century, the League of Nations commissioned four economists (dubbed "the quartet") to investigate the subject from a scientific and theoretical standpoint (Bruins et al, 1923). The quartet was, *inter alia*, tasked with determining if it is probable to develop general canons as the foundation of a global system that is able to halt double taxation (Bruins et al, 1923). The quartet then established a notion of 'economic allegiance' to be used as a foundation to construct such a global tax structure (Bruins et al, 1923). Economic allegiance is embedded on elements directed to assessing the actuality and scope of economic ties between a certain jurisdiction as well as the person or revenue to be taxed (Bruins et al, 1923). The quartet determined that, among those variables, the provenance of wealth/income should be given the most weight (Bruins et al, 1923). In other words, the quartet advocated that if all or most of the components of economic allegiance correlate, the taxing rights should be exclusively awarded to a country where all pertinent elements of economic allegiance have been established (Bruins et al, 1923).

In more complex circumstances, where there is conflict between the relevant factors of economic allegiance, taxing rights would then be shared between the different jurisdictions based on the correlative economic connection the taxpayer together with his income have with each of the factors (Bruins et al, 1923).

By the time the quartet delivered their report, several jurisdictions had begun to address the issue of double taxation through unilateral and bilateral measures (OECD, 2015). However, the alternative systems did not address entirely the issue of double taxation as the canons identified by the four economists would have (OECD, 2015). Instead, the international tax framework, backed up by the development of the UN and OECD Model treaties, developed around a broad matrix of bilateral treaties embedded around the 'assignment and classification of sources' technique, where various types of revenues are exposed to contrasting allocable rules (OECD, 2015).

The method of allocable rules involves a fundamental step of classifying the revenue subject to competing claims into one of the classifications, and if an item of revenue falls into more than one classification, the treaty resolves this through ordering rules (OECD, 2015). Treaty provisions outline that profits derived by a corporation are solely taxed by the primary jurisdiction, provided the entity operates in another jurisdiction through a Permanent Establishment situated therein (OECD, 2015). The source jurisdiction, in the latter situation,

may only tax profits allocable to the Permanent Establishment (OECD, 2015). In such cases, the Permanent Establishment is used to ascertain whether a contracting jurisdiction is entitled to tax the taxable income of the non-resident entity or not (OECD, 2015). The Permanent Establishment concept can thus be agreed to serve as an index that, by assessing a foreign entity's level of economic presence in the primary jurisdiction, ascertains the conditions under which that foreign entity can be regarded sufficiently consolidated into the primary jurisdiction's economy to justify it being taxed in that primary jurisdiction (OECD, 2015).

As a consequence, a link can be established between the four economists' economic allegiance elements and the necessity of a considerable economic presence under existing Permanent Establishment requirements (OECD, 2015). This relationship is often emphasised in literature and highlighted in the OECD Commentaries when outlined that the Permanent Establishment threshold "holds a lengthy chronicle and displays the global unanimity that, as a fundamental rule, until a time an entity of a primary jurisdiction has a Permanent Establishment in another jurisdiction, it does not have to be regarded as actively contributing to the economy of that other jurisdiction, to an extent that the primary jurisdiction should assume taxing rights to the profits it generates" (OECD, 2015). By necessitating a significant level of physical presence in the other jurisdiction, the Permanent Establishment threshold also warrants that the source jurisdiction has enforcement rights and the legal capacity to exercise its rights over the non-resident entity (OECD, 2015).

The following chapter will outline what is a digital services tax and the tax challenges that the UK government is presented with, which, consequently compelled the government to propose a DST, as an interim response to challenges posed by the digital economy.

3. CHAPTER 2: WHAT IS A DIGITAL SERVICES TAX IMPLEMENTED BY THE UNITED KINGDOM?

3.1 THE INTRODUCTION OF A DIGITAL SERVICES TAX

In the last few years, several jurisdictions, including the United Kingdom, have postulated a modern way of taxing revenue that is determined to be derived from online economic activity within their borders (America Action Forum, 2021). The international proliferation of digital rostrums, intellectual property, services, and products has been the most conspicuous transformation in the post-war international economy (America Action Forum, 2021). These transformations have enhanced international growth and found their way into the hands of users around the world (America Action Forum, 2021).

Generally speaking, under current international tax law, non-resident entities are taxed on profits earned in a jurisdiction if they have a Permanent Establishment in that jurisdiction which entails some form of a physical structure (LawCareers.net, 2021). Digitalisation has made interactions between businesses and consumers possible, without the need of a Permanent Establishment in a particular jurisdiction (LawCareers.net, 2021). As a result, there is a prospective disconnect in determining where profits are generated and where they should be taxed (LawCareers.net, 2021).

As digital technologies grow, characteristics of heavily relying on intangibles, using machines and automation, the perpetual mobility of consumers, the capability to reach consumers globally in the absence of a Permanent Establishment and the changing roles of consumers in recent times are progressively increasing (OECD – Action 1, 2015). These traits raise questions regarding the paradigm employed in assessing where economic activity occurs, and value is produced for tax purposes (OECD – Action 1, 2015).

In 2014, The Task Force on Digital Economy (TFDE), an associate group of the Committee on Fiscal Affairs (CFA) considered prospective options to address the tax challenges in question including (OECD – Action 1, 2015):

- Other measures to the existing PE thresholds;
- Modifying PE status exceptions;
- Introducing an excise tax or alternative levies and

- Imposing withholding taxes on certain types of digital transactions

The TFDE established that the Permanent Establishment exemption as outlined in the 5th Article of the OECD Model Tax Convention ought to be interpreted in accordance with BEPS Action 7 (OECD – Action 1, 2015). This is because certain activities that were previously preliminary or auxiliary with regard to conventional business models, are currently fundamental activities of specific entities in the digital economy (OECD – Action 1, 2015). This raises BEPS issues since the lack of taxes in the market jurisdiction is frequently combined with strategies that remove or minimise tax in the jurisdiction of the receiver or ultimate parent (OECD – Action 1, 2015).

As a consequence of the work done on Action 7, it was concluded that the modification of Article 5 (4) of the OECD Model Tax Convention, will certify that the application of the Permanent Establishment status exception, depends on whether the conditions of the nature of the activities carried out are simply auxiliary or preparatory in nature than either of the entity in question's fundamental activities (OECD – Action 1, 2015). By way of illustration, if the need for prompt deliveries to customers and the need to be close to customers are imperative components of a web-based vendor of tangible goods' business model, the mere maintenance of a local facility where numerous individuals work for the purpose of repositing and delivering the products to consumers, would cease to qualify for an exemption from the Permanent Establishment status (OECD – Action 1, 2015).

The OECD Secretariat recently presented a suggestion for a coordinated approach to the BEPS initiative (LawCareers.net, 2021). The proposal affords taxing rights to market jurisdictions through new nexus rules that would warrant the taxing of an entity's profits in that jurisdiction even if it is not physically present there (LawCareers.net, 2021). In addition to this, it also proposes the revising of profit allocation rules that would quest to readminister to market jurisdictions a portion of deemed surplus profits of multinational entities using a formula (LawCareers.net, 2021).

Philip Hammond, the then chancellor of the UK, announced, in his 2018 budget that the UK, in the context of broader direct tax challenges which are still not addressed, will not wait for the outcome of international discussions, as such, it is introducing its own national Digital Services Tax (DST) from April 2020 – (LawCareers.net, 2021). A Digital Services Tax is a tax

levied on multinational corporations for their digital operations in a specific jurisdiction. (America Action Forum, 2021). The primary goal of the UK government in instituting a Digital Services Tax is to provide an interim solution to recognise the value that certain companies gain from their interaction and participation with active UK users while the planned international tax regulations are being revised (UK Government, 2019).

In supporting the introduction of this tax, the UK government argues that digital-based services inherently rely on public services (Electropages, 2020). While it can be argued that digital services do not rely on public roads to transport goods, it can inversely be argued that the roads are essential in transporting the users of such services, together with the engineering services needed to maintain communication links (Electropages, 2020). These digital services are further reliant on the consumption by UK residents, who are reliant on education and health services provided by the government (Electropages, 2020). In addition to this, the government spends money on the defence force, to help create a safe and stable economy, which further assists digital based service providers that take advantage of the UK market (Electropages, 2020). As such, it matters not what the nature of the business is, but all digital businesses conducted in the UK are heavily reliant on the ecosystem supported governments spending, thus deeming the tax to be fair (Electropages, 2020).

According to the government, the DST would be a 2% tax on earnings obtained from offering a social media platform, an online marketplace, or a search engine to UK users (UK Government, 2019). The tax will be imposed to entities whose global earnings from the aforementioned in-scope commercial operations exceed £500 million, with more than £25 million of the total earnings obtained from UK users (UK Government, 2019). In addition to this, in-scope entities are obliged to pay a DST on their first £25 million of UK users' earnings, however, will be presented with an option to use a 'safe harbour' provision (UK Government, 2019).

3.1.1 An 'online service'

In the context of this tax, the fundamental concern for entities is whether their revenues are subject to it (Michael Alliston, 2020). In this respect, the digital services tax is only applicable to 'online services' (Michael Alliston, 2020). The term "online service" and what is considered

an online service remains unclear; however, the updated guidance informs businesses that in order for their web-based operations to be considered "online services" for digital services tax purposes, they should fall within one of three in-scope activities: social media platform, online marketplace, and search engine (Michael Alliston, 2020).

3.1.2 Which revenues are in-scope?

Third-party income derived from in-scope online activity are included in this scope (Michael Alliston, 2020). These revenues are subject to the digital services tax if they are attributable to the in-scope business activities, and they are linked to UK user participation (Michael Alliston, 2020). In addition to this, revenues that are auxiliary to any of the in-scope activities will also be included as digital service revenues (Michael Alliston, 2020). For instance, where an online marketplace charge handling fees, these will fall within the scope of digital revenues if they are associated to sales on the marketplace (Michael Alliston, 2020). Entities with in-scope operations should also assess whether they have a related online marketing business, since it will be regarded in-scope if the advertising service benefits significantly from the digital service (Michael Alliston, 2020).

The amount of income from digital services is calculated using consolidated yearly financial statements compiled in accordance with the applicable accounting framework (Michael Alliston, 2020). Concerns were raised about other businesses like investment funds, which by law are not compelled to prepare consolidated annual financial statements (Michael Alliston, 2020). To address this concern, the Act was revised to specify that earnings from digital services will be those that have been included in the consolidated group accounts, provided that no exception from the requirement for producing consolidated accounts has been applied (Michael Alliston, 2020).

3.2 BUSINESS ACTIVITIES IN SCOPE:

3.2.1 Social Media platforms:

The Finance Act, 2020 (The Act) defines the term ‘social media platform’ as an online platform that satisfies the following conditions:

a) The platform's primary goal, or one of its primary goals, is to encourage user engagement (including interaction between users and content on the platform provided by other users);
b) the platform enables content to be shared with other groups of users (or with other users).

For purposes of this chapter, the study will refer to Twitter as a well-known social media platform.

Twitter

Twitter is a social networking and news website which enables users to interact in brief text messages known as 'tweets' (Lifewire, 2021). The user writes a tweet that is sent to Twitter servers, which distributes it to other users who agree to receive messages from the sender (Britannica, 2023). Odeo, a podcasting enterprise launched in 2004 by Evan Williams, Biz Stone, and Noah Glass, spawned Twitter (Britannica, 2023). In the year 2005, Apple announced that it would add podcasts to its digital media application - iTunes. It was from then, when Odeo's management decided it could not compete with Apple, and a new direction had to be taken (Britannica, 2023). Jack Dorsey, who was an engineer at Odeo, proposed that the company could create a short message service (SMS), which could allow a person to share bloglike updates with friends (Britannica, 2023). Dorsey sent the first tweet in 2006, and the completed version of Twitter debuted that same year (Britannica, 2023). Later that year, Williams, Stone and Dorsey bought out Odeo and registered Obvious Corporation to further develop their invention (Britannica, 2023). In the year 2007, following an interest increase in the platform, Twitter Inc was formed as a corporate entity in the United States of America (Britannica, 2023). The platform is best known for news-breaking tweets from politicians and celebrities, content sharing and interactions amongst users (Investopedia, 2022). The platform itself is free to use (Investopedia, 2022). The company generates a major part of its revenue from advertising, data licensing and providing mobile advertising exchange services (Twitter Inc, 2021).

Revenue generation

Advertising services

Advertising revenue is generated by selling the company's 'Promoted Products' (Twitter Inc, 2021). The Promoted Products consist of the following (Twitter Inc, 2021):

- Promoted Adverts (hereafter referred to as Promoted Ads) and Twitter Amplify: Promoted Ads, appear within a timeline, tweet conversations, search results and profile pages. The company enables advertisers to target an audience based on many criterions. Promoted Ads offer goal-based capabilities that allow advertisers to cultivate for the goal selected by the advertiser, such as tweet interactions, video views, mobile application installations, website traffic or gaining new followers. Promoted Ads are pay-for performance or pay-for-impression delivered advertising and are priced through an auction.
- Follower Adverts (hereafter referred to as Follower Ads): Advertisers may use Follower Ads to establish and grow an audience interested in their brand, products, or services. Follower Ads are pay-for-performance adverts with a set price determined by an auction.
- Twitter Takeover: Appears at the top of the list of trending topics or timeline for an entire day in a particular jurisdiction. This advertising service is sold on a fixed-fee-per-day basis.

Data licensing and other services

The company generates data licensing and other revenue by (Twitter Inc, 2021):

- Providing data solutions and licenses that enable platform data partners to retrieve, search, and analyse data that is both historical and current.
- Providing wireless advertising exchange services through the MoPub exchange. Data partners often buy rights to view all or a portion of the company's data for a specific period. (Twitter Inc, 2021). In addition to this, the company operates a mobile advert exchange, and receives service fees from transactions completed on the exchange (Twitter Inc, 2021). Buyers and sellers may buy and sell advertising inventory through the mobile ad market (Twitter Inc, 2021).

Article 5 of the UK/US Double Taxation Agreement (DTA) states that a foreign corporation operating in another country can only be taxed in that jurisdiction if it holds a Permanent Establishment there. The phrase 'Permanent Establishment' refers to a fixed location of business where an enterprise's business is conducted on entirely or partially (UK/USA Double Tax Convention, Article 5).

The challenge with digital businesses is that, often they do not have a Permanent Establishment in other jurisdictions, as most, if not all transactions of that particular entity, are conducted and concluded online (Simplilearn, 2023). Another challenge is identifying an appropriate tax base and where value is created (Lawcareers.net). To take an example: If a UK resident films a very interesting video whilst on a holiday in the United States of America, and uploads it on Twitter, which then gets most views by UK residents, whom while watching, see an online advertisement for a hotel in Mauritius – what, in this example should be taxed and where should it be taxed (Lawcareers.net)?

This example contains various jurisdictions and multiple potential sources where value is created (e.g., user data collection and exploitation, advertising revenues, *et cetera*) – (Lawcareers.net), and illustrates exactly the kind of challenge the UK government has been faced with.

A discussion of what the concept of 'value creation' signifies, has raised controversial arguments by policymakers. This concept, however, is significant in international taxation for determining the impact of digitalization and the fair allocation of taxing rights between jurisdictions to ensure that Digital Multinational Entities pay their fair share of tax. To comprehend this term, as it has been applied in recent tax debates, one should examine the context of its use in the BEPS Action Plan (OECD, 2015).

3.2.2 Online Marketplace:

Means, with reference to The Act, an online platform that meets the following conditions:

(a) the main purpose, or one of the main purposes, of the platform is to facilitate the sale by users of particular things;

(b) the platform enables users to sell things on the platform to other users, or to advertise or otherwise offer to other users, particular things for sale.

The legislative test for an 'online marketplace' has been amended to make clearer that the definition includes marketplaces that bring users together, even if the sale occurs away from the platform itself (Tax Journal, 2020). As stated above, the definition is not meant to encompass e-commerce retailer online sales or online sales in general; rather, it is intended to cover cases where businesses act as intermediaries and match consumers with sellers, rather than where the company sells its own goods or services (Pinsent Mason, 2021).

Amazon

Amazon (Amazon.com) is known as the world's largest online retailer, which has its headquarters in the United States of America (TechTarget, 2022). The company originally started as an online bookselling entity (TechTarget, 2022). Today it offers a stupendous product range and inventory, which allows consumers to buy any type of supplies, including, but not limited to household goods, jewellery, movies, pet supplies, electronics, furniture, and toys (TechTarget, 2022). This internet-based entity sells these goods directly, or as an intermediary between other retailers and its million customers (Britannica, 2023). Given the nature of its business, it thus meets the definition of an online marketplace as stipulated above.

A detailed examination of Amazon's finances and public statements in 2019 revealed that the internet giant had claimed £13.7 billion of UK sales in its USA accounts (Independent, 2021). However, it only declared £5.5 billion in sales in its filing for UK-based entities (Independent, 2021). The tech giant denied the results, claiming that the gap (*'missing money'*) was due to a large portion of its sales to UK customers being logged by UK branches of one of its Luxembourg firms, and that the records had been revealed to HMRC (Independent, 2021). When asked to disclose the UK corporate tax it paid on such transactions, the company declined (Independent, 2021).

According to a survey commissioned by Unite (Unite the Union, generally known as Unite, is a British and Irish trade union), Amazon earned 67 billion euros in Luxembourg in 2019 (Independent, 2021). The report outlined that if this amount relates to sales made in Luxembourg, then it would mean that the tech giant had sold an average of ninety-two thousand euros of goods and services to every resident of the small Grand Duchy (Independent, 2021).

According to Unite's analysis, which was confidentially shared with *The Independent*, Amazon's advantage gained by lawfully moving revenues to low-tax nations is a crucial reason in the tech giant's expanding supremacy (Independent, 2021).

A group of academics headed by chartered accountant Vivek Kotecha examined the financial records of nineteen of Amazon's UK-registered businesses (Independent, 2021). From the data Amazon publicly disclosed, the research team attempted to deduce how much UK corporate tax the company might be avoiding (Independent, 2021). Based on the data publicly disclosed, the research team estimated that the tech giant had paid a maximum of 84 million pounds in tax on its profits, which is around 46 million pounds less than what would have been expected (Independent, 2021). According to these statistics, Amazon could cover its corporation tax obligation with earnings earned in just a few days of trade (Independent, 2021).

Treasury Committee member and Labour Member of Parliament Emma Hardy termed the results "very concerning" and backed Unite's request for a public probe into Amazon's "missing money" (Independent, 2021).

How does 8.2 billion pounds go 'missing'?

The research provides some of the most extensive insights into how Amazon can smoothly move earnings from where value is generated to where tax is paid (Independent, 2021).
When a shopper purchases on Amazon's UK website, they are billed by the UK branch of a Luxembourg-registered company – Amazon EU Sarl (Independent, 2021). Amazon EU Sarl had 4,302 employees in 2019, yet recorded annual revenues of 32.2 billion euros, meaning an average of 7.5 million euros per employee (Independent, 2021). Amazon's three main subsidiaries, located in the UK, reported 207,000 euros of revenues per employee (Independent, 2021). These figures suggests that Amazon EU Sarl's employees are thirty-six times more productive than their UK-based colleagues (Independent, 2021).

Professor of Accounting and Finance, Atul K Shah, at City University, said the detailed report outlines Amazon's UK tax avoidance in a clear and candid manner (Independent, 2021). His comment on this issue was: *"The millions of euros of 'sales' per worker in Amazon's Luxembourg-based corporations is a red signal for tax avoidance, emphasizing the need for greater openness on a country-by-country basis*" (Independent, 2021). "*Recording sales in*

Luxembourg Amazon's accounts indicate that it employs another strategy to reduce its UK tax bill" Professor Shah said (Independent, 2021).

Amazon Services Europe Sarl, a Luxembourg-based subsidiary, provides services to the company's website, while other Amazon enterprises in the UK and other jurisdictions compensate the Luxembourg corporation for those services - thus moving revenue to the low-tax jurisdiction (Independent, 2021). The Luxembourg-located subsidiary's 2019 accounts, show that it generated 12 billion euros in revenue and had about 193 employees - representing more than 62 million euros per employee (Independent, 2021).

According to John Christensen, a Tax Justice Network director and head of the board, Amazon's intricate corporate structure exemplifies how mismatched global tax systems have become (Independent, 2021).

According to the report, the major question that arises from the inquiry is whether the UK government wants a tax structure that encourages reduced pricing, in return for future market domination (Independent, 2021). History concerning the latter suggests that that is a dangerous bargain (Independent, 2021). Co-founder of The Balanced Economy Project – Nicholas Shaxon, emphasised that monopolies produce enormous profits, while low-tax jurisdictions conceal evidence and reduce tax payments on those gains – Amazon's outbursts in Luxembourg are a prime example of how industries and tax systems have gotten tainted (Independent, 2021).

3.2.3 Search engine activity:

An 'internet search engine' has no legal meaning (Tax Journal, 2020). This means it will take its general meaning if a court was to ever construe it (Tax Journal, 2020). However, search engines that study a single (or closely related) website are not covered by the Act (Tax Journal, 2020). The search engines that are classified as 'internet search engines' are those whose major function is the operation of a search engine (Tax Journal, 2020).

The guidance for interpreting the term 'internet search engine' states that if a website contains a search box which employs third-party technology to present results from outside sources,

then the third-party technology provider, rather than the website owner, would typically be performing 'in-scope' activities (Tax Journal, 2020).

Online advertising, which has several benefits over conventional advertising, employs the internet as technique for targeting and distributing advertising material to consumers (OECD, 2015). Internet advertising uses several, the most prominent one being search engine advertisements, in which an advertiser is charged a fee to appear among internet search results (OECD, 2015). Internet advertising is expeditiously growing in relation to the advertising sector and in terms of aggregate revenues (OECD, 2015). Search advertisements dominate the internet advertising business (OECD, 2015).

Google

Google LLC (formerly Google Inc) is an American search engine company founded in 1998 by Larry Page and Sergey Brin (Britannica, 2023). Google currently manages more than 70% of global online search inquiries, putting it at the heart of the majority of internet users' experiences (Britannica, 2023). Google Search is an entirely automated search engine that uses a web-crawler software on a daily basis in order to find material to add in Google's database (Google Search Central, 2023). Google generates its major revenue from its advertising model known as *Adwords* (Moneymodels, 2021). It allows businesses to display contextual advertisements in the search results and then charges on a 'per-click basis' (Moneymodels, 2021).

HMRC took action in response to public outrage over the low amount of taxes paid by Multinational Enterprises operating in the UK but with headquarters in other jurisdictions (BBC.com, 2016). In 2013, Google paid 20.4 million pounds in taxes from the actual value of its UK sales that year amounting to 3.8 billion pounds (BBC.com, 2016). Google's largest market is the United Kingdom, and the majority of its income in the United Kingdom come from internet advertising (BBC.com, 2016). Its European headquarters is situated in Ireland, which has a lower tax rate on corporations than the UK (BBC.com, 2016). Google thus agreed to pay 130 million pounds in back taxes after UK tax authorities opened an audit in its accounts (BBC.com, 2016).

3.2.4 What is the impact of the digital services tax on the UK economy?

In its first year, the digital services tax generated about 360 million pounds in income from US internet giants such as Google and Amazon, as well as more revenue from various other digital enterprises than they had previously paid in UK corporate taxes (the guardian, 2022). The National Audit Office (NAU) report has established that the UKs digital services tax has yielded in greater than thirty percent of what the government had anticipated in 2021 (The Guardian, 2022). Gareth Davies, the head of the NAU, also stated that the UK tax authority has not identified any entity failing to comply with the digital services tax since its legislation; however, HMRC could encounter difficulties enforcing compliance among groups with no Permanent Establishment in the United Kingdom (The Guardian, 2022). Be that as it may, *ceteris paribus*, the government still believes that the tax could progressively bring in more than 3 billion pounds in 2024 and 2025 as it surpassed its 2020/2021 annual target of 275 million pounds (The Guardian, 2022).

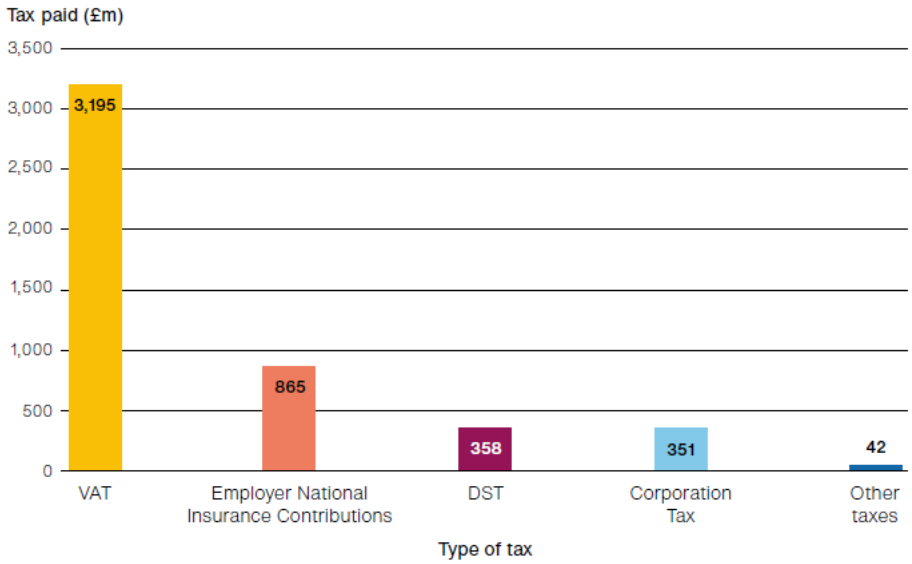
United States tech giants have, in the past paid relatively low corporate tax in the United Kingdom because they warranted their British operations to make very low profits, so they could funnel their earnings through low tax jurisdictions such as Ireland and Luxembourg (The Guardian, 2022).

Meg Hillier, head of the Public Accounts Committee, acknowledged that over 90% of the digital services tax collected in the fiscal year 2021/2022 originates from just five significant industry groupings (The Guardian, 2022).

The following diagram illustrates the tax paid, broken down by tax types for 18 business groups that paid DST in the 2021/22 fiscal year (National Audit Office, 2022):

Diagram A:

The DST was almost the same as the Corporation Tax paid by DST-liable enterprise groupings.



3.3 BROADER CHALLENGES IN THE CONTEXT OF DIRECT TAXATION

3.3.1 Avoiding a taxable presence:

Non-resident entities can communicate with consumers in other jurisdictions remotely via websites, online apps, or other digital methods under digital economy business models (OECD, 2015) as we have seen on the events outlined above, without having a physical presence in the UK. Domestic regulations in the United Kingdom required some degree of physical presence before a non-resident entity's earnings may be taxed (UK Government, 2017). Furthermore, Article 5 and 7 of the OECD Model Tax Convention supports that a non-resident entity is only liable to tax in another jurisdiction if it holds a Permanent Establishment (PE) there (OECD, 2015). As a result, the non-resident company may not be taxed simply because it has consumers in that jurisdiction (OECD, 2015). The ability of a non-resident entity to have its profits untaxed in other jurisdictions is not unique to digital entities, however, when coupled with techniques that eradicate the taxation of such profits even in the residence country, resulting in these profits not being subject to tax anywhere (OECD, 2015), that ability is said to pose BEPS challenges as outlined above. In some cases, tax in the market country may be circumvented by classifying activities among an assortment of companies to qualify for the PE status exceptions for preliminary or supplementary activities, or by affirming that each jurisdiction where the entity operates falls below the PE threshold (OECD, 2015).

3.3.2 Decreasing the income allotted to risks, assets, and functions in the market jurisdiction.

In the context of a digital economy, the company's capacity to split up risks, assets, and functions in a manner that decreases taxation, creates benefits to legally allot them in a manner that does not provide a complete reflection of the parties' actual conduct and would not be regarded, despite the tax concerns (OECD, 2015). This can happen in an instance where risks and intangible assets related to activities implemented at a local level are allocated through legal agreements to other members of the group functioning in low-tax locations to reduce the overall tax burden of the group (OECD, 2015).

MNEs often reduce their tax burden in market jurisdictions by using a PE or subsidiary to perform technical support activities, marketing activities or maintaining a paralleled server to enable a quick access of their digital products, with the parent entity legally assuming the risk and maintaining ownership of the intangibles obtained through these activities (OECD, 2015). An entity may reduce risks at a local business level by minimising investment of that company such that, financially, it is unable to assume the risk (OECD, 2015). Where an entity sells tangible goods online - e.g. Amazon – its local PE or subsidiary may maintain a warehouse and help in carrying out orders (OECD, 2015). The PE or subsidiary will be subject to tax in the jurisdictions they operate in, on earnings attributable to the services they provided there, however, the amount they earned, might be limited (OECD, 2015).

3.4 DO THESE CHALLENGES GIVE RISE TO BEPS?

As outlined above, a MNE group does to a certain extent, maintain presence in jurisdictions that represent notable markets for its goods (OECD, 2015). These entities may form PEs or local subsidiaries in a digital economy, with local activities tailored to produce low taxable profits (OECD, 2015). Where such frameworks adequately depict the activities performed in each country, the fact that the activities necessary to perform functions in another jurisdiction are more restricted in one type of corporation than another does not necessarily raise BEPS issues (OECD, 2015). However, if the allocation of such functions is not corresponding to the actual functions, such arrangements may give rise to BEPS.

3.5 HOW DO THESE CHALLENGES GIVE RISE TO ERODING THE TAX BASE AND THE SHIFTING OF PROFIT?

3.5.1 An analysis of BEPS Action 1:

Nexus and the ability of entities to have a notable presence in a jurisdiction without being liable to tax

In recent times, international tax issues are the hub of political agendas across the globe (OECD – Action 1, 2015). International tax rules, which were designed centuries ago, are recently strained because of digitalisation and the amalgamation of markets and national economies (OECD – Action 1, 2015). Weaknesses in recent tax rules, create opportunities for Multinational Enterprises to erode tax base and shift their profits to low or no tax jurisdictions (OECD – Action 1, 2015). Policymakers in various jurisdictions are now obligated to restore trust in their systems and guarantee that profits are taxed where value is produced (OECD – Action 1, 2015).

A digital economy is a result of an economic transformation facilitated by advances in ICT (Information and Communication Technology), which have made automation more effective, less expensive, and significantly assimilate, thereby enhancing corporate workflows while fostering innovation throughout all sectors of the economy (OECD – Action 1, 2015). The first action of the BEPS project examines, *inter alia*, a company's capacity to establish a strong digital presence in a particular jurisdiction without being subject to tax there owing to a lack of nexus under modern international tax regulations (OECD – Action 1, 2015). One of the main issues around digitalisation, is determining nexus with other jurisdictions for tax purposes (OECD – Action 1, 2015).

Because of the change of commercial models and the relentless rise of the automatised economy, non-resident firms now operate in market jurisdictions in completely distinct ways than during the era of adopting global tax rules (OECD – Action 1, 2015). Technological advancements in information and communication have extraordinarily widened the scale at which entities can operate in other jurisdictions without a physical presence there (OECD – Action 1, 2015). Furthermore, in most cases, a native physical presence in the form of production, advertising, and distribution was necessary for corporations to exploit opportunities in a market jurisdiction (OECD – Action 1, 2015). Existing thresholds of taxing,

rely on the existence of a physical presence to certify that the market jurisdiction has the legal competence to enforce its taxing rights over a foreign entity (OECD – Action 1, 2015).

Investments in digital infrastructure increase the elasticity of entities to select where material company operations take place, or to relocate present operations to an alternative location, regardless of whether that location outside the fundamental trade jurisdiction and the jurisdiction in which other related business operations may occur (OECD – Action 1, 2015). Consequently, it is progressively possible for an entity's workforce, IT servers, and clients each to be dispersed among various countries – away from the fundamental trade jurisdiction (OECD – Action 1, 2015).

Such concerns are worsened in some instances because, in other business models, clients are more likely to have continuous ties with service providers that extend beyond the moment of sale (OECD – Action 1, 2015). This relationship generates network effects that have the potential to increase the value of a service rendered to other prospective clients (OECD – Action 1, 2015). Customers' online interactions with retailers via websites that provide links to label and review items, can increase the website's usefulness to prospective clients by allowing them to make sophisticated decisions about items relevant to their individual interests (OECD – Action 1, 2015).

Similarly, members of a collaborative networked platform bestow content created by others, with the ramification that as new users join, the platform's value to existing users increases (OECD – Action 1, 2015). However, the business that provides the platform monetises that content through subscription sales, advertising revenues or licensing of the content to third parties (OECD – Action 1, 2015). The challenge with such transactions, is determining where value is created, thus, granting a particular jurisdiction taxing rights to the profits attributable to the transaction is not easily established, and as a result gives rise to BEPS.

The determination of 'value creation' relies on a comprehensive examination of the risks assumed, activities performed, and resources employed, the absence of which causes BEPS concerns (OECD – Action 1, 2015). Tax treaties do not allow for the taxing of a non-resident entity's business profits without a PE to which those profits are attributable, however, the subject of nexus in this regard extends beyond the questions of a PE under tax treaties (OECD – Action 1, 2015). As a matter of fact, even in the absence of treaty constraints, many

jurisdictions would not regard nexus regulations to exist under their own national laws (OECD – Action 1, 2015). Correspondingly, the concern around nexus is also related to native regulations for taxing foreign entities (OECD – Action 1, 2015).

Another distinct challenge raised by how entities have changed their ways of conducting business, is whether some pursuits that were considered preliminary or auxiliary may gradually be imperative components of entities in the digital economy (OECD – Action 1, 2015). For example, if vicinity to clients and the exigency for a nimble shipment to those clients are essential factors of an online seller's business model for selling physical goods, the upkeep of a native facility where the goods are kept could constitute a central activity of that seller (OECD – Action 1, 2015).

Data and the attribution of value creation using digital products and services

Digital technologies allow for information gathering, storage, and utilisation, as well as remote data acquisition (OECD – Action 1, 2015). Information can be collected directly from customers, other sources of information, or indirectly through external methods (OECD – Action 1, 2015). Enterprises retrieve data by means of various models that can be inventive - requesting or demanding users to providing it using statistical techniques related to it - or mainly reactive - with both the amount and the type of information provided mainly within the management of users, for example, through cloud computing and social media networks (OECD – Action 1, 2015). In a digital economy, data obtained from diverse sources is frequently a major component in the process of generating value (OECD – Action 1, 2015). The diversifying role of information raises concerns regarding whether existing nexus standards are still relevant, or whether any profits attributable to an enterprise's digital method of gathering information ought to be subject to tax in the jurisdiction from which the information is collected, and whether the information is being adequately defined and taken into account for tax purposes (OECD – Action 1, 2015). Furthermore, the quandary that arises as a result of data valuation in an international context, also precipitates concerns regarding whether a remote way of collecting data should result in nexus for fiscal reasons, even in the truancy of a Permanent Establishment and, if so, what effect would the latter have on the praxis of profit attribution and Transfer Pricing provisions which in turn, demands an examination of the assets used, activities performed and challenges encountered (OECD – Action 1, 2015). Seeing that the determination of value and the issue of nexus in a digital economy is a challenge for recent international rules, multinational entities exploit this (OECD – Action 1, 2015). In

addition to this, the fact that data can be extracted from consumers or devices in a particular jurisdiction (country A), utilising technology created in another jurisdiction (country B) and processing it in country B, and ultimately using that data to enhance product offerings or targeting consumers in country A, give rise to tax challenges in determining profits attributable to each of the functions and appropriately attributing those profits between country A and country B. These difficulties may also be worsened further by the fact that, in practice, information may be compiled from numerous sources, and blended in diverse ways to produce value, making it difficult to track the source of that data (OECD – Action 1, 2015). The data in question may also be stored and processed using cloud computing – creating a challenge to determine the location where the processing occurs, and ultimately raising BEPS issues (OECD – Action 1, 2015).

Classification of income procured from new business models

New ways of monetisation have been exacerbated by the digital economy, and this raises issues concerning the rationale behind current classifications of income and the coherence of treating transactions of a comparable nature (OECD, 2015). As a result, new business models pose questions regarding the classification of income and certain transactions for tax treaty and domestic law purposes, such as: the treatment of cloud computing and application hosting, because the classification of such transactions is not clearly dealt with in the current OECD Model Tax Convention (OECD, 2015). From a treaty context, the question is, in most instances, whether payments for such transactions should be classified as business profits, fees for technical services, or royalties (OECD, 2015). Furthermore, questions regarding whether software as a service should be classified as a provision of technical service, as the renting of space for cloud servers by others, or a general service arise (OECD, 2015). The same questions arise even in instances of rendering a platform as a service or infrastructure as a service (OECD, 2015). Answers to these questions are yet to be formulated by way of international consensus, however, in the interim, BEPS issues arise (OECD, 2015).

Taxable earnings of a non-resident entity are liable to tax under various treaties if the non-resident corporation has a Permanent Establishment in that country (OECD, 2015). Contradictory to this, other types of revenue, such as royalties, may only be subject to withholding taxes in the jurisdiction of the payer, varying on the applicable treaty guidelines (OECD, 2015). Therefore, it matters not whether a transaction is classified as commercial

earnings or any other type of revenue, as it may treated differently under the different treaty rules (OECD, 2015). As a result, elucidating the application of current treaty norms to new business models remains necessary (OECD, 2015).

Concurrently, when assessing the categorisation of revenue earned through new commercial models, it may be imperative to assess the computation of the present laws (OECD, 2015). This will be done to determine if such rules provide appropriate results in the automatised economy and whether policy variances in treating similar transactions are reasonable (OECD, 2015).

Avoiding withholding taxes

A non-resident entity may, in certain instances be subject to withholding taxes if receives certain payments such as dividends, royalties or interest, from a payer in that jurisdiction (OECD, 2015). If approved by a treaty agreement between the payer's and recipient's jurisdictions, an entity in the digital economy may qualify for a reduced exemption from withholding on earnings paid to lower tax jurisdictions in the form of interest, royalty or dividend (OECD, 2015). BEPS is generated, *inter alia*, by entities that engage in treaty shopping by establishing shell corporations in jurisdictions with attractive tax treaty networks and have weak protections against treaty exploitation (OECD, 2015).

Reducing or eliminating tax in the intermediate jurisdiction

This can be achieved by using hybrid mismatch arrangements, applying preferred domestic tax regimes, or through disproportionate deductible payments made to connected parties situated in low tax countries (OECD, 2015). These digital entities often locate, risks, assets or functions to low tax jurisdictions and thereby allocate income to those jurisdictions (OECD, 2015). Furthermore, in the setting of a digital economy, ownership of intangibles can be associated and transferred to a connected group of entities, and in some cases, for a lower price than arm's length to an associate in a country where revenue produced from those intangibles is taxed at a lower rate (OECD, 2015). This occurrence causes tax planning opportunities for these digital entities and presents risks for eroding tax base (OECD, 2015).

These entities might also reduce tax in the intermediate jurisdiction through the payment excessive deductible payments to associated companies that are situated in low-tax jurisdictions or have the right to a low rate of tax on payments received (OECD, 2015). To

generate stateless revenue, these entities may leverage hedged investments between the residency regulations of the intermediate nation and the *domicile* jurisdiction (OECD, 2015).

The above discussion was, in simple terms, and supported by the OECD report titled: Addressing Base Erosion and Profit Shifting, highlighting several co-ordinated strategies, in the context of direct taxation, associated with the erosion of the tax base and the shifting of profits, which can be categorised into four elements:

- Low or no withholding tax at source
- Low or no taxation of the recipient entitled to non-routine profits created through intra-group arrangements
- Eroding the tax base in the market jurisdiction by circumventing a taxable presence, or where there is a taxable presence, by shifting gross profits (as Permanent Establishment profits are taxed on a net basis) through trading structures
- Reduction of net profits by maximising deductions at the payer's level

4.CHAPTER 3: THE OECD TWO-PILLAR APPROACH

4.1 BACKGROUND

During the Corona virus pandemic, technology evolved so much that we still communicated and collaborated with one another digitally (WEF, 2021). Governments responded to this pandemic by increasing their spending on health care and by making available unprecedented amounts of financial backing to both labourers and businesses to help shield them from the financial harm caused by the pandemic (OECD, 2020). However, there will come a time where governments will put their focus' on reformulating their finances (OECD, 2020). As such, a consensus-based resolution made up of two pillars, that will not only play a vital role in ensuring equity and fairness in the existing tax systems but will also strengthen the global tax system in the context of new and evolving business models, will assist putting government finances back on a maintainable position (OECD, 2020).

Digital transformation encourages innovation, enhances services, and initiates efficiencies while elevating economic growth (OECD, 2020). However, the speed and extensiveness of this transformation, poses challenges in various policy areas, as well as taxation (OECD, 2020). As a result, the reforming of international tax systems with the aim of addressing tax challenges arising from digitalisation, and the preventing of uncoordinated unilateral tax measures, is recently a compelling preference for the global tax economy than ever before (OECD, 2020).

These policy concerns, particularly those that relate to taxation, were recognised as one of the main priorities for the OECD BEPS effort (OECD, 2020). As a result, the Inclusive Framework, working through the TFDE, produced a preliminary report in 2018 that identified the need for an international resolution (OECD, 2020).

It was from then, when the work on the restoration of international tax policy, undertaken by the 137 OECD-member jurisdictions commenced (OECD, 2020). This work consists of two pillars: Pillar One addressing the issue of profit allocation and nexus, while Pillar Two focusses on a worldwide minimum tax rate to handle the remainder of the BEPS concerns (OECD, 2020).

4.2 PILLAR ONE:

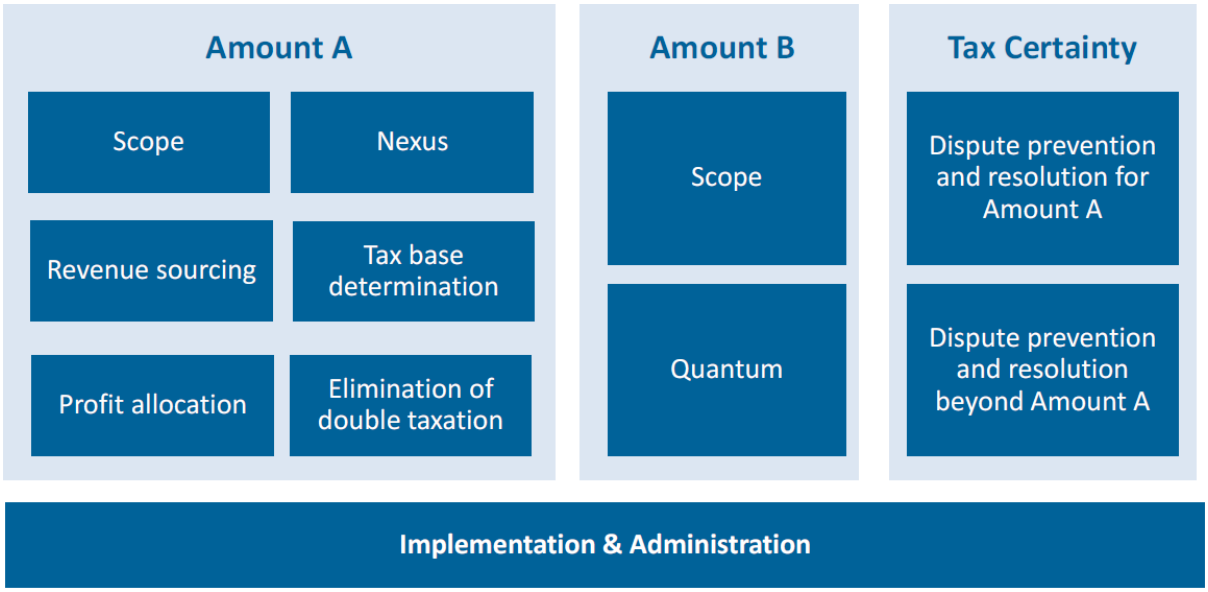
4.2.1 Scope: Amount A

Pillar One is concerned with adjusting foreign income tax systems to match modern business models by revising profit allocation and nexus laws relating to a company's earnings (OECD, 2020). In this sense, it broadens the taxing rights of market regions where a business has a prolonged and active presence in the commercial activities of that jurisdiction through remotely managed operations (OECD, 2020). Furthermore, it aspires to greatly enhance tax certainty by instituting unconventional dispute resolution and prevention techniques (OECD, 2020).
The essential elements of Pillar-one can be classified into three categories (OECD, 2020):

- Contemporary taxing rights for market jurisdictions over an interest of excess profits calculated at a MNE group level (Amount A).
- In accordance with the ALP (Arm's Length Principle), a predetermined return for certain necessary distributing and marketing operations evidently happening in a market jurisdiction (Amount B).
- Procedures to enhancing certainty in taxes using unconventional dispute resolution and preventive strategies.

As such, eleven building blocks have been established to be imperative to the formulation of Pillar One as illustrated in the diagram below (OECD, 2020):

Diagram B:



The new taxing right (Amount A)

This new legal authority will have an influence on current profit allocation and nexus standards (OECD, 2020). It will be widely applied and will not be restricted to a tiny percentage of multinational corporations in a certain industry (OECD, 2020). The important features of this new taxing right will contain (OECD, 2020):

- Scoping rules covering Automated Digital Services (ADS), and more widely Client Facing Businesses (CFB). This covers entities that are capable of having sustained and notable connections with users and customers in a market jurisdiction.
- A revenue margin derived from the annual consolidated groups earnings combined with a *de minimis* foreign in-scope revenue divestiture. The margins are established to keep management of the new standards manageable while also lowering compliance expenses.
- Employing new nexus regulations to ascertain a market jurisdiction entitled to receive the taxing right. These nexus regulations balance the interests of emerging jurisdictions in reaping the benefits of the additional taxation authority. Furthermore, the nexus regulations are backed by extensive sourcing provisions that demonstrate the peculiarity of client-facing companies and digital services, and balances the necessity for accuracy with the propensity of the in-scope multinational firms to comply, as well as the expense associated with compliance.

- A governable approach for reallocating excess profits. Competent market jurisdictions will earn a portion of the excess profits using a formular. To balance accuracy and simplicity, the calculation of profit will, to a great extent, rely of the consolidated financial revenues.
- A loss carry-over mechanism to guarantee that if the relevant company is not profitable under a going concern, there is no Amount A allocation. In ensuring that Amount A is only applied to economic profits, cogitation will be granted to in-scope multinational enterprises who are permitted to carry forward losses incurred before the initiation of Amount A into the loss carry-over policy.
- In supplementing the presumed mechanisms to prohibiting double taxation, several techniques will be considered in tailoring the allocation of taxing rights to a market jurisdiction where a multinational enterprise already leaves excess earnings under the current Arm's-Length-Principle's profit allocation rules, as well as a advertising and distribution safe harbour.

The taxing right will be implemented through the changing of domestic laws as well as international public law mechanisms, particularly the multilateral treaty.

A fixed return for certain essential distributing and marketing activities (Amount B)

Amount B has two intentions. Firstly, it promises to minimise taxpayer compliance costs while also streamlining tax authorities' implementation of Transfer Pricing regulations (OECD, 2020). The second intention is to improve tax certainty and as a result, lower controversies between taxpayers and tax authorities (OECD, 2020).

Amount B will govern the reimbursement of associated distributors that execute critical distribution and marketing functions in the market jurisdiction (OECD, 2020).

Enhanced tax certainty processes

Tax certainty provides for advanced dispute resolution and dispute prevention techniques (OECD, 2020).

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The altered taxation right will be established by applying a formula to a specified tax base, relating to a portion of the surplus earnings from in-scope operations of multinational companies (OECD, 2020). A panel approach will be available for revenue authorities to use in collaboration with relevant multinational corporations to agree on the tax base, the outcome of the formula adopted, and other imperative component of the modern taxing right which includes the elimination of double taxation (OECD, 2020).

4.2.2 In-scope activities

The sphere of Amount A is embedded on two canons: A threshold test and an activity test (OECD, 2020). As such, the definition of scope in this context, responds to the need to readdress the existing taxing rules in response to a transformed economy (OECD, 2020). The existing rules grant jurisdictions taxing rights to profits derived from a Permanent Establishment in that jurisdiction (OECD, 2020). However, in the age of a digitalised and globalised economy, businesses can still participate in the economy of other jurisdiction through interactions that expand beyond the completion of sales to further intensify the economic worth of their products, sales, and profits even without physical presence (OECD, 2020). This implies that the transfer of taxation rights can no longer be based solely on physical presence (OECD, 2020). As a result, the definition of the in-scope functions mirrors the type of challenges where this measure is most critical: Client-facing Businesses and Automated Digital Services (ADS) - (OECD, 2020).

Automated Digital Services:

The proposition to defining Automated Digital Services comprehends that some multinational enterprises can generate income from providing ADS (including monetising data) that are afforded on a standardised and automated basis to a global user-base and conduct this remotely to customers in jurisdictions with little infrastructure

(OECD, 2020). They, in most instances gain from content and data contributions created by customers, and from the profound monitoring of customers' activities and exploiting the corresponding information (OECD, 2020).

The definition of Automated Digital Services is made up of a general definition, a positive list of ADS functions and a negative list of non-ADS functions (OECD, 2020).

The general definition

The standard definition of ADS is formulated on two principles: digital and automated (OECD, 2020). The digital part of the definition covers services provided over an electronic network or the internet (OECD, 2020). The automated part of the definition covers instances where the rendering of a service to users require minimal human intervention (OECD, 2020). If an action is not on either the positive or negative list, the generic definition is used (OECD, 2020).

The first part, which is automated, is concerned with the customer's capacity to utilise the service because of the system or equipment offered, allowing the customer to acquire the service effortlessly without the need for the supplier to physically render the service (OECD, 2020). As a result, the wording is focused primarily on the rendering of a service and excludes the supplier's intervention in developing and supporting the system, which includes handling system errors, configuring the system location required to render the service, updating and maintaining the system's location, or implementing other general adjustments that are not related to the individual user's requests (OECD, 2020). The second feature, which is digital, distinguishes it from other service supply instruments, like onsite physical service delivery (OECD, 2020).

The positive list

The positive list encompasses the sale or conveyance of user information; social media platforms; search engines; online content services; online intermediation platforms; digital teaching platforms; online gaming platforms; online advertising services; and cloud computing services (OECD, 2020).

The negative list

Non-ADS functions on the negative list include services that provide access to electronic networks or the internet; tailor-made professional services, sales of other non-ADS products and services conducted digitally, tailor-made online teaching services, and income from the sale of tangible items regardless of network connectivity (OECD, 2020).

In essence, the first step in determining whether an activity falls under the purview of Automated Digital Services is to determine whether that function is on the positive list, and if it is, then it is considered to be a ADS (OECD, 2020). If it is not on the positive list, multinational enterprises and tax authorities must determine whether that activity is on the negative list, and if it is, it does not constitute an ADS business (OECD, 2020).

Client-facing businesses

Although these businesses include traditional ways of trading, which have been nullified by digitalisation, client-facing businesses are able to interact with clients in a consequential manner beyond having a physical presence in a market jurisdiction, consequently increasing their sales, and enhancing the value of their products (OECD, 2020). This material and persistent engagement can occur and create value for client-facing multinational entities due to the wider automating of the economy (OECD, 2020).

The inclusion of CFB in the context of Amount A, also identifies that in certain instances, both CFBs and ADS can warrant the coherent treatment of the various business models, which are sometimes combined (OECD, 2020).

For example, some online intermediary networks present a marketplace for selling third-party products to customers (in scope as ADS), including their own inventory of indistinguishable products (in scope as CFB); entertainment enterprises could make their content readily accessible online (in scope as ADS), including authorising the same material to others (in scope as CFB); films, music, and other programs could be provided online (in scope as ADS), and the same articles delivered physically by multinational enterprises (in scope as CFB) - (OECD, 2020). For activities that are conflicting in nature i.e. both ADS and CFB, an overruling of applying the ADS definition stands (OECD, 2020).

Client Facing Businesses are businesses that earn money through the sale of products and services primarily aimed at customers, including those that sell indirectly through intermediaries, franchising, and licensing (OECD, 2020).

4.2.3 Nexus

The new multilateral tax framework has confirmed that taxing authority cannot be awarded only based on physical presence in a market jurisdiction (OECD, 2020). The new nexus rules establish which market jurisdiction is entitled to the allocation of Amount A only (OECD, 2020). As a result, the new regulation has no effect on nexus for other tax reasons, such as customs duties or other non-tax related fields (OECD, 2020).

These new regulations could apply uniquely for Client Facing Businesses and Automated Digital Services (OECD, 2020). In the context of Automated Digital Services, exceeding the revenue threshold in a market jurisdiction, could be the only test to determine nexus (OECD, 2020). For Client Facing Businesses, the ability to take part in a market jurisdiction remotely, is less distinct (OECD, 2020).

Elements and operations of the new nexus rules

The new standards will be based on metrics of significant and consistent interaction with market jurisdictions for in-scope international companies (OECD, 2020). In essence, in the absence of such engagements with a jurisdiction, none of the group's profits will be attributable to that jurisdiction in the context of Amount A (OECD, 2020). The new nexus rules will work in an independent manner to circumscribe any unforeseen spill-over effects on other taxes (OECD, 2020).

General features

Market income benchmarks will apply to the group's in-scope revenues generated in the market jurisdiction (OECD, 2020). The market income will be calculated in accordance with the sourcing rules, and this may be differently applied to Automated Digitals Services and Client Facing Businesses (OECD, 2020). The nexus rules will follow a much broader classification approach as nexus will be determined at the level where a group partitions its activities in assessing its Amount A tax base (OECD, 2020).

Different threshold amounts for Client Facing Businesses and Automated Digital Businesses could be substantiated on grounds that the ability of a Client Facing Businesses to take part in a market jurisdiction remotely appears less prominent compared to Automated Digital Services; the sophistication and costs of compliance in relation to validating revenues derived

by Client Facing Businesses compared to Automated Digital Services points to an advanced threshold amount for Client Facing Businesses; and lastly, on grounds that profit margins are generally lower for Client Facing Businesses compared to Automated Digital Services, hence the threshold amount for Client Facing Businesses should be higher, ensuring that balance is maintained between tax benefits for market jurisdictions and the general administrative and costs of compliance (OECD, 2020).

In the context of clarifying additional indicators of nexus for Client Facing Businesses, a physical presence test in the form of a PE, in an easy way of determining nexus beyond the point of sale, because the Permanent Establishment would already have reporting and filing obligations in that jurisdiction (OECD, 2020). In other words, the nexus rules applying to a single entity, will apply to the entire group (OECD, 2020). In assessing an engaged and continuous physical presence, the physical presence test may include a condition requiring that the actions performed be related to the in-scope revenues (OECD, 2020). This requirement could include, in addition to the distribution activities, activities that directly support sales into the market like after-sales support, local stock maintenance, advertising and promotion, international delivery, repair and maintenance, collecting indirect taxes and duties, adapting services or products to the specific market, and offering billing and payment in the local currency (OECD, 2020). As intended in the test, activities with no tangible nexus to sales and no consistent physical presence might include research and development activities (OECD, 2020).

4.2.4 Revenue sourcing rules

The revenue sourcing criteria was engineered to balance the demand for precision with the capacity of in-scope multinational firms to comply while avoiding excessive compliance expenses (OECD, 2020). This is proposed to be accomplished through the enunciation of sourcing canons, backed by distinct indicators, subject to a defined ranking (OECD, 2020). This proposition of providing an array of probable variables within the rank recognises the different methods that multinational enterprises currently employ to gather data in relation to their business models, while also demonstrating accuracy to multinational enterprises and tax authorities that the specified group of acceptable distinct indicators can be relied on to yield satisfactory outcomes (OECD, 2020).

In order to link the appropriate in-scope income to a market jurisdiction, a sourcing canon for each type of in-scope revenue will be created, along with a list of permissible unique indications that multinational firms may use to employ the canon and determine the jurisdiction of source (OECD, 2020).

The acceptable indicators will be arranged in ranks (OECD, 2020). The most accurate indicator that multinational enterprises should generally use is the one ranking first (OECD, 2020). However, if the first indicator was unavailable for whatever reason, or if the multinational business could demonstrate that the indicator was unreliable, the entity might choose an alternate indicator ranked second in the hierarchy and apply the same technique to the other indicators (OECD, 2020). Data is considered unavailable if the multinational enterprise is not in possession of it, and necessary steps were taken to obtain the data, but these were unsuccessful. (OECD, 2020). This proposition is meant to certify that there is adequate flexibility to accommodate the various methods that multinational enterprises can employ to gather data (OECD, 2020).

4.2.5 Determining the tax base

Overview

The determination of the tax base for Amount A is ascertained based on the group's profits, hence it is fundamental to begin with consolidated group financial accounts (OECD, 2020). This motion brings up three wide classifications of issues for the establishment of Amount A tax base (OECD, 2020). Firstly, there is a need to determine a general calculation of profit for purposes of Amount A, including the degree to which modifications are needed to tackle deviations in the current accounting standards (OECD, 2020). Secondly, there is a need to address the technical feasibility of, and rationale for computing Amount A using fragmented accounts on either a geographical area or company line basis (OECD, 2020). Lastly, there is a need to design loss carry-over rules to certify that losses are too, considered when computing Amount A (OECD, 2020).

A profit before tax measure based on consolidated financial accounts

The tax base of Amount A will be measured using an adjusted taxable profit model extracted from the consolidated financial accounts of the appropriate multinational enterprise prepared under the relevant Generally Accepted Accounting Principles that yield similar results to the consolidated financial accounts prepared under International Financial Reporting Standards (OECD, 2020). This method has the benefit that the Amount A tax base, which is unaffected by regulated arrangements and, in the case of major multinational corporations, is based on externally audited financial accounts (OECD, 2020).

The segmentation framework

The goal of the Amount A segmentation methodology is to achieve a balance between the advantages of increased accuracy, the added complexity, and the expenses associated with segmentation (OECD, 2020).

The framework begins by admitting that although it is feasible for multinational enterprises to fractionate their revenues between client facing businesses and automated digital services and out of scope revenues, it may, however, not be possible for them to determine separately, the net profits attributable to those functions (OECD, 2020). As a result, one straightforward method would be to compute the Amount A tax base on a consolidated basis and use the consolidated profit margin as a proxy, linking it to in-scope earnings to establish a proxy for in-scope profits (OECD, 2020).

As a result, the framework will serve as the foundation for the following methodical procedure (OECD, 2020):

- In the context of Amount A, all multinational corporate groupings will be expected to categorise their revenues as client facing businesses, automated digital services, and out of scope operations as could potentially be needed for the determination of nexus.
- In order to reduce the percentage of multinational firm groups that must categorise their Amount A tax base, groups having international revenues of less than 'Y' billion euros may benefit from the 'categorised exemption'. As an alternative, this exemption might be utilised as a safe harbour, with groups falling below the benchmark having the flexibility to calculate the tax base of Amount A on a segmented or group basis, subject to certain conditions. This threshold will be diminished over a five-year period to make administration less difficult.

- Groups that are not entitled for the exemption, or who did not choose to utilise it as a safe harbour, will have to determine whether they are required to designate their Amount A tax base, and if so, on what grounds.

Loss carry-over rules

These regulations will be implemented at the segment or group level using an earn-out mechanism (OECD, 2020). This means that, in the context of Amount A, losses incurred during a certain period will be aggregated in a single account and carried over to succeeding years, rather than being assigned to market jurisdiction (OECD, 2020). Distributing these losses to market jurisdictions stresses and complicates tax authorities' job and may result in difficult-to-justify outcomes (OECD, 2020). Another method for preserving residency jurisdictions' taxing rights is the loss carry-over principle (OECD, 2020).

4.2.6 Profit allocation

The formular to ascertain the spectrum of Amount A

Amount A will be calculated using a formula that does not follow the arms-length principle (OECD, 2020). The formular will be applied to the group's tax base and will include the three specific procedures indicated below (OECD, 2020):

- A profitability benchmark to separate the excess profit related to reallocation and limit any synergy that exists between Amount A and movement compensation under existing Transfer Pricing regulations. This level will be based on a 'profit before tax to revenue' ratio to prevent complication.
- A reallocation percentage to ascertain an appropriate share of the excess profit that can be allotted to market jurisdictions under Amount A. This will warrant that other aspects such as risks, capital and intangibles are frequently remunerated and allocated to excess profits.
- Where nexus is established in the context of Amount A, an appropriation factor will be embedded on locally derived income, computed by using the criteria on scope, nexus, and income sources to administer the allocable tax base among the qualifying market countries.

This three-step method might be presented in two ways: as a profit-based proposition or as a profit margin-based offer (OECD, 2020). In some cases, the administration of each strategy may change, and these variations will guide the decision of the most suitable approach to compute and distribute Amount A (OECD, 2020).

4.2.7 Eliminating double taxation

Because the profits of a multinational enterprise's group are currently allocated using antiquated profit distribution rules, an approach that reconciles the modern taxing right, established at the group level, and the current profit distribution rules, determined at the entity level, is required to avoid the practice of double taxation (OECD, 2020). To synthesise the two profit distribution mechanisms, the technique ascertains which company or companies within the group bears the tax liability in relation to Amount A, which as a result, establishes the jurisdiction needed to avoid the double taxing of Amount A (OECD, 2020). As a result, it is possible to infer that this strategy is based on two factors: identifying the paying company or companies within a group and procedures to prevent double taxation (OECD, 2020).

4.3 AMOUNT B

Amount B seeks to harmonise the compensation of related party distributors who engage in 'basic distribution and marketing activities' in accordance with the arms-length principle (OECD, 2020), as such, it is not within the scope of this study's objectives and will, therefore, not be discussed further.

4.4 PILLAR TWO: GLOBAL ANTI -BASE EROSION MODEL RULES

On 20 December 2021, the OECD and the G20 inclusive framework on BEPS issued Global Anti-Base Erosion Model Rules (GloBE Rules, hereafter referred to as 'The rules') – (Deloitte, 2021). These rules are tailored to ensure that large MNE's pay a minimum level of tax on income attributable to a jurisdiction in which they operate (OECD, 2022).

These GloBE Rules are created with the purpose of being implemented as part of a common approach (OECD, 2022). Any jurisdiction which becomes a part of the common approach will not be compelled to adopt the GloBE Rules. However, if it chooses to do so, it ratifies to implement and administer the rules in a manner that is unvarying with the outcome provided under the GloBE Rules (OECD, 2022). Simply speaking, these rules are concerned with establishing a minimum effective tax rate that will be applied to cross-border profits of multinational entities that have a conspicuous economic footprint across the world, in the form of a global minimum tax, at a rate of 15% (Tax foundation, 2021). In addition, Pillar Two would also entail a dispute resolution processes with the intention of enhancing tax certainty for entities (Tax foundation, 2021).

The GloBE rules apply a system of Top-up Taxes - that is, an Income Inclusion Rule and an Undertaxed Payments rule that aggregates the amounts of taxes paid on an MNE's Excess Profits in a particular jurisdiction up to the Minimum Rate (OECD, 2022). The Top-up Tax does not act as a direct tax on income, rather, it applies to the excess profits calculated on a jurisdictional basis and only applies to the extent that those profits were subject to tax that is below the minimum rate OECD, 2022). The design of the Top-up Tax facilitates the application of the GloBE Rules by certifying that the total amount of a phased tax payable under the rules in each jurisdiction does not cause the Effective Tax Rate to be greater than the Minimum Rate (OECD, 2022).

The Pillar Two model will support jurisdictions to bring the GloBE Rules into their own domestic legislations (OECD, 2022). This model will further assist in providing a co-ordinated system of interlocked rules that:

- clarify Multinational Entities within the scope of the minimum tax;
- Outline a mechanism for calculating Multinational Entities' effective tax rate on a jurisdictional basis and determining the top-up amount and
- Enforce the Top-up Tax on a member MNE group in line with the agreed rule order.

Furthermore, these model rules will also address the acquisitions and disposals of entities of the same group and entail distinct rules that will deal with certain holding structures and tax neutrality regimes (OECD, 2022). Lastly, the rules will address administrative aspects,

including information pertaining to filing requirements and also provide intermediate rules for Multinational Entities that become subject to the global minimum tax (OECD, 2022).

The following chapter will give a contrast of the UK's DST and the Pillar Two model rules, which will aid in responding to the research question.

5. CHAPTER 4: CONTRAST OF THE DST AND THE OECD PILLAR TWO

Controversies about the implementation of the Digital Services Tax and the OECD two-pillar approach are still ongoing due to the fact that the digital economy has increased faster than the international gross domestic product (GDP) in the last fifteen years, which has fundamentally altered how entities operate in foreign markets (Bloomberg Tax, 2023).

Jurisdictions such as the United Kingdom have implemented their own unilateral measure to safeguard their tax base through a Digital Service Tax (Bloomberg Tax, 2023). The OECD, has, in light of protecting the tax base of most, if not all jurisdictions, proposed a two-pillar approach (OECD, 2022). A comparison already exists between the DSTs and the Pillar One (Bloomberg Tax, 2023), in addition to that, this chapter will highlight the contrast of the UK's DST and the OECD Pillar Two.

Diagram B:

MEASURE	TAX RATE	GLOBAL REVENUE THRESHOLD	DOMESTIC REVENUE THRESHOLD	SCOPE
OECD PILLAR TWO	15%	750 million euros/ (644 million pounds)	N/A	Annual profits disclosed in the consolidated financial statement of the ultimate parent

UK Digital Service Tax	2%	500 million pounds	25 million pounds/ (32 million dollars)	Social media platforms Internet search engine Online marketplace

5.1 United Kingdom's DST:

As outlined in Chapter 2 of this study, a digital services tax, is a tax on revenue and not on profits of digital entities that provide digital services activities. This tax applies at a rate of 2% on UK digital revenues above an annual allowance of 25 million pounds, unless the group elects to calculate their liability on the alternative basis of Charge provisions (UK Government, 2017).

Where revenues that are attributable to UK users exceed the abovementioned annual threshold, the group must submit a digital service tax return, and may have to pay that DST (Finance Act, 2020).

Identifying the 'location of the user' is imperative to attributing revenue that arises from the digital services activities as UK digital services revenue (UK Government, 2017). Section 44(3) of the Finance Act 2020 outlines that a 'UK user' is any user of whom it is reasonable to assume:

- In the case of an individual, is normally located in the UK;
- In any other case, is established in the UK.

The government emphasises that there is a focus on 'normal' location, as opposed to pinpointing the location of the user at the time the transaction occurs (UK Government, 2017).

The tax is payable within nine months after the fiscal year ends, and the return must be filed within 12 months (JonesDay, 2020). The DST will be eligible for deduction as an ordinary business cost against UK corporate tax, however, will not be creditable (JonesDay, 2020). This has the potential of double taxing entities that already have a UK taxable presence (JonesDay, 2020). Because of the current legal wording, the UK government is required to review the DST laws by 2025 (JonesDay, 2020).

Loss making or low margin entities may use the alternative basis of charge (JonesDay, 2020). In this alternative approach, a 2% rate is applied to the operating margin as a profit level indicator per individual digital service activity (JonesDay, 2020). If this profit level indicator is negative or nil for any digital service activity, the DST liability will also be nil for that digital service activity (JonesDay, 2020).

If digital service revenues derived from online marketplace transactions, as described in Chapter 2 of this study, are subject to a similar DST in another jurisdiction, the DST due can be reduced by 50% (JonesDay, 2020).

5.2 Pillar Two:

Pillar Two Model Rules comprise of 10 chapters. Chapter 1 deals with the scope of the rules (OECD, 2021). The major operational guidelines are highlighted in Chapters 2-5 (OECD, 2021). The sixth chapter discusses mergers and acquisitions (OECD, 2021). Chapter 7 specifies the regulations that apply to some tax neutrality and current distribution tax schemes (OECD, 2021). Chapter 8 focuses on administration, Chapter 9 on change rules, and Chapter 10 on definitions (OECD, 2021).

The rules apply to Constituent Entities that are part of a global business group (MNE group) and have annual sales of €750 million or more in the parent company's consolidated financial statements in at least two of the four evaluation years prior to the evaluation year (OECD, 2021). If one or more of the years included in "a yearly threshold" has a period longer than 12 months, the €750 million threshold will be adjusted to commensurate the length of the assessed year (OECD, 2021). There are however excluded entities which the rules do not apply to (OECD, 2021).

A MNE group is defined as any business consortium with at least one entity or Permanent Establishment that is not located in the jurisdiction of the parent entity (OECD, 2021). A Constituent Entity is any entity included in a MNE group and any Permanent Establishment of the Main Entity that is within the group (OECD, 2021). The parent entity is any entity that owns a Controlling Interest in another entity and is not controlled by another entity (OECD, 2021). An excluded entity is, but not limited to an entity that is a Governmental entity, an International Organisation, a Non-profit organisation, and others (OECD, 2021).

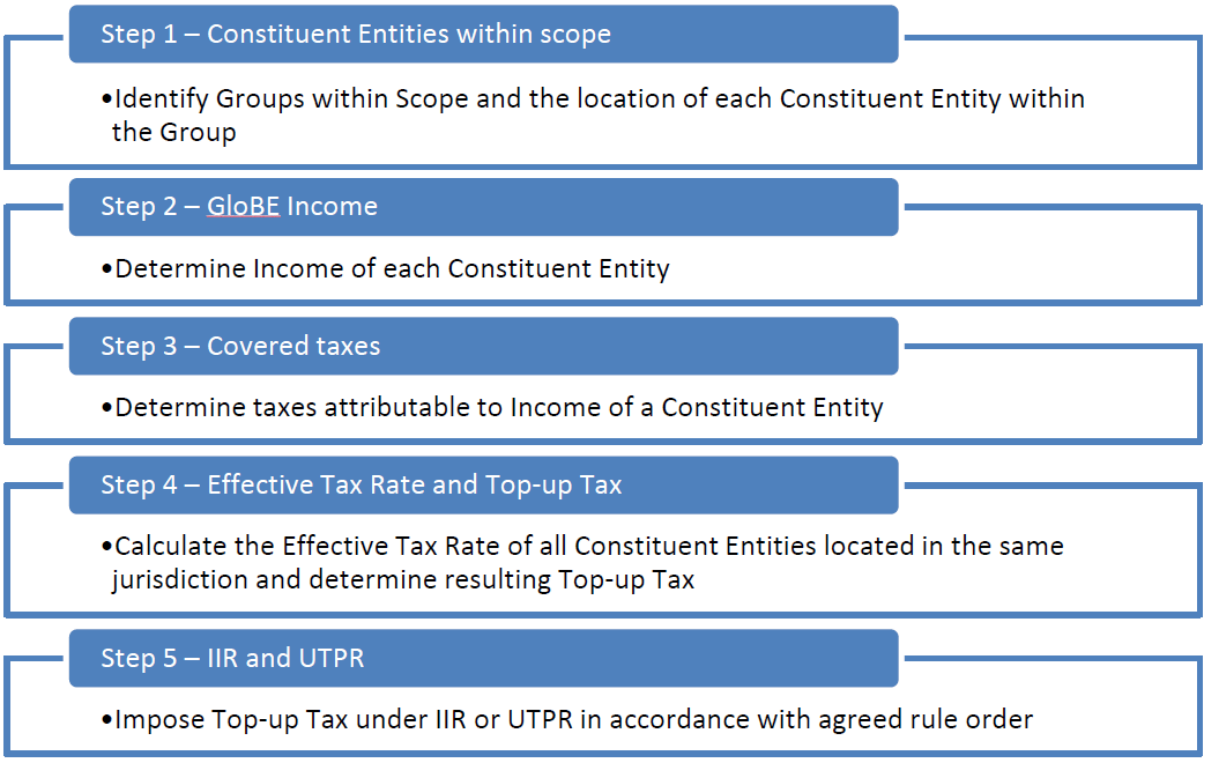
The GloBE rules apply a regime of Top-up Taxes - (an Income Inclusion Rule (IIR) and Undertaxed Payment Rules (UTPR)) that bring the total amount of taxes paid on an MNE's excess profits in a jurisdiction up to the minimum rate (OECD, 2021). As opposed to a typical direct tax on income, the top up tax system is closer in design to an international substitute minimum tax, that utilises regulated tax calculation tools to identify pools of low-taxed income within an MNE group, and further imposes a harmonised tax charge that brings the Groups Effective Tax Rate (ETR) on the corresponding income up to the Minimum Rate (OECD, 2021). The objective of the IIR and the UTPR as top-up taxes does not impede a jurisdiction from legislating the rules under its domestic income tax laws (OECD, 2021).

The IIR is the fundamental rule applied by a parent entity within an MNE group to its Allocable share of Top-up Tax of any low-taxed Constituent Entity (OECD, 2021). The IIR includes a priority approach which ensures that priority is given to the parent entity (OECD, 2021). As a way of avoiding double taxation, the IIR includes an offset method that allows the parent entity to lower the top-up tax otherwise payable where that tax is charged by another parent entity (OECD, 2021).

The UTPR acts as a backstop to the IIR, administered only in distinct circumstances where the Top-up Tax is not charged under the IIR (OECD, 2021). Applying the UTPR in a UTPR Jurisdiction shall prompt that jurisdiction to impose an additional cash tax expense on the Constituent Entities of a MNE group that equals the UTPR Tax Amount (OECD, 2021).

For ease of reference, the below diagram illustrates fundamental steps that an MNE might go through in order to determine its liability under the GloBE Rules. It includes a five-step approach (OECD, 2022):

Diagram C:



The OECD Pillar Two Model covers a wider prospect as compared to the DST and has safe harbour and penalty relief measures due to its complexity of the above five-steps approach of calculating the Top-up Tax (OECD, 2022). The safe harbour would allow an MNE to circumvent undertaking full GloBE calculations concerning a jurisdiction if it can prove, based on its qualifying Country by Country and financial accounting information, that in that particular jurisdiction, it has income and revenue lesser than the *de minimis* threshold, or an Effective Tax Rate that exceeds or equals the agreed rate, or no profit surplus (OECD, 2022).

6. CONCLUSION

The digital economy has grown, and as a result, it has transformed how entities participate in foreign jurisdictions without a physical presence. This has led to many entities, particularly large US-based technology companies, avoiding paying tax in the United Kingdom through base erosion and profit shifting strategies which exploit gaps and mismatches in the recent UK tax rules as discussed in the above chapters.

In 2015, the OECD/G20 Inclusive Framework published the Base Erosion and Profit Shifting Action 1 plan, with the aim of addressing tax challenges that have been raised by digitalisation (OECD, 2020). The Inclusive Framework continued its work on this issue at the request of the G20, delivering an intermediate report in 2018 (OECD, 2020). Participants of the Inclusive Framework decided in 2019 to divide the suggestions into two pillars in order to provide the groundwork for a comprehensive solution to the issues posed by digitalisation (OECD, 2020).

Simply put, the OECD/G20 BEPS Project proposes a two-pillar approach to design one comprehensive set of consensus-based global tax regulations to combat Base Erosion and Profit Shifting, thereby protecting tax bases while providing enhanced predictability and assurance to taxpayers (OECD, 2020).

Pillar One, as outlined above, concerns itself with determining new nexus and profit distribution rules for large multinational enterprises that satisfy certain revenue and profitability thresholds. Broadly speaking, Pillar One widens jurisdictions' ability to subject activities happening in a market country to tax, regardless of whether the multinational enterprise has a physical presence in that jurisdiction or not (OECD, 2020).

Pillar Two concerns itself with determining mechanisms to certify that large multinational enterprises pay a minimum tax rate of 15% regardless of where the ultimate parent of the entity is located or the jurisdiction in which they operate (OECD, 2020).

The OECD has, since 2013, been working on implementing these changes but has, to this date, encountered challenges (Bloomberg tax, 2023). 137 member jurisdictions had, as of November 2021, agreed to the two-pillar solution (Bloomberg tax, 2023). Furthermore, as of November 2022, not all the Inclusive Framework members had joined, thus pushing the implementation

date of the two-pillar proposition from 2023 to 2024 (Bloomberg tax, 2023). However, the OECD has to date, provided guidance on the scope of the rules and the application of the IIR and the UTPR with an ambitious plan of implementing the IIR in 2023 and the UTPR in 2024 (Grant Thornton, 2023).

Because of the difficulties encountered by the OECD in reaching an international consensus, numerous jurisdictions have, including the United Kingdom, implemented unilateral measures to protect their tax base and tax income derived from the activities discussed in the chapters above, carried out within the parameters of their jurisdictions (Bloomberg tax, 2023). One such countermeasure is a Digital Services Tax. A Digital Services Tax is a tax on gross revenue derived from numerous digital activities (Bloomberg tax, 2023). They are a mixture of transaction taxes and gross receipts taxes that apply on receipts from the sale of data collected from users, the provision of digital intermediary services and the sale of an advertising platform (Bloomberg tax, 2023).

One may argue that the implementation of this tax as a unilateral measure to taxing the in-scope revenues, is an ideal interim solution. However, because of this, multinational enterprises are at the risk being double-taxed, with no readily available recourse to reallocate taxing rights to the jurisdiction that is entitled to those profits (Bloomberg tax, 2023).

Another argument that can be raised against this tax could be that it is mainly targeted at large US-tech entities such as Amazon, Facebook, Microsoft, Google, Apple, and many more as seen in Chapter 2 of this study. This may result in these entities being sanctioned in other jurisdictions that may not have the power to impose unilateral actions because they are not paying their fair share of taxes in those other jurisdictions, creating the possibility of trade wars. Prior to the Agreement with the UK and other countries with a comparable tax, the United States of America levied tariffs on those jurisdictions, which have since been removed (National Audit Office, 2022). Currently in Africa, Kenya has also implemented a DST on direct and indirect taxes as a way of protecting its tax base (RSM, 2021).

Contrary to the DST, for the OECD/G20 Inclusive Framework to implement Pillar One, in support of the Base Erosion and Profit Shifting ongoing project, the Multilateral Convention will require the removal of Digital Service Taxes and other similar measures for all entities (Bloomberg tax, 2023). As a matter of fact, the OECD/G20 Inclusive Framework issued out a

statement mentioning that no newly legislated Digital Services Taxes or other measure of a similar nature are to be imposed from October 2021 until the earlier of December 2023, or the coming into force of the multilateral convention to give rise to Pillar One (Bloomberg tax, 2023). However, this statement is still not addressing the treatment of existing DSTs (Bloomberg tax, 2023).

Several jurisdictions, notably the United Kingdom, have, nevertheless, reached an understanding with the US about the treatment of current DST's until Pillar One is implemented (Bloomberg tax, 2023). This is frequently referred to as a Unilateral Measures Compromise (Bloomberg tax, 2023). Under the compromise, the jurisdictions can keep their existing DSTs until the implementation of Pillar One of the OECD (Bloomberg tax, 2023). However, entities that are subject to the DST may receive a tax credit against anticipated tax liabilities (Bloomberg tax, 2023). In recent times, the UK government has agreed to repeal the DST at the earlier of 31 December 2023 or the implementation of the OECD Pillar One of the two-pillar approach (Lexology, 2022). However, if the DST is not replaced by this date, the UK government is compelled by legislation to conduct a review of the tax by 2025 (National Audit Office, 2022).

An international consensus on the OECD two-pillar approach has been postponed to 2024 (Bloomberg tax, 2023). According to the discussion above, the unilateral action does, to some extent, impede a multilateral agreement that will work for numerous jurisdictions due to its precise nature and availability of remedy options. A study topic that might be examined for further research, is why most jurisdictions, notably African nations have not yet committed to the execution of the two-pillar strategy proposition?

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