Convoluted Tax Planning Anatomy of Google, Apple, Amazon & the Global Minimum Tax Rate!!

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Epilogue:

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The Finance Ministers of the world's most powerful economies i.e., the **G-7 countries**, comprising US, UK, Germany, France, Canada, Italy and Japan, reached a historical consensus on taxing multinational companies at a **'Minimum Global Tax Rate'** of at least 15 per cent.

In a statement issued on 5.6.2021, **OECD Secretary-General Mathias Cormann** said the consensus among the G7 Finance Ministers, including on a minimum level of global taxation, is a landmark step toward the global consensus necessary to reform the international tax system and it will be a game changer. He also announced that this mutual consensus of G7 Nations on a minimum global corporate tax rate of 15% will be further extended and deliberated upon in the **OECD** Inclusive Framework Meeting on 30 June-1 July, 2021 followed by the **G20** Finance Ministers Meeting in Italy on 8-9 July, 2021.

The **Organisation for Economic Cooperation and Development(OECD)** and **Group of Twenty (G20)** have been spearheading the **Base Erosion and Profit Shifting (BEPS) initiative**—a multilateral negotiation with over 135 countries, including the United States—since 2013.

BEPS refers to tax planning strategies used by multinational enterprises to exploit **tax arbitrage opportunities arising out of 'Shifting Base or Profits from Higher Tax Jurisdictions to Lower Tax Jurisdictions or Tax Havens'** to minimise their tax incidences.

Minimum Global Corporate Tax Rate is the minimum rate of corporate tax which all the consenting nations will mandatorily adopt to tax the overseas profits of the multinational corporates in their respective countries, to curb the practice of base erosion and profit shifting. The consenting nations will be free to set and legislate the corporate tax rates in their respective countries but if an MNC pays taxes at a rate lower than the global minimum, in a particular country, then their parent nations will be able to 'top-up' their taxes to the minimum rate and thereby eliminating the advantage of shifting profits to lower tax jurisdictions. The G7 Nations have agreed upon a global minimum corporate tax rate of 15% on 5.6.2021.

05.04.2021, **Chicago Council on Global Affairs, USA**

The U.S. Treasury Secretary 'Janet Yellen' in the newly formed Biden Government, in a press statement, proposed a **Global Minimum Corporate Tax Rate of 21% asan attempt to reverse a 30-year**

race to the bottom, in which countries have resorted to slashing corporate tax rates to attract multinational corporations (MNCs).

Prologue

The big USA based MNCs like **Apple, Amazon, Google and Facebook** have consistently used meticulously knitted webs and complex networks of international subsidiaries incorporated in low tax jurisdictions or tax havens with multiple routes to minimise their tax incidences by moving their bases or profits from higher tax jurisdictions to lower tax jurisdictions or tax havens.

A Deep Dive into the Convoluted& Intricate Tax Planning Structures of Google, Apple & Amazon

(i) Google & 'The Double Irish & Dutch Sandwich' Structure

In the 'Double Irish & Dutch Sandwich' model, the USA (higher tax jurisdiction) based parent company incorporates two separate corporate entities in Ireland (a lower tax jurisdiction) and a Dutch company say in Netherlands.

First Ireland based corporate entity (say A) is having its controlling interest in Ireland only. The second corporate entity (say B), incorporated in Ireland has its holding company in a 'Tax Haven' country say Bermuda or Caymans Islands.

The entire sales or revenue of the USA based parent company is accounted for in the First Ireland based corporate entity A, thereby reducing the tax rate from 21% (US Tax rate) to 12.5% (Ireland Tax Rate). Then this first Ireland based corporate entity A pays almost an equivalent amount of royalty to the Dutch based company in Netherlands say C which in turns pays this royalty amount to the second Ireland based corporate entity B for using its intellectual property rights (IPRs) in generating its revenue.

Thus, the company A reduces its tax liability by recording almost equivalent amount of royalty payment made by it to the Dutch company C as expenditure. The Dutch Company C in-turns makes an equivalent amount of Royalty to the second Irish Company B and escapes the tax liability on account of tax treaty/agreement between Ireland and Netherland. The second Irish Company B is having its holding company in a Tax Haven Country say Bermuda or Cayman Island or BVI, and as such is not liable to pay any taxes on its royalty income from Company C.

In this way, the USA based parent company pays no taxes or very minimal federal taxes to the USA treasury by shifting its profits to lower tax jurisdictions/tax haven countries.

This classical technique of 'Double Irish & Dutch Sandwich' has been successfully adopted and used by Google for over a decade to reduce its tax liabilities to almost nil.

Google's parent company Alphabet, (incorporated in USA where present corporate tax rate is 21%) incorporated a subsidiary company- Google Ireland Ltd in a low tax jurisdiction country Ireland (where corporate tax rate is 12.5%) and accounted for most of its international advertising revenue in this Ireland based company and then passed this money on to a Dutch subsidiary Google Netherlands Holdings BV. The Dutch company then transfers this money on to Google Ireland Holdings Unlimited, which has the right to license the search giant's intellectual property outside the U.S. That company is based in Bermuda, which has no corporate income tax. The use of the two Irish entities is what gives the structure its "Double Irish" byname and the use of the Netherlands subsidiary as a conduit between the two Irish companies is the "Dutch Sandwich."

In 2017, Google reportedly transferred 19.9 billion euros or roughly $22 billion through a Dutch company, which was been then forwarded to an Irish company in Bermuda. In 2018 Google moved 21.8 billion euros ($24.5 billion) through its Dutch holding company to Bermuda, up from 19.9 billion in 2017.

Thus, for more than a decade, the tax arbitrage opportunities arising out of the different US, Ireland and Dutch tax rates, allowed Google to enjoy an effective tax rate in the single digits on its non-U.S. profits, around a quarter the average tax rate in its overseas markets.

The subsidiary in the Netherlands was used to shift revenue from royalties earned outside the United States to Google Ireland Holdings, an affiliate based in Bermuda, where companies pay no income tax.

The tax strategy was legal and allowed Google to avoid triggering U.S. income taxes or European withholding taxes on the funds, which represent the bulk of its overseas profits.

However, facing tremendous pressure from the European Union and the United States, Ireland in 2014 has decided to phase out the arrangement, ending Google's Irish tax advantages in 2020.

(ii) Apple and its Irish Sweetheart Deals

Apple Inc.- **the worlds' most valuable company** with revenues of 274.5 billion USD for the 2020 fiscal, is another multinational technology company headquartered in Cupertino, California, USA, that designs, develops, and sells i-phones, consumer electronics, computer software, and online services **and it pays nothing as taxes, courtesy, again its meticulously planned corporate structures of international subsidiaries.**

Apple Inc created an Irish subsidiary', 'Apple Sales International (ASI). This subsidiary recorded all profits made in Europe, the Middle East, Africa and India. And ASI only paid tax rates between 0.005 % and 1 % in Ireland until 2014 because of an agreement between Apple and Ireland. ASI recorded profits of $22 billion in 2011. However, only about $57 million was actually considered taxable in Ireland, as the money probably made its way into a tax haven' say Bermuda or the Cayman Islands.

However, subsequently the European Union's Competition Commission observed and held that Ireland had issued tax rulings and 'sweetheart deals', specifically to offer Apple a distinct advantage and that most profits of Apple Sales International were allocated to its "head office" when this "head office" had only existed on paper and couldn't generate actual profits. It didn't have any operating capacity to handle and manage the company's product distribution business. Only the Irish branch of Apple Sales International had the capacity to generate any income from selling Apple Products. Therefore, the profits of Apple Sales International should have been recorded with the Irish branch and taxed there. It also noted that Ireland "essentially functioned as a tax haven for Apple."

In 2016, Apple has been ordered to pay 13 billion euros as unpaid taxes and 1.2 billion more as an interest to Ireland.

However, subsequently, in July 2020, the European Union's 2nd Highest Court, the General Court of the European Union has annulled the case and ruled out that the commission had failed to prove that the Irish Government had given Apple any tax advantage or the sweetheart deal.

(iii) Amazon- another USA based giant, valuing worth a trillion USD and paying ZERO federal taxes in 2016-18

Amazon is characterised by a dozen of separate but linked entities registered in different jurisdictions around the world.

Amazon's US accounts reported $17.5 billion in sales in the United Kingdom in 2019. But its main British subsidiary, Amazon UK Services Ltd, reported revenues of a much lower figure of £2.9 billion. On this, it paid just £14.46 million in corporation tax – a figure the company said had been reduced by government incentives linked to its investment in infrastructure. Some of the difference in income is likely to be down to revenue channelled through its main European subsidiary, the Luxembourg-registered Amazon EU Sarl, which handles sales for the UK, France, Germany, Italy, the Netherlands, Poland, Spain and Sweden and clocked the €43.8 billion figure last year. As a private limited company, Amazon EU Sarl does not have to publish extensive public accounts. Its 2020 filing in Luxembourg was just 23 pages long, and presented revenues and costs under a limited number of broad headings, without offering a breakdown of operations by country. There are many other Amazon subsidiaries in Europe, ranging from its different national operations, to other Luxembourg-based units such as Amazon Europe **Core** Sarl and Amazon Web Services EMEA Sarl, an IT services company.

Amazon's sheer presence in different jurisdictions has offered its vast opportunities to accrue tax advantages such as tax credits, which it uses to write off its future tax dues. Amazon EU Sarl's €1.2 billion loss accrued it €56 million in tax credits that can be used by it in the future, adding to an accumulation of €2.7 billion in losses carried forward.

Amazon EU Sarl's accounts show expenses of €31.8 billion from "raw material and consumables", €12.4 billion from "other external expenses", and €230 million from "other operating expenses".

"Other external expenses" include "provision of services from affiliated undertakings", while "other operating expenses" are "primarily related to licence agreements and royalties with affiliated undertakings", according to the accounts.

In 2017 the European Commission has ordered Luxembourg to recoup €250 million in taxes from Amazon, accusing the Grand Duchy of allowing the company to inflate tax-deductible royalty payments for intellectual property to a unit that wasn't subject to corporate tax, and like the Apple Inc, Amazon too had challenged this order of the European Commission.

This contentious and sensitive thin dividing line between 'tax planning' and 'tax evasion' and the 'cat and mouse' game between the revenue authorities and the MNCs has been summed up aptly in the following tweets.

Joe Biden before getting elected as the US President, on his Twitter handle, calling out Amazon, has said that ***"a company profiting in billions of dollars 'should not pay a lower tax rate than fire fighters and teachers."***

To this, Amazon has responded, ***"We pay every penny we owe. Congress designed tax laws to encourage companies to reinvest in the American economy. We have. $200B in investments since 2011 and 300K US jobs. Assume VP Biden's complaint is with the tax code, not Amazon."***

India's Stand on the Global Minimum Corporate Tax Rate

The Taxation Laws (Amendment) Act, 2019has inserted two new sections 115BAA and 115BAB w.e.f AY 2020-21 and has made consequential amendments to section 115BA, 115JB and section 92BA, giving the option to the corporate entities for availing the benefit of lower corporate tax rate of 22% plus surcharge in case of existing corporate entities and 15% plus surcharge in case of new manufacturing corporate entities incorporated on or after 1.10.2019.

The earlier proposal of a Global Minimum Corporate Tax Rate of 21%, of the U.S. Treasury Secretary on 5.4.2021, could have definitely created some diplomacy issues and concerns for India in the wake of its recently legislated corporate tax rate of 15% plus applicable surcharge for the new manufacturing corporate entities incorporated on or after 1.10.2019.

However, that awkward situation seems to have been thwarted somehow, now by this recent development of the emerging mutual consensus of a global minimum corporate tax rate of 15% among the G7 Nations and infact the OECD has recommended to further lower this rate to 12.5%.

Therefore, in the wake of these recent developments, there doesn't seem to be any real concern or problem for India on this issue, as long as the mutual consensus revolves around the minimum corporate tax rate of 15% or some lower rate.

Other Nations: China and South Korea have a corporate tax rate of 25%, Malaysia has 24%, Vietnam has 20%, Thailand has 20% and Singapore has 17%. So, all these countries will also have nothing to bother.

Concluding Remarks:

The low tax jurisdiction countries like Ireland, Bosnia, Bulgaria, Cyprus, Gibralter, Hungary, Macau having a corporate tax rates in the range of 10% to 12.5% and several other Tax Haven Countries like Bermuda, Bahamas, Bahrain, Barbados, Caymans Island, Panama, BVI, Isle of Man, Jersey etc. are opposing this proposal of a global minimum corporate tax rate of 15% by asserting that such a proposal **impinges on the right of the sovereign to decide a nation's tax policy** and it would result in the loss of competitive advantage for developing countries that use tax as a measure to attract investment.

In view of the clearly visible and eminent growing consensus among the OECD Nations, perceiving global minimum tax rate as an effective and much needed reform for ensuring an equitable global tax system, it has become critical for such low tax jurisdiction countries to focus on remaining attractive and competitive across all areas, including ease of doing business, state-of-the-art infrastructure, skilled labour, cheap raw materials etc, besides tax competitiveness.

But, having said it, since necessity read tax optimisation is the mother of invention read tax planning, these convoluted and complex tax planning structures are here to stay, perhaps in their more advanced and mutated anatomies.

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