UNILAG LAW REVIEW

THE TAXATION OF CORPORATE DIGITAL ENTITIES UNDER THE MULTILATERAL CONVENTION: A CRITIQUE OF THE RULE OF PERMANENT ESTABLISHMENT

Philips Adekemi

VOLUME 7, NO. 1 (2024)

THE TAXATION OF CORPORATE DIGITAL ENTITIES UNDER THE MULTILATERAL CONVENTION: A CRITIQUE OF THE RULE OF PERMANENT ESTABLISHMENT

Philips Adekemi*

ABSTRACT

The digital economy has significantly enhanced efficiency and fostered innovation; however, it has introduced complex policy challenges, particularly in taxing corporate entities. A stable international tax framework is essential to resolving the issues and earning the trust of all stakeholders. The global tax community has adopted a two-pillar approach. Pillar One concentrates on establishing rules for nexus and profit allocation, while Pillar Two introduces a global minimum tax designed to mitigate the unresolved issues related to Base Erosion and Profit Shifting (BEPS). This approach is anticipated to foster equity and fairness in taxation and also empower international economies to adapt to evolving business models and profit realisation tactics employed by multinational enterprises. This paper evaluates the design of the Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent Base Erosion and Profit Shifting (MLC), offering insights and recommendations to address the unique challenges posed by the digital economy.

* International Tax Researcher and LLM candidate at the University of Florida, and President's Distinguished Tax Student scholar. The author wishes to thank Professor Yariv Brauner.

1.0 INTRODUCTION

Globalisation remains a relevant concept among developed and developing countries as the increased global trade of goods and services has resulted in the promulgation of laws to guide trade and commerce both online and offline. This has also resulted in the need for States to place huge value on the revenues and humongous profits made by investors – private individuals and corporate entities in these business relations. In other words, no country wants to lose out from the profits of the trade of goods and services thus springing the conversation on the need to tax multinational enterprises and big corporate entities, hopefully not to their death as no one is concerned with their losses. The digital economy has remained abstract in terms of its activities, and the absence of a permanent establishment to attribute the activities of companies has made it difficult for the international tax system.

This paper seeks to holistically appraise the digital economy, and its operations and examine activities that will be taxable under this concept. The Multilateral Conventions on Pillar One and Two seek to address the challenges arising from the digital economy. Considering that the digital economy is most times necessarily not attributable to a physical presence or permanent establishment, it is imperative that the concept is thoroughly defined to understand its nuances and operations. The OECD/G20 Inclusive Framework expresses the need to strengthen the global tax system to keep up with evolving business practices and ensure that government finances are stable and sustainable.[1]

[1] See, OECD/G20 Inclusive Framework Unveils Groundbreaking Multilateral Convention Addressing Global Tax Challenges, available at https://www.oecd.org/en/about/news/press-releases/2023/10/inclusive-framework-releases-new-multilateral-convention-to-address-tax-challenges-of-globalisation-and-

The COVID-19 pandemic has heightened public demand for governments to ensure that large, profitable companies operating internationally pay their fair share of taxes where they should. Thus, to tackle this issue, there needs to be a consensus or tax clarity for these businesses to play their fair share in the post-pandemic economy.

Article 2 of the MLC does not clearly define what 'Taxable Presence' is or constitutes. Article 1 of the Multilateral Convention to Implement Amount A of Pillar One limits the scope of the Convention only to the Group Entities of Covered Groups. Article 3 defines a Covered Group as one with adjusted revenues greater than EUR 20 billion and a pre-tax profit margin greater than 10 percent.

Pillar One aims to update the international income tax system to better fit new business models by altering how profits are divided and where taxes are applied. It looks to give more taxing rights to market locations—essentially, the places where users are based—when a business is actively involved in that economy, either through local activities or by targeting those areas from other jurisdictions.

Pillar One also aims to enhance tax certainty by introducing new ways to prevent and resolve disputes. It seeks to balance the different goals of the Inclusive Framework members and eliminate certain unilateral measures. According to the outline, the main parts of Pillar One can be divided into three key components: a new taxing right for market areas to claim a portion of leftover profits calculated at the multinational enterprise (MNE) group or segment level (Amount A); a fixed return for specific basic

---

digitalisation-.html#:~:text=11%2F10%2F2023%20%E2%80%93%20The,tax%20certainty%2C%20and%20remove%20digital (accessed 21 August 2024).

marketing and distribution activities happening in a market area, following the arm's length principle (Amount B); and processes designed to improve tax certainty through effective dispute prevention and resolution methods.

According to the OECD/G20 Base Erosion and Profit Shifting Project Tax, eleven essential building blocks have been identified as crucial for creating Pillar One, forming the foundation of this Blueprint.[2]

The possible application of the rule and the taxing components have raised serious issues in the international tax order if the rule is adopted in treaty practice. This paper shall examine the negotiation process of the Multilateral Convention to implement Amount A of Pillar One bearing in mind the negotiating style of previously enacted tax treaties. The second part of this paper shall seek to answer these questions and comprehensively trace the history of the Multilateral Convention to implement Amount A of Pillar One which has now been adopted by 138 members. This part shall trace the evolution from the work of the OECD, tax scholars, and stakeholders towards resolving base profit shifting. This part shall also examine the limitations of the digital economy and the illicit financial flows in some jurisdictions that may impede tax collection.

The second part of the paper will also examine the operation of a digital economy and shall seek to ascertain whether we have finally arrived at a solution for resolving the case of the taxation of digital economies in light of the aggressive tax avoidance and planning strategies of multinational enterprises (MNEs).

[2] OECD/G20 Base Erosion and Profit Shifting Project Tax Challenges Arising from Digitalization – Report on Pillar One Blueprint INCLUSIVE FRAMEWORK ON BEPS.

The third part of this paper shall examine the limitations to the rule proposed by the MLC in resolving the concept of Entities and taxation of MNEs. The fourth and final part shall address possible alternatives, especially for Members whilst making recommendations to improve the treaty negotiations and acceptance by the wider international tax community.

2.0 DEVELOPMENT OF A COMPREHENSIVE BASE EROSION AND PROFIT SHIFTING (BEPS) ACTION PLAN

Tax treaties are the foundation of the international tax system. Currently, there are more than 3,000 tax treaties that govern most cross-border investments. These treaties are mostly based on the Model Tax Convention from the Organisation for Economic Cooperation and Development (OECD). This shows a growing alignment in the standards of international taxation.[3]

Tax treaties have been thoroughly studied over the years,[4] yet despite the growing similarities in their frameworks and nearly a century since the first modern treaties were established,[5] many fundamental questions about how they are applied, interpreted, and their overall effectiveness remain unanswered.[6] This uncertainty

[3] Yariv Brauner, 'Tax Treaty Negotiations: Myth and Reality' (2014) University of Florida Levin College of Law Legal Studies Research Paper Series No. 22-15.

[4] See, e.g., KLAUS VOGEL, KLAUS VOGEL ON DOUBLE TAXATION CONVENTIONS: A COMMENTARY TO THE OECD, UN, AND US MODEL CONVENTIONS FOR THE AVOIDANCE OF DOUBLE TAXATION ON INCOME AND CAPITAL, WITH PARTICULAR REFERENCE TO GERMAN TREATY PRACTICE (3d ed. 1997). This is the last English version of the originally German treatise. A posthumous fourth edition in English was published in 2015. See KLAUS VOGEL ON DOUBLE TAXATION CONVENTIONS (Ekkehart Reimer & Alexander Rust eds., 4th ed. 1997).

[5] See League of Nations, Double Taxation and Tax Evasion, Publications of the League of Nations II. Economic and Financial (1927). II. 40, Geneva, April 1927 (Draft Model Convention and Commentary for the Avoidance of Double Taxation); and League of Nations, Double Taxation and Tax Evasion, Publications of the League of Nations II. Economic and Financial (1928). II. 49, Geneva, Oct. 1928. (Model Convention IA. Two additional drafts were released in the same year with slight differences, known as drafts IB and IC).

[6] See, Yariv Brauner, The Klaus Vogel Lecture 2019: The True Nature of Tax Treaties 74 BULL. INT'L TAX. 28 (2020) [hereinafter Brauner, Vogel Lecture].

became particularly evident during recent global dissatisfaction with the international tax system, which has ultimately sparked the creation of the Base Erosion and Profit Shifting (BEPS) project which has turned out to be one of the most significant reform efforts in this area.[7]

In September 2013, the G20 Leaders endorsed the ambitious and comprehensive BEPS Action Plan, developed with OECD members. Based on this Action Plan, the OECD and G20 countries developed and agreed, on an equal footing, upon a comprehensive package of measures in just two years. These measures were designed to be implemented domestically and through tax treaties.[8]

As a result, many countries are experiencing a revenue crisis. Developed nations, despite still being the most powerful, are feeling this impact the most because they were hardest hit by the global financial crisis. They stand to lose the most from the shift in global economic power, face higher expectations to fund costly programs like welfare, and, being democratic, they tend to be more politically vulnerable and less adaptable.

Emerging economies may be less affected due to their growth, but they too are losing influence to multinational enterprises (MNEs) and are beginning to face pressures from civil society similar to those experienced by developed nations. Meanwhile, the developing world is undoubtedly at a disadvantage, as it has historically lacked a voice and is unlikely to have any influence when conflicting with MNEs that hold greater political and financial power. This shared challenge across countries creates a common

[7] See OECD, BEPS website at https://www.oecd.org/tax/beps/
[8] See Background Brief Inclusive Framework on BEPS OECD published January 2017.

interest in promoting international action on corporate taxation, particularly with the BEPS.[9]

With more than 130 countries and jurisdictions involved, the Global Forum on Transparency and Exchange of Information for Tax Purposes has been instrumental in promoting the consistent and effective application of international transparency standards since it was founded in 2009. Meanwhile, the financial crisis and aggressive tax strategies employed by multinational enterprises (MNEs) have brought the issue of BEPS to the forefront of political discussions. Governments worldwide face significant challenges, with estimated annual revenue losses ranging from $100 to 240 billion. Notably, the impact of BEPS on developing countries is believed to be even more severe in relation to their tax revenues compared to developed nations.

The consensus on BEPS developed through three clear phases. The first phase involved identifying the problem and led to the creation of the BEPS Action Plan, which was supported by G20 leaders. The second phase focused on consultations about specific actions and drafting solutions aimed at gaining wide backing from OECD and G20 countries. The third phase dealt with putting into action the mandates, recommendations, and best practices outlined in the final BEPS reports.

The initial ability to define the key elements of the BEPS initiative seems to have influenced how the responses to BEPS unfolded later. During the first phase, the lack of involvement from developing countries raised concerns about the OECD's role as a facilitator for international tax cooperation in the future. In response to this, the OECD

[9] Yariv Brauner What the BEPS? University of Florida Levin College of Law Legal Studies Research Paper Series Paper No. 15-40.

took significant steps in the second and third phases by broadening the range of jurisdictions participating in the BEPS project and actively engaging with regional meetings and providing technical support.[10]

The formulation of the BEPS Project underwent various phases and explorations and this reveals the engagement of various jurisdictions with the OECD via the platforms and avenues, conferences, and regional events by several stakeholders (economic advisors, country representatives) in the discussion. Thus, it is imperative to understudy how jurisdictions engaged and consulted with one another at various stages of the BEPS project to draw future lessons in the organisation and coordination process for future international tax.

2.1 Highlighting Global Tax Cooperation and the BEPS Project

The BEPS project is the second significant effort for global cooperation on taxation following the financial crisis. The first project mainly focused on transparency and was largely driven by inter-governmental efforts. Recently, the G20 and OECD have started working on tax policy to promote strong and sustainable growth across jurisdictions. This could potentially become the next major initiative for tax cooperation.[11]

---

[10] Assessing BEPS: Origins, Standards, and Responses Citation Allison Christians & Stephen Shay, General Report, in 102A Cahiers de Droit Fiscal International: Assessing BEPS: Origins, Standards, and Responses 17 (Int'l Fiscal Ass'n 2017) Pages 8 and 9.

[11] Para. 11 of the 2016 Chengdu G20 Finance Ministers' Communiqué provides: "We recognize the important role of tax policies in our broader agenda on strong, sustainable and balanced growth and of a fair and efficient international tax environment in diminishing the conflicts among tax systems. As highlighted in our discussion at the G20 High Level Tax Symposium, we emphasize the effectiveness of tax policy tools in supply-side structural reform for promoting innovation-driven, inclusive growth, as well as the benefits of tax certainty to promote investment and trade. In this regard, we ask the OECD and the IMF to continue working on the issues of progrowth tax policies and tax certainty." Communiqué, G20 Finance Ministers and Central Bank Governors Meeting, Chengdu, China, 24 July 2016.

The development and timing of these projects are key to understanding how BEPS came about and the path it creates for international tax relationships. The OECD re-established the Global Forum on Transparency and Exchange of Information for Tax Purposes as an inclusive organisation committed to improved standards for sharing information.

The Global Forum has been successful in ensuring that countries adhere to these standards for information exchange when requested. However, governments have increasingly sought more flexible ways to share information. This led to a new phase of the transparency initiative that aimed to broaden cooperation by including the automatic exchange of specific financial data. This work on transparency was driven by concerns over revenue losses in the wake of the financial crisis, public demands for disclosures of hidden financial accounts, and the need for better information sharing to fight against global terrorism and criminal activities.[12]

2.2 BEPS Implementation Process

The third and ongoing phase of the BEPS project focuses on the OECD's initiative to garner global backing for BEPS actions and to foster agreement on consistent implementation of those actions. This includes working towards a shared understanding of certain items that have not yet reached minimum standards. This phase of

[12] Assessing BEPS: Origins, Standards, and Responses Citation Allison Christians & Stephen Shay, General Report, in 102A Cahiers de Droit Fiscal International: Assessing BEPS: Origins, Standards, and Responses 17 (Int'l Fiscal Ass'n 2017).

implementation started when the final reports were released in October 2015 and received approval from G20 leaders in November 2015.[13]

To promote the implementation of BEPS, efforts were made to broaden the group of participating countries. This expansion included a diverse array of nations attracted by the potential benefits of collaboration through an inclusive framework. This framework aimed to develop additional guidance on various action items and facilitate the peer review process for those items within the BEPS initiative.[14]

3.0 THE OPERATION AND LIMITATION OF THE DIGITAL ECONOMY

The international tax system has faced significant challenges due to these pressures. With the rise of technologies such as radio waves, satellite-based services, distant catalogue sales, electronic commerce, and cloud computing, the traditional requirement for a physical presence to establish tax jurisdiction has become increasingly outdated.[15] Over time, the understatement of income by MNEs and engagement of trade mispricing pose serious challenges to the taxation of the digital economy as revenues cannot be successfully tracked and traced. The argument has been advanced on how illicit financial flows (IFFs) have been the bane of trade and commercial activities in most countries and pose a great hindrance to the digital economy.

[13] G20 Leaders' Communiqué, 15-16 November 2015. ("To reach a globally fair and modern international tax system, we endorse the package of measures developed under the ambitious G20/OECD Base Erosion and Profit Shifting (BEPS) project").
[14] The OECD technical bodies involved in the inclusive forum BEPS work consisted of working parties on the various Articles of the tax conventions and related questions.
[15] Charles I. Kingson, The David Tillinghast Lecture: Taxing the Future, 51 TAX L. REV. 641 (1996) [hereinafter Kingson, Taxing the Future].

Emphasising the challenges associated with reforming international tax law in light of the digital economy, it has been observed that the call for reform extends beyond just digital activities. However, this demand has emerged alongside the growth of the digital economy and is most clearly illustrated within that framework. The digital economy enables multinational enterprises, typically based in developed nations, to operate entirely in developing countries. They can tap into these markets without needing a physical presence, which results in insufficient taxable presence.[16] This situation leads to favourable tax outcomes that would be much harder and more expensive to achieve in traditional economic scenarios. As a result, the digital economy has allowed taxpayers to have greater control over their tax obligations, making them largely optional.[17]

This menace is present in both the developed and developing countries. Illicit financial flows (IFFs) are not solely a challenge for Africa; they represent a global governance issue that necessitates a comprehensive approach, including reforms within the global financial system. These flows have the potential to enhance domestic resource mobilisation for the continent, which, if effectively harnessed, could significantly benefit Africa's post-2015 development agenda. This is particularly relevant in light of global economic trends that indicate reliance on development aid is no longer a viable long-term solution. The report also emphasises that effectively addressing IFFs can lead

[16] See, e.g., Peter Hongler & Pasquale Pistone, Blueprints for a New PE Nexus to Tax Business Income in the Era of the Digital Economy (WU Int'l Taxation Res. Paper Series No. 2015-15, 2015), https://ssrn.com/abstract=2591829 (last visited Jan. 19, 2019) [hereinafter Hongler & Pistone, Blueprints for a New PE Nexus to Tax Business Income in the Era of the Digital Economy].
[17] Andrés Báez & Yariv Brauner, 'Taxing the Digital Economy Post BEPS ... Seriously' (2019) University of Florida Levin College of Law Legal Studies Research Paper Series Paper No. 19-16.

to improvements in governance across Africa and foster a more sustainable environment for local businesses and the private sector.

IFFs from commercial activities serve various purposes. These purposes include concealing wealth, avoiding taxes, and evading customs duties or local taxes. Many of these practices, particularly those related to taxation, are technically referred to as "base erosion and profit shifting," especially in discussions influenced by the OECD. In Africa, IFFs manifest in numerous ways. They include abusive transfer pricing, trade mispricing, the misrepresentation of services and intangible assets, and the use of unequal contracts, all aimed at tax evasion, aggressive tax avoidance, and the illegal transfer of foreign currency.

One common method of facilitating IFFs from Africa involves the misrepresentation of services and intangible assets, such as intra-group loans and management fees. These practices are increasingly contributing to IFFs, partly due to the growing role of services in global trade. Other factors include advancements in technology and a lack of accessible price comparisons. The rise of information and communication technologies has made transferring large sums of money incredibly easy, while also enabling new forms of misrepresentation. Determining the appropriate price for goods using the arm's-length principle is simpler than doing so for intellectual property, such as brand usage. Additionally, it is challenging to restrict the advisory services that related companies can provide to each other or to set limits on the amounts they can lend to one another.[18]

[18] Illicit Financial Flows Report of the High-level Panel on Illicit Financial Flows from Africa Commissioned by the AU/ECA Conference of Ministers of Finance, Planning and Economic Development, 2021.

In South Africa, the Africa Union's High-Level Panel discovered the tax avoidance mechanisms of multinational corporations. The South African authorities reported to the panel, a case involving a multinational company that managed to evade $2 billion in taxes. This company claimed that a significant portion of its operations took place in the United Kingdom and Switzerland, jurisdictions known for their lower tax rates at the time. To facilitate this, the company shifted the legal aspects of its business to these countries. However, upon investigation, South African officials discovered that the subsidiaries and branches in the UK and Switzerland employed only a small number of low-paid staff members who held minor positions. Furthermore, these offices did not manage any of the commodities the company dealt with and were not legally authorised to take ownership of them.[19]

Although most of the company's customers were based in South Africa, a paper trail was fabricated for each transaction, directing them through the Swiss or UK offices to create the illusion that these locations played a crucial role in the business operations. Ultimately, the South African authorities were able to recover the taxes that had been evaded, as it was evident that the real activities of the company were carried out within South Africa.[20]

There is a growing concern about the taxation of the digital economy in the Asian region. The impact of international tax policy reforms in Asia could differ from other regions, given the unique landscape of digitalised businesses. Reducing the importance of physical presence in determining a company's income tax liability could increase the

[19] Ibid.
[20] Ibid., page 28.

ability of Asian countries to tax foreign MNEs operating in Asia with few tangible assets. However, the home countries of Asia's technology giants could also lose revenue if these firms have to pay more taxes in other countries where they are expanding. The consequences for revenue collection could be non-trivial, given that home-grown tech giants are growing rapidly and face similar implicit tax rates to US MNEs. Some Asian countries are also turning to Digital Services Taxes (DSTs) —withholding taxes or user-based turnover taxes on digital activities—as a unilateral means of taxing tech giants and other highly digitalised businesses.[21]

Article 38 of the MLC provides a breath of relief with regard to the definition and scope of digital service tax, an initiative flowing from public consultation. While it may be argued that digital service tax is expansive, the author considers it a step in the right direction. The adoption of these provisions (Articles 38 and 39) was a key aspect of the negotiation of the Convention.

> In addition to the operative provisions of Amount A, the MLC will contain provisions requiring the withdrawal of all existing digital service taxes (DSTs) and relevant similar measures with respect to all companies and will include a definitive list of these existing measures. The MLC will also include a commitment not to enact DSTs or relevant similar measures, provided they impose taxation based on market-based criteria, are ringfenced to foreign and foreign-owned businesses, and are placed outside the income tax system (and therefore outside the scope of tax treaty obligations). The commitment would not include value-added taxes, transaction taxes, withholding taxes treated as covered taxes under tax treaties, or rules addressing abuse of the existing tax standards. The development of the MLC will include work to further develop the definition of DSTs and relevant similar measures, and to provide for the elimination of Amount A allocations for jurisdictions imposing future measures that are within the scope of this commitment.[22]

[21] International Monetary Fund Report- Asia-Pacific and Fiscal Affairs Departments Digitalisation and Taxation in Asia. DP/2021/017.

[22] See, PUBLIC CONSULTATION DOCUMENT Pillar One – Amount A: Draft Multilateral Convention Provisions on Digital Services Taxes and other Relevant Similar Measures 20 December 2022 - 20 January 2023.

The two-pillar framework aims to halt and eliminate unilateral actions, including Digital Services Taxes (DST) and other similar measures. In the absence of a globally accepted agreement among all countries, nations have tried implementing these taxes as a fallback option. Members of the Inclusive Framework acknowledge that such unilateral actions can be ineffective and may result in conflicts with other nations, as they can create situations of double taxation and provoke trade retaliations.

Historically, these DSTs have primarily targeted large digital companies, which will now fall under the new tax provisions outlined in Pillar One. By collaboratively agreeing to pause and eliminate these unilateral measures, the members of the Inclusive Framework have recognised that a coordinated strategy is preferable to a patchwork of individual actions that would introduce greater uncertainty for taxpayers and escalate tensions among governments.[23]

4.0 THE WAY FORWARD

4.1. Is There an Alternative?

The idea of establishing the permanent establishment of a company is crucial for Contracting States to determine taxation of income. Article 5 of the US Model Treaty requires "a fixed place of business through which the business of an enterprise is wholly or partly carried on.'' Thus, the management of the business must be determined. It is evident that the existing international tax regulations were not originally crafted for the modern digital economy.[24] While there have been efforts to adjust these rules in

[23] OECD/G20 Base Erosion and Profit Shifting Project Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy OCTOBER 2021.

[24] See, e.g., Chang Hee Lee, Impact of £-Commerce on Allocation of Tax Revenue Between Developed and Developing Countries, 4 J. OF KOREAN L. 19, 21 (2004) ("[D]igital technology completely destroys the

response to technological advancements and the growing significance of intangible assets, particularly in cross-border transactions, the modifications made have proven to be insufficient to effectively address these evolving dynamics. This is evidenced by the OECD's identifying the "[a]pplication of treaty concepts to profits derived from the delivery of digital goods and services" as a key pressure area that must be addressed by the BEPS project.[25]

The BEPS project must recognise that intangibles and e-commerce are distinct concepts that necessitate tailored approaches, rather than relying on outdated doctrines through analogy. For instance, it is no longer sufficient for tax jurisdiction to be solely based on physical presence, as is currently the case. This principle should be translated into clear operational guidelines.[26]

The adoption of withholding taxes on payments to non-residents for digital and cross-border technical services (for example, accounting, management, and subcontractor services), in some jurisdictions like Asia, has expanded the scope of digital services to include both business-to-business payments for online advertising as well as some business-to-consumer transactions (typically relying on financial institutions as withholding agents).

---

economic and legal basis for the existing rules of international taxation, implying the necessity of a complete overhaul ....").

[25] This is evidenced by the OECD's identifying the "[a]pplication of treaty concepts to profits derived from the delivery of digital goods and services" as a key pressure area that must be addressed by the BEPS project, later reflected in action item 1. See OECD, ADDRESSING BASE EROSION AND PROFIT SHIFTING, supra note 10, at 47.

[26] Yariv Brauner, "What the BEPS?" University of Florida Levin College of Law Legal Studies Research Paper Series Paper No. 15-40.

The revision of tax treaties and expansion of domestic rules to allow for revenue attribution to residents and non-resident companies with virtual Permanent Establishment (PE). This has introduced the concept of Digital Permanent Establishment, a taxable PE to which income tax obligations will exist when the activities of MNEs meet or exceed a global turnover and sales threshold.

The broad application of user-based taxes to both resident and non-resident companies will enable countries to capture some of the value being generated through interaction with users in their jurisdiction from a range of digital services by their citizens for highly digitalised businesses and realise the income from such businesses.

5.0 CONCLUSION

OECD's work on Pillar 1 and 2 is significantly relevant to the taxation of the digital economy, the redefinition of the concept of Personal Establishment and the avoidance of profit shifting by MNEs. The negotiation of the Treaty for years shows the positive dedication and commitment of Members and Stakeholders to make corporate enterprises and entities financially and tax-accountable for profits made from entities in various jurisdictions.

However, the reluctance of some Member States and Stakeholders who have refused to sign is seen in the monetary cap of Covered Entities and the greater benefits of the Convention to the developed jurisdictions neglecting the developing countries with few or no MNEs and profit-yielding companies who will be subject to the taxation rule. Furthermore, it is noteworthy that there is a greater fear among countries who have signed, on the loss of revenue and income, as the implementation of both Pillars may

result in a deviation from the long-established principle of source States taxing the income and revenue made in their States.

The mandatory requirement for multinational enterprises to pay €750 million or more in annual revenue to pay a global minimum tax of 15% on income received in each country in which they operate is projected to result in an increase in corporate tax globally by $220 billion year by 9 percent. However, this will negatively affect foreign direct and portfolio investment, especially in jurisdictions which rely heavily on income from corporate taxes.