
- Base erosion and profit shifting (BEPS)

- *(A 99% er's perspective!)*

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Mythili Bhusnurmath

Consulting Editor, Economic Times

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Questions from the 99% to 1%

- If we can pay taxes for services rendered by govt & as part of our social obligation, why shouldn't MNCs?
 - Tax avoidance breaks a fundamental social contract: companies that draw on public investment in skills and infrastructure to make vast profits should put something back
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Tackling BEPS: New imperatives

Equity considerations

- Extension of Rousseau's social contract.
 - Countries, esp countries like India need tax revenues to fund development
 - Tax dodging has become the rule, rather than the exception as technology makes it much easier to dodge
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Tax dodgers multiply

- Apple paid an effective corporation tax rate of just 0.005% on European profits in 2014, but is not the only culprit.
- Amazon paid £ 11.9 mn tax in the UK by routing its £5.3bn of British sales through its Luxembourg subsidiary.
- Google paid just £20.4 mn tax despite UK sales of £3.8bn in 2013.
- In 2012, US MNCs shifted > 25% of their profits to avoid tax.

Tip of the iceberg!

- Companies like Facebook & Amazon use a complex network of affiliates in countries like Luxembourg, the Netherlands or Switzerland to dodge billions of euros in taxes
- Every year, the eurozone is estimated to lose one trillion euros in revenue from MNCs that don't pay taxes on profits made on their operations in Europe.



Google & the 10 things it knows to be 'true'

- Number 6: 'You can make money without doing evil.'
- *Elaborates:* **Google is a business. The revenue we generate is derived from offering search technology to companies & from the sale of advertising displayed on our site....**

What is left unsaid is that a great deal of its revenue comes from not paying taxes honestly: is that evil?

All birds of a feather!

- Starbucks's flagship store in Frankfurt reportedly paid no profit tax since it opened its doors 10 years ago.
 - A recent investigation by the US Senate showed that between 2009 & 2012, Apple paid no tax on its reported \$74 billion in overseas income.
 - It was able to do this through a perfectly legal device; opening a subsidiary in Ireland & exploiting a loophole in the Irish tax code.
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Who suffers due to BEPS?

- Governments lose revenue.
- Ordinary citizens lose since govts forced to cut public services, increase taxes.
- Small businesses, those working mainly in 1 national market & new firms can't compete with MNCs who shift profits across borders to avoid/reduce tax loss.
- MNCs that don't shift profits also lose relative to rivals who resort to BEPS.

Hurts the 'have-nots' more!

- BEPS revenue losses conservatively estimated at USD 100-240 bn annually, ie 4-10% of global corporate income tax revenues.
- Given developing countries' greater reliance on corporate income tax revenues as a percentage of tax revenue, the impact of BEPS on these countries particularly significant



BEPS: falls between the cracks

- Arrangements may be strictly legal, but they fail basic tests of economic, social justice & old-fashioned integrity
 - Sadly national govts are party to the crime : Apple struck a deal with the Irish **government** (custodian of public '**trust**') that allowed it to allocate its European profits to a shell company not registered for tax in **any** country.
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What is the problem?

- Existing tax principles are out-dated; predate digital age, globalisation, e-commerce & rise of internet companies
 - Today MNCs are able to centralise their intangible assets – brands, trademarks, patents, knowhow – in low-tax countries
 - Corporates are able hold govts to hostage – **lack of political will, lack of global co-operation**
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Time to face harsh truth

- Global challenges such as tax avoidance, climate change and microbial resistance are borderless and cannot be addressed by nations acting alone.
 - Economic success comes from creating conditions in which high-growth businesses can flourish, drive innovation & create jobs, not from arrangements that facilitate tax fudges/dodges
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Is OECD BEPS project the way out? Aims?

- Provide coherence to the international tax system;
 - Link substance & value creation with tax rules and fiscal benefits, granting symmetry;
 - Strengthen transparency & exchange of relevant tax/non-tax information
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How do we get there?

- Complete reform of international tax rules so that MNCs are obliged to pay tax based location of economic activity.
 - This avoids countries getting trapped in a race to the bottom on corporation tax.
 - It takes power away from corporations and puts it back in the hands of the nation state.
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G-20:Sept.2013 St Petersburg

- Endorses G7 position on BEPS: *Profits should be taxed where economic activities deriving the profits are performed & where value is created. In order to minimize BEPS, we call on member countries to examine how our own domestic laws contribute to BEPS & to ensure that international and our own tax rules do not allow or encourage multinational enterprises to reduce overall taxes paid by artificially shifting profits to low-tax jurisdictions*
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G20 meet in China: Sept 2016

- Reiterates support for international tax cooperation to achieve a globally fair and modern international tax system and to foster growth, including advancing on-going cooperation on base erosion and profits shifting (BEPS), exchange of tax information, tax capacity-building of developing countries and tax policies to promote growth and tax certainty.
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Are we serious? hypocrisy of the West!

- Switzerland, Ireland, UK, US members of the OECD but directly/indirectly encourage dodgy tax practices
 - World's offshore tax shelters – Cayman Islands, Isle of Man, Jersey, Bermuda, Gibraltar – all British overseas territories
 - Britain fought a war over Falkland Islands so no room for pretence !!
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UK not alone: US has its Delaware loophole

- Modus operandi: Co sets up subsidiary in Delaware, transfers its trademark there; other locations pay to use it.
 - Intangible assets not taxed in Delaware, so co doesn't pay taxes on money transfd to subsidiary.
 - Co. can deduct royalty cost in other states & avoid income tax it would have otherwise owed – used by Toys R Us
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In a nut-shell: Take a call...

- Are tax dodges 'evil'? Is it ethical for companies like Google, Amazon, Starbucks etc to make millions of dollars in profits and not pay taxes?
 - What is the dividing line between tax evasion and tax avoidance?
 - Is it a crime to deliberately arrange your affairs so that tax paid has no relation to place/quantum of economic activity?
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SC ruling in Azadi Bachao Andolan

- Essence of ruling: Treaty shopping is not taboo
 - Disagree: Countries must follow 'Substance over form approach' ie tax authorities must determine if the movement of income between foreign affiliated companies is based on legitimate commercial reasons or is merely a sham set up to obtain treaty benefits.
 - Must render unto Caesar the things that are Caesar's cos it is to Caesar who is charged with taking care of society/less privileged
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Till such time as we do that ...

- ***OECD & G20 call to countries not worth the paper it is written on***
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Thank you !

