Digital Economy and The Taxation of Permanent Establishments in EPC Contracts and Large Contracts: A Global Perspective

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Abstract. The taxation of the digital economy presents its challenges, and issues across the globe which have been acknowledged by taxation experts worldwide providing different approaches to tax the digital economy, as businesses embrace digital models, and significant challenges are faced in the process. Using an exploratory approach, the study examines the relevant literature in this regard, looks at how the digital economy is going to influence the taxation of Engineering, Procurement, and Construction (EPC) contracts, and what measures are likely to be taken by countries in the process. It examines the different components of an EPC contract that are likely to shift offshore, and what countermeasures will be taken by the Revenue of respective countries. The authors look at the significant rulings of judiciary in the past cases, to arrive at the taxability of offshore and onsite services components, in an EPC contract. It explores how the revenue may deal with taxation of PEs in a digital economy where services components and intangibles are likely to take a major share, and proposes a framework for EPC Contractor, reducing Permanent establishment arising. The study concludes with a look at a possible solution in this regard, by proposing certain mechanisms, and guidelines, that might as well help alleviate the situation, on a pre-consultation basis with tax authorities and help in reducing disputes and ambiguity, in the process of taxation of EPC contracts.

Keywords: Digitalization, Tax planning, EPC contracts, Permanent establishment, Anti Base Erosion and Profit Shifting, Pillar I & II, Treaty Shopping

1 Introduction

The taxation of entities in a digital economy presents its own set of challenges arising due to emerging ways of doing business in the digital world and evolving principles which have rendered, the principles applied behind the earlier brick-and-mortar models, non-workable. With advances in digital technologies, and new tools and processes for sharing information, and delivering services, it has impacted the zone of EPC contractors too, and the different aspects of revenue streams accruing to these entities have created a new set of challenges for the taxman in various jurisdictions. In the process, the OECD countries came up with the Base erosion and profit-shifting

S. Gupta et al. (eds.), *Proceedings of the 5th International Conference on the Role of Innovation, Entrepreneurship and Management for Sustainable Development (ICRIEMSD 2024)*,
Advances in Economics, Business and Management Research 310,
https://doi.org/10.2991/978-94-6463-612-3_8

initiatives in 2015, with an agenda of 15 action points, and was adopted by 140 nations globally after intense consultations. With economies going digital, the OECD had come out with Pillar 1 and Pillar II initiatives which had been proposed, for the curbing of tax avoidance, harmful tax practices, limiting artificial avoidance of Pes, etc. Countries the world over started issuing necessary regulations under their domestic laws to tap into the taxation of digital services and created a conflicting situation as to the taxability of services in a jurisdiction. These results into Digital Sales Tax (DST) and deemed income categories based on certain thresholds.

An EPC contract can take on a variety of forms, like JVs, and SPVs depending only on the industry, the number of vendors and participants, the countries in which those vendors and participants reside, and the DTAA between those nations and India, where the contract is implemented. The first section analyses the tax planning and avoidance practices of EPC businesses. The second section then looks at important elements and court-decided cases, connecting them to previous research. The authors endeavour to construct a framework that may prove beneficial for EPC corporates in identifying potential triggers for the establishment of permanent establishments and subsequent tax liability, as well as supporting the tax risk mitigation process, in the digital economy.

The study is important and plays a critical role in tax planning in the context of EPC contracts, particularly as the economy goes digital, and possible practices of tax planning that can be adopted. It identifies key factors that influence the structure of EPC contracts, the importance of split contracts in the digital economy, studies the past case decisions by the judiciary in the context of EPC contracts into offshore and onsite parts and how it influences tax planning. The significance of this study is quite critical as EPC contracts form the base of infrastructure projects, the very fulcrum for the growth of the nation, has implications in terms of generating higher employment, GDP growth, attracting FDI from global investors, raising the standard of living for the economy as a whole. Examples of these could be Oil Refineries, Steel plants, Chemical plants, Power plants, Heavy engineering equipment manufacturing etc, and add to the strength of the economy. Also, effective tax planning helps keep the costs lower for the project, maintain sustainable debt levels, enable us to meet sustainable development goals, and provide utilities services, at affordable costs, on a price-cost comparison, thus providing the ultimate consumer with lower unit prices for services and products. The study is of considerable utility to the taxman, Govt policymakers, Investors, EPC contractors as well as regulators fixing utility prices for services, products and rights to use.

2 Review of Literature

[1] Large multinational corporations' shifting of profits into lower-tax jurisdictions (and consequent erosion of tax bases) and the growth of the digital economy pose challenges to the design of global, coordinated tax policies that prevent tax avoidance in areas where economic benefits are generated. The chapter gives a summary of the initiatives and regulations being implemented to guarantee that multinational corporations, and not just those offering digital services, are taxed in the regions where value is created.

[2] The administration of corporation tax has faced additional difficulties as a result of globalisation. Companies can now conduct cross-border business and transactions in two or more tax jurisdictions with greater ease. Companies are encouraged by this development to transfer their profits from tax jurisdictions with higher rates to those with lower rates. The Permanent Establishment (PE) principle, which stipulates that a business must pay taxes in the jurisdiction of its fixed or major place of operation, is one of the framework's noteworthy developments. This paper outlines the obstacles and examines the domestic efforts being made in Nigeria to ensure that the digital economy is taxed. [3] This paper examined the regulations governing PE in OECD, and its model rules. PEs play a key role and enable the use of Global Rules, and the concept of stateless PEs and the application of PE regulations in the absence of a tax agreement in the originating state have been introduced by the GloBE Rules. These recently added features have expanded the definition of PEs, allowing the GloBE Rules to be applied in many circumstances that would not have fallen under the purview of taxation. This would establish a tax nexus in the source jurisdictions, enabling income attributable to MNEs operating in a digital economy without a physical presence to be subject to domestic taxation under the laws of these source (market) nations. [4] The study examines the difficulties and possibilities in taxing the digital economy, along with how they might be applied to international trade and tax policy. Comprehensive literature observations on important areas, such as digital tax solutions, international cooperation, cross-border transaction management, and tax revenue determination, were used to conduct the analysis. The results indicate that there are several issues with calculating taxable income, such as planning for taxes, prevention, and optimisation mistakes. International cooperation is crucial to solving the difficulties associated with digital taxes. It points out methodological flaws and suggests possible directions for further investigation, such as sector-wide sector analysis, geographical expansion, and the investigation of novel technology for tax administration. [5] This paper presents the challenges and opportunities associated with taxing the digital economy, as well as potential applications to international commerce and tax policy. The investigation was carried out using extensive literature observations on significant topics, including cross-border transaction management, international collaboration, digital tax solutions, and tax revenue determination. The findings show that there are several problems with determining taxable income, including prevention, budgeting for taxes, and optimisation errors, mentioning international collaboration is essential to resolving the challenges posed by digital taxation, identifying methodological shortcomings and making recommendations. [6] The old tax systems for all main taxes have been put to the test by the growth of the digital economy, with particular worries regarding multinational corporations' tax planning. The difficulties in taxing the digital economy have given rise to tax reform proposals that have the potential to greatly alter the present tax structures and improve the taxation of the digital economy. This essay examines these reforms and how developing Asia has responded to them, and discovers that responses have been inconsistent, with wealthier nations being more likely to implement the reforms. The paper advised that developing Asia could use tax reform techniques, for dealing with digital trade and commerce.

[7] Globally regulations are in place to reduce tax competition between nations in the context of lower rates of applicable taxes, and one needs to follow the initiator countries, as funds will flow into low-tax nations. Political dynamics will impede the necessary "critical mass," the exact amount of which is uncertain, and could impede the regulations' implementation in numerous nations. While the GloBE regulations offer a fresh approach, this article has outlined several obstacles that could affect their ability to stop tax competitiveness and the drive to the bottom in developing nations.The final regulations appear to be biased in favour of developed nations, which are primarily MNEs' home countries, and the OECD should not impose the regulations in stone to find a long-term solution to the several issues that affect their efficacy. [8] The century-old tenets of international taxes have come under scrutiny due to the digitisation of the global economy. The fundamental change has led to a dematerialisation of activities, which has increased the risk of profit shifting and base erosion. The supranational authorities have prioritised this matter and created a legislative toolkit to address the issues brought out by the digital economy. The OECD has set itself apart in particular by implementing an inclusive framework in 2021 that aims to address these same issues. This essay will offer the chance to examine the modifications made by the legislation in detail and to discuss some of its pointed and contentious issues. [9] This study aims to comprehend the impact of the 2019 global health afflictions on international digital services as well as how business operations and corporate responses to policy changes are influenced by changes in tax laws in various nations.The Base Erosion and Profit Shifting project "Two-Pillar" solution, which was approved by 136 nations on October 8, 2021, is the result of the debates and consists of two proposals that seek to impose a worldwide tax on the digitalisation of the market and economy. In contrast to the current situation, in which nations are unilaterally implementing digital tax policies through changes to their domestic regulations, this article explains, analyses, and suggests certain changes to these tax policies to advise better, more coherent digital tax policy. This will help governments ensure that a fair tax regime is implemented more uniformly. [10] Globalisation and digitalisation have had a significant impact on economies and people's lives all around the world, and in the twenty-first century, this impact has only increased. The tax laws governing international business income, which have been in place for more than a century, are under threat from these changes, which have also opened the door for base erosion and profit shifting (BEPS). The OECD has increased its efforts, by creating a 15-point action plan to tackle these obstacles, to combat BEPS., and to strengthen the substantive requirements of the current international standards, improve transparency and clarity, and bring coherence to domestic regulations impacting cross-border activity. [11] The international tax law has undergone significant transformation and shaping due to globalisation and digitalisation, and the recent swift developments have frequently compromised its efficiency and competitiveness. Since the start of the twenty-first century, double non-taxation has gained attention since big businesses have made use of corporate tax system loopholes to reduce their tax obligations while compromising free trade between nations. International organisations modified the models and agreements over time to adapt the international tax system to this new situation. This study attempts to provide a broad overview of business taxation to determine whether

the recently implemented "Global Minimum Tax" can also serve as a remedy for the long-standing problems of double non-taxation and detrimental tax rivalry across jurisdictions. [12] The current regulations are unable to address the tax issues posed by globalisation, technological innovation, and the ensuing mobility of functions, risks, and assets in company activities.The two-pillar solution proposed by the OECD aims to reform the international tax system by transferring a proportion of the excess profits of the largest multinational corporations to market countries (Pillar 1) and imposing a minimum tax of 15%, which will primarily be paid in the residence jurisdiction of the ultimate parent of multinational groups.The article also makes the case for setting up an international tax organisation (ITO) to oversee this tax and concludes with an ambitious expenditure plan designed to successfully address global issues like climate change, and includes a transitional regime to support nations who may lose domestic revenue as a result of implementing the suggested solution.

[13] Mention that DSTs might not go away. It's unclear if the BEPS 2.0 global tax agreement would be put into effect, especially in the US. The original plan for putting Pillar One into action was for a multilateral document to be signed by 2022 and go into force in 2023. Challenges facing multilateral instruments and the ratification process of tax treaties include reaching an agreement among the approximately 140 signatories, balancing the political realities and unique regulations of each nation's legal system with the agreement, and resolving logistical issues with implementation and adherence, exist, with the G20/OECD international tax plan, to be cautiously implemented in the United States due to political realities. Neither the proposed corporate alternative minimum tax nor the current U.S. framework for taxing overseas firms controlled by Americans is consistent with Pillar Two of the global tax agreement, and Pillar One's future does not appear bright. The effectiveness of the global tax agreement's implementation is in doubt given how crucial it is for the United States to guarantee the successful execution of both Pillars. [14] The digital economy heavily relies on online platforms. By fostering new types of employment and incorporating small and medium-sized firms (SMEs) in the economy, they provide an environment for social growth and significantly contribute to the creation of innovations and increased productivity, easing foreign economic activity. The EU currently has the most comprehensive regulation in place, which aims to safeguard local consumers of goods and services offered by global digital platforms from wrongdoing while also establishing the necessary framework for the development of digital platforms. [15] with the global economy becoming more digitally connected, the century-old principles of international taxation have come under examination. In order to meet the challenges raised by the digital economy, the supranational authorities have given this subject top priority and developed a legislative toolset. This essay provides an opportunity to analyse the legislation's changes in-depth and to talk about some of its controversial and incisive points, in the context of OECD practices. [16] The majority of today's business models predated the passage of South Africa's controlled foreign company ("CFC") regulations more than 20 years ago. These anti-avoidance regulations make sure that gains that South African citizens send abroad are taxed in South Africa. This essay makes the case that the CFC regulations in place in South Africa have not evolved to keep up with these new business models and do not adequately control the Internet economy. To address the digital economy and new

business models, this paper suggests updating the CFC regulations, utilising country-by-country reporting, and even thinking about introducing a regime alternative to the CFC regulations.

[17] New digital business models slowly permeate international industries, and nations are implementing a range of digital initiatives to aid in this process. Taxation policies, as one of the most crucial instruments, are greatly anticipated by nations since they not only illustrate a nation's digital leadership but also its pattern of economic development with DST and global minimum tax, used to regulate their digital business models. And to help nations manage digital business models more effectively, with an example of the formulation of tax policies for the digital economy.

[18] This study examines the widely held notion that traditional businesses have a higher tax burden than digital businesses. The study investigated the effective corporation tax rate (ECTR) for a large sample of 463 international businesses from 2010 to 2020, including 217 digital and 246 traditional companies, showing that there is little difference in the effective tax rates for traditional and digital businesses. While the effective corporate tax rate for digital enterprises has been rising gradually over time, over the full study period, which encompasses every year from 2010 to 2020, the average difference in the effective tax rate between traditional and digital enterprises did not surpass three percentage points in any of the chosen countries, and an additional 3% tax on digital services would, in practice, impose a disproportionately larger tax burden on digital enterprises compared to their traditional counterparts, since the observed difference consistently fell below this margin.

[19] The globalisation of capital flows and commercial exchanges opens up new avenues for generating value in economic activity. Additionally, the disparities in corporate taxation among resident states have put nations' ability to impose taxes on business profits made within their borders in jeopardy. This study examines the agreement made by the OECD and the G20 in October 2021, which accepted steps as part of the BEPS project to stop the erosion of tax bases in market jurisdictions that are supported by multinational corporations. The study found the underlying causes of the pessimistic assessment of the practical resolution to the aforementioned issues: inflated projections on the size of the new expected tax bases for Pillar 1 and the substantial expenses associated with administration and compliance.

[20] The digital economy is growing quickly on a global scale. This massive increase can be found to be present in the new revolution in industry along with rapid technological advances In the context of Africa and financial inclusion therein the study looks at the digital economy, digital service taxes, and mobile money taxes in Africa. The study uses four main ways to look at how taxes on digital financial services (DFS) affect the financial sector, and the way the people feel about the tax system, and stresses the negative consequences that such technology-based taxes will have on development, across the stratum of society.

[21] Within Tanzania's tax system, the phenomena of BEPS are examined in this paper. It emphasises in particular the complex Two-Pillar Solution to address issues on BEPS and includes a full review of the OECD's Two-Pillar Solution and the proposal of a minimal worldwide tax under Pillar Two. It also includes an in-depth investigation of BEPS itself and growing multilateralism in the field of international taxation. In

addition to giving insightful analysis and advice on how to address BEPS-related problems going forward, and ends with insightful remarks on the topic, that will be highly beneficial to policymakers, scholars, think tanks, the academic community, tax departments, international trade institutions, stakeholders in digital taxation, online enterprises, and the court.

[22] This essay examines the development of global taxes as well as the effects on developing nations of the OECD Two-Pillar approach. The October 2021 agreement on the OECD's (Organisation for Economic Co-operation and Development) Two-Pillar solution represents a significant and revolutionary shift in the global tax system. This essay examines how international taxation has changed over time, starting with its original design and continuing through its various stages of development until the OECD adopted the Two-pillar system. It also looks at the effects of the Two-pillar solution and projects how the new tax system will affect developing nations in the future.

[23] the Organisation for Economic Cooperation and Development (OECD) often hails its Pillar 2 project as a global collaborative endeavour to guarantee that major multinational corporations pay a minimum tax independent of their headquarters and the jurisdiction in which their activities are situated. Global tax cooperation is consistent with the budgetary interests and priorities of the United States and at least 137 other countries. This study aims to identify the areas in which the Pillar 2 model rules are inadequate and where additional revisions to the GloBE rules are required.

[24] The residence/source tax regulations, which have been in effect for more than ten years, are no longer relevant in the contemporary digital economy. The notions of permanent establishment and other concepts that produced tax certainty have become obsolete due to changes in value chains and business models. This article aims to determine whether the policy-driven approach of the OECD BEPS provides the necessary legitimacy for the equitable and fair enforcement of taxing and profit allocation regulations formulated using the principle-based approach of the UN FACTI Panel, and finds that developing countries now receive little attention from OECD rules.

[25] Examine the OECD's BEPS Action 1 as a narrative, using narrative analysis techniques established by academics. It concludes that the OECD's concern regarding stability in the BEPS Action 1 discourse was unfounded, and points to the failure of OECD to sustain widespread and long-term support for its remedies to income tax challenges posed by digitalisation, given its intrinsic problems and origin, and heighten worries about the OECD's hegemony in the creation of international tax rules.

[26] The study examines whether multilateral negotiation can help overcome the current bilateral tax treaties which are in majority, governments under a single forum. This paper comes to the conclusion that the nature of tax multilateralism has altered since powerful governments are now less able to dominate other states during negotiations and are much more reliant on a successful resolution that forges international agreement.

3 Research Gap

The past studies have indicated the issues arising in tax planning and the taxation of EPC contracts and permanent establishment arising therein, with different types of PEs arising in the process. With economies going digital however the basis for taxability and the way services are likely to be performed are changing drastically, and impacts large contracts, EPC contracts in a way as to focus more on taxing rights and blurs the distinction between the aspects of tax planning and tax avoidance, by use of various structures and arrangments. Changing business models compounds the problem as the tasks can be done in the other contract state without the necessity to move to the site of the source state, and these have not been discussed in past studies. The authors propose a design framework in the digital economy, linking the factors involved in EPC contracts responsible for the arising of a Permanent Establishment, with possible solutions. This study on EPC contracts proposes to examine this and also how taxation will evolve in the digital age and its effect on EPC contracts.

4 Objectives of the study

1. To study the relevance and importance of tax planning in the context of EPC contracts, particularly as the economy going digital, possible practices of tax planning that can be adopted.
2. To examine the role of key factors, which influence the structure of the EPC contracts, and the reasons why the split of contractors may be considered, in a digital economy necessary by corporates.
3. To study the decided cases in the context of EPC contracts holding the importance of tax planning of EPC contracts, by split into the offshore and onsite parts, and the rationale behind these decisions.
4. The study also proposes a framework for taxation for EPC contracts in the context of a digital economy.

5 Methodology:

The various court decisions and the circumstances that went into them shed more light on the reasons for the court's interpretation of whether a PE has arisen or not. The exploratory study takes into account the legal pronouncements of ITAT, HC, SC, and views of professional consultants like Deloitte, KPMG, E&Y, etc. and offers advice and recommendations on the most recent developments in business practice.

5.1 Data Source

The study is exploratory and draws on secondary data from historical studies, a variety of government reports, publications from the Tax Justice Network, the OECD, Deloitte, PWC KPMG, Itatonline.org, the ICAI Journal, the BCAJ Journal, the High Court, the Supreme Court, and the AAR, among other sources. Also, the authors examined significant court cases, (69 nos) specifically how they were decided at different levels at the ITAT, AAR, HC, and SC levels mainly from 2007-08, to 2023. This would give an insight into the various treatments as meted out by the judiciary.

6 Results & Discussion

6.1 To study the relevance and importance of tax planning in the context of EPC contracts, particularly as the economy goes digital, possible practices of tax planning that can be adopted.

While tax planning is a recognised strategy used in trade and commerce to lessen arising obligation, it frequently seems that corporations enter the risky and unclear territory of tax avoidance because such strategies are likely to be contested by the government and the tax man. The government incurs costs in the form of reduced foreign direct investment (FDI) flow, funds being diverted from countries with more favourable tax treaties to India, potential loss of investor interests, and potential loss of recognition in international arbitration (such as the Vodafone case and the Cairn Energy case) along with related expenses. Meanwhile, taxpayers bear the costs of uncertainty, interest on tax payments, and penalties. Additionally, it has been noted that the Indian department has been hesitant to provide any advice on tax planning or potential red flags regarding tax avoidance, in addition to judicial rulings that further muddy the waters for investors regarding income and capital gains taxes. It should be a logical consequence of shareholder wealth and investor aggression for larger returns for tax planning. Furthermore, given the tight project execution timelines, sponsor demands, and project priorities, there is a compelling need to plan adequately for taxes in the context of EPC contracts, where the margins are modest, ranging from 6% to 12%.

Many criteria seem to be highly pertinent and helpful for contract structuring, in keeping with previous research, studies, and aspects. These factors include the effective tax rate, the likelihood that tax avoidance will be discovered, the perceived fairness of tax administration actions, court rulings, stakeholder concerns, project funders' assurance of a minimum return on investment, government tax aggression initiatives, etc. Additionally, split contracts reduce tax concerns and increase commercial value by moving a significant amount of work to an offshore firm, a practice that is accepted throughout the world. Tax risk can be mitigated in part by the participating firms' organisational structure, and it is common business practice to use subsidiaries as a framework for local contract execution. Furthermore, when making the ultimate decision regarding taxability, courts consider the main business goal of the contract as well as the contract in its totality. Courts review split contracts, supporting documentation, and parties' actions during contract execution to ascertain each party's role—possibly with tax ramifications. Research from the past indicates that tax evasion is more common among large corporations, multinational corporations, and institutional owners and that external tax consultants have greater faith in a structure when recommending it to an entity. Fallen (1995). These factors are becoming an essential part of planning for EPC contracts to minimise liability resulting from PE arising, and consequently, the necessity of tax planning, which occasionally even verges on tax avoidance. These factors have the potential to significantly influence the outcome of a PE arising or otherwise in tax cases. Using digital technologies EPC entities can avoid taxes on the part of the services if rendered online, in digital mode, with suitable safeguards and clauses in the contract. The services being rendered from the home state will be taxed only in the home state, and an agreed-upon mechanism needs to be evolved, bilaterally between two states (DTAA decides) to share the allocable part of taxes between the two states These can complicate the profit allocation attributable for levy of taxes and trigger transfer pricing issues.

6.2 To Examine the role of key factors, which influence the structure of the EPC contracts, and the reasons why the split of contractors may be considered, in a digital economy necessary by corporates

Previous research suggests that a wide range of characteristics are present that affect how contracts are divided up. Even though several factors, such as increasing firm value, reducing project effective costs, and increasing tax savings, may be worthwhile in and of themselves, the main reason EPC contracts split up has to do with the way the contracts are structured—that is, how various parties collaborate under a single contract to complete the project. It follows that each project's scope should be precisely defined and included in its agreement. The master agreement refers to the general relationship between these contracts. The requirement by investors and financial institutions to establish a special purpose entity (SPV) to carry out contracts, hold assets and obligations, track cash flows, and handle profit and loss independently is a key issue. Corporates benefit mainly from the division of work scope and the ability to carry out the majority of contracts outside of India when offshore and on-site portions of EPC contracts are separated. The SPV and contract split routes may allow them to save taxes; The normal EPC contract margins are lower, ranging from 6% to 12%. The high degree of complexity in integrating different subsystems; participation of several parties in the project's execution; assembly, installation, testing, commissioning, and performance on-site; and so on. This is a widely recognised practice that greatly aids in project execution. Since their support is essential to the successful completion of the project, financiers, banks, and auditors also participate in the process of helping the entity structure its SPV.

Through the use of intermediary SPVs, they optimise tax savings, and split contracts are the result of this process. Even though these are the conventional paths for tax planning, the courts may attempt to interpret the splits in ways that are not wholly consistent with business or commercial viewpoints due to their differing principles and methods. The current principles that the judiciary has adopted state that the transactions must have a commercial purpose, that the contract must be examined rather than just read, and that it must not attract the provisions of the General Anti-Avoidance Rule (GAAR). In other words, the primary purpose of a contract should not be the goal of tax benefits, even though it may end up being one of the purposes.

Furthermore, courts have previously ruled in numerous cases that offshore suppliers of equipment and services are not subject to taxation in India unless there is a clear connection between the PE originating in India and the services rendered. In such instances, only the portion of profits attributable to work completed as originating in India is subject to taxation. These inevitably encourage the larger companies involved in EPC contracts to carry out the majority of the work, such as equipment delivery, design and service provision, and fabrication to be carried out outside of India. While tax planning techniques are commonplace, acknowledged, and well-known in the realm of jurisdictional tax administration, the inability to trace planning and avoidance actions effectively has been hampered by the absence of a cooperative framework.

With time and greater revenue losses for some countries, they have grown more circumspect when giving industry exemptions, advantages, and concessions. They have also imposed safeguards, prerequisites, and well-defined laws to lessen the flow of income from high-tax to low-tax regimes. The BEPS actions are a crucial initiative that aims to regulate the substantial tax planning measures that multinational corporations and large corporations take. The action points about BEPS, harmful tax practices (A-5), permanent establishment status (A-7), avoidance of artificial contract splitting, disclosure of aggressive tax planning (A-12), multilateral instruments (A-15), and prevention of treaty abuse (A-9) are some of the most important ones that have an impact on this aspect. These are closely related to tax planning and are specifically used tools in the structure, design, and execution of EPC contracts. Due to strict monitoring and reporting in the form of reports under the OECD-announced BEPS.

Even though there are transfer pricing laws in Actions 8, 9, 10, and 13, India has not yet completely embraced them. This also affects the pricing of EPC contracts, especially when it comes to the implications of transfer pricing for plant and equipment as well as services. In addition, additional impact from income additions may arise, especially when it comes to intangibles like patents, Drawings and designs, trademarks, Copyrights brand royalties, and usage rights. While some regions, like the UK, have published reports, guidelines, and advisories on tax avoidance and shelters, Singapore has initiated measures for corporate tax governance and requests voluntary active participation and cooperation from the taxpayer, based on certain specified regulations, India has not initiated similar measures. The OECD has also developed tax risk indicators, which can be useful as guidance tools in this regard.

With the advent of new technologies and increasing digital transformation for adopting new business models, the data flow and processes have gone into the online and digital mode, starting from initiating a tender, processing, selecting, and awarding to the final bidder. With many players involved in the EPC contracts, it naturally becomes imperative as also the advantage to reduce the turnaround time to process documents and deliver the final output to the project sponsor and customer. As organisations embrace digital models and transformation this becomes key to success and competition.

6.3 To study the decided cases in the context of EPC contracts holding the importance of tax planning of EPC contracts, by split into offshore and onsite parts, and the rationale behind these decisions.

In this we examine the past decided 69 cases in the Indian context propounded by the judiciary at various levels, over 15 years from 2006-07 to 2022-23. These range from Composite contracts, split contracts turnkey contracts, single contract. In the 69 cases it is noted that 7 contracts are Single, 45 split contracts, 6 Composite, 1 Turnkey, and 7 others indicate that split contracts are the most preferred method for tax planning by corporates and as even endorsed in some past judicial outcomes, though fraught with an element of risk on account of the possible allegation of deliberate splitting of contracts by the taxman. On the taxability of these contracts, a summary analysis indicates that in 55 cases onsite part was fully taxable while the entire contract has been held taxable only in 2 cases, and 6 cases are not held not taxable. The offshore part for the supply of equipment is not generally taxable Again using the outcomes of judgment as a dependent variable and the independent variables as Business connection, Fixed place of business, contract indivisible, turnkey, installation and commissioning, Supervision, drawings and designs, site visit and deputation, duration of the project, offshore equipment, existing etc, a logistic regression using python code was considered. The outcomes for regression (Table 1) were arrived at for ascertaining the relationship between the factors. The findings are as under:-

Table 1. Logistic Regression

	coef	std err	z	P>|z|	[0.025	0.975]
Intercept	6.027	969.679	0.006	0.995	-1894.510	1906.563
nature_of_contract_Composite [T.True]	15.227	4.78E+05	3.19E-05	1.000	-9.37E+05	9.37E+05
nature_of_contract_Others [T.True]	-10.156	969.678	-0.010	0.992	-1910.690	1890.377
nature_of_contract_Single [T.True]	-11.680	969.678	-0.012	0.990	-1912.213	1888.854
nature_of_contract_Split [T.True]	-13.537	969.676	-0.014	0.989	-1914.067	1886.993
portion_taxable_Not_Taxable [T.True]	6.055	2.352	2.574	0.010	1.445	10.665
portion_taxable_Onsite_Activity [T.True]	3.695	1.729	2.137	0.033	0.306	7.083
business_conection	0.794	1.261	0.629	0.529	-1.678	3.266
contract_split	2.092	1.455	1.438	0.151	-0.760	4.943
contract_indivisible	-10.344	933.543	-0.011	0.991	-1840.056	1819.367
turnkey_contract	0.783	1.737	0.451	0.652	-2.622	4.188
installation_and_commissioning	2.672	1.157	2.310	0.021	0.405	4.940
drawings_and_designs	5.369	5.80E+07	9.25E-08	1.000	-1.14E+08	1.14E+08
site_visit_and_deputation	0.880	1.454	0.605	0.545	-1.970	3.730

substantial_activities_done_at_site	1.290	1.189	1.085	0.278	-1.041	3.621
duration_of_project	23.656	1.83E+05	0.000	1.000	-3.60E+05	3.60E+05
offshore_equipment_existing	-1.459	1.405	-1.039	0.299	-4.212	1.294

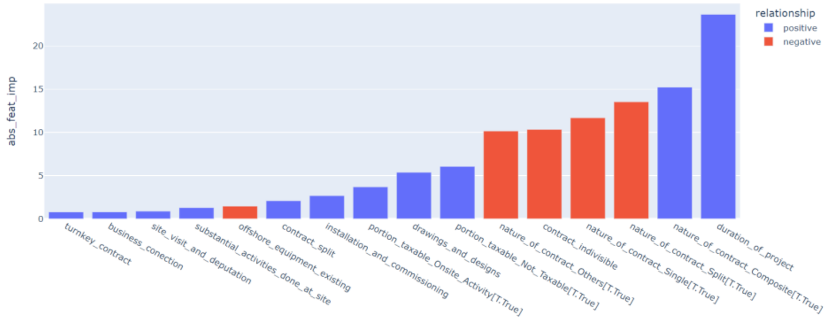

Fig. 1 Features

The positive factors correlation indicate that these factors are likely to act in favour ot tax payer while the negative factors indicate that these are likely to trigger judicial scrutiny. Considering the above, it is possible to plan the EPC contract designs in such a fashion as to reduce the impact of taxes. The relevance of tax planning, evasion, and contract splits is intimately related to the development of EPC contracts., because of its peculiar nature. While tax planning is permissible, tax evasion is frowned upon by the judiciary. However, companies often find it difficult to go under the taxman's radar and boost shareholder value through tax avoidance practices rather than pure tax planning, which leads to lower levels of wealth creation and project profitability. Examining past rulings at different levels highlights the key components of tax planning and potential features (Fig. 1) of tax evasion regarding EPC contracts. The courts have upheld the tax planning and frowned upon avoidance.

7 Proposed Framework

A brief flow diagram is given below:-In this flow diagram, (Fig. 2) the concept of EPC contracts is decomposed into two parts -for goods and services. This division is complementary to the onsite-offshore split of contracts being practised in this industry. While for goods physical, brick and mortar infrastructure is necessary, services can now be offered digitally from the source state, without coming to the executing state, by using digital tools, technologies, and software programs, stored in a server in the source state or other state, the access to which can be on a controlled, licensed basis without generating a PE in the host country, and as such incomes may not be attracted to tax. A variety of services like drawing and designs, consulting, expert advisory, technical services, Engineering services, etc can be transferred digitally, and attraction of a PE definition can be minimal. However, those relating to supervision at site, installation and commissioning, trial run production, visits by experts and engineers, etc will run the risk of creating a PE if the duration of the personnel stay exceeds the provisions as per DTAA or IT Act. Both developing countries as well as developed countries try to maximise their revenue outcomes and thus have competing interests, which is evidenced by the DTAAs signed by the nations on a bi-lateral basis, at the political level to promote investments in respective states, to deter double taxation of income for their nationals, entities as well as reduce tax revenue loss. Typically it is noticed that certain countries are more favourable for global investors to move their funds, like the Netherlands, UK, Belgium, Luxembourg, etc act as conduits for funds, which help them to structure and place their entities incorporated in those countries. Due to the digital economy, it becomes imperative to tax the sales, on a deemed margin basis, and to avoid tax administration costs, and dissuade moral hazard behaviour, tax is levied at flat rates of 2% to 10% on the total income generated using digital technologies. Withholding tax at source (WHT) helps to ensure the plugging of possible income leakages that might occur. These help capture the digital revenue to the tax net, and augment income levels of nations. With extensive use of AI, ML and Big data, pattern identification in large databases helps to reduce the income escaping assessments. On the goods part the offshore deliveries of equipment and risk transfer ensure that the chances of PE arising on such part, are minimal, as reported in past judgments.

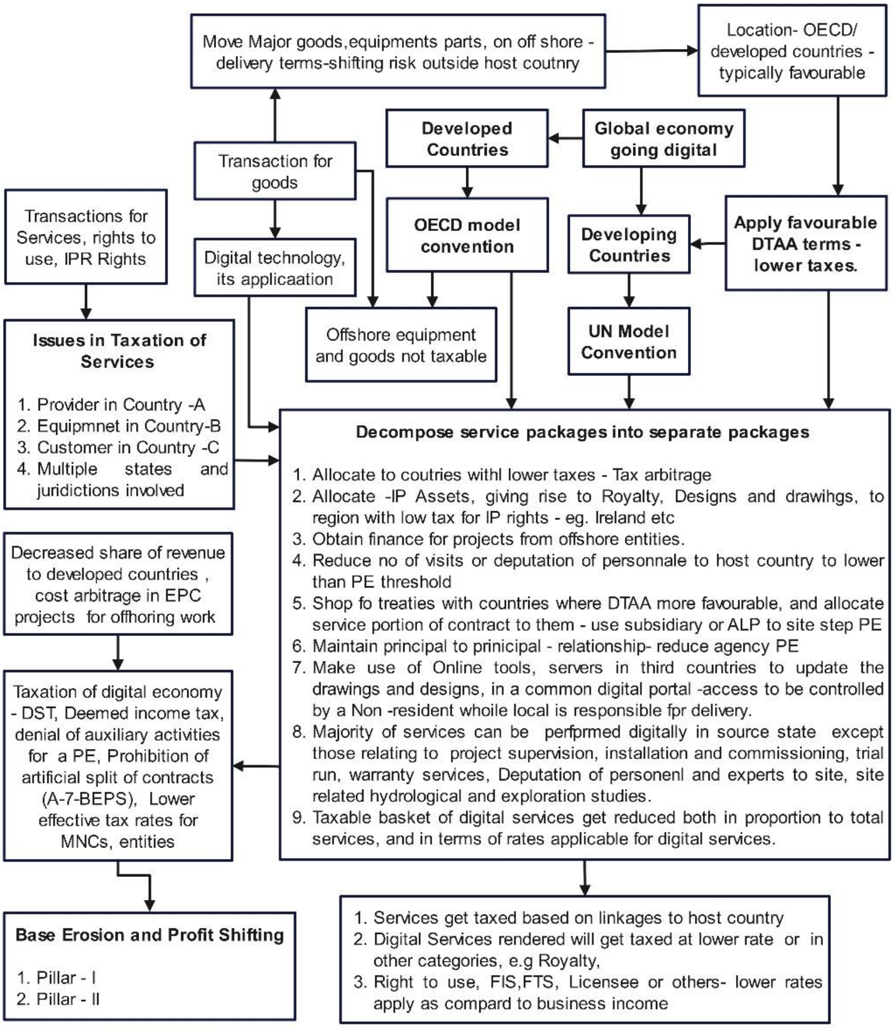

Fig. 2 Flow diagram for Economy going digital and its application to EPC contracts - considering the current rulings and emerging technologies for digital economy

8 Limitations

The study is exploratory, looks at EPC contractor's businesses, and is not empirical. It also ignores the kind of litigation, the taxpayer's and the department's attitudes in these kinds of cases, tax morale in developing nations like India, and behavioural attitudes, as outcomes under Pillar I & Pillar Ii of the OECD program, which at this stage appear uncertain to merit any prediction as to which way the digital taxation in the economy will unfold.

9 Conclusion

The advent of the digital economy has forced cooperation across nations, developed and developing thereby increasing the scope of tax cooperation as a corollary. Structures and mechanisms at the institutional level and agreed declarations, general principles for digital taxation are getting more and more prominent and implemented under joint mandates. This could in the future lead to the creation of deemed PEs for digital businesses to be taxed at a minimum rate, where turnover, asset base, and the proportion of profit earned in a country are below a given threshold as agreed and also countries will respond by denying an exemption for pre-sales activities, reducing PE formation period, the industry and trade will react by recourse to more acceleration technologies where allocation of cost, bundled products and services, special arrangements with large entities(e.g Google in Ireland -2% tax) becomes difficult, to compute and can be challenged legally. The linkage of PE with the activities of the entities is not going to be easy as it involves entities with operations in multiple countries. Transfer pricing issues and intangible asset taxation are likely to become a matter of mutual agreement between nations, as each vies for FDI in their jurisdictions. These will force more tax cooperation and information exchange agreements which may alter the landscape for both investors in entities as well as corporates seeking funds for investment, being subject to more scrutiny and regulation, particularly in the banking, and insurance industries which form the financial supply chain for routing of funds into EPC projects. Managing tax risk in the digital economy is going to be a challenge for legislation as well as the govt as continuously balancing for optimisation of tax revenues within the framework of international agreements and challenges posed by technology, by resorting to tax cooperation and information exchange on the pre-consulted basis, with guidelines and mechanism that can stand the test of situations over time.

Acknowledgments. NIL

Disclosure of Interests. The authors have no competing interests to declare that are relevant to the content of this article.

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