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**TAX HAVENS: A ROTTING PLAGUE – AN IN-DEPTH EXAMINATION OF  
CORPORATE TAX AVOIDANCE STRATEGIES AND THEIR ECONOMIC IMPACT**

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**ABSTRACT**

This paper provides a comprehensive examination of tax havens and their adverse impact on global economic stability and fiscal reserves. This paper highlights how multinational corporations exploit regulatory loopholes through the practice of transfer pricing and the notorious practice of Dutch Sandwich with a double Irish to avoid paying taxes and shift profits to low-tax or no-tax jurisdictions. This practise not only results in substantial loss to the revenue stream of the government but also impairs investment meant for public welfares. This paper also includes a case study of Apple Inc and about it utilised tax havens too little to no tax. Moreover, it also includes the steps that have been taken by Organisation of Economic Cooperation and Development and India to curb this plague. This paper also suggests some measure that may be taken by India and other countries to minimise the usage of tax havens and make corporations pay their fair share of taxes do the government. In conclusion, the document calls for a coordinated global effort to increase transparency, reform tax treaties, and enforce stricter regulatory measures, thereby restoring the integrity of the international tax system and promoting equitable economic development.

**KEYWORDS:** Tax Havens, Tax Avoidance, Corporate Tax Evasion and Base Erosion and Profit Shifting (BEPS).

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## INTRODUCTION

Taxation is the cornerstone of modern governance, providing governments with the resources to fund public services, infrastructure, and welfare programs. For corporations, paying taxes is not only a legal obligation but also a demonstration of their commitment to societal development and economic fairness. However, the phenomenon of corporate tax evasion has become a pressing global issue, undermined the integrity of tax systems and erode public trust.

The term “tax” is derived from the Greek word “*tassein*” which means fix, which later in Latin changed to “*taxare*,” which means “to censure, charge or commute”. Which again in old French changed to “*taxer*” and finally the term “*tax*” was devised which meant “to estimate or determine the amount of penalty or damages” in medieval English.

## DEFINITION OF TAX

Adam Smith a Scottish economist and philosopher in his book and magnum opus “*An Inquiry into the Nature and Causes of the Wealth of Nations*”, generally referred to by its short title “*The Wealth of Nations*”, described taxes as “a contribution imposed by the government upon individuals for the service of the state.” He emphasized the importance of fairness, certainty, convenience, and efficiency in taxation—principles that continue to influence modern tax systems.

Courts worldwide have interpreted taxes in various ways. For instance, in the landmark case of *Zenith Lamps and Electricals Ltd. vs The Registrar, High Court and Ors.*<sup>3</sup> the Hon’ble Madras High Court relied on the Supreme Courts adopted definition of tax as “a compulsory extraction of money by public authority for public purposes enforceable by law and not as a payment for services

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<sup>3</sup> Zenith Lamps and Electricals Ltd. vs The Registrar, High Court and Ors., (1968) 1 MLJ 37 (India).

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rendered." upon taking reference from the judgment of *Matthesus v. Chicory Marketing Board*<sup>4</sup> delivered by C.J. Latham of the Hon'ble High Court of Australia.

## TAX PLANNING

Tax planning in its simplest form refers to arranging your income in such a way that the assessee pays less tax. It's about utilising the rules in such a way, that he keeps more of your money with himself legally. Individuals and corporations do this by making smart choices about how they spend, save, and invest their money in such a way that they pay lower tax bills

## TAX AVOIDANCE

Tax avoidance denotes the tactical application of legal stipulation, gaps and uncertainties in tax legislation to reduce tax obligation. In contrast to tax evasion which employs illegal actions like hiding income or altering financial data, tax avoidance functions legally within the framework of the law. Nonetheless, it frequently ignites discussions on ethics and policy as it questions the principles of fairness and equity in tax frameworks.

Tax avoidance usually encompasses complex financial strategies and the organisation of transaction to lower taxable income or postpone tax obligation. It is commonly utilised by businesses affluent individuals and global corporations. The idea centres on taking advantages of loopholes in tax agreements or government incentives to secure financial gains.

Individuals as well as corporations use tax shelters and tax havens. Dyreng says "*Tax shelter is one type of tax avoidance, and tax havens are jurisdictions that facilitate reduced taxes*"<sup>5</sup>.

The Organization for Economic Co-operation & Development ('OECD') defines tax avoidance as "*the arrangement of a taxpayer's affairs that is intended to reduce his liability and that although*

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<sup>4</sup> *Matthesus v. Chicory Marketing Board*, 60 Com. L.R. 263 at 276 (Australia).

<sup>5</sup> Dyreng, Scott D.; Hanlon, Michelle; Maydew, Edward L. *Long-Run Corporate Tax Avoidance*. The Accounting Review. 83: 61–82 (2008).

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*the arrangement could be strictly legal is usually in contradiction with the intent of the law it purports to follow.”*

Governments all across the board keep a strong eye on those types of transactions and if it is found that the something illegal has been done, the accused may even be prosecuted.

The Hon’ble Supreme Court in **CIT v. A. Raman & Co.**<sup>6</sup>, while discussing on topic of tax avoidance has ruled that *“the avoidance of tax liability by arranging the commercial affairs so the charge of tax is distributed is not prohibited as such. A taxpayer may resort to a device to divert the income before it accrues to him. The effectiveness of the device does not depend upon morality but on the operation of the Income Tax Act, 1961. While the violation of law is prohibited and subject to penalty, its circumvention is within the legal means and is permissible”*.

Furthermore, the Hon’ble Gujrat High Court, in the case of **CIT v. Sakarlal Balabhai**<sup>7</sup>, has ruled that *“the assessee in receipt of an amount which, in fact, is liable to taxation but on which he avoids the tax liability by some artifice or device, may not be subject to legal consequences”*. When this decision was in appeal before the Hon’ble Supreme Court, the court upheld the decision of the High Court in the case of **CIT v. Sakarlal Balabhai**<sup>8</sup> and dismissed the appeal.

## TAX EVASION

Tax evasion or tax fraud is illegal with respect to the way a body would work to deny the imposition of taxes by individuals, corporations, trusts, etc. Usually, tax evasion is referred to as the deliberate misrepresentation of taxpayer income and expenditure to tax authorities where it is considered false tax reporting, disclosing lesser income, profits or gains than the amounts that are actually being earned, overstating deductions in the tax code, bribing the authorities, and so on, hiding money at safe houses. Tax evasion is widely thought of as a practice associated with the informal

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<sup>6</sup> CIT v. A. Raman & Co., [1968] 1 S.C.R 10 (India).

<sup>7</sup> CIT v. Sakarlal Balabhai, [1968] 69 I.T.R 186 (India).

<sup>8</sup> CIT v. Sakarlal Balabhai, [1972] 86 I.T.R 2 (India).

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economy<sup>9</sup>. Tax evasion could be measured in terms of percentage as to the number of an unreported income, thereby representing another dimension of tax gaps, that is the difference between that portion of income which tax authorities requires to be reported and the actual submission of report.

## TAX HAVENS AND THEIR MODUS OPERANDI

### INTRODUCTION

A tax haven is a term, often used pejoratively, to elucidate a location which has very low tax rates for international investors, even though rates for domestic tax payers may be higher.<sup>101112</sup>.

Tax havens have gained a rather significant place in today's world due to rising globalization and a greater manoeuvrability of capital across the globe. The Multi-national Corporations (MNC's) often shift their profits to no or low-tax jurisdictions or so as to reduce their taxing liability. For this very purpose, MNC's now use a variety of methods, ranging from transfer pricing to going as far as transferring royalty-generating patents etc. Studies on tax haven have provided a variety of examples to the methods and mechanism used by companies, firms, and individual keep siphoning their money from the domestic economy.

One study describes a pattern of tax avoidance through the example of a MNC which was operating in Zambia was selling copper originating from Zambia to its subsidiary in Mauritius @ €2,000 per

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<sup>9</sup> Usman W. Cohan *Tax, Evasion & Whistleblowers: Curious Policy or Durable Strategy?* Wayback Machine *Tax Law*, International & Comparative Tax eJournal pp. 1-7, 2020.

<sup>10</sup> Financial Times Lexicon: Definition of tax haven". Financial Times. June 2018.

<sup>11</sup> "Tax haven definition and meaning". Collins English Dictionary.

<sup>12</sup> Dhammika Dharmapala; James R. Hines Jr. *Which countries become tax havens?*, Journal of Public Economics. 93 (9-10): 10581068. doi: 10.1016/j.jpubeco.2009.07.005. S2CID 16653726.

tonne. The subsidiary company of Mauritius then resells the same material @ €6,000 per tonne. Thus, Zambia, had been deprived of taxing the margin of €4,000 per tonne<sup>13</sup>.

India loses \$9 Billion in profits to tax havens across the world. Out of the total revenue, approximately \$3 billion, goes to tax havens in the European Union, while, \$5 billion, in profits goes to non-European Union tax havens. The tax havens that are used specifically by Indian firms includes countries like as Belgium, the Netherlands, Malta, and Ireland, and Switzerland. And countries such as Hong Kong, Singapore, and Bermuda are other tax havens<sup>14</sup>.

Organisation of Economic Co-operation and Development popularly known as OECD defines “Tax havens as “a country which imposes a low or no tax, and is used by corporations to avoid tax which otherwise would be payable in a high-tax country”<sup>15</sup>.

## MODUS OPERANDI

Each company or firm has its own way of harmful tax competition when it operates in more than one tax jurisdiction. Such MNCs become subject to several sets of tax rates and also several sets of tax regulations. The interplay between rules and rates gives rise to several possible tax obligations. When the income of MNCs overlaps in claims of taxes, the company may have several routes available for tax avoidance. This often translates into reduced taxable income, and so tax revenue lost, and distortion in international financial flows and investments allocated by MNCs internationally.<sup>16</sup> This is often described as ‘shifting of profits. The shifting of profits is done through allocation of debt and earnings stripping, transfer pricing, contract manufacturing, check-

<sup>13</sup> Khadija Sharife, *Treasure Islands: Mapping the Geography of Corruption*, MRONLINE (Jul. 2010), <https://mronline.org/2010/07/20/treasure-islands-mapping-the-geography-of-corruption>.

<sup>14</sup> India loses 5 percentages of corporate revenue as firms shift profits to tax havens, shows research. [https://scroU.in/latest/939109/india-loses-5-oi-corporate-revenue-as-firms-shift profits-to-tax-havens-shows-research](https://scroU.in/latest/939109/india-loses-5-oi-corporate-revenue-as-firms-shift-profits-to-tax-havens-shows-research)

<sup>15</sup> OECD, Glossary of Tax Terms, Available at: <https://www.oecd.org/ctp/glossaryoftaxterms.html>.

<sup>16</sup> J.L. Blouin, *Taxation of Multinational Corporations*, University of Pennsylvania, pp. 1-22, 2012.

the-box provisions, and cross crediting and sourcing rules for foreign tax credits. Under the method of shifting of profits from a high-tax jurisdiction to a low-tax, companies or the firms borrow more in the high-tax jurisdiction. Under 'earnings stripping', companies escape high domestic taxation by using interest deductions to their foreign headquarters in a friendly tax regime to lower their corporate taxes. This happens because most of the tax jurisdictions provide provisions for tax relief to a company against the amount of interest paid on debt<sup>17</sup>. This is an incentive for taxpayers to have or increase their debt ratio and take loans from associated enterprises located in tax friendly jurisdictions and claim higher tax deductions. Thus, this rule provides undue benefits and lower tax outgo for multinational groups<sup>18</sup>. Transfer pricing is another way to shift the profits from high-tax to low-tax jurisdictions. Generally, an income would be reflected in account when the prices of goods and services sold by related companies are shown without any manipulation. However, MNCs having sold goods and services to their related companies show the prices by lowering it. This often happens with pricing of intellectual property rights and other intangible properties. A patent developed by a company in high tax jurisdiction may get it licensed in a tax haven through one of its affiliates. By this process, probable income through that patent would lower due to lower value of the license or royalty.

For example, company 'A' located in India purchases a good for Rs. 100/- and sold it to its associated company 'B' for Rs. 200/-, located in a tax haven. The company B, in turn sells the good in the open market for 500 rupees. Had 'A' sold it directly, it would have made a profit of Rs. 400/. But by routing it through B, it restricted the profit Rs. 100/-, permitting B to appropriate the balance. Under this process, the country where company 'A' is located (India) will lose the tax on true value of sale. Techniques of transfer pricing have many more ways to flaunt high tax liability in given domestic jurisdiction. International outsourcing or a contract of manufacturing is another arrangement whereby companies avoid taxes. It is a method wherein a subsidiary is set up in a tax

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<sup>17</sup> Section- 94B, Income Tax Act, 1961 No. 43, Acts of Parliament, 1961 (India).

<sup>18</sup> American Jobs Creation Act of 2004, Pub. L. No. 108-357, § 118 Stat. 1418, (2004) (U.S.C).

haven and profit shifting occurs via contract manufacturing. Similarly, ‘foreign tax credit’ is designed to mitigate the effects of double taxation of foreign income. However, many a times, the foreign tax credit is used to avoid high tax liability.

### **GLOBALLY RECOGNISED TAX HAVENS**

Below mentioned is a list of globally recognised tax havens.

**Table 1<sup>19</sup>**

S.NO	COUNTRY NAME	OECD <sup>20</sup>	FSF-IMF 2000 <sup>21</sup>
1.	Antigua & Barbuda	Y	Y
2.	Bahamas	Y	Y
3.	Bermuda	Y	Y
4.	British Virgin Islands	Y	Y
5.	Cayman Islands	Y	Y
6.	Cyprus	Y	Y
7.	Liechtenstein	Y	Y
8.	Luxembourg	N	Y
9.	Mauritius	Y	Y

<sup>19</sup> Tax Justice Network, *Identifying Tax Havens and Offshore Finance Centres*, Available at [https://www.taxjustice.net/cms/upload/pdf/Identifying\\_Tax\\_Havens\\_Jul\\_07.pdf](https://www.taxjustice.net/cms/upload/pdf/Identifying_Tax_Havens_Jul_07.pdf).

<sup>20</sup> OECD-CTPA 2006: *The OECD's Project on Harmful Tax Practices: 2006 Update on Progress in Member Countries*. Paris: Organization for Economic Cooperation and Development.

<sup>21</sup> FSF 2000: *Report of the Working Group on Offshore Financial Centres*. Basel: Financial Stability Forum.



<b>10.</b>	Monaco	Y	Y
<b>11.</b>	Netherlands Antilles	Y	Y
<b>12.</b>	Panama	Y	Y
<b>13.</b>	Seychelles	Y	Y
<b>14.</b>	Switzerland	N	Y
<b>15.</b>	Vanuatu	Y	Y

Not every country has the same share when tax havens are in question. Below mentioned is a list of the Top 5 tax havens which contribute in Global Corporate Tax Abuse.

**Table2<sup>22</sup>**

<b>S.NO</b>	<b>COUNTRY</b>	<b>CONTRIBUTION TO GLOBAL CORPORATE TAX ABUSE</b>
<b>1.</b>	British Virgin Islands	7.1%
<b>2.</b>	Cayman Islands	6.7
<b>3.</b>	Bermuda	5.8
<b>4.</b>	Switzerland	5.3
<b>5.</b>	Singapore	4.8

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<sup>22</sup> Ibid.

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## CASE STUDY

### APPLE'S USE OF TAX HAVEN

Apple Inc, is a major multinational technology company, known as a symbol of innovation, had been under scrutiny for its tax haven practices, which have sparked world-wide debates about corporate accountability, a need for global tax reforms and economic justice.

### APPLES BUSINESS MODEL

Apple's global business model is structured in such a way that it maximizes efficiency and minimises the costs including that of taxes it owes to the authorities. The revenue streams are heavily subservient to the Intellectual Property the company owns, which are easily transferable across different jurisdictions.

This structure makes it relatively easy for apple to shift profits to low-tax jurisdictions, allowing the company to shift its profits to low-tax jurisdictions, thereby, allowing the company to drastically reduce its effective tax rate.

### APPLE INTELLECTUAL PROPERTY MANAGEMENT

Apples revenue is designed in such a way that royalties and licensing fees is derived from its Intellectual Property's such as patents and trademarks; and by assigning its Intellectual Property ownership to subsidiaries which offer low corporate taxes, apple ensures that the taxes it's owes to authorities is always the bare minimum.

### USE OF DUTCH SANDWICH WITH A DOUBLE IRISH

The Dutch sandwich with a Double Irish is among the most popular tax avoidance scheme used by multinational corporations like Apple, Google, Microsoft. The name of this scheme originates from setting up two Irish subsidiaries and one Dutch company in the middle of the taxing structure. This scheme is mostly used by American companies as US tax system does not tax the US companies who do not repatriate dividends from foreign countries (Tax Cuts

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and Jobs Act, 2015).<sup>23</sup> The reason why the foreign subsidiaries in the Ireland is that the Irish taxing system taxes a company based on where the place of effective management lies, thereby meaning that a company may be incorporated in Ireland works in Ireland but if its place of effective management lies in another country, Irish Authorities will not have the power to tax that particular company provided that the place where the effective management lies has a Double Tax Avoidance Treaty with Ireland.

## **MODUS OPERANDI OF THE SCHEME**

### **STEP 1: FORMATION OF 2 IRISH COMPANIES**

Setting up of Irish Company 1 which is registered in Ireland but is managed by a purely tax haven country such as Bermuda, British Virgin Islands or Cayman Islands, as under the Irish tax code, a company is taxed on the basis of its management and control and not its residency and since the company is managed from a tax haven, it is not subject to Irish taxing statutes. Setting up of Irish Company 2 which is managed and resident of Ireland and is thereby, responsible for paying the taxes to the Irish Authorities.

### **STEP 2: TRANSFER OF INTELLECTUAL PROPERTY TO IRISH COMPANY 2**

The second step happens when the US parent company either sells or licenses its Intellectual Property like patents, trademarks copyrights to the Irish Company 1 at a very low cost.

### **STEP 3: LICENSING TO IRISH COMPANY 2**

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<sup>23</sup> Jean Franco Fernandez Clark, *Double Irish Dutch Sandwich Tax Avoidance Explained*, OFFSHORE AFFAIRS, (Feb 3, 2020), <https://www.offshoreaffairs.com/post/double-irish-dutch-sandwich-tax-avoidance-explained>.

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In this step, Irish Company 2 pays high royalties to the Irish Company 2 for the legal right to use the company's Intellectual Properties in its own business operations. These royalties are the reason for the significant decrease the Irish Company 2's income in Ireland.

## **STEP 4: ROUTING PAYMENTS THROUGH THE NETHERLANDS (DUTCH SANDWICH)**

Irish Company 2 does not pay the Irish Company 1 directly instead it pays the royalties through a Dutch holding Company set up in the Netherlands for this purpose.

The Dutch company exists because Ireland does not apply withholding tax on payments related to royalties to European Union countries, though it does when the payments are made directly to tax havens.

The Dutch company which does not tax outgoing royalty payments transfers the payments to Irish Company 1 which is managed from a tax haven generally Bermuda.

## **STEP 5: FINAL TRANSFER TO TAX HAVEN**

The Irish Company 1 that is controlled from Bermuda receives the royalties and reports them in the tax haven avoiding corporate taxes and since Bermuda is a **ZERO CORPORATE TAX** country, the profit remains untaxed.

## **EUROPEAN COMMISSION INVESTIGATION**

The European Commission initiated an investigation into Apple's tax practices in 2014 focusing on the company's relation with its Irish subsidiaries, Apple had entered into two key tax rulings with Ireland in 1991 and 2007 which the European Commission challenged constituted illegal state aid.

## **FINDINGS OF THE COMMISSION**

The European commission found that Apples' Irish subsidiaries paid an effective tax rate of **0.005%** on profits booked through Irish Subsidiaries<sup>24</sup> in 2014, compared to the Irish Standard Corporate Tax rate of **12.5%**. Also, the investigation revealed that Apple had specifically allocated a majority of its European profits to its Irish Subsidiaries that did not have the capacity to generate profits at such a large scale.

## THE VERDICT

On August 30, 2016, the commission submitted its report and finding, that Ireland had provided Apple with illegal state aid which violates European Union Competition Laws. Thus, the European Commission ordered Apple Inc. to pay €13 Billion (\$14.5 billion approx.) in back taxes along with applicable interest at 8% which amounted to roughly at €6Billion to the Irish tax authorities for period ranging from 2004-2014 making the total upto €19 Billion.

## APPEAL

In 2016, Apple and Ireland both decided to appeal the decision of the commission in the European Union's General Court. On 15<sup>th</sup> July, 2020, the court in it's ruling set aside the order of the commission stating that the commission had failed in presenting the required legal standards that Apple Inc. has received tax benefits from Ireland thereby, ruled in the favour of Apple.<sup>25</sup>

During the pendency of the appeal, Apple had placed the €13billion along with €1.3 billion in an Irish escrow account<sup>26</sup>. Margrethe Vestager, the lead investigator in this case, in her

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<sup>24</sup> Financial Times *Interview extracts between Apple tax advisers and Irish Revenue*, Financial Times (Sept 30, 2014) <https://www.ft.com/content/233744b6-4886-11e4-ad19-00144feab7de> .

<sup>25</sup> Joe Brennan, *Ireland wins appeal in €13bn Apple tax case* The Irish Times (Jul 15, 2020 at 10:09) <https://www.irishtimes.com/business/economy/ireland-wins-appeal-in-13bn-apple-tax-case-1.4305044>.

<sup>26</sup> Louise Kelly, *State collects €13bn Apple tax bill – plus interest* The Irish Times (Sept 18, 2018 at 18:37) <https://www.independent.ie/business/technology/state-collects-13bn-apple-tax-bill-plus-interest/37329162.html>.

statement stated that “State aid: Ireland gave illegal tax benefits to Apple worth up to €13 billion”.<sup>27</sup>

## APPEAL TO EUROPEAN COURT OF JUSTICE

On 10<sup>th</sup> September, 2024, the court set aside the ruling of the European Union General Court, thereby confirming the findings of the commission. The court in its judgement stated that “European Court of Justice gives final judgment in the matter and confirms the European Commission’s 2016 decision: Ireland granted Apple unlawful aid which Ireland is required to recover”<sup>28</sup> though the question regarding the interest was rejected by the court of Justice thus the only relief that Apple got was of interest payable to the Irish Authorities<sup>29</sup>.

## TRUE COST OF TAX HAVENS

- **Fiscal Deficit**

Government across the globe rely highly on corporate taxes which they receive from levying it on corporations. According to Tax Justice Network, an independent British advocacy group, India loses about \$32 billion to tax havens across the globe<sup>30</sup>. Also, according to Ernesto Crivelli, Ruud De Mooij and Michael Keen<sup>31</sup>, tax havens cost nearly \$500-\$600 billion yearly in corporate taxes to government treasury across the globe.

- **Impact on Infrastructure and Development Deficiencies**

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<sup>27</sup> "European Commission – PRESS RELEASES – Press release – State aid: Ireland gave illegal tax benefits to Apple worth up to €13 billion" [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_16\\_2923](https://ec.europa.eu/commission/presscorner/detail/en/ip_16_2923).

<sup>28</sup> Charlotte Edwards and Theo Leggett *Apple told to pay Ireland €13bn in tax by EU* (Sept 10, 2024) <https://www.bbc.com/news/articles/ckgwkwxr4eqo>.

<sup>30</sup> Tax Justice Network *Tax Justice Network, Country Profiles* <https://taxjustice.net/country-profiles/india/>.

<sup>31</sup> IMF Working Paper by Ernesto Crivelli, Ruud De Mooij and Michael Keen available at <https://www.imf.org/external/pubs/ft/wp/2015/wp15118.pdf>.

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Governments across the globe relies on corporate taxes to finance social programmes and infrastructure, education and healthcare projects. Various studies have found that nations experiencing high levels of tax evasion often suffer from underfunded infrastructure projects ultimately slowing down the economic growth of the countries. The reason being, since the revenue of the government has reduced the government has to prioritize some projects and leave some other for future. Leading International Organisations estimates that, tax evasion in developing countries leads to an annual reduction of 20% in public investment projects, thereby hindering economic progress significantly.

- **Widens Income Gaps**

According to study conducted by Thomas Piketty, Emmanuel Saez and Gabriel Zucman<sup>32</sup>, tax evasion contributes to the increasing concentration of wealth among the top 1% earners. According to them, when corporations and wealthy individuals indulge in tax evasion, government often shifts the revenue deficit charge to the wages and consumption, disproportionately affecting lower-income citizens. This often leads to greater economic inequality and social unrest among the working class of the country.

- **Erosion of Investor Confidence**

A country's ability to captivate foreign investment relies heavily on its reputation for financial transparency and regulatory stability. When events such as tax evasion is discovered, it raises the eyebrows of investors bout financial mismanagement and legal unpredictability, thus, often discouraging investors whether domestic or foreign from committing capital to such

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<sup>32</sup> Thomas Piketty, Emmanuel Saez and Gabriel Zucman; *Rethinking Capital and Wealth Taxation*, 2023 Oxford Review of Economic Policy, 39, 575-591, 2023.

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countries. Studies have often indicated that countries that suffer from continuous tax evasion, often experiences a capital crunch and a reduced Foreign Direct Investment (FDI).<sup>33</sup>

- **Loss of Creditworthiness and Economic Stability**

International credit rating agencies like Moody's, Standard and Poor's (S&P), Fitch Ratings often keep an eagle's eye when determining the creditworthiness of country and consider tax compliance and enforcement mechanism in their consideration. A nation that has rampant tax evasion risk a downgrade in its credit rating. This leads to increase in the cost of the borrowing for the government and private enterprises.<sup>34</sup> For example, Greece's economic crisis in the early 2010's was exacerbated by high levels of tax evasion, contributing to severe austerity and a loss to investor confidence.<sup>35</sup>

## STEPS TAKEN TO CURB TAX HAVEN USAGE

- **BEPS (OECD Project), 2013**

The Base Erosion and Profit Shifting (BEPS) is a collaborative project between OECD and G20 nations to set up an international framework(s) to counter the corporate tax evasion done by multinational corporation with the help of tax havens who use the method of base erosion and profit shifting technique<sup>36</sup>. The OECD's Committee on Fiscal Affairs began its working on this topic in 2013.

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<sup>33</sup> Zucman, G. (2015). *The Hidden Wealth of Nations: The Scourge of Tax Havens* (pp 3). Chicago: University of Chicago Press, 2025.

<sup>34</sup> Sovereign Ratings Methodology, Moody's Investors Service: <https://ratings.moodys.com/api/rmc-documents/63168>.

<sup>35</sup> Greece Selected Issued by IMF (2017), <https://www.imf.org/en/Publications/CR/Issues/2024/01/23/Greece-Selected-Issues-544034>.

<sup>36</sup> "Base erosion and profit shifting - OECD". [www.oecd.org](http://www.oecd.org).



The project aims mainly at identifying and removing any loopholes or inconsistencies from country to country that enable corporations to shift profits from a high corporate tax nation to a jurisdiction where taxes are less accommodating. In a conservative estimate, restructuring of these loopholes would cause a loss in tax revenue ranging between \$100 to \$240 billion a year. This accounts for about 4 to 10% of global corporate taxes on profits currently being shifted around the world. The action plan applicable to this project stated that failure to address BEPS would create competing international standards the unilateral measures would place a huge rift in the current consensus-based framework, creating a total mess with double taxation once again flooding the world.

- **BEPS 2.0**

In 2019, OECD released another policy note regarding new proposals combatting the BEPS activities of multinational corporation which has been labelled as BEPS 2.0<sup>37</sup>. In the press release, OECD had asserted that this policy has the backing of United States, China, Brazil and India.<sup>38</sup> These pillars posed a threat to the title of Ireland being recognised as the world's largest BEPS safe house which proposed to move to a global systems of taxation where tax is based on where the product was consumed and not where the Intellectual Property of that particular product was based.<sup>39</sup> The Head of tax for PwC in Ireland stated that “there are limited number of consumer in Ireland and the proposal which was under consideration (BEPS 2.0) would obviously lead to the welfare of larger countries”.<sup>40</sup>

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<sup>37</sup> Alexander Hartley "Why BEPS 2.0 makes tax heads nervous". International Tax Review, 2019.

<sup>38</sup> Ibid.

<sup>39</sup> Ireland may soon run out of road on tax, The Irish Times (Feb 02, 2019 at 06:05) <https://www.irishtimes.com/business/economy/ireland-may-soon-run-out-of-road-on-tax-1.3779223> .

<sup>40</sup> Gavin McLoughlin Irish corporation tax faces new squeeze as OECD kicks off digital reform probe, 2019 Irish Independent (Jan 31, 2019 at 08:00), <https://www.independent.ie/business/irish/irish-corporation-tax-faces-new-squeeze-as-oecd-kicks-off-digital-reform-probe/37766815.html> .

## ***Pillar One: Relocation of Profits***

Pillar One seeks to assign a share of the earnings by multinational corporations (MNCs) to the countries in which they make money, regardless of whether the MNC has a physical presence in that country. This is directed mostly toward large digital and consumer-facing firms, which surpass global revenues of €20 billion and boast profit margins over 10%. The primary mechanism, referred to as Amount A, transfers 25% of Remaining profits (profits higher than 10% of revenues) to the jurisdictions where the market is situated.

## ***Pillar Two: Minimum Global Tax***

The Idea to introduces global general pillar taxes of 15% to prevent tax avoidance by Multinational Enterprises (MNEs) that transfer their profits to low-tax jurisdictions. It applies to MNCs with annual revenues of, at least, €750 million.

## **STEPS TAKEN BY INDIA**

- **General Anti-Avoidance Rules, 2012<sup>41</sup>**

The main aim of these regulations was to curb tax avoidance practices by denying tax benefits to transactions lagging commercial substance. The GAAR regulation applies to impermissible avoidance arrangements, which includes creating rights and obligations not originally created in an arms-length transaction, Misuse or abuse of tax laws, lack of commercial substance, or transactions which are carried out in a manner which are not aligned with the standard

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<sup>41</sup> *Final Report on General Anti Avoidance Rules (GAAR) in Income Tax Act, 1961*, Department of Economic Affairs, Ministry of Finance, [https://dea.gov.in/sites/default/files/report\\_gaar\\_itact1961.pdf](https://dea.gov.in/sites/default/files/report_gaar_itact1961.pdf) .

operating procedures of a business enterprise. The key provisions of. The regulation includes the power to recharacterize transactions deny tax treaty benefits and disregard entities or arrangements used for tax avoidance. However, this regulation only applies if the tax benefit exceeds rupees 3 crores and does not affect bona fide commercial transactions.

- **POEM Rules 2017<sup>42</sup>**

Place of Effective Management Rules or POEM is a key legislative reform that has been undertaken by the government to curb the use of shell companies that are though registered outside India but are operated in India. The POEM rule prevents companies from misusing offshore entities to shift profits. What this rule implies is that a company is considered a resident of India for tax purposes if its key management and commercial decisions are made in India, even though the company is incorporated outside India with this the government has aimed to curb the use of shell companies operating in tax havens to avoid the taxes of the resident countries.

- **Amendment to Double Taxation Avoidance Agreements**

After realizing that. Multinational corporations were misusing the double taxation avoidance agreements that India had with Mauritius<sup>43</sup>, Singapore<sup>44</sup> and Cyprus<sup>45</sup>. The government revised its tax treaties with them to prevent round tripping, which means reinvesting Indian money disguised as foreign investment in India. The multilateral instrument of 2019 under

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<sup>42</sup> Circular No 25 of 2017, issued by Central Board of Direct Taxes (CBDT), [https://upload.indiacode.nic.in/showfile?actid=AC\\_CEN\\_2\\_2\\_00039\\_196143\\_1524045010860&type=circular&file name=ita-circulars-circular-no-25-2017-dated-23-10-2017.pdf](https://upload.indiacode.nic.in/showfile?actid=AC_CEN_2_2_00039_196143_1524045010860&type=circular&file name=ita-circulars-circular-no-25-2017-dated-23-10-2017.pdf).

<sup>43</sup> *EY report on the Amended DTAA* Ernst & Young, [https://www.ey.com/en\\_gl/technical/tax-alerts/india-and-mauritius-signs-protocol-amending-double-tax-treaty](https://www.ey.com/en_gl/technical/tax-alerts/india-and-mauritius-signs-protocol-amending-double-tax-treaty).

<sup>44</sup> Amended DTAA Tax Sutra, <https://www.taxsutra.com/sites/taxsutra.com/files/dtaa/SINGAPORE.pdf>.

<sup>45</sup> Archana Rao India Clarifies Tax Treaties with Mauritius, Cyprus, and Singapore India Briefing (Jan 24, 2025), <https://www.india-briefing.com/news/india-clarifies-tax-treaties-with-mauritius-cyprus-and-singapore-35933.html/>.

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the OECD BEPS framework modifies the existing DDA as to counter base erosion and profit shifting.

## **SUGGESTIONS**

- **Ending Tax Haven**

Creating a comprehensive list of tax havens that is devoid of political influence, supported by data, based on objective standards, and includes effective countermeasures. Transparency measures, extremely low tax rates, and detrimental tax practices that result in significant reductions must always be part of the criteria. Strong measures, such as sanctions to stop their use is crucial and incentives for compliance to prevent businesses from moving their profits to tax havens and limit the countries losing investment and tax revenues to such tax havens, should be used when this list is prepared.

- **Re-Negotiating the Taxing Deals**

Generally, agreements between advanced and developing countries have unjust terms and conditions on taxing policies for developing countries. Tax treaty refers to those agreements between countries, which helps in determining between them on which country will have the taxing rights on an Internationally owned company and when they are entered between lower and higher income countries, the latter generally allocates or reserves more taxing rights to themselves, ensuring that money flows. From developing economies to the developed economies. Thus, there is need to re-negotiate the tax treaties between the developed and developing countries for consistent growth and to contribute towards the 2030 Agenda on Sustainable Development Goals.

- **Lowering Taxes**

Though a large chunk of revenue of the government comes from corporate entities, the government should consider lowering the taxes on corporates so as to discourage them to use

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tax haven. A high tax rate does not always guarantee a higher tax collection, Instead, it may lead to an increase in the already existing tax evasion. Bringing down the tax rate and keeping it within a reasonable level will definitely help in reducing the tax evasion through tax haven.

- **Implementing Whistleblower Protection**

Protecting the very person who exposes corporate secrets with respect to tax evasion is a necessary step and morally and ethically right thing to do as the whistleblower exposes himself, his identity needs to be kept secret along with some incentives should be given. This encourages other to come forward when their company exploits the taxing system

## CONCLUSION

In summary. The persistent usage of tax havens by multinational corporations has led to a critical challenge to both national economies as well as the global economy. The paper shows how. Complex mechanisms such as touch sandwich with a double Irish are used to manipulate transfer pricing and but also undermines the principles of fairness and equity. The resulting financial deficits affects the capacity of the government to adequately invest in public services, infrastructure and social welfare leading to income inequalities and impeding the global goal of sustainable development.

But it can be seen. That some initiatives have been taken such as the BEPS, BEPS 2.0. Still, some actions, such as revision of text edits, is an important step toward closing the legal loophole and curbing this plague. However, we must note that these actions should be governed by the principles of natural justice, transparency and strict enforcement. And the political will to hold both corporations and tax havens accountable for their actions. And only through a global effort can be restored. The integrity of the global taxing system ensures equitable distribution of fiscal responsibilities and foremost secure a more just economic future for all.