

3. Working Paper on Tax Policy – Economy

NITI Aayog released the first working paper under the NITI Tax Policy Working Paper Series–I, titled Enhancing Tax Certainty in Permanent Establishment and Profit Attribution for Foreign Investors in India, focusing on improving tax certainty and attracting more foreign investment.

Importance of Tax Certainty

Foreign investment is important – India has received rising FDI inflows, from about USD 6 billion in 2005–06 to USD 50 billion in 2024–25.

Unclear rules create problems – Foreign companies often do not know if they will be taxed in India or not, because of unclear definitions of Permanent Establishment (PE) and profit attribution.

Litigation takes years – Tax disputes in India often last 10–12 years, which is costly and discourages investors.

Permanent Establishment (PE) and Profit Attribution

Permanent Establishment (PE) – A situation where a foreign company is considered to have a “fixed presence” in India (like an office, branch, or even through digital business). If PE exists, the company must pay tax in India.

Profit Attribution is deciding how much of the company’s profit should be taxed in India. This is complicated when business happens partly in India and partly abroad.

Key Proposals in the Working Paper

Optional Presumptive Taxation Scheme – Foreign companies can choose to pay tax at a fixed percentage of their Indian revenue depending on industry. This avoids long disputes and provides clear expectations.

Legislative Clarity – Codify PE definitions and attribution rules aligned with OECD/UN models. Avoid retrospective taxation and provide due process safeguards.

Robust Dispute Resolution – Strengthen Advance Pricing Agreements (APAs) and Mutual Agreement Procedures (MAPs). Explore mandatory arbitration in unresolved cases.

Capacity Building – Train tax officers in complex international tax issues to ensure consistency and fairness.

Stakeholder Engagement – Mandatory public consultations before tax law changes. Enforce a Taxpayer Charter to guarantee rights and transparency.

Administrative Efficiency – Expand safe harbour rules to cover PE attribution. Streamline withholding tax relief using OECD’s TRACE system.

Supreme Court’s Role in Tax Law – Over the years, the Supreme Court has played a key role in shaping how PE and profit attribution are interpreted.

Formula One case (2017) – The Court held that even temporary arrangements, like a race track used by Formula One in India, could create a Permanent Establishment. This showed that the substance of business activity matters more than the legal form.

Hyatt International case (2025) – The Court held that even if a multinational is making a global loss, its Indian operations can still be taxed separately. This reflected the “separate enterprise” principle and expanded India’s power to attribute profits to local activities.

India and International Tax Reforms – India participated in global tax reforms under BEPS (Base Erosion and Profit Shifting). It is a project led by OECD and G20 to stop multinational companies from avoiding taxes. It has 15 “Actions” (recommendations) and one of these is Action 7.

Action 7 – Earlier, companies avoided paying taxes by operating through agents instead of opening offices. Action 7 tightened rules so that such arrangements are also taxed. In 2019, countries agreed that more reforms were needed, especially for digital companies like Google, Facebook, Amazon. Hence Pillar One and Pillar Two were introduced.

Pillar One – Even if a company like Amazon or Google has no office in India, it still earns revenue from Indian customers. Pillar One ensures that part of such profits are taxed in India.

Pillar Two (Global minimum corporate tax) – Sets a **15%** minimum tax for all big multinational

companies worldwide. This stops them from shifting profits to tax havens with very low or zero taxes.

Way Ahead

The NITI Aayog's working paper paves the way for a future-ready tax system by introducing clear rules making India's tax regime fairer, more transparent, and globally competitive. By cutting litigation and attracting foreign investment, these reforms strengthen the tax base and accelerate the journey towards Viksit Bharat@2047.

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