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"Appreciation is a wonderful thing. It makes what is excellent in others belong to us as well".

Voltaire

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"Audentes Fortuna Iuvat"

TABLE OF CONTENTS

LIST OF ABBREVIATIONS

TEU Treaty on European Union

TFEU Treaty on the Functioning of the European Union

EU European Union

EEA The European Economic Area

US The United States

UK The United Kingdom

MNE Multinational Enterprise

CFC Controlled Foreign Corporation

EUR Euro

MS Member States

TJN Tax Justice Network

CTHI Corporate Tax Haven Index

FSI Financial Secrecy Index

BEPS Base Erosion and Profit Shifting

OECD The Organisation for Economic Co-operation and Development i

BC Before Christ

A.D Anno Domini

I.E. Id Est

E.G Exempli Gratia

IMF International Monetary Fund

TIEA Tax Information Exchange Agreement

CRS Common Reporting Standard

FATCA Foreign Account Tax Compliance Act

AEOI Automatic Exchange of Information

MCAA Multilateral Competent Authorities Agreement

CbC Country-by-Country Reporting

CCCTB Common Consolidated Corporate Tax Base

DST Digital Services Tax

IFRS International Financial Reporting Standards

GAAP The Generally Accepted Accounting Principles

CUP The Comparable Uncontrolled Price

IRR Income Inclusion Rule

UTPR Undertaxed Payment Rule

STTR The Subject to Tax Rule

GloBe Global Anti-Base Erosion Proposal

ATAD Anti Tax-Avoidance Directive

LIST OF TABLES

ABSTRACT

Regardless of how today's businesses strive to reach their expansion goals beyond national borders, the main issue is the fact that tax compliance authorities face a bundle of problems that revolve around cooperation and legal limitations. Indeed business goals of big corporations reach further than the national taxing policies of one or even a couple of countries. Tax avoidance is the typical and most relevant case that shows the limitation of legal instruments in generating legal responsibility. On the contrary, tax evasion and tax fraud are clearly regulated as illegal activity punishable by law. De jure, the above-mentioned terms are easily differentiated whereas de facto, today's business models and their "aggressive tax planning" create uncertainty and a grey zone between legality and illegality.

It's safe to say that these malpractices have been happening long ago the internet era or even globalisation but today's challenges have other dimensions. As big globalised corporations have been for some time a challenge for tax officials of every country, this issue multiplies in an even more modern concept which is the case of large MNEs that offer intangible products or even tangible products by business models or platforms that are majorly offered on the internet. A great issue is that not every intangible can be priced or be given a market value by the authorities for there is an infinite number of possibilities in creating new ones. There are numerous issues related to assigning the right value to intangibles, starting from intangibles as digital products to intangibles as corporate assets. Practices that lead to an undervaluation of intangible assets create an unfair market environment for businesses not involved with intangibles. These practices are very interesting to be seen from an accounting perspective and a purely legal perspective.

If there are inconsistencies in the price or worth given to intangible assets or intangible products then, this produces opportunities to use transfer pricing and base erosion techniques as well as accessing secrecy jurisdictions more easily. All these arrangements, in the long run, will be reflected in society and the market, causing unmeasurable damages. One thing is clear, giant undertakings that thrive in the field of intangibles and take advantage of the era of digitalization, have quite an advantageous position in comparison to other members of the market.

INTRODUCTION

While taxation by many individuals is considered a burden, with the latest developments it appears that might be the case. For a great majority of people, taxes are becoming a burden produced from the ability of MNEs to avoid paying their fair share. The European Commission has made its position clear when it declares that fighting tax evasion is essential[1]. Not only for providing greater fairness and economic efficiency but to tackle the unfair burden amongst tax-payers. The weighted average corporate income tax rate has decreased from 46,52 per cent in 1980 to 25,85 per cent in 2020[2]. Adding tax dodging as a factor to this equation and there is a clearer picture of the situation.

With globalisation being the architect of today's economy, law has been trying to control the field without adapting its methods. Indeed, adaptability is the key to survival[3]. This concept introduced by Darwin stands quite relevant for the present situation of international taxation policies. Yet, to this day, the keyword that describes the current situation the best is "limitation". It is paradoxical, that law the mechanism that should provide fairness and justice is building barriers that limit the "radius" of legal responsibility. This way of tackling the issue lead by national political interests and building barriers on cooperation is not solving any issue, but rather giving ground to evasion and avoidance. This strong political background has steered the wheel in the wrong direction, by lowering corporate tax for the purpose of attracting large MNEs in their jurisdictions.

Even though tax non-compliance started to be part of the society together with taxation itself, the challenges of a globalized economy on one side and digitalization, on the other hand, have made it hard to impossible for countries to establish a solution independently. The modern business models have surpassed every border, limitation or concept of locality by simply using the most important technological product of our era, the internet. Tax dodging is a challenge

[1] Eur-Lex, 'COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL On Tax Transparency To Fight Tax Evasion And Avoidance' (*Eur-lex.europa.eu*, 2015) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52015DC0136> accessed 1 May 2021.

[2] Elke Asen, 'Corporate Tax Rates Around The World' (*Tax Foundation.org*, 2020) <https://taxfoundation.org/corporate-tax-rates-around-the-world-2020/> accessed 1 May 2021.

[3] Jean Nickerson, 'Adaptability Is Key To Survival' (*Purposefulselling.ca*, 2018) <https://purposefulselling.ca/adaptability-is-key-to-survival/> accessed 1 May 2021.

more than ever because besides "the traditional ways" of committing tax non-compliance, the digitalization of business models and practices bring another dimension of tax non-compliance "opportunities".

Yet, the causes of tax non-compliance are many and there is no fixed solution on this matter. Beginning with a national standpoint, setting up a consolidated tax policy that combats tax non-compliance is dependent on so many national problems that vary from one country to another. Nevertheless, some causes seem to be present in many countries regardless of their particular issues that remain. According to an article from the Inter-American Center of Tax Administrations (CIAT), some of the causes worth mentioning are the structure of the country's tax system itself, lack of simplicity and accuracy of the tax legislation, aggressive tax planning from multinational enterprises, intangibles that make assigning a true value difficult, the digital economy and the inefficiency of the tax administration[4].

As it seems, digitalization and intangibles play their role but most of the consequences circle around challenges like efficiency, and certainly, this is not a novelty of the last years. These structural issues are as old as civilization itself and undoubtedly tackling these problems primarily as a country is the first step towards a greater solution. Nevertheless, even if countries solve the causes that lead to tax non-compliance internally, corporations functioning in a globalized economy context will still find many loopholes in other jurisdictions, and this makes the fight against non-compliance deficient. By understanding these issues, addressing jurisdiction limitations and leaning towards cooperation and harmonisation at least on a minimal level is the only step that can provide results. Anyhow, to address the issues of a globalized economy with regard to tax compliance and to analyse these issues in an international setting, the reasoning should start from the nucleus. It is the pursuit of every nation that can shape a successful initiative that addresses tax abuse concerns on an international scale. But what holds back a country from cooperation?

From the national perspective, what barricades the development of regional cooperation turns out to be the lack of will and the troublesome competition between jurisdictions to offer lower taxes as a stimulus for MNEs. These issues are mostly dependent on the national political

[4] Alfredo Collosa, 'Which Are The Causes Of Tax Evasion?' (*CIAT*, 2019) <https://www.ciat.org/which-are-the-causes-of-tax-evasion/?lang=en> accessed 1 May 2021.

aspirations of every country. This precisely is also the issue of the EU that has achieved the consolidation of a single market and yet there is no common will to set a minimum standard for corporate tax rates. An estimated 1 trillion Euros in public money is lost every year in the EU, due to tax evasion and avoidance[5]. This reflects a shared issue of the 27 European Member States that although are part of an economic and political union such as the EU, still refuse to take this union to the next step, that being the harmonisation of tax policies. Nevertheless, in this world where borders do not work as barriers that restrain the free reach of another market, it is evident that even a European harmonisation of tax policies will be a partial solution if it is not backed up by a global will to cooperate and find a solution on tax havens, secrecy arrangements and ineffective tax policies.

Effectively, the developed economies have the political and economical strength to stimulate a global change hence, the initiatives of the OECD have gained great attention and focus. Yet, research and statistics show that the solution has a huge barrier, the conflict of interest. The CTHI assesses that some of the OECD countries or their dependencies are ranked as the first six world's greatest enablers of corporate tax abuse[6]. Considering that these countries are expected to be leading towards a solution creates a troubling picture. Moreover, building a platform of effective cooperation to tackle tax non-compliance is the first step towards another challenge, that of digitalization. For this field, the biggest issue is the lack of preparation and comprehension of today's gigantic developments in today's digitalized business field.

In order to tackle this bundle of challenges, firstly it is very important to stress the importance of efficient fiscal policies and the underlying purposes of taxation. This paper will also shed a light on the uncertain legal border that stands between tax avoidance and evasion. All these uncertaintites and challenges will be addressed while incorporating the issue of legal limitations which hinder legal responsibility. While the main target of this research paper is to address the corporate setting of these issues, in order to show the true dimensions of today's international taxation challenges, an analysis of MNEs that particularly take advantage of legal gaps by creating a huge market centred around intangible products is necessary.

[5] European Commission, 'TAX EVASION AND AVOIDANCE: Questions And Answers' (ec.europa.eu, 2012) <https://ec.europa.eu/commission/presscorner/detail/en/MEMO_12_949> accessed 1 May 2021.
[6] Mark Bou Mansour, 'Tax Haven Ranking Shows Countries Setting Global Tax Rules Do Most To Help Firms Bend Them - Tax Justice Network' (*Tax Justice Network*, 2021) <https://www.taxjustice.net/press/tax-haven-ranking-shows-countries-setting-global-tax-rules-do-most-to-help-firms-bend-them/> accessed 1 May 2021.

HISTORICAL OVERVIEW ON THE PURPOSE AND IMPORTANCE OF TAXATION

Benjamin Franklin stated, "The only things certain in life are death and taxes". Imposing taxes has frequently brought displeasure yet, "Taxation is the price which civilized communities pay for the opportunity of remaining civilized"[7]. Indeed, civilization goes hand in hand with taxation. Nevertheless, this reaction taxation has always brought among people has shown a correlation of taxation to revolution itself and consequently to democracy. It is the constant seek of change and rightness in taxing policies that have fuelled many progressive changes and at the same time caused many conflicts. Hence, it is very important to acknowledge the true purpose and importance of taxation in a progressive society.

As Adam Smith has stated, "Little else is requisite to carry a state to the highest degree of opulence from the lowest barbarism but peace, easy taxes, and a tolerable administration of justice: all the rest being brought about by the natural course of things"[8].

Taxation is a system of enforced fees for a product, income or service that is directed at individuals and organizations by the government or its agency. Today, not paying these fees results in legal responsibility and various sanctions. One of the direct purposes of this system is to utilize these financial contributions by implementing various socio-economic development projects[9]. Anyhow, the great attention given to tax compliance is not a trait of today's society or today's social constructs. Taxation can be traced back to the oldest civilizations and perhaps even further. It comes with leadership the responsibility to manage the resources of your people and provide a better environment. Consequently, the concept of taxation can be found as far there is recorded history. Nevertheless, the establishment of a tax system where a fee would be gathered by an organized group that had that specific duty that was given by the rulers of the territory took place at the time of great civilizations.

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[7] Lant Pritchett and Yamini Aiyar, 'Taxes: Price Of Civilization Or Tribute To Leviathan?' [2015] SSRN Electronic Journal <https://www.cgdev.org/sites/default/files/Aiyar-Pritchett-Taxes-Price-Tribute_WP412.pdf> accessed 2 May 2021.

[8] Ibid.

[9] All Answers ltd, 'Explaining The Primary Purpose Of Taxation Economics Essay' (businessteacher.org, January 2021) <https://www.ukessays.com/essays/economics/explaining-the-primary-purpose-of-taxation-economics-essay.php?vref=1> accessed 2 May 2021

If we would jump to today's biggest tax noncompliance challenges, reducing one's tax burden seems to be one of the greatest ongoing problems. Another way of describing this phenomenon is, dishonest tax reporting by individuals or entities. This brings us to the specific category of income taxation which is the honey pot of today's tax noncompliance opportunists. One might think, income tax is a modern challenge that is harder to regulate properly and thus making the comparison to the above ancient civilizations irrelevant. As a matter of fact, as Judge Charles D. Rosa has mentioned: "The Income Tax is by no means a new thing. It is as old as tithes of Biblical times, and appeared later in the Roman estimo, the French dixieme and the English tenth.."[10].

The Greeks had a system of income taxation around 596 B.C in the time of Solon. Moreover, in the time of Ancient Rome, there was income taxation as well although the system used is not clear because of the continuous changes that the rulers of the Empire would make. Anyhow, Edward Gibbon has written about the use of torture in the time of Constantine the Great in 306-337 A.D in gaining the right amount of income tax from the citizens. It's worth mentioning that the earliest historical mention of income taxation is likely to be in 1580 BC in Egypt[11]. As a matter of fact, it was an essential duty of the Vizier to make sure that the judicial and public officials were paying their fair share of income tax otherwise their punishment could even be death[12]. While today, it is not surprising when hearing about different personalities that are successful in profiting from income tax exemption. Quite interesting how these ancient civilizations have shown to be more efficient in tackling one of today's biggest challenges. Nonetheless, the income tax used in such instances certainly has not been regulated like it is today but the logics after this taxation fits under the logics of income taxation.

Primarily, the modern idea of levying taxes on the basis of the generated income had its beginnings in England in 1379.[13] This novelty came after great pressure from King Richard II on the Parliament. It is qualified as the modern idea of income tax because effectively it was

[10]Charles R. Metzger, 'BRIEF HISTORY OF INCOME TAXATION' (1927) Vol. 13 American Bar Association <https://www-jstor-org.ezproxy.ub.unimaas.nl/stable/25707292?seq=1#metadata_info_tab_contents> accessed 2 May 2021.
[11] Ibid.
[12] Samuel Blankson, '*A Brief History Of Taxation'* (1st edn, Lulu Inc 2007).
[13] Charles R. Metzger, 'BRIEF HISTORY OF INCOME TAXATION' (1927) Vol. 13 American Bar Association <https://www-jstor-org.ezproxy.ub.unimaas.nl/stable/25707292?seq=1#metadata_info_tab_contents> accessed 2 May 2021.

an income tax but at the time it was called a graduated poll tax. For the purpose of this taxation, people would pay a fee that would be assigned based on a division of classes built on characteristics such as their living conditions, amount of property, ranking etc. This policy is considered one of the major causes that fuelled the "Peasant's Revolt" of 1381 which almost brought the downfall of King Richard.

Moreover, under the rule of Stuarts, the constant unrest from tax issues reached its peak when Charles I, started to levy the duties without the consent of the Parliament and this situation retaliated into a civil war. Charles was executed in 1649 and from that moment, the Parliament has ruled over England[14]. These continuous tax battles were finally "settled" in a very important moment when the Bill of Rights in 1688 determined that "Levying Money for or to the Use of the Crowne by pretence of Prerogative without Grant of Parlyament for longer time or in other manner then the same is or shall be granted is Illegall"[15].

Income tax was introduced formally with the same name for the first time in the UK in 1798 and it went into force as a temporary tax. The purpose for being temporary was for the Parliament to have an assurance that the King would summon the Parliament each year and thus create dependability on the Parliament.

As mentioned above, throughout history, there has always been an intertwining of tax, war, democracy and revolution and especially in the case of income tax which is a capitalist development as well as a consequence of expansion and wars. Simply put, tax battles are frequently about democracy and representation that oftentimes need to be seen in a class context because of the initial fuel of the rebellion that is the struggle and revolt of a certain class[16].

[14] Rob Normey, 'A Brief History of Taxation' (2001) 25 LawNow [12].
[15] Bill of Rights [1688] 1688.
[16] John Passant, 'Historical Note: The History Of Taxation Is Written In Letters Of Blood And Fire' (2016) 10 Australasian Accounting, Business and Finance Journal <https://ro.uow.edu.au/aabfj/vol10/iss2/6/?utm_source=ro.uow.edu.au%2Faabfj%2Fvol10%2Fiss2%2F6&utm_medium=PDF&utm_campaign=PDFCoverPages> accessed 2 May 2021.

TAX EVASION AND TAX AVOIDANCE

Tax avoidance, evasion or any other action that aims to lower the obligation towards the tax authority has been part of the society since the start of income taxation itself. Both tax avoidance and evasion serve the similar purpose of lowering the amount of tax that a subject has to pay. Nevertheless, legally, they are distinguished from one another.

The subject of law, whether being a physical person or a juridical person, avoids taxes by minimizing the liability towards the tax authorities by using legal means. Deductions offered as a tax relief incentive in regulated cases, tax deferral plans, and tax credits are some of the most used mechanisms to avoid taxes. The whole action of avoiding taxes happens by taking advantage of the legal loopholes and using law as a mechanism to lower your obligations toward the authorities. The fact that tax avoidance is done by using legal means and by "abiding law", results in no illegal action hence it is not sanctioned by the law as an illegal act.

To summarize, the most common ways, a company or a person avoids taxes is by following one of the three routes. The first is interpreting the law of a country in accordance with their interests in order to pay fewer taxes than they should be paying. The second is by trying to declare profits in another country other than the country they earned the profits for the purpose of paying the tax on profits in the chosen country. The last route is by trying to pay the taxes later than the profits were earned[17]. The European Commission gives tax avoidance the following definition: "Tax avoidance is defined as acting within the law, sometimes at the edge of legality, to minimise or eliminate tax that would otherwise be legally owed. It often involves exploiting the strict letter of the law, loopholes and mismatches to obtain a tax advantage that was not originally intended by the legislation"[18].

Whereas, in the case of tax evasion, the subject of law achieves its purpose of lowering the tax burden by deceit or by concealing the true income. Evading taxes is achieved by creating a false declaration of profits which consequently leads to a lower tax burden. Nevertheless, tax evasion, is complex as this false declaration might come from producing fake documents but

[17] Ronen Palan, Richard Murphy and Christian Chavagneux, '*Tax Havens How Globalization Really Works* '(Cornell University 2010).

[18] Commission E, "Time to Get the Missing Part Back" (*Taxation and Customs Union – European Commission* August 19, 2016) <https://ec.europa.eu/taxation_customs/fight-against-tax-fraud-tax evasion/missing-part_en> accessed May 4, 2021.

it might also come from negligence and these two clearly are not treated the same way. The action of falsifying documents and producing false information in order to pay lower taxes is classified as tax fraud. According to the European Commission: "Tax fraud is a form of deliberate evasion of tax which is generally punishable under criminal law. The term includes situations in which deliberately false statements are submitted or fake documents are produced.[19]"

Yet, the essence is that in the case of tax evasion, the subject of law uses deceptive ways to lower the taxes hence tax evasion is mainly sanctioned by law as an illegal act. The European Commission defines tax evasion as following: "Tax evasion generally comprises illegal arrangements where tax liability is hidden or ignored, i.e. the taxpayer pays less tax than he/she is supposed to pay under the law by hiding income or information from the tax authorities"[20]. The taxable capital and income are not declared at all or is only declared partially, and the subject also withholds information that should be declared. Commonly, for most of the countries, this action is regulated as a criminal offence yet there are countries like Switzerland and Liechtenstein where evasion is regulated as a civil offence[21]. At least for the European Union and EEA countries, this different way of classifying tax evasion leads to different consequences like poor cooperation in the case of requests from foreign countries.

By understanding these concepts, it turns out that tax avoidance is the grey area that stands between tax compliance and tax evasion[22]. "Tax compliance" itself is to be understood as the effort of the subjects of law in estimating and paying taxes in accordance with the law[23]. As defined by the European Commission, a subject of law that avoids taxes, remains within the borders of legality regardless of the consequence that avoidance brings thus, a subject avoiding taxes is somehow still complying with tax law yet not with the spirit of law[24].

A decision from the Supreme Court of the United States on January 7, 1935, said, in a unanimous opinion: "The legal right of a taxpayer to decrease the amount of what otherwise

[19] Ibid.
[20] Ibid.
[21] Ronen Palan, Richard Murphy and Christian Chavagneux, 'Tax Havens How Globalization Really Works' (Cornell University 2010).
[22] Ibid.
[23] Farny O and others, "TAX AVOIDANCE, TAX EVASION AND TAX HAVENS" (arbeiterkammer.at, 2015) <https://www.arbeiterkammer.at/infopool/wien/Studie_tax_ avoidance.pdf> accessed May 2, 2021.
[24] Allison Christians, 'Avoidance, Evasion, and Taxpayer Morality' (2014) 44 Wash U J L & Pol'y 39

would be the amount of his taxes or altogether avoid them, by means which the law permits, cannot be doubted"[25]. In regard to this steep distinction between two "mechanisms," that pursue a similar goal, there has been for a long time a great deal of discussions. Nevertheless, the way law has evolved to this day, we have a clear distinction between legality and legitimacy.

However, the distinction remains to be clear and obvious only *de jure* as *de facto* there is an unclear grey area in classifying a particular deed involving the reduction of taxes as avoidance or evasion. One element that makes the distinction somewhat clearer and that quite often is taken into consideration when determining whether a case falls under evasion or avoidance is the Mens Rea[26]. The fraudulent intention can be a primary factor in differentiating evasion from avoidance. While others think Mens Rea should be taken into consideration to conclude if the arrangement falls under "innocent evasion" or "fraudulent evasion"[27]. For example, tax fraud is one of the types of tax evasion that manifests this factor the most as the ill-intention is very evident in this case. Yet, aggressive tax planning also involves Mans Rea, and it cannot be qualified a priori as neither evasion nor avoidance because as it will be seen further on, it depends on how "aggressive" the tax planning is. That is the reason why there cannot be any clear borders between these two. Somehow, the difference between the two is "the thickness of a prison wall"[28].

It's this uncertainty that unsurprisingly creates this unidentifiable grey zone between legality and illegality. Tax avoidance at its core is a consequence of the complexities of a taxation system. These complexities create a vacuum and consequently a great deal of loopholes for the interested parties. What magnifies the vacuum created by one complex system of taxation, is understandably a vacuum created by a bundle of complex legal regimes. Especially when they have different perceptions or regulations on tax non-compliance and particularly poor collaboration between them. This is exactly the issue that tax authorities face in the case of multi-national corporations. Not rarely, the arrangements used by multi-national corporations are hard to get classified under evasion or avoidance. One method that seems to be very popular

[25] Gregory v. Helvering, 293 U. S. 465, 469 (1935).
[26] George S K, 'The Fine (and Hazy) Line between Tax Avoidance and Tax Evasion' (2018) 5 Ct Uncourt 19.
[27] Craig Elliffe, 'The Thickness of a Prison Wall-When Does Tax Avoidance Become a Criminal Offence?' (SSRN, 2012) <https://papers.ssrn.com/sol3 /papers.cfm?abstract_id=1992652> accessed 6 May 2021.
[28] Ibid.

among these multi-national corporates is the one called "aggressive tax planning." The definition given by the European Commission is as follows:

"Aggressive tax planning consists in taking advantage of the technicalities of a tax system or of mismatches between two or more tax systems for the purpose of reducing tax liability. Aggressive tax planning can take a multitude of forms. Its consequences include double deductions (e.g. the same loss is deducted both in the State of source and residence) and double non-taxation (e.g. income which is not taxed in the source State is exempt in the State of residence)"[29].

This scheme is heavily dependent on tax loopholes that international corporations use which in the end, arise from the lack of harmonization of even the most basic concepts related to tax non-compliance.

On this issue the OECD has acknowledged in the BEPS Report that "A number of indicators show that the tax practices of some multinational companies have become more aggressive over time, raising serious compliance and fairness issues"[30]. The more aggressive the tax planning of these multi-national companies becomes, the blurrier the grey zone between avoidance and evasion gets. It is hard to conclude whether aggressive tax planning is on the border of legality or just illegal at this stage, yet it is clear that these actions go against the intention of law. On the one hand, IMF has reacted strongly on the matter declaring that: "There are broadly two sets of issues. One – discussed in the next subsection – is (illegal) evasion by individuals. The other is avoidance by multinationals – legal (or cynics might say, not obviously illegal)"[31].

While on the other hand, many stress this issue completely differently like in the case of the Circuit Court of Appeals for the Second Circuit where the Judge Learned Hand expressed that "Anyone may so arrange his affairs that his taxes shall be as low as possible; he is not bound

[29] Commission European, 'COMMISSION RECOMMENDATION of 6 December 2012 on aggressive tax planning' (Official Journal of the European Union, 2012)<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012H0772&from=EN> accessed 4 May 2021.
[30]OECD (2013),' *Addressing Base Erosion and Profit Shifting'*, OECD Publishing, Paris,<https://doi.org/10.1787/9789264192744-en> accessed on May 4 2021.
[31] INTERNATIONAL MONETARY FUND, 'IMF Fiscal Monitor (FM) - Taxing Times, October 2013' (*IMF* October 1, 2013) <https://www.imf.org/en/Publications /FM/Issues/2016/12/31/Taxing-Times> accessed May 4, 2021.

to choose that pattern which will best pay the Treasury; there is not even a patriotic duty to increase one's taxes."[32]. The current legal status of aggressive tax planning is described at best by Alfred Hacker when he says, "If under tax avoidance one understands the legal possibilities of avoiding tax and under tax evasion the illegal (i.e. punishable) activities to reduce the tax burden, there remains a relatively large grey area between the two in which so-called 'aggressive tax planning' assumes a large role[33]".

Tax planning in the simplest form without attaching any "master plan" to avoid your lawful obligations is considered a quite valuable and important approach for businesses operations. Being careful to minimize your taxes when possible is vital for businesses and up till this point, there is not much to argue on. The problem arises when the taxpayer disregards completely the "spirit of the law" and manipulates the words without adding the logics behind it. In these cases, the actions of the taxpayer lead to another classification that is not just tax planning but aggressive tax planning, tax avoidance or even evasion. This track is not seen only in the case of tax planning but also in the case when incentives that the government offers are abused in order to avoid tax obligations. Some "legal" arrangements that are used and abused for tax purposes are tax-free investments like donations to charity, paying into pension schemes or claiming research and development tax relief. It's the misuse and abuse of legal and lawful actions that makes tax non-compliance a challenge. How do you set the line? When does it start to be a problem? Generally, the more complex the planning or scheme is and the more damages it produces, the more attention gets from the authorities and thus it gains the word "aggressive". Even then, the following issue is if aggressive tax planning is still at the border of legality or not.

In the case of "The Brain Disorders Research Limited Partnership and Neil Hockin v HMRC" the UK court ruled against the claim for a £29 million tax relief after the investors claimed they spent £122 million in Research and Development while it was found that only £ 7 million were spent. The case was qualified as an avoidance scheme but the amount of tax that they claimed was illegal[34]. Yet, there is no way of defining at what point these arrangements get too

[32] Marshall v. Commissioner, 57 F. (2d) 633, 634 (C. C. A. 6th, 1932).
[33] Farny O and others, 'TAX AVOIDANCE, TAX EVASION AND TAX HAVENS' (*arbeiterkammer.at,* 2015) <https://www.arbeiterkammer.at/infopool/wien/Studie_tax_ avoidance.pdf> accessed May 2, 2021.
[34] The Brain Disorders Research Limited Partnership and The Commissioners for her Majesty's Revenue and CustomsHoward M. Nolan Tribunal Judge, (*Financeandtax.decisions.tribunals.gov.uk*, 2015) <https://financeandtax.decisions.tribunals.gov.uk/judgmentfiles/j8488/TC04510.pdf> accessed 4 May 2021.

"aggressive". Moreover, in this case, it is also discussable if the actions constitute avoidance or evasion. After all, the investors hid the correct information and produced fake materials which could easily be regarded as deceptive. Clearly, the uncertainty is alarming when observing various legal cases.

The Congressional Research Service report of 2015[35] recognizes the difficulty of determining a clear distinction between evasion and avoidance but at the same time stresses that in reality, at least in the US, the distinction in practice is likely to be made based on whether the offender is an individual or a corporation. The report gives two examples that display the situation, one being the avoidance case when a multinational corporation builds a factory in a low tax jurisdiction instead of building it in the US in order to take advantage of low foreign corporate tax rates. The evasion situation includes an individual that opens a secret bank account in an offshore jurisdiction and doesn't report the interest income. This division made de facto gets even more unfair the deeper you dig into the problematics, especially when analyzing particular activities corporations undertake. Transfer pricing is one of the activities that is frequently considered as avoidance but if examined could easily be classified as evasion. Transfer pricing is the action of charging low prices for sales to low-tax affiliates while paying high prices for purchases from them. Hence, the prices do not reflect the true value and make the arm's length principle ineffective. These activities could be easily regarded as evasion but as it seems the border of legality focuses on the juridical subject rather than the action itself.

The lack of harmonization as mentioned above is a direct cause of these tax non-compliance actions. Undoubtedly, initially, it affects every country as a distinct member of an economically globalized world. At the same time, it affects even more various regions especially one like the EU that has developed a single market for 28 countries. Lastly, it affects the global economy as a whole. As a matter of fact, a handful of multi-national corporations like Google, Starbucks and Amazon have proven to cause great losses that affect the global economy[36].

[35] Jane G. Gravelle, 'Tax Havens: International Tax Avoidance And Evasion' (2009) 62 National Tax Journal <https://fas.org/sgp/crs/misc/R40623.pdf> accessed 4 May 2021.
[36] INTERNATIONAL MONETARY FUND, 'IMF Fiscal Monitor (FM) -- Taxing Times, October 2013' (*IMF,* October 1, 2013) <https://www.imf.org/en/Publications /FM/Issues/2016/12/31/Taxing-Times> accessed May 4, 2021

Another way of distinguishing evasion and avoidance from each other might be by understanding more on the causes of these actions. In most cases, evasion comes from a lack of information meaning that the offender tries to withhold information or provide false information that lower the tax obligations. The lack of information can be addressed by introducing mechanisms designed to improve information sharing and cooperation between tax authorities. Whereas in the case of avoidance, it is more a consequence of the legislative processes and the way tax codes treat the concept of tax avoidance.

At least for corporation tax dodging, the harmonization of corporate income tax rates could very well address both issues. The latest political developments are moving towards this solution and this progress has been greatly affected by the abusive policies multinational corporations have used, causing great economical damages for many countries. Janet Yellen, the US Treasury Secretary has just recently called for a global minimum corporate tax and the European Commission seems quite supportive of such proposal[37]. The rate of such minimum corporate tax as suggested should be set by the OECD. Yet, the US has its own proposal which involves a 21% minimum corporate tax followed by an elimination of exemptions on income coming from countries that do not establish a minimum tax. The European Commission spokesman Dan Ferrie, in support of this proposal also mentioned the priority of ensuring that digital businesses pay their fair share. The emphasis falling on the digital businesses doesn't come as a surprise considering the intense ongoing discussions in regard to the digital giants that have challenged numerous regulated fields of law such as privacy law, competition law and certainly tax law. Setting a minimum corporate tax rate globally would directly impact the vital platform of tax evasion and avoidance, tax havens. Though there is no explicit status given to the arrangements done in tax havens, by large, these actions are mostly regarded as tax evasion. These arrangements include misleading, misrepresentation and the concealment of facts. Excluding relevant facts and hiding profits or income makes all the action lean more on the side of illegality and evasion. In short, tackling the issue of tax havens is one of the most important and strategical moves in order to put an end to tax abuse.

[37] Jan Strupczewski, 'EU Backs U.S. Call For Global Minimum Corporate Tax, But Rate To Be Decided' (*U.S.*, 2021) <https://www.reuters.com/article/us-usa-treasury-yellen-eu-idUSKBN2BT1YG> accessed 4 May 2021.

TAX HAVENS, THE KEY APPARATUS OF EVADERS AND AVOIDERS

"Tax haven" is a term that usually refers to a country that offers low tax rates or no taxes at all to foreign investors. Yet, it does not refer only to countries but also regions inside a country like the City of London. These regions inside a country that are qualified as tax havens are often called jurisdictions with the purpose of reinforcing the authority responsible for the legal system. Nevertheless, majorly, tax havens are not independent. On the contrary, they belong to developed countries such as the US, France, the UK, the Netherlands, Luxembourg. In other cases, there is still a real connection with an important financial location, which is necessary for these jurisdictions to maintain their role in being a tax evasion hub[38].

There is no standardized definition for tax havens even though a report of OECD in 1998 on Harmful Tax Competition: An Emerging Global Issue, determined some features of these jurisdictions. These features describe four criteria that tax heavens essentially fulfil namely, imposing zero or low minimal tax rates, providing no effective information exchange with other countries, having a lack of transparency in disclosing regulations and lastly, not having the economic activity as a precondition[39]. By using these criteria, the goal is to understand better, follow the patterns and identify these general practices that are used in tax regimes to favour financial or economic activities in specific locations.

The issue of tax havens goes beyond tax. These jurisdictions that offer secrecy and an offshore world full of evasion opportunities, collapse markets and investments while taking the economy as far as possible from efficiency. It is commonly discussed that tax havens affect mostly developing countries but as a matter of fact, these tax-dodging platforms affect both developed and developing countries heavily. These hubs create opportunities for various illicit finance arrangements like tax cheating, fraud, embezzlement, bribery, money laundry and last but not least, tax evasion and avoidance[40]. Because of these "dark places" investments and free trade are distorted and the trust in tax systems is weakened. The harmful consequences affect

[38] Farny O and others, "TAX AVOIDANCE, TAX EVASION AND TAX HAVENS" (*arbeiterkammer.at,* 2015) 8 <https://www.arbeiterkammer.at/infopool/wien/Studie_tax_ avoidance.pdf> accessed May 2, 2021.
[39] ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT 'HARMFUL TAX COMPETITION An Emerging Global Issue' (*Oecd.org*, 1998), para 60 <https://www.oecd.org/ctp/harmful/1904176.pdf> accessed 2 May 2021.
[40] Markus Meinzer and others, 'Introduction' (*Fsi.taxjustice.net*, 2020) <https://fsi.taxjustice.net/en/> accessed 3 May 2021.

the countries individually and also the global market in general. In terms of distorting competition, on the one hand, the local market will be affected by market players that are taking advantage of these tax regimes. On the other hand, competing countries trying to cut taxes in order to attract more foreign investors bring a very problematic situation.

In fact, especially since the 1980s when the era of financial globalization commenced, there has been a constant phenomenon that can be labelled as "competition" between jurisdictions to provide "tax privileges"[41]. It is not easy to quantify the damage in numbers but to create an idea on the dimension of the problem, estimates suggest that at least 8% of global household financial wealth is located in tax havens[42]. Nevertheless, this research paper focuses particularly on corporate tax non-compliance and as a matter of fact, for the region of the EU, this phenomenon of "harmful and unfair" tax competition created by low tax rates is most commonly found in the field of corporate taxation[43].

Other ways of providing the "tax privileges" is by offering these tax cuts as tax incentives and several countries have created the so-called production zones where these incentives are offered[44]. One example is when the jurisdiction offers particular forms of confidentiality like banking secrecy. Trusts are also another e.g. of tax incentives because the original owner of the wealth transfers this wealth to a trustee who administers it accordingly while the identity of the owner remains unknown[45]. Moreover, other indicators showing the presence of such tax incentives are the cases when a country or jurisdiction provides offshore services for non-residents. This policy is reflected as an asymmetrical financial sector in comparison to the local economy. Another characteristic of these jurisdictions is the lack of interference of political changes in the way businesses carry out their activities. This factor makes tax evasion and avoidance easier as these private entities are not fully controlled or regulated by any public entity. Regardless of the importance that legal incentives hold in regulating the issue of tax havens, de facto, the willingness of these jurisdictions to cooperate decreases, even more, when its negotiation power increases. Understandably, the readiness of a party to collaborate is

[41] Ibid.
[42] Gabriel Zucman, 'The Missing Wealth Of Nations: Are Europe And The U.S. Net Debtors Or Net Creditors?*' (2013) 128 The Quarterly Journal of Economics, 1321-1364 <https://academic.oup.com/qje/article-abstract/128/3/1321/1851017?redirectedFrom=fulltext> accessed 3 May 2021.
[43] Farny O and others, 'TAX AVOIDANCE, TAX EVASION AND TAX HAVENS' (*arbeiterkammer.at,* 2015) 8 <https://www.arbeiterkammer.at/infopool/wien/Studie_tax_ avoidance.pdf> accessed May 2, 2021.
[44] Ibid.
[45] Ibid.

essential in achieving agreements in international law and the negotiation process itself with these tax havens varies heavily on their economic interests and also the political power[46].

The secrecy policies of financial institutions have been targeted for years by the OECD as the lack of transparency is considered a key factor that aids tax-havens. Therefore, the OECD has been tackling the issue of tax havens by developing initiatives that fight these secrecy policies and create platforms where the exchange of information for tax purposes is key. In other words, globally the strategy that is being used to fight tax avoidance and evasion is the one that involves information exchange agreements between countries. The effectiveness of these agreements will be discussed further on for the purpose of discussing first the target group or the "offshore hubs" that OECD and EU have announced.

Firstly, it's important to examine the Financial Secrecy Index, the Corporate Tax Haven Index provided by Tax Justice Network and the listing of corporate tax havens provided by Oxfam. These non-governmental organizations with no political interests play an essential role in fighting tax havens. It is necessary to analyse the findings of these organizations side by side with the findings of the OECD and the EU to have a broader view of the issue, both from political organizations as well as from organizations that have no political connections with the entities involved in the issue of tax-havens. As it will be shown below, the findings differ greatly and emphasize different aspects of the same issue.

Does the OECD identify and address the "key players" that offer these harmful tax practices? How effective are the policies that the OECD is implementing in order to fight tax avoidance and evasion hosted in tax havens? The aim of analysing the different data provided by different entities such as the OECD, the EU, TJN and Oxfam is precisely answering these questions. By understanding more about these jurisdictions that offer harmful tax practices and how effectively they are targeted, it is easier to build an objective judgement on how the regional or global initiatives like the ones undertaken by the OECD and EU, have promoted improvement in the cooperation and the reduction of their secrecy policies in these jurisdictions.

The FSI focuses mainly on analysing and ranking jurisdictions on the basis of their secrecy and the degree of their offshore financial activities. The lack of transparency is a key factor in the

[46] Ibid.

formation of tax havens hence it is very important to clarify the role of FSI because the ranking of secrecy jurisdiction does not constitute a list of tax havens per se. TJN does not use the term tax haven but secrecy jurisdictions or offshore financial centre. While sometimes it is used interchangeably with the term tax haven, essentially it has a broader meaning and at the same time in some cases, a narrower meaning.

As there is no clear definition for tax havens, it makes the differentiation between tax havens and secrecy jurisdictions rather difficult. While the secrecy jurisdictions have many similarities with tax havens, the index does not use the same techniques used to list tax havens because the FSI is not focused on the illicit financial practices that multinational corporates carry out. Another reason why sometimes secrecy jurisdictions are not the same as tax havens is the case of the US and Panama. They are both parts of the FSI, yet there is a difference between them, there is no a priori assumption that a subject of law moves to the U.S just to avoid taxes because the US has a quite developed financial market. Hence, subjects of law are prone to move to the U.S for legitimate reasons. While in the case of Panama, a subject of law that moves there will not benefit from a developed financial market or a developed economy hence, the only logical assumption would be to exploit from the jurisdiction by doing illicit finance arrangements.

The methodology used by the FSI involves an intertwining of qualitative and quantitative data that focus on analysing the degree of involvement of the jurisdiction in the financial markets and the secrecy practices. As qualitative data, regulations, laws and information exchange processes are used and ranked in order to achieve a secrecy record. When a secrecy jurisdiction has a high score, it means they are less transparent in showing the activities they foster as well as not highly involved in information exchange with other countries and jurisdictions. Some examples of the indicators that are used in order to evaluate the laws of the secrecy jurisdictions are: checking if there is any banking secrecy and if it is backed by laws of the secrecy jurisdiction, checking if there is any public register of foundations and trusts, checking if the government is aware continuously on the company's ownership details, checking if these details of company's ownership are up to date and available to the public at a reasonable price being maximum 10 € etc.

Concerning the quantitative data, they are used for the purpose of determining the weight this jurisdiction has on the global scale. The secrecy jurisdictions with the highest score are those that have the greatest share in the market of financial services for non-residents. The data used

are usually public, published by international financial services while in the cases when there is a lack of public data, the data of the International Monetary Fund are used. The combination of the secrecy score with the global weighting creates the Financial Secrecy Index. The data are interpreted by also taking into account the global significance of the secrecy jurisdiction. Hence, a jurisdiction that has a considerate share of the international financial services and also a high degree of transparency, is rated with the same score as a smaller secrecy jurisdiction that has no transparency[47].

According to FSI, the amount of private financial wealth situated in untaxed or low-taxed secrecy jurisdictions around the world amounts to around US 21$ - US 32% trillion. Meanwhile, as stated in the FSI index of 2020, the OECD countries are accountable for nearly half of the secrecy hubs in the world, for no less than 49 per cent. These OECD countries provide directly 34 per cent of the global financial secrecy as well as 14 per cent indirectly by using their satellite dependent jurisdictions. When using their satellites, they benefit from the outsourcing of their financial secrecy, by using jurisdictions such as the US Virgin Islands, Curacao, Jersey, Isle of Man etc. Because of these secrecy policies, there are cross-border financial flows in large amounts that come from illegitimate or illicit sources and origin.

One of the worst cases is that of the African countries, which since the 1970s have lost in capital flight more than $US 1 trillion whereas an estimation of the combined external debt amounts to less than US$ 200 billion[48]. Developing countries feel a quite heavy burden from these secrecy jurisdictions. Nevertheless, developed countries are not left behind when it comes to the considerate damage it creates to their economies. Especially EU countries such as Portugal, Greece and Italy have had for years a great ongoing problem with tax evasion and politicians stealing through these secrecy jurisdictions.

An important aspect of FSI is that it rebuts the traditional stereotypes on the tax havens and countries that provide illicit finance structures. The ranking that FSI provides shows that the world's most significant jurisdictions that provide financial secrecy are not only small islands as many suppose but some of the world's biggest most developed economies. As a matter of fact, one of the founding countries of the OECD, the US is ranked second in the index just after

[47] Ibid.
[48] Markus Meinzer and others, 'Introduction' (*Fsi.taxjustice.net*, 2020) <https://fsi.taxjustice.net /en/introduction /introducing-the-fsi/> accessed 3 May 2021.

the Cayman Islands. The 2020 FSI shows the top 10 countries that have the highest secrecy of financial centres. The Cayman Islands hold first place, followed by: USA, Switzerland, Hong Kong, Singapore, Luxembourg, Japan, the Netherlands, the British Virgin Islands and lastly, the United Arab Emirates. In the index, it is also clarified that if the UK would be treated as a single entity with its network of Overseas Territories and Crown Dependencies then, the UK would be ranked in the first place on the index[49].

When comparing the Index of the year 2013 with 2020 one, the first thing that catches your eye is that in the previous index the FSI qualified 82 countries as secrecy jurisdictions[50]. While in 2020, the FSI has qualified 133 countries as secrecy jurisdictions. Yet, it is worth mentioning that from the comparison of the 2020 FSI and the one from a decade ago, there have been improvements and a huge role was played by all the actors of the society that have made the taxation issues gain more popularity and consequently discussed more. Especially these improvements come as a consequence of the latest transparency reforms. By analysing further on, it seems like there have been reforms in automatic exchange of information and beneficial ownership registration. Yet, country by country reforms and progress have been slow and the reporting has been weak. The countries on the index, on average, have reduced their influence on global financial secrecy by 7 per cent. Nonetheless, various jurisdictions that unfortunately have a large share in the global financial market have resisted this trend, the most important ones being the UK, US and understandably Cayman too[51].

A very important index worth turning to is the Corporate Tax Havens Index that focuses particularly on the jurisdictions that provide multinational corporations the opportunity to lower their corporate income tax obligations. The index ranks the jurisdiction based on the combination of two factors namely, the Haven Score and the Global Scale Weight and these two create the CTHI value (Corporate Tax Index Value). The Haven Score measures how big is the range allowed by the jurisdiction's financial and tax systems for corporate tax abuse. Whereas the Global Scale Weight shows the amount of financial activity from multinational corporations in the jurisdiction. Based on these components, the index has shown the top 10

[49]Ibid.
[50] Alex Cobham and Petr Jansky, 'Financial Secrecy Index 2013 Methodology' (*Fsi.taxjustice.net*, 2013) <https://fsi.taxjustice.net/Archive2013/Notes%20and%20Reports/FSI-Methodology.pdf> accessed 2 May 2021.
[51] Markus Meinzer and others, 'Financial Secrecy Index 2020 Reports Progress On Global Transparency – But Backsliding From US, Cayman And UK Prompts Call For Sanctions - Tax Justice Network' (*Tax Justice Network*, 2020) <https://www.taxjustice.net/press/financial-secrecy-index-2020-reports-progress-on-global-transparency-but-backsliding-from-us-cayman-and-uk-prompts-call-for-sanctions/> accessed 1 May 2021.

most important secrecy jurisdictions that host the most financial activity to be: the British Virgin Islands, Cayman Islands, Bermuda, Netherlands, Switzerland, Luxembourg, Hong Kong, Jersey, Singapore and lastly, the United Arab Emirates[52]. It is worth mentioning that the first three ranked jurisdictions together with Jersey are Overseas Territories and Crown Dependencies of the United Kingdom. That being so, as it is also mentioned above, these types of territories function as satellites of larger developed jurisdictions which in this case is the City of London, UK. Nevertheless, when the controlling jurisdictions like the UK are approached by other jurisdictions that request cooperation and the regulation of these tax havens, UK points out that these are sovereign and independent jurisdictions hence, the UK has no control over them.

According to the findings of CTHI, because of the tax havens, every second the equivalent of one nurse's yearly salary is lost. In the case of corporate tax havens, they damage particularly the developing countries. These low-income countries lose every year the equivalent of their combined budgets for public health. An estimated amount of the losses Governments face from tax havens is over $427 billion per year and from this amount, $245 billion, is lost due to cross-border corporate tax abuse by multinational corporations. A quite troubling picture the CTHI shows is the fact that the OECD countries cause over two-thirds of tax abuse risks.

This global organization that for the purpose and dimensions it has constitutes a monopoly and a rule-maker. According to the latest CTHI index, the OECD's member states, and their satellites are responsible for the world's corporate tax abuse risks at 68 per cent. The Member States directly, without their satellites are accountable for 39 per cent of the world's corporate tax abuse risks while their dependencies cause the remaining 29 per cent[53].

Another listing targeting corporate tax havens is the one provided by Oxfam. According to the findings, the top 15 jurisdictions that are qualified as the world's worst tax havens are Bermuda, Cayman Islands, the Netherlands, Switzerland, Singapore, Ireland, Luxembourg, Curaçao, Hong Kong, Cyprus, Bahamas, Jersey, Barbados, Mauritius and the British Virgin Islands[54].

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[52] Markus Meinzer and others, 'Corporate Tax Haven Index 2021' (*Cthi.taxjustice.net*, 2021) <https://cthi.taxjustice.net/en/> accessed 5 May 2021.

[53] Markus Meinzer and others, 'Corporate Tax Haven Index' (*Cthi.taxjustice.net*, 2021) <https://cthi.taxjustice.net/en/impact-and -solutions/the-problem>accessed 5 May 2021

[54] Esmé Berkhout, 'Tax Battles: The Dangerous Global Race To The Bottom On Corporate Tax' (*Oxfam International*, 2016) <https://www.oxfam.org/en/research/tax-battles-dangerous-global-race-bottom-corporate-tax> accessed 2 May 2021.

Once again, UK is not part of the list but 4 of its dependencies are hence the influence of the UK in such tax abuse policies is shown indirectly. The findings provided by Oxfam are very similar to the data provided by CTHI. The research conducted by Oxfam is focused on the main issues tax havens bring such as zero or low corporate tax, tax incentives that have no productivity and the absence of the will to cooperate with international projects against tax avoidance that increase the financial transparency. Oxfam's researchers stress that the average corporate tax rate of G20 countries is today is less than 30 per cent, while 25 years ago was 40 per cent. In a globalized economy aided by the internet and digital advancements that bring business platforms closer than ever to the consumer, with the main players being multinational corporations, using such tax rates causes undoubtedly a huge impact on the economy. Especially when we are in front of facts that point out the tax avoidance, aggressive tax planning or tax evasion coming from these big multinational corporations.

In deep contrast, is the Uncooperative Tax Havens list provided by the OECD in 2002, where there are only seven jurisdictions and none of them is on the current or previous top-10 list provided by the FSI, CTHI or Oxfam. Today, the OECD has no list of Uncooperative Tax Havens. In May 2009, the OECD's Committee on Fiscal Affairs removed the last three remaining jurisdictions from the list as it clarified that Andorra, Monaco and Lichtenstein have shown intentions to implement the required international standards[55].

It is very important to state the differences between the TNJ and Oxfam indexes that show tax havens and the uncooperative tax havens list of the OECD. The differences are in the essence of the information it provides and, on the criteria used. While the TJN and Oxfam focus more on the actual consequences of tax havens, the OECD and EU focus more on the formal policies and the measures these jurisdictions take procedurally. Initially, the OECD created a set of criteria in 1998 to identify tax havens and then it recognized more than 40 jurisdictions that fall under these criteria. The predominant part of this list made commitments by 2007, to implement transparency policies and effective information exchange hence the OECD updated the list of tax havens to those who did not cooperate. The criteria taken into consideration to assess tax havens were:

- checking if the jurisdiction has no tax or has a nominal tax on relevant income,

[55] The OECD , 'List Of Unco-Operative Tax Havens - OECD' (*Oecd.org*) <https://www.oecd.org/countries/monaco/list-of-unco-operative-tax-havens.htm> accessed 3 May 2021.

- checking if there is a lack of effective information exchange,
- checking if there is a lack of transparency and lastly,
- checking if there are no substantial activities[56].

The list of jurisdictions that was created based on these criteria is different from the list of Uncooperative Tax Havens list. The difference is that the new listing focuses on jurisdictions that are tax havens and do not cooperate thus tax havens that cooperate are not included. Yet this does not mean that the cooperating jurisdictions are not tax-havens. On the contrary, as stated before, that is why some of the most developed countries like the USA and UK are qualified as some of the biggest secrecy jurisdictions or corporate tax havens by other sources such as TNJ and OXFAM. As a result, the TJN indexes assess tax havens and secrecy jurisdictions based on their current and effective activity and if these jurisdictions help entities to conduct tax fraud and abuse. While the OECD lists focus on jurisdictions that do not cooperate to take measures for their activities. Another important aspect of the OECD and EU listings is that they are mainly focused on procedural and formal developments rather the effective changes.

A study conducted on the OECD initiative on tackling tax cooperation issues argues that cooperation and progress were not the reason why the OECD narrowed the 1998 list but rather the withdrawal of the U.S support in 2001[57]. Consequently, the OECD changed its approach and focused on information exchange not in requesting reforms until all the parties would sign in. Effectively this resulted in little real progress being made in reducing tax haven arrangements.

In 2016, the EU itself introduced a new project that would be used to identify corporate tax havens based on 3 factors. A jurisdiction must meet at least two of the factors in order to be compliant. These factors are:

- being considered compliant on tax transparency
- being considered compliant on fair taxation

[56] The OECD , 'COUNTERING OFFSHORE TAX EVASION' (*Oecd.org*, 2009) <https://www.oecd.org/ctp/exchange-of-tax-information/42469606.pdf> accessed 4 May 2021.
[57] Jane G. Gravelle, 'Tax Havens: International Tax Avoidance And Evasion' (2009) 62 National Tax Journal, 4<https://fas.org/sgp/crs/misc/R40623.pdf> accessed 4 May 2021.

- implement anti-BEPS (tax base erosion and profit shifting) measures[58]

After the assessment of 92 jurisdictions based on these criteria, the EU concluded that 72 countries do not meet the above-mentioned criteria. While most of them were put on the grey or watch list, 17 of them were put on the blacklist. Today there are 12 jurisdictions[59] listed and all are non-EU jurisdictions that are not found on the top 10 tax havens that different indexes such as FSI, CTHI and Oxfam show. Again, the assessment of this list is made based on political and procedural grounds rather than effective reforms or the real damage the jurisdiction creates in being a tax haven and how much tax abuse and fraud it fosters.

As for the content of the listings, it can be concluded that the jurisdictions that the EU identifies as problematic and the jurisdictions that are identified by the Oxfam and TJN indexes are two completely different pictures. Non-political organizations like Oxfam discuss that the EU should put its house in order before addressing non-EU jurisdictions for fostering harmful tax practices. An assessment conducted by Oxfam, on the EU countries and their tax practices shows that the list provided by the EU has a political substance and it is not impartial. That is why, the EU countries were analysed by Oxfam based on two factors namely, the potential harmful tax practices and the attracted profits that are not reflected for the real economic activity they have in the jurisdiction. The results coming from the use of Eurostat data show 18 EU countries to have potentially harmful tax practices. These countries are Belgium, Ireland, Netherlands, Cyprus, Italy, Poland, Croatia, Latvia, Portugal, Estonia, Lithuania, Slovak Republic, France, Luxembourg, Spain, Hungary, Malta and UK[60].

Although the issue of jurisdictions that offer tax-dodging policies remains a very complex topic that requires ongoing research and analysis, there is an objective deduction arising from the above analysis. The indications show that the EU and the OECD do not target directly the most problematic offenders that cause effectively the vast majority of tax abuse. This actuality might be a result of these organizations having other priorities or considering that having another strategy is more beneficial. Nevertheless, a great factor that affects the situation is

[58] European Council, 'Taxation: Council publishes an EU list of non-cooperative jurisdictions' (consilium.europa.eu, 2017)< https://www.consilium.europa.eu/en/press/press-releases/2017/12/05/taxation-council-publishes-an-eu-list-of-non-cooperative-jurisdictions/> accessed 2 May 2021.
[59] European Commission, 'Common EU list of third country jurisdictions for tax purposes' (ec.europa.eu, 2020)<https://ec.europa.eu/taxation_customs/tax-common-eu-list_en> accessed 2 May 2021.
[60] Oxfam International, 'ASSESSING JURISDICTIONS AGAINST EU LISTING CRITERIA' (www.oxfam.org, 2019) < https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620625/tb-off-the-hook-tax-havens-methodology-070319-en.pdf > accessed 1 May 2021.

undoubtedly the political interests that at the end of the day highlight countries that have a great deal of decision-making power in the global arena for all the international policies related to taxation. Spotting the countries that face a conflict of interest in regulating the current tax-dodging platforms is not hard.

Indeed, a distinction consisting of three main zones can be made[61]. The first one is the European zone, including Switzerland, Luxembourg, the Netherlands and Switzerland as the most important tax havens which mainly centre around corporate headquarters, banking and finance houses. The second zone is the City of London with its crown dependencies, overseas territories as well as Hong Kong and Singapore. Lastly, the third zone is found in the United States. While it should be emphasized that the most influential zone is the British one. Another way of presenting the situation is as Zucman when he defines the well-built network as "trio-infernal" particularly, Switzerland, Luxembourg and the British Virgin Islands[62].

Hence, the clash of grandiose economic interests coming from these giant developed markets can be traced without difficulty. In conclusion, the main offenders that cause the greatest damage to the global economy are quite known and brought up by many authors and non-governmental organizations but not by the organizations that are in charge of developing solutions on this matter. As discussed above, there have been strategies that address these concerns like the attempts to increase the transparency of these jurisdictions and the improvement of the automatic information exchange. Further on, this paper will analyse the effectiveness of these policies. Do these policies actually outweigh the damage already caused by the absence of targeting directly the main offenders and are these formal requirements productive as measures in fighting tax evasion and avoidance?

INFORMATION EXCHANGE AGREEMENTS

Information exchange agreements (TIEA's), the Common Reporting Standard (CRS) and the Foreign Account Tax Compliance Act (FATCA) are the key instruments used for the purpose of increasing information exchange among countries. The success of these efforts and this

[61] Ronen Palan, Richard Murphy and Christian Chavagneux, '*Tax Havens How Globalization Really Works'* (Cornell University 2010) 146.

[62] Farny O and others, "TAX AVOIDANCE, TAX EVASION AND TAX HAVENS" (*arbeiterkammer.at,* 2015), 18 <https://www.arbeiterkammer.at/infopool/wien/Studie_tax_ avoidance.pdf> accessed May 2, 2021.

strategy remain an open discussion yet empirically, based on the evidence, information exchange agreements do not reduce tax evasion generally[63].

TIEAs are bilateral agreements that are negotiated individually between countries. This system is the predecessor of CRS and even though still in power and working side by side with CRS, it is more limited. When it comes to CRS, it is a universal model for the automatic exchange of information (AEOI), designed in 2014 by the OECD. CRS is a project substantially different from the previous initiatives taken internationally in the field of information exchange. What makes it different from other initiatives is the multilateral approach, the broad scope and the extensive country coverage[64]. FATCA is also important to be mentioned because the US is the only major economy that is not committed to CRS. As a matter of fact, it was the US in 2010, that initially reacted to cross-border tax avoidance and evasion coming from its citizens. Like this, FATCA arose as a system that would oblige foreign financial institutions to gather and inform automatically the IRS on the financial account information of US citizens. FATCA was an important factor that prompted the discussion among the OECD member states that lead to the creation of the CRS. Today, the CRS is the most significant worldwide mechanism used to combat tax evasion and avoidance.

Two main reasons why the CRS today has built a lot of expectations and is regarded as the most significant project is because it is a multilateral approach that breaks the barriers or requirements arising from country-by-country negotiations and because it has a broader scope than any other previous initiative. As soon as a country sings the MCAA, the financial information is exchanged automatically once a year, by financial institutions on financial assets of non-resident taxpayers. Furthermore, the CRS does not only focus on receiving financial information like FATCA but also on providing information. On the other hand, TIEAs have shown to be ineffective in achieving the purpose they were meant for. They lack efficiency because they have shown to be expensive, they are rarely used, and it takes several months to notice results. Though there are many secrecy jurisdictions that have signed TIEAs, the

[63] Elisa Casi, Christoph Spengel and Barbara Stage, 'Cross-Border Tax Evasion After The Common Reporting Standard: Game Over?' [2020] SSRN Electronic Journal <https://www.sciencedirect.com/science/article/pii/S0047272720301043> accessed 3 May 2021.
[64] Ibid.

exchange of information is not achieved accordingly mainly because of the fences their local legislation builds[65].

Regarding the efficiency of the CRS, regardless of the exceptions and loopholes that are hindering the delivery of optimal results, there is evidence that the CRS is causing changes in the sphere of offshore jurisdictions. Estimates delivered by Deutsche Bank and Oliver Wyman in 2017, indicate that because of the CRS, by the end of 2017, there has been a flow of USD 1.1 trillion out of offshore accounts[66].

A study conducted from the fourth quarter of 2014 to the third quarter of 2017, which focuses on the effectiveness of CRS in lowering the amount of wealth and related income in tax havens has shown an estimated impact of the CRS. As a short-term impact, this study has concluded that by the time the CRS has passed into national law in the offshore jurisdictions the cross-border deposits held by non-residents of tax havens has statistically decreased by 11,5 %. According to the study, the CRS has not truly put an end to cross-border tax evasion or avoidance. Instead, there has been a change in dynamics which favours the US which has no obligation to report to the CRS. Indeed, the study has found that during the period the research has been conducted, there has been an increase by 10% in the cross-border deposits held by residents of non-haven countries in the US after the CRS took effect. On the other hand, the study also has found that the CRS is responsible for the reduction of the cross-border deposits in traditional tax havens by USD 45 billion at the lower bound[67].

Another new initiative introduced by the OECD which focuses on increasing the transparency and the quality of data on corporate taxation is the Country-by-Country (CbC) Reporting under BEPS Action 13. Action 13 under BEPS is one of the four minimum standards which are subject to peer review. This means that all members of the Inclusive Framework on BEPS are committed and thus obliged to implement the four minimum standards as well as to participate in the peer reviews. CbC Reporting requires all large multinational entities (MNEs) to prepare a CbC report including all the data related to the global allocation of income, paid taxes, profit and economic activity in every jurisdiction in which the MNE operates.

[65] Tax Free Today, 'How Tax Information Exchange Agreements (TIEAs) work' (www.tax-free.today, 2019) < https://tax-free.today/blog/tax-information-exchange-agreements/> accessed 3 May 2021.
[66] Ibid 2.
[67] Ibid 11.

Table 1. Comparison of TIEAs, FATCA and CRS[68].

TIEAs	FATCA	CRS
Key Dates	**Key Dates**	**Key Dates**
• 19 May 1998: OECD Report 'Harmful Tax Competition: An Emerging Global Issue' was published • April 2002: OECD launched the Model Agreement on Exchange of Information in Tax Matters (Model TIEA) • From early 2000 up to now: 887 TIEAs are signed; between 2008 and 2013: 744 have been signed	• 2007: IRS issued its report entitled "Reducing the Federal Tax Gap" • 18 March 2010: FATCA provisions were passed • 8 February 2012: the US Treasury issued exhaustive reporting guidelines on FATCA • 1 January 2013: the final FATCA legislation is issued • From June 2013: FATCA Intergovernmental Agreements (IGAs) become effective	• 13 February 2014: CRS was introduced by the OECD • From October 2014: the signing the MCAA by the member jurisdictions started • From 2015: the implementation of the CRS in the member jurisdictions started • From January 2016: data gathering by financial institutions started under the CRS • September 2017: data exchange under the CRS for the first time
Collaborating Tax Havens	**Collaborating Tax Havens**	**Collaborating Tax Havens**
Andorra, Anguilla, Antigua and Barbuda, Aruba, Bahamas, Bahrain, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands, Cook Islands, Cyprus, Dominica, Gibraltar, Grenada, Guernsey, Hong Kong, Isle of Man, Jersey, Liberia, Liechtenstein, Luxembourg, Maldives, Malta, Marshall Islands, Mauritius, Monaco, Montserrat, Nauru, Netherlands Antilles, Niue, Panama, Saint Lucia, Saint Kitts and Nevis, Samoa, Saint Vincent and the Grenadines, San Marino, Seychelles, Singapore, Turks and Caicos Islands, Switzerland, Vanuatu	Anguilla, Antigua and Barbuda, Bahamas, Bahrain, Barbados, Bermuda, British Virgin Islands, Cayman Islands, Cyprus, Dominica, Gibraltar, Grenada, Guernsey, Hong Kong, Isle of Man, Jersey, Liechtenstein, Luxembourg, Malta, Mauritius, Montserrat, Panama, Saint Lucia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, San Marino, Seychelles, Singapore, Turks and Caicos Islands, Switzerland	Andorra, Anguilla, Antigua and Barbuda, Aruba, Bahamas, Bahrain, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands, Cook Islands, Cyprus, Dominica, Gibraltar, Grenada, Guernsey, Hong Kong, Isle of Man, Jersey, Liberia, Liechtenstein, Luxembourg, Malta, Marshall Islands, Mauritius, Monaco, Montserrat, Nauru, Niue, Panama, Saint Lucia, Saint Kitts and Nevis, Samoa, Saint Vincent and the Grenadines, San Marino, Seychelles, Singapore, Turks and Caicos Islands, Switzerland, Vanuatu
The Scope *Information is exchanged either upon request or spontaneously* • The applicant country must submit identification information on the taxpayer and the tax purpose for which the information is required. Tax includes taxes on income or profits, taxes on capital, taxes on net wealth, and estate, inheritance or gift taxes (potentially also other taxes) • The requested country must provide information held by financial institutions and in case of indirect ownership, information on all persons in the ownership chain	**The Scope** *Automatically exchanged information on accounts from US citizens abroad:* • Identification information of the account holder, or of the last beneficial owner if indirectly owned, • Information on the account, including the balance, the interest and/or dividend amount, the amount of other income generated from the assets held in the account, the proceeds from the sale or redemption of financial assets, the amount paid or credited by the reporting financial institution in reference to the account *Information exchanged upon request on accounts from foreign citizens in the US:* • Identification information of the account holder, if indirectly owned, on the last beneficial owner • Information on the account, including the interest and/or dividend amount, the amount of other income generated from the assets held in the account	**The Scope** *Automatically exchanged information:* • Identification information of the account holder, or of the last beneficial owner if indirectly owned • Financial information on the account, including the balance, the interest and/or dividend amount, the amount of other income generated from the assets held in the account, the proceeds from the sale or redemption of financial assets, the amount paid or credited by the reporting financial institution in reference to the account

Surely, the MNEs that are required to prepare the reporting have to fall under the criteria that Action 13 requires. The criteria determine that every MNE that has a consolidated group revenue of EUR 750 million is required to file a CbC report for every jurisdiction the MNE operates in[69]. Further on, every member country is required to collect and share detailed data on these MNEs that are conducting business in their jurisdiction[70]. It is still a very new ambitious project just like BEPS hence, it is too soon to have a conclusion on its effectiveness.

As this header has shown, there are current initiatives trying to tackle the substantial damage tax havens bring to the worldwide economy. The productivity of the approaches these initiatives take can surely be discussed as there are as many sceptics as there are supporters. Evidence and data show that there is still a lot of work to be done. In regard to the current effects of these initiatives, it seems there are improvements but not substantial ones. The mechanisms used seem to be limited in causing a great change of the present situation even if used with the highest efficiency. For these mechanisms to have the highest effectivity, minimally there should be a completely different approach in classifying jurisdictions as tax havens because the lists provided by the OECD do not reflect the reality. Yet, even if such changes are implemented, there is a much simpler way that would have a higher impact on the situation. Harmonization of at least the minimum corporate tax rate together with the way tax abuse is dealt with would overcome the effects of the current initiatives and produce substantial changes. Information exchange remains a very beneficial initiative that would aid greatly in the cases of concealment of information on profit and income. However, to fight the platforms that offer tax-dodging policies, the solution remains still in changing these policies and setting a minimum standard.

[68] Elisa Casi, Christoph Spengel and Barbara Stage, 'Cross-Border Tax Evasion After The Common Reporting Standard: Game Over?' (SSRN Electronic Journal, 2020), 4<https://www.sciencedirect.com/science/article/pii/S0047272720301043> accessed 3 May 2021.

[69] OECD, Country-by-Country Reporting: Handbook on Effective Implementation, (OECD 2017) <www.oecd.org/tax/beps/country-by-country-reporting-handbook-on-effective-implementation.pdf> accessed 2 May 2021.

[70] PMG, 'OECD: New methodology for peer review of BEPS Action 13 country-by-country reporting' (home.kpmg, 2020)<https://home.kpmg/us/en/home/insights/2020/10/tnf-oecd-new-methodology-peer-review-beps-action-13-cbc-reporting.html>accessed 2 May 2021

IS IT THE TIME FOR HARMONISATION?

This initiative for a minimum standard and other initiatives that lead to a harmonized regulatory platform for corporate tax rates have been floating around for a long time. In the EU this debate dates back to the 1960s at the early stages of the EU economic integration[71]. Since then, the negative effects that different corporate systems of Member States would bring for the creation of a common market were discussed. As a matter of fact, in 1975, the Commission introduced a directive that would harmonize the corporate tax rates in a band starting from 45 to 55 per cent. This initiative and many others did not materialize. Yet, there has been a constant discussion on the issue of a single market with many different tax systems.

The EU has achieved a certain degree of regulation for the taxation field, although the scope is limited[72]. Direct taxation since the beginning has been a competence of the Member States. Yet, in accordance with the principle of conferral, the EU can act within the limits of the competencies that the Member States confer upon it in order to reach the objectives set in the Treaties. This also means that direct taxation is one of the shared competencies because besides the importance taxation policies have for every Member State, these policies affect the internal market greatly.

The principle of proportionality and subsidiarity laid down in article 5 FEU also assign limitations to the exercise of competencies of the EU in the field of direct taxation[73]. The principle of subsidiarity addresses shared competences by defining that EU acts on these competencies for as far as the objectives required cannot be adequately met by the Member States. Moreover, the proportionality principle requires the actions of the EU not to surpass what is necessary to achieve its objectives. Besides regulating the competencies of the EU in the fields of direct taxation, indirectly these principles also hinder harmonization.

Nevertheless, different paths can be used to achieve a harmonized tax field in the EU. One way is by referencing article 115 TFEU which can be used as a legal basis although the article itself

[71] Michael Lang(Hg.), Pasquale Pistone(Hg.), Josef Schuch(Hg.), Claus Staringer(Hg.), 'Introduction to European Tax Law on Direct Taxation' (Linde Verlag, 2015), 1210 Wien, ISBN: 9783709407615, 43.
[72] Ibid.
[73] Consolidated Version of the Treaty on European Union [2008] OJ C115/13.

does not expressis verbis address direct taxation[74]. It permits the Council to establish directives, regulations and provisions directly affecting the functioning of the internal market but only by unanimity[75]. Which for the case of harmonizing direct taxation policies is hard to impossible to achieve mainly of the political climate that is always closely tied to important national matters like taxation.

Acknowledging the complexity of the issue and the ongoing debate over the degree of harmonization that would suit them best, the EU has tried to use other routes to develop a solution. The focus has been falling on cooperation and on decreasing obstacles at least to some extent. This way tax cooperation in the EU has aided different tax systems to be more consistent with one another. One initiative that addresses directly tax avoidance and attempts to set a minimum standard for the protection of the Internal market is the Council Directive 2016/1164 of 12 July 2016[76]. This Directive comes as a package that includes ATAD I and ATAD II and one of the main aims is to ensure and provide that the Member States use a coordinated approach in the implementation of some of the recommendations under the OECD BEPS project.

The ATAD package introduces 5 regulatory rules starting from a minimum harmonization framework for CFCs proceeding with interest deductions rules, an exit tax rule, hybrid mismatches rules and it also requires an introduction of the GAAR rule[77]. The rule addressing hybrid mismatches targets companies that try to abuse national mismatches and use them as loopholes to avoid taxes. The exit taxes rule targets taxpayers that move their assets out of a jurisdiction by introducing four cases that shall be treated as sale of assets if the assets still remain under the same ownership. These rules should all be implemented by January 1, 2019. However, till January 1, 2024, the MS have the option of applying national interest limitation rules if they are "equally effective" to the ATAD I rules. ATAD is a promising initiative for the EU. It will function as a bridge that will bring the CCCTB closer to finalization while at the same time it makes the transition to the BEPS policies easier. There have been several

[74] Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (TFEU) [2016] OJ C202/1.
[75] Michael Lang(Hg.), Pasquale Pistone(Hg.), Josef Schuch(Hg.), Claus Staringer(Hg.), 'Introduction to European Tax Law on Direct Taxation' (Linde Verlag, 2015), 1210 Wien, ISBN: 9783709407615, 11.
[76] Ibid 19.
[77] Minor, R,' EU Anti-Tax Avoidance Directive Took Effect January 1, 2019'. (The National Law Review,2019) <https://www.natlawreview.com/article/eu-anti-tax-avoidance-directive-took-effect-january-1-2019> Accessed 10 May 2021.

critics, one being the lack of adequate guidance on some of the rules found in the GAAR and CFC articles. Nonetheless, the ATAD is a very promising step towards harmonization.

To this day, the only straightforward harmonization initiative that was proposed as a Directive is the Common Consolidated Corporate Tax Base (CCCTB). A project that started in 2004 and got published as a draft Directive by the Commission on 15 March 2011[78]. This project was met with opposition from numerous Member States hence it remained just an aspiration until October 2016 when the Commission proposed to re-launch it again. CCCTB is composed of a set of rules that calculate and assess the businesses taxable profits in the EU. This project is a straightforward harmonization initiative because the companies would have to comply with only one single EU system that would assess their taxable income and not with the laws of each and every EU Member State. The finalization of this initiative would impact and improve first and foremost, the Single Market as it would reduce the uncertainty on the side of authorities as well as the companies. Another great impact would be the major changes in regard to combating tax avoidance[79]. Unfortunately, the re-launch did not go according to plan and the proposal is still stuck as ministers failed to agree on the framework. Unfortunately, this project still continues to seem unrealistic on the political level.

Moving forward, the EU has another challenge that needs to be addressed in a larger scale. This delicate issue is related to the way MNEs aided by the digitalization of their business practices access the advantages of an unharmonized taxation field even more easily than the other interested subjects. For years now, concerns arise constantly on the current international tax system if it does properly address and regulate the digitalization of the economy. Based on the present international tax rules, in the case of the digital sector, MNEs mostly pay corporate income tax where production takes place and not where the consumers are located. Many disagree with this practice and stress that because of the digital economy, corporations gain their income from users that in this case are abroad. Yet, the lack of physical presence in these markets exempts the corporations from being a subject of the corporate tax rates a country imposes[80].

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[78] Judith Freedman and others, 'The KPMG guide to CCCTB' (assets.kpmg,2012) KPMG International Cooperative <https://assets.kpmg/content/dam/kpmg/pdf/2012/10/ccctb-part1-v2.pdf> accessed 5 May 2021.

[79] European Commission 'Common Consolidated Corporate Tax Base (CCCTB)'(ec.europa.eu) <https://ec.europa.eu/taxation_customs/business/company-tax/common-consolidated-corporate-tax-base-ccctb_en> accessed 5 May 2021.

[80] Elke Asen, 'What European OECD Countries Are Doing about Digital Services Taxes' (*Tax Foundation.org*, 2021) < https://taxfoundation.org/digital-tax-europe-2020/ > accessed 1 May 2021.

At the global level, the OECD is dealing with this issue and it has been negotiating with 137 countries to improve and adapt the international taxation system accordingly. BEPS under Action 1 focuses entirely on the tax challenges digitalization brings. It recognizes nexus and profit allocation to be some of the greatest issues and it ensures to provide new rules that do not necessarily connect business profits with its physical presence. These attempts are focused on developing a solution under the context of multilateral agreements and on a broad scale that would include all cooperative countries. Nevertheless, the issue of digital economies has been going on for some years now and many countries have decided to move forward with unilateral agreements. This is indeed the way some of the European Union countries have decided to proceed.

Regionally and also globally, The European Union is quite developed economically, and this growth majorly is a result of the economic and political union of 27 countries. The Internal market provides access to the markets of all the MS hence it is very easy for entities to expand and reach the customers as soon as they reach the single market. This makes the lack of corporate tax harmonization even to a minimal level very problematic especially for digital businesses. The different corporate tax rates throughout the whole region create an imbalance among countries in fostering MNEs. Understandably, the corporations tend to expand their branches in jurisdictions that offer low corporate taxes. Which makes countries like Ireland, Netherlands, Luxembourg, Belgium, Malta and Cyprus quite advantageous. At the same time, they account for the loss of EUR 42.8 billion in tax revenue for the rest of the EU countries[81].

About half of the European countries that are part of the OECD have tackled this issue by announcing, proposing or implementing a digital services tax (DST). DST is a tax that falls on particular gross revenue streams of large digital corporates and since this tax predominantly targets U.S corporations it is considered by the U.S discriminatory. Even though the tax rates and the scope are different among different countries, it still makes these developments very similar to the case of France v Google[82]or "harmonization from the back door of the tax policies".

[81] Thomas R. Tørsløv, Ludvig S. Wier, Gabriel Zucman'THE MISSING PROFITS OF NATIONS'(Gabriel-zucman.eu, 2018) NBER WORKING PAPER SERIES < https://gabriel-zucman.eu/files/TWZ2018.pdf> accessed 1 May 2021.

[82] Société GOOGLE IRELAND LIMITED ,N° 1505113/1-1 TRIBUNAL ADMINISTRATIF DE PARIS

For the way the European Union was brought to life, minimum standards are the core of the economic zone and the coordination of corporate tax policies would provide a minimum standard for the taxation policy. France has triggered various discussions on the digital corporate tax situation in the EU. In 2017, supported by Italy, Germany and Spain, France requested that digital multi-national corporations like Amazon and Google be taxed in the EU based on their revenue made in the Member countries and not on the profits which are booked in the subsidiaries that are established in low tax countries like Ireland[83]. France urged to request by the European Commission to resolve this issue by establishing an "equalization tax" on turnover in the country the revenue was earned[84].

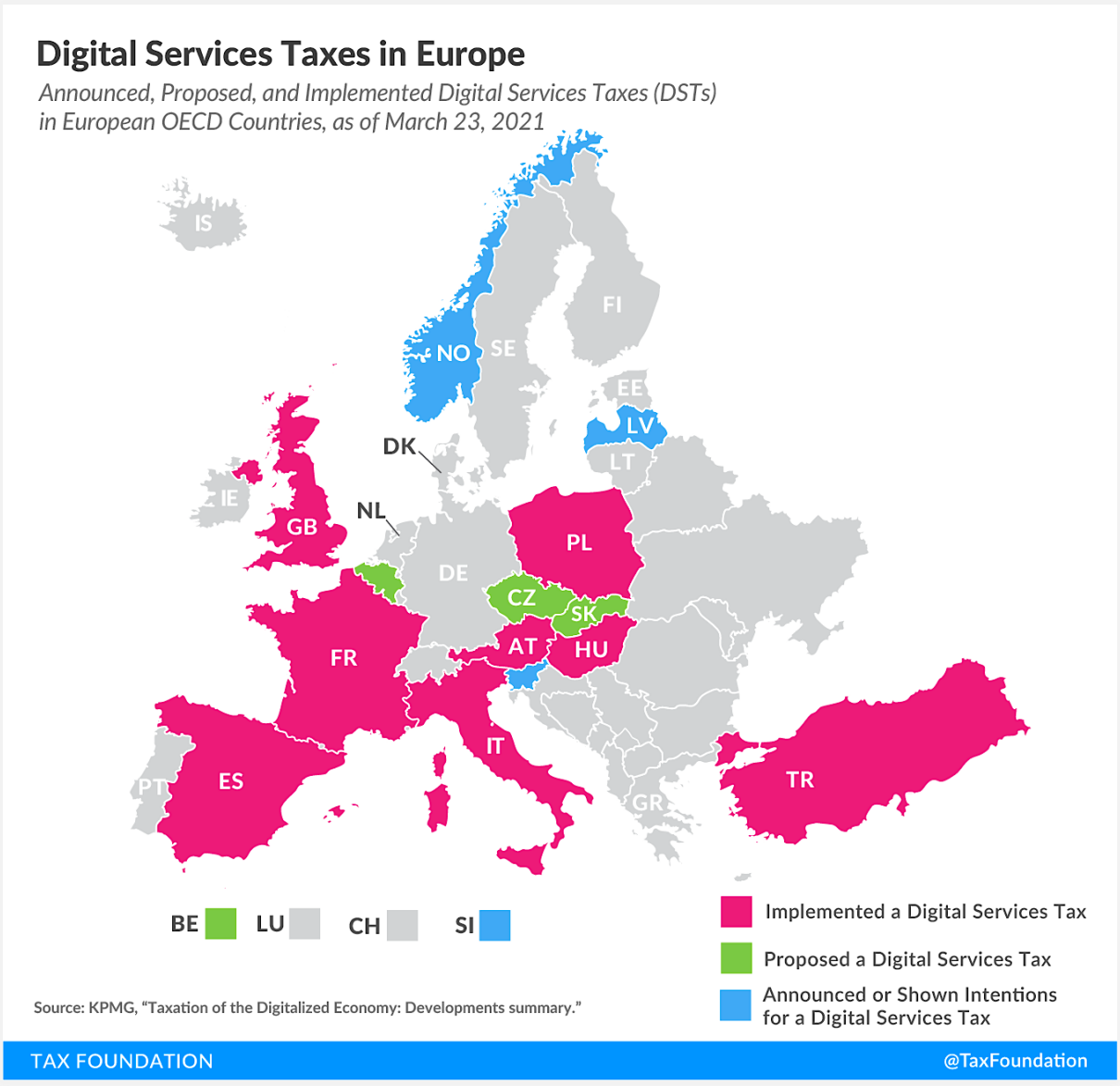
This proposal was met with resistance from Ireland Denmark, Finland and Sweden thus making it unsuccessful. Ireland particularly was very worried about this project as it claims that it's directly an attack on the member states sovereignty over corporate tax. The initiative presented by France has been considered an attempt to reach "harmonization through the back door"[85]. Ireland stresses that the unification of such tax policies would cause the change of all balances and inevitably would mean that the larger member states will do better than the smaller ones hence this would directly damage the economy of Ireland.

Nevertheless, regardless of a failed multilateral initiative to tackle nexus rules inside the European Union, the French authorities never gave up addressing the tax avoidance happening inside the EU. Since 2015 they proceeded to investigate Google on their tax practices. In 2019, the district court of Paris approved a "convention judiciaire d'intérêt public" which provides the opportunity to end legal actions in return for the payment of a fine. This concept is also used for tax evasion cases and in the case of Google, the charge included EUR 500 million for tax evasion as well as EUR 465 million in order to settle claims with French tax authorities. The dispute itself revolved around the fact that Google due to tax loopholes could declare all

[83] Reuters Staff 'France, Germany, Italy, Spain seek tax on digital giants' revenues' (reuters.com, 2017)< https://www.reuters.com/article/us-eu-tax-digital/france-germany-italy-spain-seek-tax-on-digital-giants-revenues-idUSKCN1BK0HX > accessed 2 May 2021.
[84] Natasha Lomas 'France, Germany, Spain, Italy call for turnover tax for tech giants'(techcrunch.com,2017)< https://techcrunch.com/2017/09/11/france-germany-spain-italy-call-for-turnover-tax-for-tech-giants/> accessed 5 May 2021.
[85] Michael McGrath 'French Tax Plan Another Attempt At EU Corporate Tax Harmonisation Through The Back Door'(fiannafail.ie,2017)< https://www.fiannafail.ie/french-tax-plan-another-attempt-at-eu-corporate-tax-harmonisation-through-the-back-door-mcgrath/> accessed 5 May 2021.

of its earnings in Ireland and pay only 12.5 % in corporate tax. The French authorities claimed that there is a permanent establishment of Google Ireland in France which makes most of the profits related to the French market attributable to the permanent establishment in France[86]. In a way, France paved the way DTS was going to work for the other countries that supported the claims of France.

Table 2. DST tax in the European OECD countries[87].



[86] TPcases.com' France vs Google, September 2019, Court approval of CJIP Agreement – Google agrees to pay EUR 1 billion in fines and taxes to end Supreme Court Case' (TPcases.com,2019)< https://tpcases.com/france-vs-google-september-2019-courts-approval-of-cjip-agreement-google-pays-eur-1-billion-in-fines-and-taxes-to-end-supreme-court-casease/>accessed 5 May 2021.

[87] Elke Asen 'Digital Services Taxes in Europe' (files.taxfoundation.org, 2021) < https://taxfoundation.org/digital-tax-europe-2020/> accessed 1 May 2021.

The French authorities did manage to push "harmonization through the back door" in a way. Initially, the court of Appeal favoured Google and dropped the charges because it concluded that the French establishment is a dependent agent of Google Ireland and as such, it is not viewed to have the authority to conclude contracts in the name of Google Ireland. Nevertheless, Google agreed to settle the case by agreeing to a non-prosecution agreement making Google pay EUR 500 million for the period 2011-2016 together with tax adjustments of EUR 465 million for 2011-2018[88]. This move was made by Google to avoid continuing investigations and uncertainty.

The issue of tax authorities to recognize and identify the permanent establishments of multi-national corporations has been an ongoing struggle. Especially for similar cases where limited risk distributors, marketing office arrangements or commissionaire have been involved. For this reason, as mentioned above, BEPS has tried to settle this issue and close the loopholes by introducing a cross-election mechanism. According to article 12 (1) of the Multilateral Convention, a dependent agent will be regarded as a permanent establishment of its principal if the agent concludes contracts habitually on behalf of the principal. Furthermore, it also clarifies that the agent will be considered a permanent establishment if it plays the primary role in concluding contracts routinely without any material modification made by the principal[89].

The UK has used a similar method too although, the UK did not support the digital tax initiative pushed by France. In 2016, Google reached an agreement with the UK that requires Google to pay £130 million back in tax for the last 10 years[90]. Google announced that following the agreement they will pay tax based on the revenue coming from UK-based advertisers. Brexit makes the UK a quite fascinating case in regard to the future of corporate tax rates initiatives and the influence the UK has played in protecting its crown dependencies. It's safe to say that right now, harmonization is essential and without it, the spectrum of avoidance has the potential to spread even more. With the UK leaving the EU and its legal framework like the EU's Code

[88] Antonie Vergnat and Romain Desmonts 'DESPITE APPEALS WIN, GOOGLE AGREES TO EUR 1B SETTLEMENT TO AVOID CRIMINAL PROSECUTION'(mwe.com,2020) <https://www.mwe.com/insights/france-despite-appeals-win-google-agrees-to-eur-1b-settlement-to-avoid-criminal-prosecution/> accessed 5 May 2021.
[89] The OECD 'Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS'(oecd.org,2017)<https://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf> accessed 5 May 2021.
[90] Aimee Chanthadavong, 'Google to pay UK government £130m back in taxes'(zdnet.com,2016) <https://www.zdnet.com/article/google-to-pay-uk-government-130m-back-in-taxes/> accessed 5 May 2021.

of Conduct on Business Taxation, it will lead to a lack of pressure in working towards a solution for the secrecy jurisdictions. From a global perspective, we have an unstable big economy that can easily go both sides and become a "well-established tax haven". As the accounting professor and tax campaigner Richard Murphy remarked, "this deal is a gift to tax-dodging individuals and firms"[91]. It is still not clear if the UK will pursue this goal and lower the corporate tax rates to become an even more attractive place for corporates. This deceleration from the fight against corporate tax avoidance and evasion costs the economy of the UK not less than half a trillion dollars in lost revenue each year. Moreover, strategically this move would make the UK an even more problematic jurisdiction since it will be hard to push its agenda forward without having a seat at the table of the EU. The political climate can easily aggravate and hence, there are more chances for the UK to be called out directly for its policies.

The most promising project that has taken the harmonization attempts to the next step of developing a clear initiative and framework is the OECD/G20 Inclusive Framework. Finally, after the OECD initiative to address the challenges arising from digitalization under action 1 was met with a lack of will from the participating countries, since 2019, the OECD/G20 Inclusive Framework introduced the 2 Pillar approach. Pillar 2 in particular focuses on creating a platform that would introduce a global minimum tax. This global harmonization of the minimum tax rate would aid the tax authorities to address the issues coming from Profit Shifting and Base Erosion arrangements coming from the MNEs. This project is also known as the global anti-base erosion proposal (GloBe proposal)[92]. It incorporates four sets of rules in the Programme of Work: a) the income inclusion rule (IRR); b) the switch-over rule; c) the undertaxed payment rule (UTPR) and d) the subject to tax rule (STTR). Whereas Pillar 1 works towards establishing new nexus rules that would establish a new way of paying taxes. The main goal of Pillar 2 is to warrant that all large international corporates pay no less than a minimum level of tax. If the OECD effectively introduces this project, then it would tackle directly the tax-dodging platforms offered by the tax havens.

[91] Ben Chapman, 'Does the Brexit deal pave the way for Britain to become a tax haven?'(independent.co.uk, 2021)< https://www.independent.co.uk/news/business/news/brexit-uk-tax-haven-jersey-freeports-b1781049.html> accessed 5 May 2021.

[92] The OECD 'Addressing the Tax Challenges of the Digital Economy, Action 1 2015 Final Report'(oecd-library.org, 2015) <https://www.oecd-ilibrary.org/docserver/9789264241046-en.pdf?expires=1620245778&id=id&accname=guest&checksum=5E6221C50FC58B852D883DAF79077648> accessed 5 May 2021.

Not by chance, the global minimum tax rate initiative goes hand in hand with the digital giants. The global minimum tax introduced by Pillar 2 will only apply to MNEs that meet or exceed EUR 750 million annual gross revenue threshold[93]. This amount of revenue is set to be easily linked to BEPS Action 13 CbCR rules thus minimizing compliance costs that would arise. Simply stated, the taxation globalization attempts tend to mainly target large MNEs that conduct business practices that rely heavily on digital platforms. Legally, these business practices bring numerous challenges some of them being, regulating intangible assets or goods for tax purposes. As digitalization has brought the opportunity for businesses to be everywhere and nowhere at the same time, the intangible assets they own or the intangibles goods they sell produce the same difficulties. Whether IP-related intangibles or digital intangibles that are just lately developed, the complexity of defining and setting a value seems to work as an advantage for the "modern businesses". The uncertainty surrounding this field results in a mechanism that involves a pure conflict of interest because not rarely the value creation signals are set by the owners or traders themselves. Hence, targeting these novel assets and goods poses a substantial challenge for the global economy.

INTANGIBLES FROM THE LEGAL PERSPECTIVE

While "Information has become the new currency of business"[94], a major amount of corporate assets have transitioned from tangibles to intangibles. This brings up the importance of having the right knowledge and assessment in order to establish a system of value creation and then assign the taxation authority. At the same time, the concepts of assets and property have changed a great deal these past decades hence the legal norms are regularly under the pressure of fitness or stability. The great need for a framework that identifies, regulates and valuates the intangibles, is also supported by data. In 2016, the digital economy contributed 15,5 % of the global GDP[95]. By 2025, estimates show that the contribution coming from the digital economy has the potential to reach 24.4% of the global gross product (GDP). Moreover, it is estimated

[93] OECD *'Tax Challenges Arising from Digitalisation – Report on Pillar One Blueprint: Inclusive Framework on BEPS'(oecd.org, 2020)*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris < https://www.oecd.org/tax/beps/tax-challenges-arising-from-digitalisation-report-on-pillar-two-blueprint.pdf> accessed 5 May 2021.

[94] Andrea M Matwyshyn, 'Imagining the Intangible' (2009) 34 Del J Corp L 965, 6.

[95] UNCTAD 'Digital Economy Report 2019 Value Creation and Capture: Implications for Developing Countries' (United Nations, 2019) 90<https://unctad.org/system/files/official-document/der2019_en.pdf>accessed 6 May 2021.

that 70% of new value created in the economy will come mainly from digitally-enabled platforms[96].

Attempts made to master and somehow control this new economy have one starting point, understanding what are intangibles. Nevertheless, defining intangibles is a real challenge and that lawmakers are constantly trying to address the matter. It is this lack of certainty that works as bliss for the "intangible dealers". 40 years ago, when intangibles constituted only 17% of all company value it was more manageable to leave them out of the balance sheets. The situation has changed drastically these last two decades, making the value attached to intangible assets account for $80 out of every $100 hence, underestimating the value of such assets is not an option anymore[97].

Though hard to tell and assess with a simple definition, it has been generally approved that three traits identify the intangibles: 1) they have the ability to generate economic profit 2) they are not tangible and 3) they may be negotiated, traded, appropriated[98]. Yet, different legal documents have different ways of defining intangibles. Mainly, when defining intangibles, the focus falls on Intellectual property and though it constitutes a very important part of the intangibles, there are still other intangibles. This group is so diverse that it includes software codes, data, brands, inventions, content, confidential information, industrial know-how as well as IP rights and everything that could be a potential IP right but is not. These other intangibles are connected to the IP rights but their digital substance can distinguish them. Hence, a way to divide intangibles is by separating them into intangible assets and digital goods or digital intangibles. Not every intangible necessarily falls into these two groups but a great deal of them does.

In regard to intangible assets, it is evident that the definitions given to this group need to broaden. An example of how these assets are defined is found in Section 482 of the Internal Revenue Code, part of US transfer pricing regulations which defines an "intangible" as an asset that consists of specific items and has substantial value in itself not dependent on the

[96] World Economic Forum 'Shaping the Future of Digital Economy and New Value Creation' (weforum.org,2021) <https://www.weforum.org/platforms/shaping-the-future-of-digital-economy-and-new-value-creation> accessed 6 May 2021

[97] EVEREDGE 'The missing trillions: valuing intangible assets'(everedgeglobal.com,2019) <https://www.everedgeglobal.com/news/valuingintangibleassets/> accessed 6 May 2021

[98]Elena Danescu 'Taxing intangible assets: issues and challenges for digital Europe' (Internet Histories, 2020), 4:2, 196-216 <https://doi.org/10. 1080/247 01475.2020.1749806>accessed 6 May 2021

services of any individual. Some of the mentioned specific items are Patent inventions, formulae, processes, designs, patterns, know-how, copyrights, trademarks, franchises, methods, programmes and systems[99]. In 2014 there was a proposal in the U.S to broaden the definition of intangible property[100]. On the other hand, OECD has already taken a broader approach by acknowledging that there are different ways of targeting what are intangibles. The way used by the OECD is by dividing the intangibles into several groups namely, "marketing intangibles" and "trade intangibles", "routine and non-routine intangibles", "unique and valuable intangibles" "soft and hard intangibles" and "hard-to-value intangibles"[101]. Though OECD lists a number of the intangibles as examples, still it recognizes that the list is not comprehensive[102]. The Transfer Pricing Guidelines state some of the following as intangibles: trademarks, patents, know-how and trade secrets, brands and trade names, licences and similar limited rights in intangibles and goodwill. Moreover, it states that market-specific characteristics and group synergies are not to be considered intangibles for transfer pricing purposes for the simple reason that they cannot be controlled or owned by an entity[103].

Clearly, these definitions tend to be relatively broad but centre around the traditional concept associated with IP rights. This association of intangibles with IP rights comes because when talking about intangible property, the oldest and most common developed concept is that of IP rights. IP rights can be defined as assets that entitle claims to future benefits while the assets themselves do not have a physical or financial embodiment[104]. The simplest correlation to this concept is that intangible assets expressed as IP rights include all form of intellectual knowledge and intellectual expression that can be manifested as Intellectual Property.

Whereas, what constitutes a digital intangible is a newer concept not reflected fully in the above definitions. The concept of digital goods is undeniably quite immense. Time magazine

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[99] Deloitte and ITR, "Intangibles 2nd Edition" (*www2.deloitte.com*2014) 8 <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-itr-intangibles-guide.pdf> accessed May 6, 2021.

[100] *Aaron M. Rotkowski* 'Intangible Property in Transfer Pricing Analyses'(willamette.com,2015) <http://www.willamette.com/insights_journal/15/winter_2015_7.pdf>accessed 6 May 2021

[101] OECD 'Guidance on Transfer Pricing Aspects of Intangibles', OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing (2014), para 6.13 <http://dx.doi.org/10.1787/9789264219212-en> accessed 6 May 2021

[102] OECD'Aligning Transfer Pricing Outcomes with Value Creation', Actions 8-10 - 2015 Final Reports(2015), OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, para 6.15<http://dx.doi.org/10.1787/9789264241244-en>accessed 6 May 2021

[103]OECD 'Guidance on Transfer Pricing Aspects of Intangibles', OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing (2014), para 6.15 <http://dx.doi.org/10.1787/9789264219212-en> accessed 6 May 2021.

[104] Lev B, *Intangibles: Management, Measurement, and Reporting* (Brookings Institution Press 2001) 5.

indicated and predicted for the first time the reliance on information systems when it named "The Computer" as person of the year 1983[105]. It is the era when giant corporations have the means to compete with every small business in every neighbourhood of this world just by using the internet. Not by surprise, the OECD report concluded that the borderline between digital services and digital goods stands blurry with a potential to get even blurrier[106].

An interesting way to describe digital goods is as bitstrings of 0s and 1s that have economic value[107]. A bitstring is everything that can be stored in the memory of a computer and able to be transmitted all over the internet. It's safe to say that every idea and knowledge can be translated and encoded as a bitstring. Digital goods are: non-rival, infinitely expansible, discrete, aspatial and recombinant[108]. There are many different aspects in which these digital goods can be seen and there are many other properties and traits that you can attach to them hence, framing them is quite a challenge. Another interesting way these digital goods behave in the market is by ignoring the traditional way goods are valued. For digital goods, there is no differentiation between any copy of the digital good and the good itself. Some digital goods are visual images, music, computer software, databases, videogames, blueprints, recipes, DNA sequences etc. Under this group also fall Ideas and knowledge that are not supported by legal protection as in the case of IP rights[109].

As for Intangible assets, they tend to be relational, created by law or human interaction, able to appreciate with time and are non-terrestrial[110]. What does a patent have in common with goodwill except for being both intangible? It's their relational nature that is quite an interesting common attribute that they have. The meaning of this characteristic is simply that their value depends on a social context. This relational trait makes intangible assets different from traditional corporate assets which depreciate with time. Time does not have the same effect on trademarks, patents, copyrights, trade secret goodwill or any other intangible assets because they have proven to have the ability to increase their value over time.

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[105] Andrea M Matwyshyn, 'Imagining the Intangible' (2009) 34 Del J Corp L 965, 5.
[106] OECD (2015), Addressing the Tax Challenges of the Digital Economy, Action 1 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, 56 <http://dx.doi.org/10.1787/97892 64241046-en>accessed 6 May 2021.
[107] Quah D, *Digital Goods and the New Economy* (Centre for Economic Policy Research 2002), 2.
[108] Ibid 3.
[109] Ibid 4.
[110] Andrea M Matwyshyn, 'Imagining the Intangible' (2009) 34 Del J Corp L 965, 10.

Another characteristic intangible assets share is the non-terrestrial nature they have. In the case of intangible assets, it's indeed easier to connect them to a territory in comparison to connecting a digital good to a territory[111]. A patent can be easily associated with the territory or territories where it's protected. Nevertheless, it is still an intangible asset which makes it impossible for it to be rooted physically to a real space. As for the intangible goods, this characteristic is even more evident because quite often it is very hard to even associate a territory to a digital product even for the purpose of production or usage. Still, there are intangible assets that mimic intangible goods perfectly in the case of leaving no terrestrial trace. Trade secrets are intangible assets that live inside the head of some individuals hence this type of intangible asset can be at the same time all over the world.

This easy way of transferring intangible assets and goods is the reason why another trait of both of these categories is fragility[112]. Intangible assets are more fragile than physical assets especially in the case of a corporate setting. Data breaches and confidentiality breaches are terms that are frequently used in the business world. Some of the biggest issues of multinational corporations are precisely the leak of their data, confidential information and the theft of their intellectual property. A research conducted by the European Union Intellectual Property Office (EUIPO) showed that EUR 60 billion are lost every year due to counterfeiting in 13 sectors[113]. That's why this trait is the Achille's heel of these assets and technology is the reason why today what makes an idea valuable is not only the good content but the confidentiality of this good content.

An intangible asset that reflects a few of the above-mentioned traits of intangibles is goodwill. Goodwill is the perfect example that shows how unique intangible assets are. Hence an overview of how goodwill behaves in the market as a *sui generis* asset shows how much intangibles differ from tangibles and how hard is to develop a value creation system for them. It may seem like a modern concept, but a trace of a goodwill rationale can be found in 1888 when the Liverpool Chartered Accountants Students' Association

[111] Ibid 13.
[112] Ibid.
[113] EUIPO 'EUR 60 billion lost every year across the EU due to counterfeiting in 13 key economic sectors'(euipo.europa.eu,2019)<https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2019_Status_Report_on_IPR_infringement/2019_Status_Report_on_IPR_infringement_pr_ireland.pdf>accessed 6 May 2021.

framed goodwill as something that reflects benefits coming from the good feelings and regard that the costumers have for a business[114].

Goodwill is regarded as the excess of the purchase price over the fair value of an identifiable tangible and intangible net asset that would be acquired in a business combination[115]. It is simply the subjective perception of investors, consumers or people in general on the value of the company. One might say that it was the regular disvaluing of the internet company goodwill that was responsible partially for the dot com bubble of 2000[116]. Sometimes goodwill is the asset that is valued the most in a transaction, more than all the other assets together. The AOL Time Warner Merger is a case wherein the case of a Merger, goodwill was valued at $147 billion while the value of Time Warner based on the balance sheets was $162 billion. What makes goodwill unique, is the fact that it is included in the balance sheet as an asset but based on the IFRS and the U.S GAAP, it is not affected by amortization or depreciation as the other assets because it is thought that this method does not give a clear picture of the value[117]. It is this uniqueness that makes goodwill, an excellent example of how controversial intangible assets are and how hard it to develop a legal framework to regulate them.

Following the attempts to understand intangibles in order to then develop a system of value creation has shown to be a very challenging mission. The above analysis of just what intangibles include shows this picture. The greatest developments done in giving intangibles a frame and attaching some borders is done by researchers that have done the complete opposite. This means, that today the most effective way of targeting intangibles and regulating the field is done by building a broad definition that emphasizes the non-exhaustive nature of the lists of properties or types of intangibles. Its effectiveness for transfer pricing purposes is arguable that is why defining intangibles is one of the main goals of BEPS which has been very challenging to reach.

The authorities have given a lot of attention to understanding practically how this digital economy can be treated for tax purposes. It is a fair assumption and understanding that the

[114]Andrea M Matwyshyn, 'Imagining the Intangible' (2009) 34 Del J Corp L 965, 11.
[115]Ibid.
[116] *Heidi N. Moore* 'Microsoft's Failed Yahoo Strategery'(The Wall Street Journal,2008)<https://www.wsj.com/articles/BL-DLB-3101>accessed 6 May 2021.
[117]Evan Tarver 'When and why does goodwill impairment occur?'(Investopedia.com,2020) <https://www.investopedia.com/ask/answers/061715/when-and-why-does-goodwill-impairment-occur.asp>accessed 6 May 2021.

traditional concept of assets or goods does not match these "new assets and goods" that have lately appeared to dominate many markets. The differences do not only come from the way they are valued but also in the way they manifested in the market.

Nowadays a unique organizational structure can also be an intangible asset. A simple example is an internet-based supply chain, which is a quite used practice in the present business world. A novel way to classify intangible assets is by dividing them into discovery, organizational practices and human resources[118]. Entities that invest in research and development as well as manage to reach expenditures from it, benefit from the first category of intangible assets. The second category has had quite a growth because of the technological era we are part of. Organizational practices are different platforms which help the businesses reach their target customers or differently called e-commerce platforms. These platforms provide the means for easier communication, for quite effective marketing practices and sometimes even the opportunity to sell the product directly through these platforms. Concerning human resources, valuable personnel and different compensation policies such as employee training and education are utterly beneficial for companies and create the third category of intangible assets. These type of intangible assets are considerably different from IP rights and still they can be found in the same category of intangible assets. IP rights and intellectual expression are more commonly regarded as intangible assets in comparison to discovery, organizational practices and human resources. There is a lack of inclusion for a great variety of intangibles in various projects or frameworks that attempt to regulate the field.

This actuality begs some questions: "While the efforts to understand the nature of the market of intangibles has shown this new dimension of valuable assets, should a larger variety be included and treated by the traditional accounting system? Moreover, should all these assets be included in the financial reports of the company? Lastly, would the incorrect embodiment of these assets cause any problem regarding tax compliance?

Companies are taxed by the tax authority based on 2 aspects, their income and their assets in the case of deductions. One of the purposes of financial statements is that these affect the taxation decisions of the tax authorities particularly in regard to the tax policies they implement. Consequently, if the financial statements show a picture that does not reflect

[118] Lev B, *Intangibles: Management, Measurement, and Reporting* (Brookings Institution Press 2001), 6.

the reality and sends the wrong signals to the tax authorities, it does affect all the market. Financial statements are becoming less informative in showing the current position of the corporates financially hence, creating uncertainty on future perspectives[119].

The root of wealth does not come from the production of material goods but rather from the development and the manipulation of intangible assets[120]. Consequently, corporates are prone to make investments towards intangibles that quite often and in by large are not reflected in the balance sheet. Yet, these moves produce a great source for the future success of the company. There is a huge gap between the book value and the market value of equity for most companies and according to their documentation, the ratio of market-to-book ratio of US firms has changed from 0,81 in 1973 to 1,69 in 1992 which means that circa 40% of the market value is not reflected in the balance sheet[121]. Additionally, it does greatly impact market competition because it creates an unequal climate. This comes as an advantage especially for MNEs that conduct business based on the E-commerce business model and follow a business strategy that relies heavily on digital advancements.

For the complex nature and the broadness intangibles have, it is impossible to be treated by the traditional accounting system in the same way tangible assets are. There must be a deep modification of the accounting model, so it does not only fit the traditional model of doing business which involves mostly tangible goods and assets. The term asset itself shows one example of how they are perceived and seen traditionally and how this perception should be upgraded. Traditionally assets are considered valuable property, while in the case of intangibles, we are not always talking about ownership. E-commerce platforms constitute a property that can be sold and taxed accordingly. Unlike Human resources that constitute a very valuable intangible asset, yet no company owns its employees and cannot be taxed for them at least as long as we are talking about human beings and not robots. Hence, quantifying and monetizing intangibles by using the traditional business principles is unachievable. As for R&D, for tax purposes, this type of intangible provides tax deductions and not rarely, these deductions are also abused in order to benefit from tax avoidance. These three examples show perfectly how intangibles

[119] Cañibano, L., García-Ayuso Covarsí, M. and Sánchez M., '*THE VALUE RELEVANCE AND MANAGERIAL IMPLICATIONS OF INTANGIBLES: A LITERATURE REVIEW1* (Oecd.org, 1999), 5<https://www.oecd.org/sti/ind/1947974.pdf> accessed 6 May 2021.
[120] Ibid.
[121] Ibid.

behave so differently even among themselves and the traditional accounting principles cannot fully comprehend intangibles.

The complexity of incorporating a mechanism that regulates intangibles and fights the uncertainty comes firstly, among others, from the growth of the intangible market in the global value chain. Secondly, it comes from the difficulty of integrating the arm's length principle while following the contractual arrangements entities conduct with intermediary entities in low or no-tax jurisdictions. A common scenario that the tax officials face is, challenging the low transfer prices or cost-based service prices of intangibles by using the comparability analysis and the CUP method. This happens when an entity develops an intangible and transfers it to an intermediary that resides in a low or no-tax jurisdiction. Like this, the profit to the transferee would be significant especially in comparison to the price paid. Another scenario would be the case of the intermediary entity that owns the intangible legally since the beginning. This entity could contract another related entity to proceed with the development of the intangible for a price for services. In these scenarios, it would be hard for the tax authorities to address the arrangements. While the owner of the intangible has the potential to earn income from the exploitation of the intangible and the profit could be many times more than the transfer price or the price paid for the services[122].

The more intangibles are underestimated for the value they give to particular MNEs, the more these companies can avoid paying taxes by using transfer pricing methods in intercorporate transactions that do not reflect the real value and profit coming. Another illustration would be the case of embedded intangibles in which the goal is to distinguish the value coming from any sale of goods or services in order to reveal the portion coming from the intangibles. The whole challenge is to identify the income coming from the invisible intangible for tax purposes.

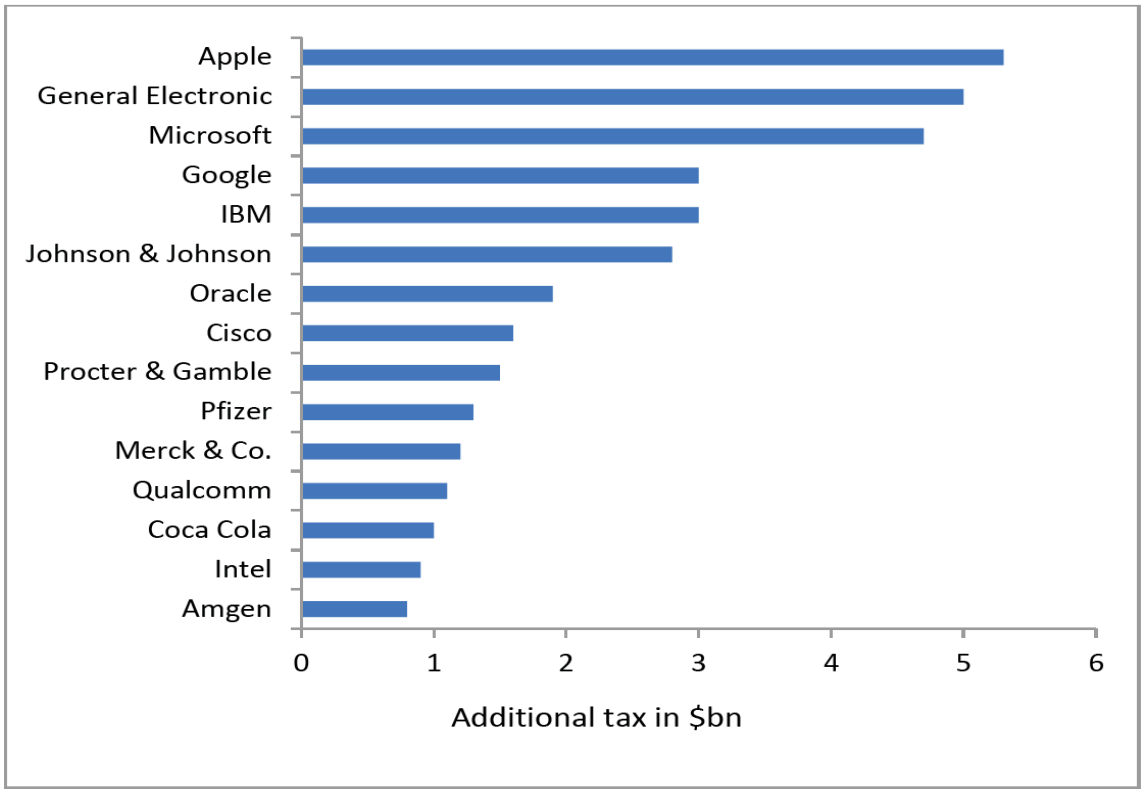
Another e.g. would be the case of an organizational structure like a website or a database, that is not valued accordingly and not reflected on balance sheets or financial statements. If there would be an intercorporate selling between related entities, it would be easier to

[122] Li, Jinyan and Nikolakakis, Angelo, 'Taxation of Intangibles' (2020). Articles & Book Chapters. 2802, 14 <https://digitalcommons.osgoode.yorku.ca/scholarly_works/2802> accessed 6 May 2021.

use transfer pricing methods because it wouldn't be easy for the authorities to assign a real value and profit coming from the transaction. Hence, a poorly built framework for the valuation of different intangible assets leaves so many opportunities for tax abuse as it is quite easier to shift profits to low-tax countries. A quite famous method used by MNEs to shift profits by using intangible assets is called the "Double Irish with a Dutch sandwich"[123]. This method has been used by Apple, Google and Facebook with Google dodging at least 3,7 billion in taxes in 2016[124].

Whilst MNEs for years now have managed to lessen their tax burden leaving small and medium-sized entities to pay their fair share, this table shows another reality. If the legal framework would implement a taxation structure where the MNEs could not dodge their tax burden, these 15 corporations would be hit the hardest.

Table 3. A world without tax loopholes[125].



[123] Jean Franco Fernández 'Double Irish Dutch Sandwich Tax Avoidance Explained'(offshoreaffairs.com,2020)<https://www.offshoreaffairs.com/post/double-irish-dutch-sandwich-tax-avoidance-explained> accessed 6 May 2021.
[124] Jay Pil Choi and others 'Transfer pricing of intangible assets with the arm's length principle'(Voxeu.org, 2020) <https://voxeu.org/article/transfer-pricing-intangible-assets-arm-s-length-principle>accessed 6 May 2021.
[125] Ibid 19.

Moreover, the economists at the Swiss bank Crédit Suisse researched on the privileges big corporations in the OECD area obtained by the use of loopholes. The focus of this research was the calculation of the difference between the taxes these corporations really pay and the legally prescribed tax rates. The results showed that for 390 MNEs part of the OECD area, the difference is over EUR 75bn. The sectors that showed to have the biggest differences were IT and Pharmaceuticals. In these two sectors, intangibles play an important role, and this gives these sectors the advantage to use from profit shifting arrangements easier[126].

DEVELOPMENTS FROM THE OECD

The OECD Base Erosion and Profit Shifting (BEPS) is the most promising initiative that attempts to address these challenges which intertwine together digitalization, globalization and tax dodging especially arranged by MNEs. It tackles tax avoidance and focuses on encompassing the digital economy as well as the new challenges that multinational corporates bring in tax compliance. Its focus is precisely the MNEs that rely on the gaps and loopholes of tax laws with the purpose of tax avoidance. Base Erosion and Profit shifting practices themselves cause the countries losses in revenue that amount to 100-240 billion per year. Considering that 137 countries are coming together and agreeing on the necessity of a global approach on this matter is a very positive step towards the cooperation of tax authorities of different countries.

It is important to emphasize the novelty of action 8, as a guidance that addresses directly the information asymmetry on hard-to-value intangibles for those transactions that include the use or transfer of intangibles as regulated in Article 9 of the OECD Model Tax Convention. Some of the main purposes of Action 8 are to adopt a clear definition of intangibles as well as work on ensuring the suitable allocation of the associated profits related to the use or the transfer of intangibles in conformity with value creation while at the same time developing transfer pricing rules for these hard-to-value intangibles[127].

[126] Farny O and others, "TAX AVOIDANCE, TAX EVASION AND TAX HAVENS" (*arbeiterkammer.at,* 2015), 24<https://www.arbeiterkammer.at/infopool/wien/Studie_tax_ avoidance.pdf> accessed May 2, 2021.
[127] OECD 'Aligning Transfer Pricing Outcomes with Value Creation, Actions 8-10 - 2015 Final Reports',

The term Hard-to-value intangibles (HTVI) includes intangibles that*, "when a transfer among associated parties happens, i) no reliable comparable exist, and ii) at the time the transactions was entered into, the projections of future cash flows or income expected to be derived from the transferred intangible, or the assumptions used in valuing the intangible are highly uncertain, making it difficult to predict the level of ultimate success of the intangible at the time of the transfer"*[128].

These hard-to-value intangibles have the potential to include very valuable intangibles that are difficult to be identified differently. To target these intangibles the tax authorities may consider post-transfer results in order to determine the transfer price in particular circumstances[129]. This method goes beyond the five pricing methods and it's developed to address hard-to-value intangibles[130]. Nevertheless, the taxpayer has the right to challenge this way of analysing the transfer price by giving evidence that the outcomes are a result of unforeseeable circumstances[131].

Another essential problem that BEPS Actions 8-10 tackle is the ownership and entitlement to income coming from intangibles. Actions 8-10 regulate the entitlement to intangible income between the formal legal owner and the economic owner by distinguishing them. In this case, an example of the formal legal owner would be the intermediary entity and the economic owner would be the entity that effectively performs functions, controls and uses the assets or deals with the risks related to the development or creation of the intangible value. According to BEPS, the emphasis falls on the ownership of the intangibles based on contractual rights and the behaviour of the parties yet, this is regarded as a starting point and not the endpoint. The effective roles played, the actual assumed risks, the controller of the assets are variables that

(2005) OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, 67<http://dx .doi.org/10.1787/9789264241244-en>accessed 6 May 2021.

[128] Ibid para 6.189.

[129] Ibid para 6.190

[130] Li, Jinyan and Nikolakakis, Angelo, 'Taxation of Intangibles' (2020), Articles & Book Chapters, 2802, 15 <https://digitalcommons.osgoode.yorku.ca/scholarly_works/2802> accessed 6 May 2021.

[131] OECD 'Aligning Transfer Pricing Outcomes with Value Creation, Actions 8-10 - 2015 Final Reports', (2005) OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, para 6.193<http://dx .doi.org/10.1787/9789264241244-en>accessed 6 May 2021.

are central in establishing how the income from the exploitation of intangibles should be shared[132].

BEPS for the purposes of transfer pricing analysis has defined the word "intangible" as a non-financial asset and as a non-physical asset that is possible to be owned or controlled in commercial activities and most importantly, in case there would be a usage or transfer, it would be compensated had it occurred between independent parties in comparable situations[133]. It is essential to clarify that the definition is quite broad and it includes also intangibles that are not usually recognized as intangibles for accounting purposes. These type of intangibles include, but are not limited to those mentioned on page 41 namely, organizational practices, human resources and discovery. Nevertheless, the guideline stresses that attention should be given to determining whether an intangible exists or has been used or transferred. This is rather important for the simple reason that not every marketing undertaking creates or improves an intangible as well not every research and development expenditure initiative results in creating an intangible[134].

BEPS as a whole has the arm's length principle as a cornerstone. This principle focuses on a simple practice of analysing if the price charged in a transaction between two independent parties is the same as the price charged between two associated parties in a comparable transaction with similar conditions and economic circumstances. This principle has shown to be not fully effective in the case of intangibles and one of the reasons is the difficulty in quantifying the value of these products and also the fact that for most of the time, the main source of information on their values is the taxpayer itself[135]. Moreover, another reason why this method does not always produce effects is because in intercorporate transfers for most cases the services and products that are transacted amongst subsidiaries are not the same services and products that unrelated parties transact. For example, a company that licenses its own Intellectual Property around the world would not license that IP right to unrelated parties. Nevertheless, it should be noted that lately some banks and assets managers are licensing out

[132] Li, Jinyan and Nikolakakis, Angelo, 'Taxation of Intangibles' (2020), Articles & Book Chapters, 2802, 15 <https://digitalcommons.osgoode.yorku.ca/scholarly_works/2802> accessed 6 May 2021.
[133] OECD 'Aligning Transfer Pricing Outcomes with Value Creation, Actions 8-10 - 2015 Final Reports', (2005) OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, para 6.6<http://dx .doi.org/10.1787/9789264241244-en>accessed 6 May 2021.
[134] Ibid para 6.11.
[135] Valentiam Group 'Arm's Length Principle In Transfer Pricing'(valentiam.com,2020)<https://www. valentiam.com/newsandinsights/arms-length-principle-transfer-pricing>accessed 6 May 2021.

to third parties some particular trade intangibles like end-to-end investment platforms[136]. These advancements theoretically should help in creating a greater range of potential internal CPU data that could be used for Transfer Pricing purposes.

Even when the Arm's length Principle is used, MNEs still can abuse this principle in ways that make it possible for them to report a large share of their profits in low tax jurisdictions and consequently avoiding to pay the suitable tax in the countries where they effectively operate[137]. These issues are multiplied in the case of digital companies that differ from the traditional business models on three key aspects: scale without mass, substantial reliance on intangible assets (especially IP) and the importance of data, their synergies with intangible assets and user participation[138]. It is quite hard to trace them given that their business strategy does not necessarily require physical assets. This gives them the opportunity to be located nowhere and everywhere at the same time. Consequently, these business models create issues in taxing right allocation, intern-nation tax competition and stateless income. These deficiencies of the Arm's length principle have been recognized by the OECD and it is the project of BEPS that has emphasized the way this principle should be implemented and interpreted. Recognizing that the principle can be manipulated and bring outcomes that do not coincide with the amount gained by the economic activities that involve the members of an MNE group, BEPS focuses on strengthening the principle and at the same time takes extra steps beyond this principle to ensure a more transparent tax environment[139].

BEPS Action 1 which focuses greatly on the digitalization tax challenges emphasizes the importance of reaching a consensus on the fundamental reforms BEPS is trying to achieve. Yet, Action 1 does not offer any solutions on the matters rather it describes the challenges while just mentioning potential options that can be used to address base erosion and profit shifting issues. The "Programme of work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy" that was published just lately in

[136] Deloitte and ITR, "Intangibles 4th Edition" (*www2.deloitte.com,* 2018) <https://www2.deloitte.com/content /dam /Deloitte/in/Documents/tax/in-tax-ITR-2018-intangibles-guide-noexp.pdf> accessed May 6, 2021

[137] Valentiam Group 'Arm's Length Principle In Transfer Pricing'(valentiam.com,2020)<https://www. valentiam.com/newsandinsights/arms-length-principle-transfer-pricing>accessed 6 May 2021.

[138] OECD, 'Tax Challenges Arising from Digitalisation – Interim Report 2018: Inclusive Framework on BEPS', OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, (oecd.org, 2018), para 32-36 <http://dx.doi.org/10.1787/9789264293083-en>accessed 6 May 2020.

[139] OECD 'Aligning Transfer Pricing Outcomes with Value Creation, Actions 8-10 - 2015 Final Reports', (2005) OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, 13<http://dx .doi.org/10.1787/9789264241244-en>accessed 6 May 2021.

May 2019 provides a clearer vision on achieving solutions in 2020. The main objectives of these proposed solutions are to create a platform that neither does result in double taxation nor in taxation where there is no economic profit.

The Program of Work Report sets out three nexus tests that target user participation, marketing intangibles and significant economic presence. From these tests it is asserted that value is created by the consumers, the users or in the market of the jurisdiction and the taxation right of these jurisdictions is independent from the existence of a physical business presence. The way the Report tries to achieve this goal is by suggesting proposals that focus on the profits of the MNE group. The proposals incorporate;

1) a profit split method that that would provide the market jurisdiction where the MNE group's non-routine profits are made a portion of the profit
2) partial allocation of the profit of the MNE group
3) approaches based on distribution such as setting a baseline profit in the market jurisdiction for marketing distribution and user-related activities[140].

This new concept provides and ensures that profits are taxed where the activities are held and where the value is created. Yet, this new "value creation paradigm" is difficult to be incorporated into effective tax rules as there is no international consensus or agreement that has developed this concept into real rules.

Concerning the tax base issues, the Programme of Work Report introduces a global anti-base erosion proposal that comprises two correlated rules. The first rule introduces an income inclusion rule that provides the resident country with the income taxation right of a foreign branch or a controlled entity in case this income is subject to tax at an effective rate that is below a minimum rate. The second rule provides a tax on base eroding payments that operate by denying a deduction of source-based taxation jointly with any necessary changes to double tax treaties related to certain payments unless that payment was subject to tax at or above a minimum rate[141].

[140] Jinyan Li and Angelo Nikolakakis, 'Taxation of Intangibles' (2020). Articles & Book Chapters, 2802, 18<https://digitalcommons.osgoode.yorku.ca/scholarly_works/2802> accessed 6 May 2021.
[141] OECD 'Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy',(oecd.org, 2019) OECD/G20 Inclusive Framework on BEPS, OECD, Paris, <www.oecd.org/tax/beps/programme-of-work-to-develop-aconsensus-solution-to-the-tax-challenges-arising-from-the-digitalisation-of-the-economy.htm> accessed 6 May 2021.

Worth mentioning is also Action 5, which introduces a new concept of treating preferential tax policies that offer corporates hubs to dodge taxes. Under action 5, BEPS has shaped a minimum standard that tries to set a limit on corporate tax avoidance arrangements by regulating that the substantial activity or modified nexus requirement will be taken into consideration to assess if a tax regime is harmful. Identifying if some tax incentives offered by some countries have the purpose of poaching another country's tax base is a real challenge because at first, it is difficult to locate the country in which the value is created. That is why the analysis should and will incorporate the substantial activity of MNEs.

In Brief, the OECD is introducing an extensive framework that addresses some of the greatest issues of today's global tax environment. The legal framework is promising and well-built although there is space for improvement e.g. in defining intangibles and tax havens in a way that would target the objects of law better. One important factor this project lacks is the multilateral fiscal body that would have the competence to ensure that malpractices will be punished accordingly. For such an extensive framework that includes many broad and complex matters within the taxation field, there is the need for a body or bodies that are exclusively dedicated to this project. A solution could be to assign a political mandate for this duty to the UN Tax Committee and ensure that the framework is being adopted by the enterprises and the tax authorities. Another issue that the OECD should tackle is the inclusion of China and other economies that have significant power in the global economy. These and many other challenges that the BEPS framework is facing should be addressed carefully and solved otherwise all the promising framework will be damaged greatly and will not have a chance to make a real change in the global economy.

CONCLUSION

The main aim of this research was to analyse the challenging field of tax non-compliance in a corporate context with a particular focus on the challenge coming from the digitalization of business practices and intangibles. Initially, it was intended to have a scope that only included the EU. On one hand, considering the reach of such an issue it is ineffective to attach a border to the solution when the globalization of the economy knows no such thing. Consequently, the real remedy seems to be acknowledging the need for cooperation and the will to develop real solutions that leave no last resorts for the tax dodgers to go to. However, on the other hand, all this cooperation is dependent on the will and collaboration of countries and like this, the scope lessens quite a lot. Moreover, there is also the case of the EU that has one common sui generis will besides that of every MS. Inevitably, the solution starts from each and every country and then it builds up to unions, to regions and lastly, to a global solution. Hence, the first raised question [supra p 2] tackled the reasons that hinder cooperation among countries.

It is evident from this research that the effects coming from the current situation of international tax policies create two opposing blocks. While many countries are greatly damaged by this situation, some benefit from it. This research shows that among others, some reasons that make cooperation hard to reach are the political substance of the matter, the opposite interests and the way the situation has retaliated to this day. The political substance makes it hard to address and solve this issue only legally and this already adds another variable to the equation. This political essence also has shown that entities like the OECD and the EU have been affected by the interests of certain countries that are tax havens or control them as satellites.

As for the countries that gain from these abusive practices, it seems like losing this source of earnings is a threat to the entire economy. On the contrary, no country is expensed from the damages tax havens and damaging tax policies bring. As a matter of fact, if a minimum corporate tax would be in place, it is discussable if corporates would move their headquarters from the countries they already reside in because there would be no other jurisdictions that would offer such arrangements. Hence, it can be concluded that to an extent, it is a fabricated misperception of some countries considering harmonization to not be in their interest. Indeed, the only beneficiaries are the MNEs that exploit the low tax rates and create a harmful competition among countries.

Regarding the last reason, by retaliation of the situation emerge two situations. The first situation centres around problematic policies that prioritize attracting MNEs in the jurisdiction. This competition has blurred the focus of countries from the damages in the long run, like the absurd decline of corporate tax rates during the last decades. The second situation revolves around perceiving there are little to no real chances of success from this initiative. Even when the consequences become clear and emergent for a solution, perceiving a lack of will from other countries discourages even countries that are willing to agree on developing a different standard.

Furthermore, this paper tackles the blurry border between tax avoidance and evasion and tries to research more on the possible solutions. The problem has shown to be the lack of effectivity from the legal framework in regulating the real cases that emerge from arrangements businesses do to lower their tax burden. A big number of these arrangements end up being in between legality and illegality with a great chance to be spared if the subject of law is an enterprise. This situation makes the court's practice law in a very unclear and inconsistent way which is also seen from the use of words like "too aggressive" to justify their decision.

How to set the line between aggressive and too aggressive or avoidance and evasion, is the other issue this research tried to tackle [supra p 11]. The approach taken by BEPS under Action 5 addressing harmful tax competition does put the pressure right where it should be. Indeed, the regulatory entities of countries should be held responsible for offering terrain to these practices. Yet, without harmonization, there will still be more subtle ways of poaching other countries tax base. Even if the legal means are updated to qualify many of the arrangements as evasion or avoidance, there will still be new methods arising. Hence, if these practices continue, there is no effectiveness in assessing where is the border as it will always become blurry at some point in the future.

That said, addressing the issue like France in the France v Google case is still not the answer because legal persecution cannot be used as a threat, even if what is claimed would rightfully belong to the claimant. If the legal instruments do not produce justice, then it is time to address the issue there. It is not a legitimate and legal solution to accomplish self-justice by using nonlegal means or by pushing the fault on the businesses for taking advantage of the gaps in the law.

Even though solutions to this problem are widely discussed, one remedy is to address the issue from the essence. Meaning, this problem cannot be fixed if it continues to be a word-game without a real regulatory framework that assesses the practices effectively. The last resort remains setting a minimal corporate tax rate that would directly affect tax havens and at the same time focusing on cooperation between countries in order to pressure jurisdictions that try to poach taxes of other countries into changing these policies.

One might say that the OECD and EU have created these lists of tax havens that offer tax-dodging arrangements. Indeed, here arise the next questions [supra p 16] of this research which try to evaluate if these lists have targeted the jurisdictions that produce most of the damages for the global economy. The evidence suggests that they have failed to do so. What these organizations have done is focusing on procedures and policies that like in the case of the blurry border between avoidance and evasion, do not seem to have any significant effect de facto on the practices of the tax havens. While the biggest offenders are marked as cooperative jurisdictions, studies show that the situation hasn't changed much. This answers the next raised issue related to the effectiveness of the approaches the EU and especially the OECD use to develop a solution. Indeed, the OECD and EU assess the issues surrounding the field correctly but then they fail or refuse to target the main offenders and develop initiatives that would have real efficacy. These organizations focus a big part of their knowledge and influence on developing procedures that hide the biggest offenders under the curtain of "cooperation" and list jurisdictions that do not produce any significant damages for the global economy as problematic. Yet again this achieved cooperation does not seem to reduce the damages coming from these jurisdictions. It is objectively, a waste of resources of such important entities that can truly make a change because they possess the power, and they function in the role of monopolies for such issues that affect the global economy.

Regarding the next question [supra p 24] addressing the effectivity of the measures used by the OECD, data show that the main offenders have agreed to implement information exchange agreements and to be part of BEPS. The progress from information exchange agreements is evident yet not significant in restricting these practices. Yet, the initiatives from a legal framework perspective are promising if the OECD and EU would target the right offenders. BEPS, CCCTB and also the Anti-Tax Avoidance Directive are very innovative as projects and it is still soon to conclude on their effectiveness. For some time now and lately, even more, the EU and the OECD have been showing their will to push their BEPS and CCCTB agenda

forward. This increased political interest on this matter undoubtedly comes as a consequence of the enormous ongoing losses countries have suffered but even more than that, because of the new digitalized market that not only knows no borders but also uses for tax-dodging arrangements “an untraceable asset”, the intangibles.

This brings us to the other questions [supra p 43] that centre around the way intangibles are reflected and treated for tax purposes. The variety of intangibles analysed in this research paper has shown that we are dealing with a very diverse group that cannot be defined in an exhaustively detailed way. The characteristics of the intangibles as well their behaviour in the market have shown that they cannot be treated in the same way tangibles do. That being said, the raised questions that tackled the limited inclusion in the financial statements and the way they are treated by the traditional accounting system fall under the same answer. The financial statements and the traditional accounting system fail to reflect the true value of intangibles as corporate assets or as sold goods. There should be a new way of valuing intangibles and reflection of this value to the authorities. While undoubtedly, there should be a larger variety of intangibles included in reports, there is still a lot of analysis to be done on the way intangibles should be treated for tax purposes. While for IP rights that have been long in the market, there is more knowledge on how to regulate them for tax purposes. It is certain that, organizational practices, human resources and discovery cannot be treated the same for tax purposes and like this, the last question about intangibles is answered. The deficiency in comprehending and regulating these new assets and goods sends inaccurate signals to the tax authorities leaving a big terrain for tax non-compliance.

Finally, to answer the most essential question [supra p 29] of this research paper, harmonization has never before been more necessary. For all the above questions harmonization is the most effective approach that can bring real substantial results. Even for intangibles, a harmonized terrain would enable the authorities to gather so much more information on the intangibles even on the hard-to-value intangibles. Although developing a solution on the intangibles involves more complex issues that have to be addressed by a platform that targets exclusively intangibles, harmonization would directly address the issue of tax havens which would diminish the terrain left for tax-dodging arrangements.

Harmonization even at a regional level like in the case of the EU would be very beneficial for the economy of all the Union. It would make the BEPS project easier to implement if there is

a regional harmonization before BEPS takes cooperation to the next step. If for the global sphere, harmonization seems to be hard to be achieved for the time being, for the EU the time has come, and the union remains insufficient without the harmonization of tax policies.

Harmonization at any level being regional or global would firstly benefit the authorities by preventing tax avoidance and evasion, eliminating mismatches between national systems and remove the need or the effectiveness of transfer pricing. In addition, it would also benefit the entities greatly by firstly reducing compliance costs. Especially for the EU, a single system would be used to calculate the taxable income of companies and as CCCTB has announced it would be in the form of a "one-stop-shop" that would be used also for filing tax returns in all the region of the EU[142]. Harmonization at any level would also directly increase the company's legal certainty and make the business climate for every entity more transparent.

In conclusion, the current global economic climate does request desperately for at least a minimum standard of corporate tax rates harmonization. The biggest obstacle is the political environment that creates a clash of interests. In such a globalized economy it is hard to make a change without the consent of at least the biggest economies. Fortunately, an undeniable improvement in regard to this topic is that lately it has been more discussed and brought up as a great issue that affects us all. It seems like the wheel of change started to move and hopefully, this will set the right pressure on the political sphere to stick to this priority that cannot be ignored anymore.

[142] European Commission 'Common Consolidated Corporate Tax Base (CCCTB)'(ec.europa.eu)<https://ec.europa.eu/taxation_customs/business/company-tax/common-consolidated-corporate-tax-base-ccctb_en> accessed 5 May 2021.

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ANNEX 1- ABSTRACT AUF DEUTSCH

Unabhängig davon, wie die heutigen Unternehmen ihre Expansionsziele jenseits der nationalen Grenzen erreichen wollen, ist das Hauptproblem die Tatsache, dass die Steuerbehörden mit einem Bündel von Problemen konfrontiert sind, die sich um die Zusammenarbeit und die rechtlichen Grenzen drehen. In der Tat reichen die Geschäftsziele großer Konzerne weiter als die nationale Steuerpolitik eines oder sogar einiger Länder. Steuervermeidung ist der typische und relevanteste Fall, der die Begrenztheit der rechtlichen Instrumente bei der Erzeugung von rechtlicher Verantwortung zeigt. Im Gegensatz dazu sind Steuerhinterziehung und Steuerbetrug eindeutig als illegale Aktivitäten geregelt, die strafrechtlich geahndet werden. De jure sind die oben genannten Begriffe leicht zu unterscheiden, während de facto die heutigen Geschäftsmodelle und ihre "aggressive Steuerplanung" Unsicherheit und eine Grauzone zwischen Legalität und Illegalität schaffen.

Sicherlich gab es diese Missstände auch schon vor der Internet-Ära oder gar der Globalisierung, aber die heutigen Herausforderungen haben andere Dimensionen. Da große globalisierte Unternehmen schon seit geraumer Zeit eine Herausforderung für die

Steuerbeamten aller Länder darstellen, vervielfacht sich dieses Problem in einem noch moderneren Konzept, nämlich im Fall großer multinationaler Unternehmen, die immaterielle Produkte oder sogar materielle Produkte über Geschäftsmodelle oder Plattformen anbieten, die hauptsächlich im Internet angeboten werden. Ein großes Problem ist, dass nicht jedes immaterielle Produkt von den Behörden bepreist oder mit einem Marktwert versehen werden kann, da es eine unendliche Anzahl von Möglichkeiten gibt, neue Produkte zu schaffen. Es gibt zahlreiche Probleme im Zusammenhang mit der Zuweisung des richtigen Wertes für immaterielle Güter, angefangen von immateriellen Gütern als digitale Produkte bis hin zu immateriellen Gütern als Unternehmensvermögen. Praktiken, die zu einer Unterbewertung von immateriellen Vermögenswerten führen, schaffen ein unfaires Marktumfeld für Unternehmen, die nichts mit immateriellen Vermögenswerten zu tun haben. Diese Praktiken sind sowohl aus buchhalterischer als auch aus rein rechtlicher Sicht sehr interessant zu betrachten.

Wenn es Unstimmigkeiten beim Preis oder Wert von immateriellen Vermögenswerten oder immateriellen Produkten gibt, ergeben sich daraus Möglichkeiten, Verrechnungspreise und Techniken zur Aushöhlung der Bemessungsgrundlage zu nutzen sowie leichteren Zugang zu Geheimhaltungsvorschriften zu erhalten. All diese Regelungen werden sich langfristig in der Gesellschaft und auf dem Markt widerspiegeln und unabsehbare Schäden verursachen. Eines ist klar: Riesige Unternehmen, die im Bereich der immateriellen Güter erfolgreich sind und die Ära der Digitalisierung nutzen, haben eine ziemlich vorteilhafte Position im Vergleich zu anderen Marktteilnehmern.