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Multi-National Companies: an endless race to tax evasion
Aziende Multinazionali: una corsa senza fine all'evasione fiscale

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ABSTRACT

Questo elaborato nasce con l'intento di analizzare quali sono le principali metodologie che vengono utilizzate da parte delle Multinazionali per eludere la tassazione nei loro paesi di riferimento. L'idea di base è nata grazie alle lezioni del mio relatore che, dopo approfondite analisi dei casi specifici, ha inculcato in me questo desiderio di conoscere i veri motivi che portano Stati e Aziende a collaborare per raggiungere un fine comune, quello di rendere obsolete leggi e regolamenti, sfruttando buchi normativi per eludere la tassazione e creare un forte scompenso tra coloro che operano in maniera pulita, versando e dichiarando tutto ciò che gli compete, e coloro che invece cercano in ogni modo di sfruttare il loro potere per creare vantaggi fiscali importanti, che per lo più si ripercuotono su piccole imprese ed imprenditori. L'analisi parte da una scrupolosa documentazione, volta a conoscere tutte quelle metodologie messe in essere da parte della Commissione Europea per arginare questo tipo di problemi, partendo dai Tax Rulings fino ad arrivare alla trasparenza sulla ripartizione del reddito. In seguito, ho spostato l'attenzione su una Multinazionale che nello specifico ha sfruttato a suo favore questi buchi normativi per creare la propria posizione di vantaggio all'interno del mercato internazionale: Ikea. Il modus operandi è molto simile a quello di molte altre multinazionali che, sfruttando la tassazione minima sulle royalties proposte da alcuni paradisi fiscali, creano profitti enormi che li pongono ancor più in una situazione di vantaggio e potere rispetto a quanto già non siano. Infine, ho cercato di racchiudere tutte le nuove riforme varate dall'OECD per combattere questa immane piaga, partendo dal CFC fino ad arrivare all'ultima grande idea che si spera possa porre un freno definitivo allo strapotere delle aziende in questione, la Global Minimum Tax, che racchiude la possibilità di creare una

tassazione minima per tutte quelle aziende con un grande fatturato, così da porle tutte al medesimo livello di fronte la legge, e non al di sopra di essa.

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INTRODUCTION

The following paper draws the attention to a very recurring theme in recent years: tax evasion and avoidance. The text begins with a brief description of the main methods used by multinationals to evade the controls put in place by the European Commission. Then the Lux Leaks case is analysed, which lays the basis for the central theme of the thesis, the Ikea case, and how a multinational with a turnover of 41.3 billion, through complex triangulations with compliant countries (Holland and Luxembourg), manages to be taxed at the lowest level. The entire investigation has been made by the European Commission after a long period of analysis, that has brought the world to the knowledge of the Ikea case. The last chapter focuses on the current situation, how the OECD is trying to stem this great problem, putting in place some actions that limit or hinder the power of multinationals, concluding with a proposal launched by the G20, which calls for the imposition of a minimum taxation for all those companies that until now have made this huge regulatory hole a major advantage.

1 EVASION AND AVOIDANCE

To introduce this two words, I want to share an extract from Oliver Wendell Holmes, who wrote:

"When the law draws a line, a case is on one side of it or the other, and if on the safe side is none, the worse legally that a party has availed himself to the full of what the law permits. When an act is condemned as evasion, what is meant is that it is on the wrong side of the line..." (Bullen v. Wisconsin (1916), 240.

There is a very specific reason why tax evasion and avoidance represent the so-called heel of Achilles of Europe. Both phenomena have a common goal: to pay less taxes and "get around" them tax rules. Although the two terms, or rather the two behaviors, are easily confused, there is one substantial difference that is denoted in the criminal and administrative fields. Tax evasion can be defined as all those behaviors and methods that have as their objective that of reducing or eliminating the tax levy by the State on the taxpayer, through practices that violate tax laws and regulations. The phenomenon of tax evasion can be sanctioned both on an administrative and criminal level, depending on the extent and amount of taxes and fees not paid to the State because of non-compliance with tax regulations. When we talk about tax avoidance, however, we refer to a very different behavior on the level regulatory and sanctioning with respect to evasion. tax avoidance consists of transactions without economic substance which, while respecting the

law, guarantee the realization of indirect tax advantages in favor of taxpayers. The need for an efficient flow of information between tax administrations and taxpayers has often been considered of fundamental importance to solve the problematic application and interpretation of tax law provisions. The difficulties related to the application and interpretation of tax law provisions are enhanced in cross-border situations: it is obvious that taxpayers making investments or having business activities in a country different from that where they are resident shall encounter the difficulties related to the compliance with the foreign tax system, with language barriers and legal concept which they are not familiar with.

1.1 TAX RULINGS

Tax rulings are an institution through which multinationals can agree with the tax authorities of a country on the tax treatment for a specified period. Through a ruling, a multinational can, for example, obtain the endorsement of a tax authority on the way in which it establishes intra-group prices for transactions in goods and services exchanged between its various companies, as in the case of APAs (Advanced pricing agreements), the advance agreements on transfer pricing, which represents an extremely widespread practice on the part of multinationals which, with these agreements, aim to acquire advance knowledge of the amount of taxation for a long period of time. It is, therefore, a real tax planning. Through the ruling, a

multinational can also obtain certainty on the way in which a country will fiscally treat the disbursement, to group companies not resident in the same country, of dividends, royalties, interest payments. With a ruling, a non-resident multinational can also ascertain the correct interpretation of the rules of a country relating to the attribution of profits or losses to its own permanent establishment in the country.

For example, the European Commission has sanctioned that Apple has benefited from tax rulings granted by the Irish government considered, however, to be illegal state aid for an amount of approximately 13 billion euros. A similar case is that of the US chain of Starbucks coffee shops, which were forced to correspond to the Dutch government nearly 30 million. However, for the European Commission, such behavior and artifice go to artificially alter competition to the point of developing and issuing directives or the implementation of the "BEPS project" contrast measure. So-called advance price agreements (APAs or advance price agreements) constitute a type of tax ruling often used by multinationals to obtain approval on its own transfer pricing methods. A prior agreement on transfer pricing can be unilateral when participates only one tax administration and a taxpayer or multilateral when it involves the agreement of two or more tax administrations.

This regime is now divided in two parts which are Advance Tax Rulings (ATRs) and Advance Pricing Agreements (APAs). This report focuses on the APAs since IKEA has taken advantage of them to not pay, or even avoid, taxes. The APA practice allows to get an upfront agreement on the transfer prices to be used by a

tax paying company. From 2006, the rulings from the old practice have been invalidated. The new system allows the company to obtain in advance how a specific intra-group will be taxed. However, this new system is defined case-to-case and is not publicly available.

1.1.2 WHAT ABOUT ITALY?

In 2010 the Italian Tax Administration issued ruling n. 2010/137654 that helped the country to implement a new vision on transfer pricing documentation. This change pushed multinational enterprises to file a notice with the tax administration confirming that they have all the documentation required to fil the annual tax return. The Italian international tax ruling is a special procedure through which a domestic enterprise engaged in international activities or a foreign enterprise engaged in investment or business activities in Italy can agree with the Italian tax administration on the tax treatment of certain important items concerning its cross border activities including amount income attributable to an Italian PE, transfer prices for the exchange of goods or services between affiliated companies, Italian withholding taxes on outbound interest, dividends and royalties.

1.2 THE VCLT: ITS CONTENT, LEGACY AND CHIEVEMENTS

The Vienna Convention on the Law of Treaties (VCLT) is a treaty concerning the international law on treaties between states. It was drafted by the International Law Commission (ILC) of the United Nations, which began work on the Convention in 1949. VCLT provides an international legal framework for these agreements in time of peace (the effect on treaties of the outbreak of hostilities between States is explicitly excluded from the reach of the Convention). Specifically, articles 31 and 32 give the general rules for the interpretation of treaties between states. The VCLT applies to 'treaties', which are defined in Article 2(1)(a) as "international agreement[s] concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation". It is non-retroactive and only applies to treaties concluded after its entry into force (27 January 1980 for original parties). Even if the VCLT does not apply, many provisions of the VCLT are accepted by States to reflect customary international law. As finalised, the VCLT addresses a range of topics that are fundamental to the law of treaties. It incorporates rules related to the conclusion and entry into force of treaties (Part II); the observance, application, and interpretation of treaties (Part III); the amendment and modification of treaties (Part IV); and the invalidity, termination, and suspension of the operation of treaties (Part V), amongst others. The VCLT has been influential

for courts and tribunals in a range of contexts. This week's series of posts focuses primarily on how the VCLT has informed investment tribunals in their interpretation and application of investment treaties. Indeed, the VCLT has informed the deliberations of numerous investment tribunals. Investment tribunals have repeatedly recognised that the VCLT rules on treaty interpretation in Articles 31-33 reflect customary international law. Investment tribunals have also recognised that other provisions of the VCLT reflect customary international law, including the Article 26 principle of *pacta sunt servanda*, the Article 28 principle of non-retroactivity, and the principles on third party rights/obligations in Articles 34 to 36. Investment tribunals have similarly referred to the VCLT when determining the impact of purported reservations to investment treaties. Tribunals confronted with the interaction between investment treaties and the treaties of the European Community have also drawn on the VCLT (particularly Articles 30 and 59) for guidance. The importance of the VCLT to investment arbitration has been a recurring topic of coverage on the Blog. Many past posts have considered how investment tribunals have used the VCLT in response to both technical issues and matters relevant to broader debates. As these posts have pointed out, the VCLT has often played a pivotal role in the resolution of a range of issues.

1.2.1 VIENNA CONVENTION ON THE LAW OF TREATY

SECTION 3. INTERPRETATION OF TREATIES

Article 31. GENERAL RULE OF INTERPRETATION

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(*a*) Any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;

(*b*) Any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(*a*) Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(*b*) Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(*c*) Any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

ARTICLE 32

Supplementary means of interpretation

This article is meant to better define what has been written in Art 31 and, hence, it works as an integration of the previous Art 31.

Art 32 is a support of Art 31.

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion,

in order to confirm the meaning resulting from the application of Art 31 or to determine the meaning when the interpretation according to Art 31:

- Leaves the meaning ambiguous or obscure or
- Leads to a result which is manifestly absurd or unreasonable.

1.3 TRASFER PRICING

With the continuing globalization of our economy, as well as the resulting increase in cross-border transactions and the complexity of domestic and international laws and regulations, multinational companies increasingly recognize the importance of proactively managing transfer pricing to limit related tax risks and take advantage of planning opportunities.

Transfer pricing is the setting of the price for goods and services sold between controlled (or related) legal entities within an enterprise, it can be used as a profit allocation method to attribute a multinational corporation's net profit (or loss) before tax to countries where it does business.

The Organisation for Economic Cooperation and Development ("OECD") has published guidance on taxation for its member countries and the determination of transfer prices for tax purposes.

• According to Article 9(1) of the Model Tax Convention on Income and on Capital: “Where (…) conditions are made or imposed between the two [associated] enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly".

• According to the arm's length principle intra-group transactions should be priced as if they were agreed to by independent companies negotiating under comparable circumstances at arm's length. This principle ensures that an MNE's tax obligations cannot be lessened or avoided through strategic internal trading. With the rise of globalization, the implementation of the arm's length principle to stop unjust transfer pricing practices is being recognized as essential by economists, politicians and the business community alike.

The idea of transfer pricing follows the international tax management principle:

"If there are excess tax credits, show branch profits in the lowest-tax jurisdictions by allocating costs to the highest-tax jurisdictions, without making negative profits."

A multinational that decides to transfer assets offshore must consider that tax regulations about transfer pricing are based on the arm's length standard (ALS, art.9 OECD Model Tax Convention). Therefore, it is required that the accounting records in the two units treat the transaction in the same way as a sale to an outside customer and not as it is only an internal operation. More in detail, the ALS treats every related affiliate as a separate party so that the price of cross-border intercompany transactions should be determined as if the transactions were conducted between unrelated parties in an open market.

In the case of a complicated transaction, such as the movement of Intellectual Property (an intangible asset), it could be more difficult to determine the price of

the operation under the ALS due to the absence of comparable transactions. What happens in this case is that a company's core IP is transferred to a controlled foreign subsidiary in exchange for annual payments taxable at the parent level. However, the controlled foreign subsidiary's earnings are taxed locally and at a much lower rate.

RISKS	BENEFITS
Transfer pricing helps in reducing the duty costs by shipping goods into high tariff countries at minimal transfer prices so that duty base associated with these transactions are low.	There can be a disagreement among the organizational division managers as what the policies should be regarding the transfer policies.
Reducing income taxes in high tax countries by overpricing goods that are transferred to units in those countries where the tax rate is comparatively lower thereby giving them a higher profit margin	There are a lot of additional costs that are linked with the required time and manpower which is required to execute transfer pricing and help in designing the accounting system.

1.3.1 ARM'S LENGTH PRINCIPLE

The transfer pricing is not an illegal or necessarily abusive procedure, but it becomes so when the price transfer is wrong, so when there is an intentional manipulation by companies. It is estimated that about 60% of the international trade takes place within the same corporate group rather than between multinationals. The Transfer pricing can deprive governments of their fair share of taxes and expose the multinationals to a possible double taxation. Since there is no absolute rule for

the right transfer of any type of international transaction with associated companies, whether it concerns raw materials, intangible fixed assets, of services, financing or contracting costs, is a source of potential disagreement about the corrected amount of taxable income that was carried forward in a particular jurisdiction. The basis for determining the correct correction is, almost universally, the “arm's length principle". The OECD with the "Transfer Pricing Guidelines for MNCs and Tax" 2017 Administrations "was created for the introduction of the" arm's length principle ", which it is explained in article 9 of the OECD Tax Model Convention.

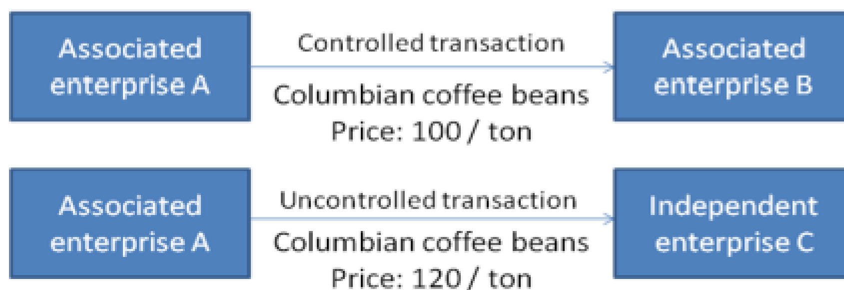
1.3.2 TRANSFER PRICING METHODS

There are five transfer pricing methods that can be applied to establish whether the conditions of controlled transactions are consistent with the arm's length principle. These five methods consist in three “traditional transaction methods”: the comparable uncontrolled price method (“CUP” method), the resale price method, and the cost-plus method; and two “transactional profit methods”: the transactional net margin method (“TNMM”) and the transactional profit split method. This methods represent the international consensus on the manner of applying the arm’s length principle. In order to minimise the risk of double taxation, countries are encouraged to make available all the five transfer pricing methods in their domestic rules and to apply them in accordance with the TPG.

1.3.3 THE CUP METHOD

The CUP method compares the price charged for property or services transferred in a controlled transaction to the price charged for property or services transferred in a comparable uncontrolled transaction in comparable circumstances. If there is any difference between the two prices, this may indicate that the conditions of the commercial and financial relations of the associated enterprises are not arm's length, and that the price in the uncontrolled transaction may need to be substituted for the price in the controlled transaction.

CUP method (illustration):



First, it needs to be determined whether the uncontrolled transaction (sale by A to C) is comparable to the controlled transaction (sale by A to B). This will de done through a comparability analysis (review of the five comparability factors).

1.3.4 THE RESALE PRICE METHOD

The resale price method begins with the price at which a product that has been purchased from an associated enterprise is resold to an independent enterprise. This price (the "resale price") is then reduced by an appropriate gross margin (the "resale price margin"), determined by reference to gross margins in comparable uncontrolled transactions, representing the amount out of which the reseller would seek to cover its selling and other operating expenses and, in light of the functions performed (taking into account assets used and risks assumed), make an appropriate profit. What is left after subtracting the gross margin can be regarded, after adjustment for other costs associated with the purchase of the product (e.g. customs duties), as an arm's length price for the original transfer of property between the associated enterprises.

Resale price method (illustration):

Sales price to independent customers	1,000	
Resale margin (*i.e.* gross margin) (*e.g.* 40%)	400	Tested in the resale price method; determined from uncontrolled comparables
Cost of goods sold: transfer price	(600)	(*i.e.* purchase price from associated enterprise)
Selling and other operating expenses	(300)	
Operating profit	100	

1.3.5 THE COST PLUS METHOD

The cost-plus method begins with the costs incurred by the supplier of property or services in a controlled transaction for property transferred or services provided to an associated enterprise. An appropriate mark-up, determined by reference to the mark-up earned by suppliers in comparable uncontrolled transactions, is then added to these costs, to make an appropriate profit considering the functions performed and the market conditions. Such arm's length mark-up may be determined by reference to the mark-up that the same supplier earns in comparable uncontrolled transactions (an "internal comparable"), or by reference to the mark up that would have been earned in comparable transactions by an independent enterprise ("external comparable"). In general, the mark-up in a cost-plus method will be computed after direct and indirect costs of production or supply, but before the operating expenses of the enterprise (e.g., overhead expenses).

Cost plus method (illustration):

Cost of raw materials	200	
Other direct and indirect production costs	100	Tested in the cost plus method; determined from uncontrolled comparables
Total cost base	300	
Mark-up on costs (*e.g.* 20%)	60	
Transfer price	360	(*i.e.* sale price to associated enterprise)
Overheads and other operating expenses	(40)	
Operating profit	20	

1.3.6 THE TRANSACTIONAL NET MARGIN METHOD

The transactional net margin method ("TNMM") examines a net profit indicator, i.e. a ratio of net profit relative to an appropriate base (e.g. costs, sales, assets), that a taxpayer realises from a controlled transaction (or from transactions that are appropriate to aggregate) with the net profit earned in comparable uncontrolled transactions. The arm's length net profit indicator of the taxpayer from the controlled transaction(s) may be determined by reference to the net profit indicator that the same taxpayer earns in comparable uncontrolled transactions (internal comparable), or by reference to the net profit indicator earned in comparable transactions by an independent enterprise (external comparable).

In cases where the net profit is weighed to costs or sales, the TNMM operates in a manner like the cost plus and resale price methods respectively, except that it compares the net profit arising from controlled and uncontrolled transactions (after relevant operating expenses have been deducted) instead of comparing a gross profit on resale or gross mark up on costs.

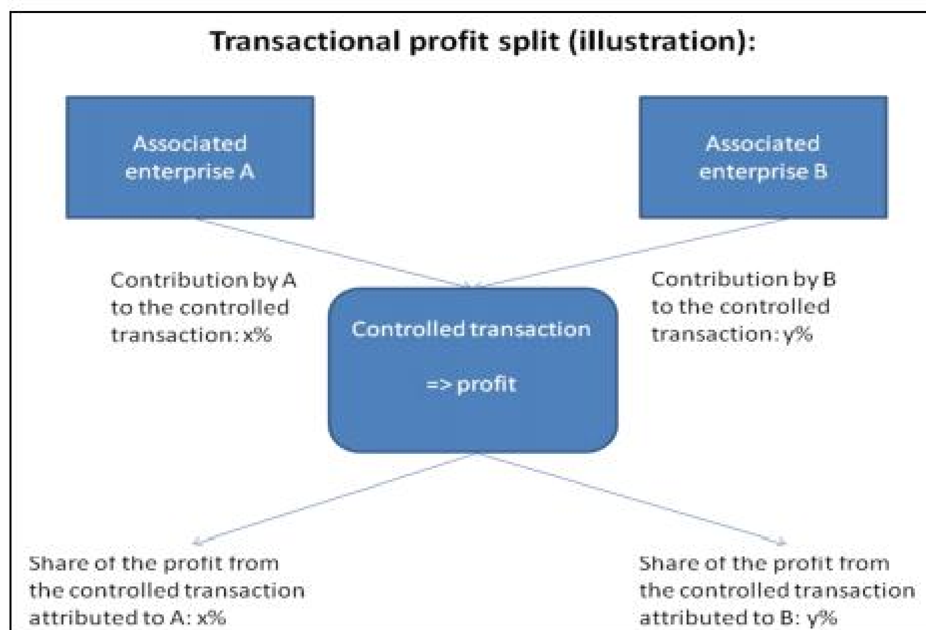
Difference between a cost plus and a TNMM for a contract manufacturer (illustration):

Item	Amount	
Cost of raw materials	200	
Other direct and indirect production costs	100	
Total cost base	300	Tested in a cost plus method
Mark-up on costs (*e.g.* 20% of costs)	60	
Transfer price	360	
Overheads and other operating expenses	(45)	Tested in a TNMM
Operating profit (*e.g.* 5% of costs)	15	

1.3.7 THE TRANSACTIONAL PROFIT SPLIT METHOD

The transactional profit split method first identifies the combined profits to be split for the associated enterprises from the controlled transactions in which the associated enterprises are engaged. In some cases, the combined profits will be the

total profits from the controlled transactions in question. In other cases, the combined profits will be a residual profit intended to represent the profit that cannot readily be assigned to one of the parties from the application of another transfer pricing method, such as the profit arising from valuable, unique intangibles. Note that the combined profits may be a loss in some circumstances.



1.4 BEPS

Base erosion and profit shifting (BEPS) refers to tax planning strategies used by multinational enterprises that exploit gaps and mismatches in tax rules to avoid paying tax. Developing countries' higher reliance on corporate income tax means

they suffer from BEPS disproportionately. BEPS practices cost countries USD 100-240 billion in lost revenue annually. Working together within OECD/G20 Inclusive Framework on BEPS, 139 countries and_jurisdictions are collaborating on the implementation of 15 measures to tackle tax avoidance, improve the coherence of international tax rules and ensure a more transparent tax environment.

1.4.1. WHAT BEPS MEANS?

BEPS refers to tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity or to erode tax bases through deductible payments such as interest or royalties. Although some of the schemes used are illegal, most are not. This undermines the fairness and integrity of tax systems because businesses that operate across borders can use BEPS to gain a competitive advantage over enterprises that operate at a domestic level. Moreover, when taxpayers see multinational corporations legally avoiding income tax, it undermines voluntary compliance by all taxpayers.

BEPS is of major significance for developing countries due to their heavy reliance on corporate income tax, particularly from multinational enterprises. Engaging developing countries in the international tax agenda is important to ensure that they

receive support to address their specific needs and can effectively participate in the process of standard-setting on international tax.

1.4.2 OECD vs BEPS

The OECD/G20 Inclusive Framework on BEPS brings together over 135 countries and jurisdictions to collaborate on the implementation of the BEPS Package. The current political priorities in international taxation highlight the need for ensuring that tax is paid where profits and value are generated. It is thus imperative to restore trust in the fairness of tax systems and allow governments to effectively exercise their tax sovereignty. These new political objectives have been translated into concrete action recommendations in the context of the initiative against base erosion and profit shifting (BEPS) by the Organisation for Economic Cooperation and Development (OECD). In response to the need for fairer taxation, the Commission, in its communication of 17 June 2015 sets out an action plan for fair and efficient corporate taxation in the European Union. In addition, the conclusions supported an effective and swift coordinated implementation of the anti-BEPS measures at the EU level and considered that EU directives should be, where appropriate, the preferred vehicle for implementing OECD BEPS conclusions at the EU level It is essential for the good functioning of the internal market that, as a

minimum, Member States implement their commitments under BEPS and more broadly, take action to discourage tax avoidance practices and ensure fair and effective taxation in the Union in a sufficiently coherent and coordinated fashion in a market of highly integrated economies there is a need for common strategic approaches and coordinated action, to improve the functioning of the internal market and maximise the positive effects of the initiative against BEPS. The BEPS package provides 15 actions that equip governments with the domestic and international instruments needed to tackle tax avoidance. Countries now have the tools to ensure that profits are taxed where economic activities generating the profits are performed and where value is created. These tools also give businesses greater certainty by reducing disputes over the application of international tax rules and standardising compliance requirements. OECD and G20 countries along with developing countries that are participating in the implementation of the BEPS Package and the ongoing development of anti-BEPS international standards are establishing a modern international tax framework to ensure profits are taxed where economic activity and value creation occur. Work is being carried out to support all countries interested in implementing and applying the rules in a consistent and coherent manner, particularly those for which capacity building is an important issue. The Inclusive Framework on BEPS allows interested countries and jurisdictions to work with OECD and G20 members on developing standards on BEPS related issues and review and monitor the implementation of the BEPS

Package. The OECD/G20 Inclusive Framework on BEPS actively monitors the implementation of all the BEPS Actions and reports annually to the G20 on this progress. The implementation of the BEPS Minimum Standards is of particular importance, and each of these is the subject of a peer review process that evaluates the implementation by each member and provides clear recommendations for improvement. Peer reviews of the BEPS minimum standards are an essential tool to ensure the effective implementation of the BEPS package. First results were available for Action 5 in 2017, for Action 13 and Action 14 in 2018, and for Action 6 in 2019. The results of the peer reviews show strong implementation throughout the world. All countries and jurisdictions joining the framework will participate in this review process, which allows members to review their own tax systems and to identify and remove elements that pose BEPS risks.

1.4.3 DOUBLE TAXATION

International juridical double taxation can be defined as the imposition of taxes in two or more States on the same taxpayer. Every taxpayer that is engaged in commercial, industrial, financial or any other activities in other countries must pass through the application by all countries of common solution to identical case of double taxation. Another important aspect is the continue exchange of information between the countries, with administrative cooperation in tax matters and assistant

in collection of taxes, with the only purpose of preventing tax avoidance or evasion. Where a taxation takes place across international borders between two associated enterprises, and they made an adjustment to the transfer price for tax purposes, this adjustment, if it increases the taxable profit, may result as a double taxation. However, this is not always the case: if an adjustment is made to a transfer price in respect of a transaction that is passed through a tax heaven, in this case this adjustment only brings more profits into liability in the State that made it.

1.5 EU TRANSPARENCY ON INCOME ALLOCATION AND TAX ARRANGEMENTS

The EU Anti-Tax Avoidance Package (ATAP) was issued by the European Commission in 2016 to counter tax avoidance behaviour of MNEs in the EU and to align tax payments with value creation. The package includes the Anti-Tax Avoidance Directive, an amending Directive as regards hybrid mismatches with third countries, and four other measures.

1.5.1 ATAD I

The Anti-Tax Avoidance Directive (ATAD), COUNCIL DIRECTIVE (EU) 2016/1164 of 12 July 2016, introduces five anti-abuse measures, against tax avoidance practices that directly affect the functioning of the internal market.

1) Interest Limitation Rule – Reduce profit shifting via excessive interest payments (Article 4)

2) Exit Taxation – Prevent tax motivated movement of valuable business assets (intangibles) across borders (Article 5)

3) General Anti-Avoidance Rule (GAAR) – Discourage Artificial Arrangements (Article 6)

4) Controlled Foreign Company (CFC) – Reduce profits shifting to low tax jurisdictions (Article 7, 8)

5) Hybrid Mismatch Rule – Reduce Hybrid Mismatch Possibilities (Article 9 + ATAD II)

The first measure, interest limitation rule aims to prevent profit shifting activities that take place via excessive interest payments. This rule restricts deductibility of interest expenses and similar payments from the tax base.

The second measure, exit taxation, deals with cases where the tax base (e.g., valuable intangible assets) is moved across borders. The third measure is the general anti avoidance rule (GAAR) which allows countries to tackle artificial tax arrangements not governed by rational economic reasons. The fourth measure is the controlled foreign company (CFC) rule, which is designed to deter profit-shifting

to low-tax countries. The fifth measure, the rule on hybrid mismatches, aims to limit cases of double non-taxation and asymmetric deductions resulting from discrepancies between different tax systems.

1.5.2 ATAD II

ATAD II, COUNCIL DIRECTIVE (EU) 2017/952) of 29 May 2017, contains a set of additional rules to neutralize hybrid mismatches where at least one of the parties is a corporate taxpayer in an EU Member State, thus expanding the application to non-EU countries. The second directive also addresses hybrid permanent establishment (PE) mismatches, hybrid transfers, imported mismatches, reverse hybrid mismatches and dual resident mismatches. (Article 9, 9a and 9b). Recently other measures have been included to improve the knowledge among EU Member States:

- The Country-by-Country Reporting (CbCR) requirement introduces a reporting requirement on global income allocations of MNEs to increase transparency and provide Member States with information to detect and prevent tax avoidance schemes.

- The Study on Aggressive Tax Planning investigates corporate tax rules in Member States that are or may be used in aggressive tax-planning strategies.
-

1.5.3 DAC (DIRECTIVE ON ADMINISTRATIVE COOPERATION)

Tax authorities in the EU have agreed to cooperate more closely and exchange information to be able to apply their taxes correctly and combat tax fraud and tax evasion.

Exchange of Information within the EU is based on Council Directive 2011/16/EU. The Directive and the later amendments in DAC 2 – 6 provide for exchange of information in three forms: spontaneous, automatic and on request:

- Spontaneous exchange of information takes place if a country discovers information on possible tax evasion relevant to another country, which is either the country of the income source or the country of residence.
- Exchange of information on request is used when additional information for tax purposes is needed from another country.
- Automatic exchange of information (AEOI) is activated in a cross-border situation, where a taxpayer is active in another country than the country of residence. In such cases tax administrations automatically provide tax

information to the residence country of the taxpayer, in electronic form on a periodic basis.

Directive on Administrative Cooperation – DAC						
DAC1 2011/16/EU NON AEOI	DAC1 2011/16/EU AEOI ITEMS	DAC2 2014/107/EU AEOI ITEMS	DAC3 2015/2376/EU AEOI ITEMS	DAC4 2016/881/EU: AEOI ITEMS	DAC5 2016/2258/EU NON AEOI	DAC6 2018/822/EU AEOI ITEMS
Applies:1/2013 All exchanges of info except Art. 8 ***Exchanges on request** ***Spontaneous exchanges** ***Presence in adm. offices** ***Simultaneous controls** ***Request for notification** ***Sharing best practices** ***Use of standard forms**	Applies:1/2015 1st exchanges on 2014 by: 30.6.2015 Art. 8 ***Automatic exchange of information** on **5 non-financial categories:** **Income from employment* **Directors fees* **Pensions* **Life insurance products* **Immovable property (income and ownership)*	Applies:1/2016 1st exchanges on 2016 by: 30.9.2017 Art. 8, para 3a Automatic exchange on **financial account information:** **Interests, dividends or other income generated by financial account* **Gross proceeds from sale or redemption* **account balances*	Applies:1/2017 1st exchanges by 30.9.2017 Art. 8a Automatic exchange of information (using a central directory as from 1.2018) of: ***Advance cross-border rulings** ***Advance pricing arrangements**	Applies:6/2017 1st exchanges on 2016 by: 30.6.2018 Art. 8aa **Automatic exchange of information** on **country-by-country reports** on certain financial information: **Revenues* **Profits* **Taxes paid and accrued* **Accumulated earnings* **Number of employees* **Certain assets*	Applies:1/2018 Art. 22, para 1a **Access by tax authorities to beneficial ownership information** as collected under AML rules	Applies:7/2020 1st exchanges by: 31.8.2020 Art. 8aaa and hallmarks in Annex 4 ***Mandatory disclosure rules** for **intermediaries** and ***Automatic exchange of information** on tax planning **cross-border arrangements**

2 LUXLEAKS AND TAAKS AVOID

What is analysed inside the first chapter is how the European commission has tried to fight against the evasion of taxes inside Multinational Enterprises, but with poor results. After this deep exposition I would like to talk about a specific case that describe more in detail the situation inside Multinational Company, the case of Ikea called from European Commission TAAKS AVOYD. Since the Lux-leaks scandal in November 2014 revealed that about 350 large multinational companies (MNCs)

were using sweetheart tax deals in Luxembourg to minimise their tax contribution, not a single day goes by without a new reported scandal or proposals to ensure companies ‘pay their fair share’. One of the biggest scandals regarding corporate-state rulings is the so-called Lux-leaks, that is an investigation born from the collaboration between 80 journalists from different countries, and coordinated by International Consortium of Investigative Journalism (ICIJ), which revealed a list of facilities taxes granted by the Luxembourg government, between 2002 and 2010, to over 300 companies. The scope of the investigation is incredibly broad: it involved over forty media outlets (such as The Guardian or Le Monde), in addition to the current president of the European Commission Jean Claude Juncker (then Prime Minister of Luxembourg), whose position on the matter is not yet been clarified. Among the companies involved in the scandal are giants such as Ikea and Amazon, but also many financial and consulting firms (Lehman Brothers, Procter & Gamble) and banks (Deutsche Bank above all, but also UniCredit and Intesa San Paolo). Different names, but same substance: all the companies involved are guilty of having concluded secret agreements with the tax authorities of the Grand Duchy, thanks to which they were then able to 'maneuver' the movements of offices and profits e benefit from substantial tax savings. Many of these agreements have also involved Italy, as they have effectively allowed giants like Apple or Amazon to create fiscal enclaves in Europe to which to divert, and to which to impute, one's profits on the continent.

2.1 TAAKS AVOID

In the past 15 years, many multinational corporations moved their tax domiciles to Europe: the purpose was to take advantage of the differences in tax laws between their States and European countries. Many of these corporations found themselves in conflict with the European Commission (the Commission), which imposed hefty penalties on them. It is well known that international tax law has many loopholes, and in the past three decades, multinational corporations (MNC) have exploited them. On 24 December 2016, the Organization of Economic and Cooperation Development (OECD) announced a universal agreement to address these issues. The tax loophole misuses have become too serious to neglect anymore.

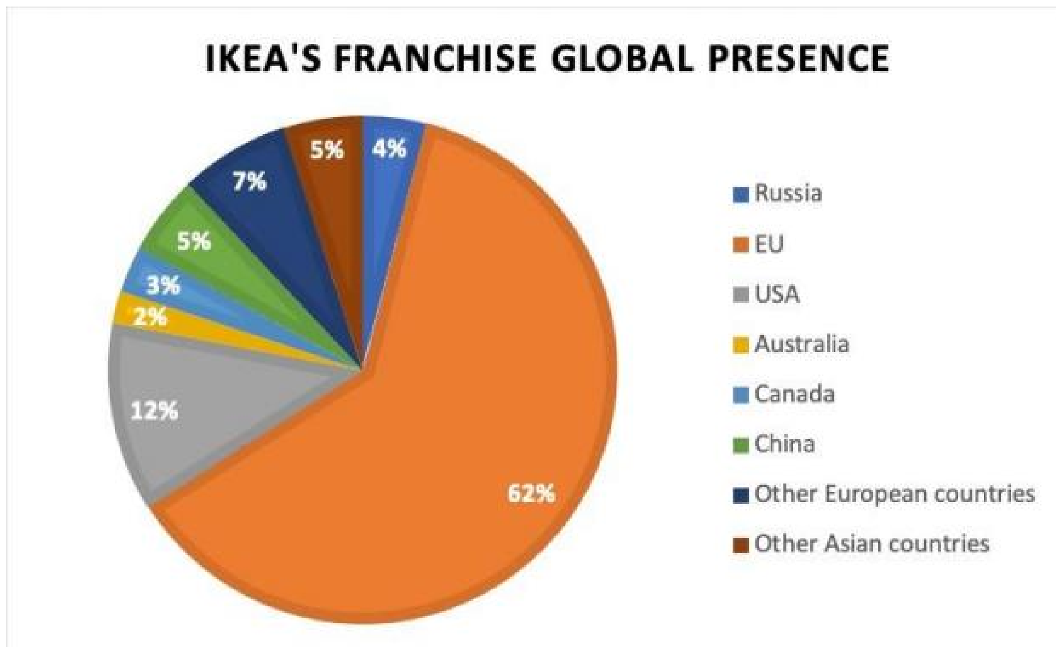
Transfer pricing is probably the most serious problem in international taxation, as is showed from Riley: "It is a general maxim that taxpayers want to minimize their tax liability to the greatest extent possible. However, taxpayers who pursue this aim risk crossing the line separating permissible tax avoidance from impermissible tax evasion. In the realm of international business tax law, nowhere is this issue more pressing than in the arena of transfer pricing, in cases where the taxpayer is a multi-national enterprise (MNE) comprised of corporate entities located in several tax jurisdictions worldwide. (Riley, Mary. 2014. Transfer Pricing and International Taxation: A Continuing Problem for Taxing Authorities). This means that the

multinational enterprises increasingly abuse 'transfer pricing' between the parent company and its controlled foreign corporation as a vehicle to shift its profit from a lower-tax country to a higher one. The only purpose is to minimize its overall tax liability. The key player of IKEA's effective tax-avoiding strategy is arguably its corporate structure which includes both foundations and holding companies sited in tax havens such as Luxembourg, the Netherlands and Liechtenstein. This complex structure allowed Ikea to put into effect aggressive transfer price strategies which, in turn, led the company itself to benefit from exceptional advantages from a fiscal point of view.

2.1.1 IKEA AT A GLANCE

IKEA is a multinational company founded in Småland, Sweden, by the entrepreneur Ingvar Kamprad in 1943, at the time he was 17. The name rose from the initials of his name and the initials of the places where he grew up: Elmtaryd and Agunnaryd. By 1943, IKEA started as a mail-order business by selling pencils, matches, watches and other merchandise. Nowadays, its business is mainly based on the sale of furniture and furnishing accessories. IKEA specializes in low-priced goods, sold whenever possible in compact “flat-pack” form for in-home assembly by the customer. The first IKEA store was opened in Älmhult, Sweden, in 1958 and the first stores outside of Sweden were opened in Norway in 1963 and Denmark in 1969. Then the first IKEA store outside Scandinavia was established in Spreitenbach, Switzerland, in 1973. By 1974, IKEA broadened its market beyond continental Europe. Nowadays, the multinational company is a giant enterprise with about 33 billion euros in annual sales, 172 thousand employees, an extended global supply chain and a global franchise presence. The next graph shows its global presence: there are 378 IKEA stores worldwide, including 234 in the European Union and 55 in North America, respectively the first and the second largest market of the company itself. However, the data considered for the analysis might have changed since IKEA has been severely affected by the Coronavirus pandemic and its aftermath. As a result, the Swedish giant has been forced to shut down many

stores around the world, incurring a loss of 1.5 billion euros compared to 2019 turnover.



Ikea's strategy stems from a very simple philosophy:

"Why are beautiful products made only for a few buyers? It should be possible to offer good design and functionality at low prices." - Ingvar Kamprad.

Ikea's goal has always been to offer quality furniture at a good price, accessible to everyone. Over the years, the company has been faithful to this principle, and this goal has been considered one of the brand's strengths. Ingvar Kamprad's intuition was to buy an abandoned farm and start producing his furniture directly in the

structure. In this way, production costs could be reduced, and the final product sold at a lower price, and he had a further perception that, even today, is the basis of Ikea's business model that makes it distinctive. Around 1956 Ingvar realized that shipping large pieces of furniture was often difficult and expensive and that products were damaged in transit. Hence, the idea was born. Disassembling the items and dividing the individual pieces into special packages would be easier to move. It would be the customer himself, after the purchase, to assemble his own furniture. This also allowed us to reduce shipping costs. Another key element is the absence of the figure of the interior decorator. When you enter Ikea, you are immediately immersed in home environments that are already furnished: from the dining room to the kitchen, from the bathroom to the bedrooms. All this makes the customer want to replicate that furniture, with that layout, with those accessories, in their own home. Finally, at Ikea it is the customer who chooses the product and picks it up from the warehouse, puts it in the cart and pays for it at the checkout.

All this makes it possible to have a good product at a great price.

The historic "LÖVET" coffee table, from where started the idea of "flat packs" originated. Source: Ikea

2.1.2 IKEA CORPORATE STRUCTURE

Despite its massive growth, IKEA remains a privately-owned business with a complex multinational structure that is engineered to minimize its total tax obligations and to maintain family control over the company. By 1982, Kamprad family had split IKEA into two legally distinct corporate groups that play complementary roles: - IKEA Group, owned by Stichting INGKA Foundation (formed in Netherlands, 1982); - Inter IKEA Group, owned by Interogo Foundation (formed in Liechtenstein, 1989). At the top of this dual structure, the private foundations that own both corporate groups are controlled the Kamprad family (Ingvar Kamprad and his three sons) and its closest associates. By 1988, the

Kamprad family also owns the IKANO Group through a holding company, the ICAF Antillean NV, in Curaçao which forms part of the Kingdom of the Netherlands and is an associate member of the European Community. IKANO Group is responsible for financial services, real estate, and retail, indeed it operates 5 stores in Malaysia, Singapore, Thailand and has a franchise agreement with the Inter IKEA System BV. Since IKEA includes several companies that do not play a key role in its fiscal strategy and there is very little information on the IKANO group available, this analysis will focus on the two relevant groups: IKEA Group and Inter IKEA Group.

2.1.3 IKEA GROUP

IKEA Group is now organized under a Dutch parent company: the INGKA Holding BV, owned by the Stichting INGKA Foundation. The Stichting INGKA Foundation, founded in 1982 by Ingvar Kamprad, is a non-profit charity organization, without tax obligations located in the Netherlands. The foundation's objectives are "free from any profit motive" and its funds are used for charitable causes and for the IKEA Group. According to its charitable purpose, the foundation reinvests part of its funds into it and gives another part to its subsidiary foundation: the Stitching IKEA Foundation. The legal and financial documents are exempt from

public disclosure under Dutch law. For this reason, it is impossible to determine whether the owners of the IKEA Group established this structure for tax purposes. The INGKA Holding BV manages the retail side of IKEA. It includes country-level subsidiaries and the 378 stores that operate as franchises under IKEA brand with major presence is in Europe. The parent company's name comes from the initials of the name of the IKEA founder Ingvar Kamprad explaining how much the company is linked with its culture and values. INGKA received the 90% of the IKEA revenue in 2018.

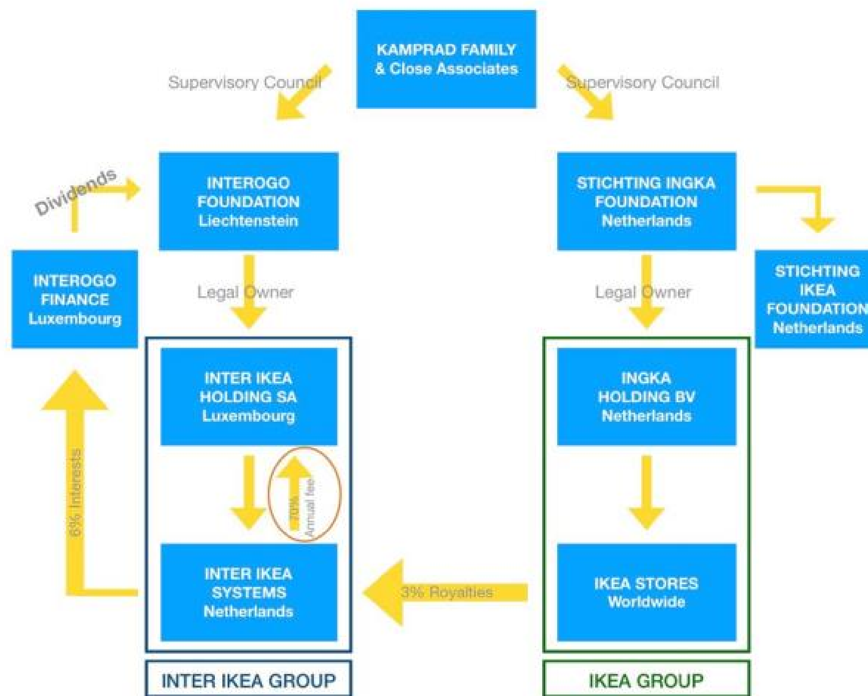
2.1.4 INTER IKEA GROUP

Inter IKEA Group is now organized under a Luxembourg holding company: the Inter IKEA Holding SA, owned by the Interogo Foundation. The main purpose of Interogo Foundation, founded in 1989 by Ingvar Kamprad, is to secure the independence and longevity of the IKEA Concept. The foundation has legal personality under Liechtenstein law and its funds can only be used in accordance with the foundation's purpose. Kamprad family controls the Interogo Foundation indirectly through its close associates who serve as members of the Foundation Council and Supervisory Council. By 2011, Interogo Foundation founded the

Interogo Finance SA Luxembourg because this country does not charge withholding taxes on interest. Until 2011 the Inter IKEA Holding SA owned the proprietary rights which were licensed to Inter IKEA Systems BV, under the payment of a license fee. From 2011 onwards, Inter IKEA Systems BV owns the proprietary rights and for the purchase, contracted a loan with Interogo Foundation, which yields an interest rate of 6%. Nowadays, Inter IKEA Holding SA owns the Inter IKEA system, which owns the proprietary rights used to develop the IKEA Franchise Concept, and currently owns the IKEA's factories and forestry, the product development, and the supply chain. It also operates financial and real estate businesses with activities that only few times are related to IKEA. The Inter IKEA Group can be seen as the real IKEA, as it includes the Ikea trademarks and the Ikea Concept (i.e., intellectual property assets). The purpose of this group is to secure a continuous improvement and secure a long life of the Ikea concept.

2.2 HOW IKEA IS AVOIDING TAXES

The next figure shows the fiscal strategy adopted by the tax management team of IKEA in order to maximize profits by minimizing taxes paid, through the strategic allocation of profits in favourable tax regimes countries and the process used.



My own elaboration.

Every store of the IKEA Group sends Inter IKEA Group royalties equal to 3% of its net turnover as compensation for the use of the brand: meaning that for every euro spent in any given IKEA store, three cents go directly to Inter Ikea System BV in the Netherlands, which are forwarded to Inter Ikea Holding SA in Luxembourg. Here the royalties are tax exempted. By using this method IKEA gained about 3 billion euros of royalties over the period 2012-2014. Until 2011, Inter Ikea Systems BV paid 70% of annual fee to the Inter Ikea Holding SA, as the orange circle in the figure suggests. From 2011 onwards, Inter IKEA Systems BV pays interests to

reimburse the buying of IKEA trademark. Inter IKEA System paid about 1 billion euro of interests over the period 2012-2014, related to the acquisition of the IKEA trademark, to the Interogo Finance in Luxembourg. The problem is that royalties and interests sent abroad are not taxed in Netherlands. In addition, Interogo Finance subsidiary only paid 0.06% in taxes thanks to a deal with Luxembourg.7 Moreover, Inter IKEA Group paid about 600 million euro in other charges to secret beneficiaries over the period 2012-2014. Considering that the founding documents of Inter IKEA accounts are secret due to the function of the Interogo Foundation, the payments corresponding to the other charges cannot be identified. At the end, dividends are sent to Interogo Foundation where they are tax free since Liechtenstein does not tax dividends received from foreign subsidiaries. Liechtenstein is a small country where the beneficiaries of trusts and private foundations can remain secret. In this way, the Inter IKEA Group is able to shift profits to its legal owner, through tax-deductible interest payments. By using this method Interogo Foundation received 800 million euro of dividends over the period 2012-2014. It is estimated that IKEA avoided at least 1 billion euros taxes in Europe between 2009-2014.

2.3 LEGAL FRAMEWORK

There are many companies nowadays that operate at the limit of legality in tax matters for the excessively complex nature of some realities, both for obvious advantages. The presence of tax havens in Europe, makes the financial administrations of countries more "rigid" in terms of aspect tax authorities require constant research and investigations to prevent substantial losses for the tax authorities. In the last decade, sanctions against large groups for unpaid taxes o undeclared income has increased significantly, as has the average amount eroded to the state coffers. If at first the growing evasion (in the strict sense but also understood as abuse) seemed to be an oversight of the technology sector, where the dematerialization of products and of the processes has made it increasingly difficult to quantify and ascertain acts illegal, it has proved to be a common feature in certain environments. The presence of tax havens has led to a real phenomenon of delocalization of multinationals: tax breaks, banking secrecy and tax rulings have increased the attractiveness of countries such as the Netherlands, Ireland and Luxembourg, which are home to tens of thousands of shell companies and more of 40,000 holding companies. Recent cases of indicting multinationals for evasive practices have forced them to do so countries to take measures to counter these phenomena. With regard to the Netherlands, for example, the introduction of a withholding tax has been planned on intra-group transfers of dividends (by 2020) and on interest, royalties and other payments due to the exploitation of brands and trademarks, for companies resident in the Netherlands, but also in other countries

of the blacklist . In addition to such measures, the requirements will undergo a tightening substantiality necessary for companies resident in the Netherlands, which will have to give adequate information about the operations and economic transactions carried out, to demonstrate that they are actually carried out.

Many European governments grant multinational companies special tax status as a foreign corporation to attract investment capital. The analysis of the legal framework starts with the presentation of the Swedish scenario and the related choice of IKEA to leave Sweden. The multinational company has located subsidiaries in three countries as better known as tax havens: The Netherlands, Luxembourg, and Liechtenstein.

2.3.1 SWEDEN

Sweden is anything but a tax haven. In fact, companies that do businesses in the country have to pay a broad range of taxes such as withholding tax and VAT. The profits of a foreign company branch are taxed in the same way as the profits of a resident company. If a Swedish company operates its business abroad directly or through branch offices, the foreign profits should be taxed in Sweden. However, Sweden has signed treaties with other countries in order to avoid double taxation whereas, if there aren't, the company can claim a credit against Swedish national income tax for comparable taxes paid abroad. Regarding the transfer pricing,

Swedish legislation follows the OECD guidelines and, thus, requires that transactions between related parties be at “arm’s length”. Formal rules on advanced pricing agreement (APA) procedures can be applied. Bilateral and multilateral APAs are available. An APA generally lasts between three and five years. Concerning the rulings, the Swedish Tax Agency does not have the authority to issue binding rulings, but it is possible to apply for an advance ruling from the National Board on Advance Rulings regarding the tax implications of certain transactions. The decision by the board may be appealed to the Swedish Administrative Supreme Court. Rulings are binding. The IKEA profits come from royalties. In Sweden, no withholding tax is imposed on royalties under domestic law. Royalty payments made to a non-resident generally are income of the recipient. Thus, the non-resident recipient is taxed in Sweden on the net royalty income at the ordinary corporate income tax rate of 22%.

2.3.2 THE NETHERLANDS

The Netherlands has offered special tax deals to foreign MNE’s resulting in illegal State Aid. A patent box referred to as the ‘innovation box’ is also offered. The initial regime from 2007 applied only to income from patents which was taxed at a reduced rate of 10%. In 2010 the regime was expanded to include a much wider range of IP and the tax rate was reduced to 5%. The reduced rate of corporate tax applies to the

net positive income derived from the qualifying IP (gross income minus all related expenses and depreciation). The Netherlands plays an important role in international tax avoidance. Oxfam placed the Netherlands as the No. 3 on the list of tax havens of the World. It is the most popular conduit tax jurisdiction among the Fortune 500 MNEs. The Netherlands provides MNEs with conduit holding companies serving as hubs/transits for corporate profits and capital to low tax jurisdictions such as Cyprus and Bermuda. MNEs within the IT sector have been known to use a combination of subsidiaries in Ireland, the Netherlands, and Bermuda to reduce their taxes, also known as a "Double Dutch Irish sandwich".

The Netherlands has numerous tax treaties, low or zero withholding taxes, a strong legal systems and good reputations for enabling transfers of profits and capital to low tax jurisdictions. There are three features which make the Netherlands a very attractive location for multinationals eager to avoid taxation. Participation Exemption. This regime allows not to pay taxes on dividend payments and capital gains from subsidiary companies from Netherlands corporate income tax in the holding company, it means that a company doesn't pay taxes twice. Four conditions must be respected by a company in order to take advantage of the participation exemption:

1. The Netherlands-resident holding company must hold at least 5% of the issued (and paid) share capital in the Foreign or Netherlands resident company;
2. The shares must be considered as a long-term oriented investment;

3. If the shareholding is in a non-Dutch company, then the foreign company must be subject to a foreign profits tax at national level.

4. In addition, if the subsidiary is not Dutch it must not be engaged in passive group financing activities that is it cannot be a simple cash conduit. Double taxation treaty network. The Netherlands has a wide network of double tax treaties to prevent double taxation that reduced withholding tax for dividends, interests and royalties. Now the Netherlands has treaties with more than 80 countries. In addition to low dividend withholding tax rates, these tax treaties also cut out withholding tax on interests and limited withholding tax on royalties from 0% to 15% (where usually is around 30%). Withholding tax from the Netherlands is always zero on interests and royalties, no matter the target country. This is an enormous advantage from foreign companies. In fact, they usually establish a conduit company in the country where they can drive royalties, licences or patents.

2.3.3 TAX RULINGS

Rulings are agreements from the tax authorities on how much a company will be taxed, given the method of profit calculation between the business unit in the Netherlands and the other members of the group. This regime is now divided in two parts which are Advance Tax Rulings (ATRs) and Advance Pricing Agreements (APAs). This report focuses on the APAs since IKEA has taken advantage of them

in order to pay, or even avoid, taxes. The APA practice allows to get an upfront agreement on the transfer prices to be used by a tax paying company. From 2006, the rulings from the old practice have been invalidated. The new system allows the company to obtain in advance how a specific intra-group will be taxed. However, this new system is defined case-to-case and is not publicly available. Companies must fulfil certain criteria to obtain the new tax ruling advantages, including:

• at least 50% of the managing directors of the company must be Dutch residents;

• important management decisions must be taken in the Netherlands;

• accounting must be done in the Netherlands;

• the main bank account and the accounts of the entity must be kept in the Netherlands;

• the company must run financial risks.

2.3.4 LUXEMBOURG

A tax haven in the heart of Europe: it is the Grand Duchy of Luxembourg, a small country among the founders of the European Union and for some years at the centre of attention for its tax policies that suck wealth from the rest of the Union. The latest cannonade against the city-state walls is the investigation of an editorial consortium led by Le Monde, with the collaboration of the investigative network OCCRP (Organized Crime and Corruption Reporting Project) and other newspapers. Open

Lux, which promises burning revelations in the coming days, reveals impressive data: 55,000 offshore companies are registered in a smaller area of the Aosta Valley, set up only to hold shares in other companies. Given that large companies are often holders of other company shares and in turn held by financial holding companies, it becomes particularly complicated to trace the final beneficiary of a company's profits. The beneficial owner hides behind the last parent company, which very often is based in a country where the tax burden is much lower than the current one where the subsidiaries do their business. In addition to tax avoidance - according to the study "The missing profits of Nations" this practice costs Italy 6.6 billion less in annual tax revenue -, the problem is also the possible laundering of money from illegal activities. Shielded by a forest of figureheads and Chinese boxes, names linked to crime or dirty business are camouflaged among the final beneficiaries, which would attract the attention of national authorities if they appeared at the head of a company. Regarding the favourable regime that allows not to pay taxes in Luxembourg, there is the so called “exempt 1929 Holding companies”, that is the organic law of July 31, 1929, relating to exempt holding companies. The legislation had allowed the holding companies to take many advantages, providing them a tax vehicle that doesn’t let the companies pay double taxation. Under the Law of 31 July 1929, exempt 1929 holding companies are not subject to any direct taxes in Luxembourg, such as, for example, corporate income tax, municipal business tax and net worth tax. However, regarding the taxation of the capital, an exempt 1929

holding company must pay 1% on contributions in cash or on contributions of assets and 0.2%, that is an annual registration tax. Companies must have been registered in Luxembourg in order to be recognized as an "exempt 1929 holding" company. Once this criterion is met, they engage in the activities of acquiring, holding and enhancing any form of participation in other Luxembourg or foreign companies. Moreover, an exempt holding company cannot take up any industrial activity, otherwise they will be treated as a fully taxable trading company. Paragraph 27 of the Commission Decision "on aid scheme C 3/2006 implemented by Luxembourg for '1929' holding companies and 'billionaire' holding companies" establishes the authorised activities that an "exempt 1929 Holding". Comma g "acquiring and holding patents, exploiting them by granting licences to its subsidiaries and receiving royalties in consideration (licences may also be offered to third parties, but there may be no trading therein)" reflects the case of Inter IKEA Holding SA. In 2006 the European Commission found in substance that the exempt 1929 holding companies scheme constituted aid within the meaning of Article 87(1) of the Treaty. Moreover, the Commission established that the measures adopted by the "exempt 1929 holding companies" was a "state aid" incompatible though with the common market. In its decision, the Commission considered that this advantageous regime gave many economic advantages only to the exempt 1929 holding companies that caused the reduction of tax liabilities in favour of the economic groups that the holding companies belong to, towards the Luxembourg Treasury. The classification

of a national measure as “state aid” assumes that the following cumulative conditions are met: 1. the measure confers an advantage; 2. that advantage is conferred through state resources; 3. the advantage is selective; 4. the measure distorts or threatens to distort competition and is capable of affecting trade between Member States. 11 Nevertheless, the Commission established that those which have profited by the “exempt 1929 holding” didn’t have to pay back all the economic advantages used. In fact, it was already exiting when the Treaty of Rome (Treaty establishing the European Economic Community, now the European Community) entered into force. The new Law introduced a transitional regime safeguarding the existing advantages for companies enjoying exempt 1929 holding company or billionaire holding company status, from the date of its entry into force until 1 January 2011.

2.3.5 LIECHTENSTEIN

Liechtenstein is an attractive country for assets investments. Since 2011 the country has renewed its taxation system, making it competitive. Due to that, Liechtenstein has become a crucial seat both for local and international investors. In principle, all corporations, foundations, and establishments are subject to a profit tax at a flat rate of 12.5%. Resident companies are subject to unlimited tax liability on worldwide income. A company is resident in Liechtenstein if its registered seat or place of

effective management – POEM- is within Liechtenstein. Non-resident companies are subject to limited tax liability on income from properties or branches within Liechtenstein. All legal entities are subject to an annual corporate minimum tax of 1,800 Swiss francs (CHF) for tax years starting 1 January 2017. This tax can be fully credited to the profit tax and is due even if the corporation is not resident in Liechtenstein for the whole tax period. Moreover, the Principality has signed numerous double tax agreements with countries worldwide and foreign companies registered in Liechtenstein that can benefit from a 2.5% tax rate on dividend payments and no other fees on royalties and interests. One of the main advantages that IKEA gets from the country is that dividends are not taxed. Liechtenstein provides a friendly legislation to the beneficiaries of dividend payments. Regardless of whether the dividend income comes from foreign or local investment, the state does not impose a tax on it. According to that, Interogo Foundation, located in Liechtenstein, gets money from Interogo Finance SA, located in Luxembourg, in the form of dividends that are not taxed in the Principality. As a member of the European Economic Area Agreement, companies or individuals that invest in Liechtenstein benefit also from advantageous taxation regulations when extending their trade activity to other economic areas included in the agreement. Moreover, the double taxation conventions signed between Liechtenstein and other countries provide to investors the possibility of tax deduction at source on dividends. Liechtenstein has signed nineteen double tax treaties with many countries included

Luxembourg. All the treaties for the avoidance of double taxation follow the OECD model. The treaties signed do not contain clauses for the limitation on benefits so far. Now Liechtenstein seems to be ready to open the exchange of information with other nations, in fact there is a new agreement that changed things.

Taxation is mainly based on wealth tax and income tax. The latter applies to resident subjects (not less than six months a year) in relation to income produced wherever they are. Income subject to wealth tax is exempt from income tax. The exemption extends to investment income (rents, dividends, interest), if they derive from assets subject to wealth tax. Capital gains, rents deriving from leases made by individuals and capital gains from foreign sources are in any case exempt. Individual income tax rates are progressive and range from a minimum of 3.5 to 28%. Taxable persons are corporate legal persons, including Stiftungs and Anstalt (foundations with and not for profit), investment firms and "trusts". Partnerships are fiscally transparent that is, they are not subject to corporation tax. For corporate income tax purposes, a company is resident in Liechtenstein if its registered office or place of effective management is located there. Dividends distributed to resident and non-resident entities are exempt, as are share capital gains.

2.4 EUROPEAN COMMISSION AGAINST IKEA

In 2016 the European Parliament published its revealing research report TASK AVOID, elaborating on the tangle of companies, foundations, holdings and tax avoidance tactics of the furniture giant. The Greens/European Free Alliance group at the European Parliament, the Commission, by letter of 7 April 2016, requested the Netherlands to provide information about Advanced Tax Rulings (hereafter "ATR") and Advanced Pricing Agreements (hereafter "APA") granted to the companies of Inter IKEA. The Commission indicated that based on the preliminary analysis of the information submitted by the Netherlands, it was concerned that the 2006 APA and the 2011 APA might endorse a method for determining Inter Ikea Systems' profit HE that would not result in a reliable approximation of a market-based outcome in line with the arm’s length principle and therefore might have conferred a selective advantage upon Systems. The 2006 APA indirectly determined for tax purposes the annual licence fee which Systems paid to another company of Inter IKEA established in Luxembourg, I.I. Holding S.A. (hereafter "Holding"), for a set of proprietary rights necessary for the exploitation of the franchising business of IKEA. That licence fee reduced Systems' taxable profit shifting a substantial part of that profit to Holding. The profit shifted to Holding in Luxemburg was not taxed there, since it was subject to a special exemption regime for holding companies, which expired at the end of 2010. In 2011, Systems acquired

the proprietary rights in question. Consequently, Systems ceased to pay the licence fee and the 2006 APA became without object. The 2011 APA sets out that the acquisition price to be paid by Systems for the proprietary rights is at arm's length. It also sets out that the intercompany loan granted to Systems for the acquisition has been concluded under arm's length conditions and that therefore the interest is fully deductible. This interest deduction reduces the taxable profit of Systems in the Netherlands. At this stage, the Commission has doubts whether the price agreed for the proprietary rights as agreed in the 2011 APA corresponds to an arm's length price and therefore whether the 2011 APA results in an annual taxable profit for Systems from 2012 onwards that corresponds to a reliable approximation of a market-based outcome in line with the arm's length principle. On 21 December 2011, Interogo Foundation and Systems signed a Sale and Purchase Agreement (the "Sale and Purchase Agreement") by which Systems acquired the beneficial ownership of the PRs.49 According to the Sale and Purchase Agreement, the value of the PRs was EUR 9 billion. After the acquisition of the PRs by Systems the Licence Agreement was terminated.[1]

[1] The entire paragraph was taken from the document published by European Commission "Netherlands Possible State aid in favour of Inter IKEA "

2.4.1 The exploitation of the IKEA business: 1983 - 2011

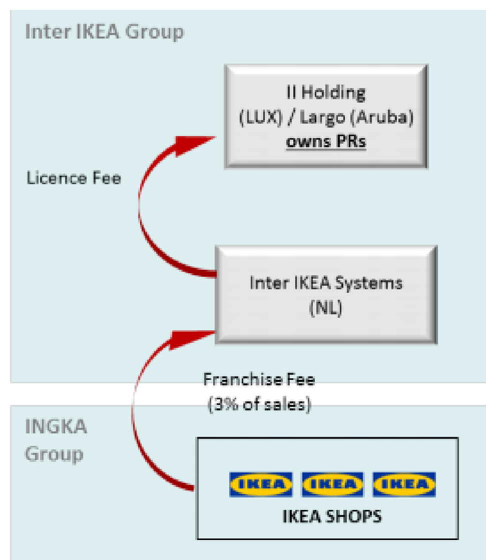
When the IKEA business was split in the early 1980s into two groups, Inter IKEA and INGKA, Mr Kamprad transferred many the retail companies to the INGKA [2]Group, more specifically to a Netherlands Foundation, the INGKA Foundation - head of the INGKA Group - which today owns most of the IKEA stores. At the same time, the proprietary rights concerning the IKEA business which had been developed until that date - including trademarks, the IKEA trade name and copyright as well as underlying know-how or formulae (hereafter the "PRs")- were transferred in 1983 from Inter IKEA, to Holding, a company controlled by the Interogo Foundation and subject to the special "Holding 1929" tax regime Luxembourg. At the same time, on 1 July 1983 Holding concluded a licence agreement with Systems (hereafter the "Licence Agreement") authorizing the latter to use the PRs to create and develop the IKEA Franchise Concept upon the payment of a licence fee. The IKEA Franchise Concept is the set of intangible assets necessary to operate the IKEA business under the franchise model. The IKEA Franchise Concept is then franchised by Systems to essentially all worldwide IKEA stores (mostly owned by INGKA). Under the franchise agreements, the franchisees pay a franchise fee of 3% of the stores' net franchisee turnover to Systems in exchange for the use the IKEA Franchise Concept. Under the terms of the Licence

[2] The entire paragraph was taken from the document published by European Commission "Netherlands Possible State aid in favour of Inter IKEA "

Agreement, Holding licensed to Systems the right to use and exploit the PRs by selecting and combining its different components, thereby "creating a unique marketing and retailing concept for the sale of furniture and furnishings" (the IKEA Franchise Concept) which is then franchised by Systems to retailers. Systems is also authorised to register the PRs and undertakes to protect these rights, although holding remains the legal and beneficial owner. The Licence Agreement is applicable in the countries specified in an annex to the Licence Agreement and in other countries separately agreed between the parties. The Netherlands has provided figures showing that, for each year between 2006 and 2009, the costs incurred by Systems on behalf of Holding that should be reimbursed by Holding to Systems have been calculated as 9% of the franchise income. These figures also show that the (gross) licence fee to be paid by Systems to Holding has been determined as 79% of the franchise income. Therefore, the licence fee effectively paid by Systems to Holding amounted to the difference between these two percentages, i.e. 70% of the franchise income. On December 2009, the PRs and the rights and obligations under the Licence Agreement were transferred from Holding to the company Largo Brands Corporation AVV, a subsidiary of Interogo Foundation established in Aruba (hereafter "Largo"). Therefore, as of that date, Largo replaced Holding as licensor of the PRs to Systems. The Netherlands has not provided the terms of this transfer.

The transaction between Systems and Holding/Largo is the subject-matter of the 2006 APA.[3]

Exploitation of the IKEA business until 2011 under the 2006 APA



From: European Commission

2.4.2 *The exploitation of the IKEA business since 2011*

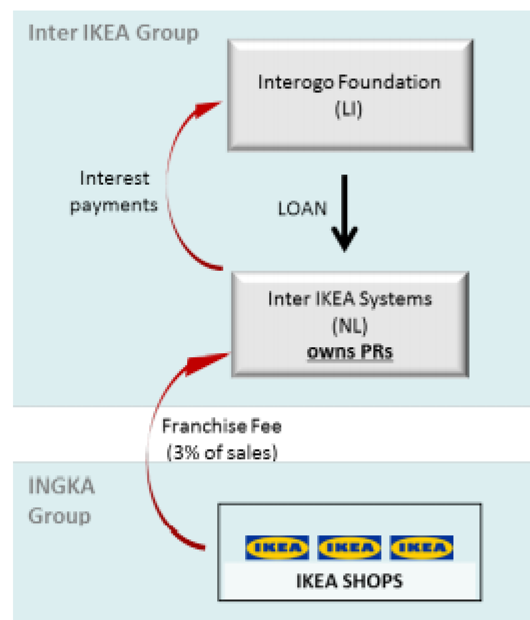
On 21 December 2011, Interogo Foundation and Systems signed a Sale and Purchase Agreement (the "Sale and Purchase Agreement")48 by which Systems acquired the beneficial ownership of the PRs. According to the Sale and Purchase

[3] The entire paragraph was taken from the document published by European Commission “Netherlands Possible State aid in favour of Inter IKEA “

Agreement, the value of the PRs was EUR 9 billion. After the acquisition of the PRs by Systems the Licence Agreement was terminated, the acquisition took place through two transactions: on the one hand, Interogo contributed to Systems 40% of the beneficial interest in the PRs – representing an amount of EUR 3.6 billion – as share premium reserves. On the other hand, Interogo sold to Systems the remaining 60% of the beneficial interest of the PRs for a purchase price of EUR 5.4 billion (hereafter "the Purchase Price"). Both transactions were effective on 1 January 2012. The Purchase Price was converted into a loan (hereafter "the Loan") granted by Interogo Foundation to Systems. Therefore, Systems remained indebted towards Interogo Foundation with an amount of EUR 5.4 billion. The terms of the Loan are defined in a loan agreement signed by Interogo Foundation and Systems on 21 December 2011 (hereafter the "Loan Agreement"). It bears a fixed yearly interest of 6%, which is claimed to have been determined at arm's length based on two quotation letters made by BNP Paribas and ING and the assessment of Inter IKEA's chief financial officer. According to the terms of the Loan Agreement, the Loan is unamortised and has a 12-year maturity. The Netherlands also submitted together with the 2011 APA and the Sale and Purchase Agreement a table showing a valuation of the IKEA brand by Interbrand amounting to USD 12.5 billion in 2010. The Sale and Purchase Agreement contains a price adjustment mechanism61 whereby, if on 31 December 2023 the fair market value of the PRs is different than EUR 9 billion, the amount of the debt towards Interogo Foundation will be adjusted

(upwards or downwards) at that same date so that it will still represent 60% of the amount of the fair market value of the PRs. The Sale and Purchase Agreement does [4]not determine the methodology to calculate the fair market value of the PRs. The acquisition of the PRs by Systems is the object of the second of the contested measures (the 2011 APA).

Exploitation of the IKEA business since 2011 under the 2011 APA



From European Commission

[4] The entire paragraph was taken from the document published by European Commission "Netherlands Possible State aid in favour of Inter IKEA "

2.4.3 The 2006 APA

The title of the 2006 APA is "APA Settlement Agreement". It was signed on 9 March 2006 between Systems and the Dutch tax administration. The object of the 2006 APA is to determine "the taxable margin on the franchise, catalogue and service activities and the value of the IKEA FRANCHISE CONCEPT on termination of the licence agreement between [Systems] and [Holding]". The 2006 APA is valid from 1 January 2006 to 31 December 2010, with an automatic extension for one subsequent five-year period provided the facts and circumstances on which it is based do not change significantly.

Tax treatment of Systems:

According to the 2006 APA, Systems has full entitlement to the franchise and catalogue revenue related to the IKEA Franchise Concept which is paid by franchisees. The 2006 APA stipulates that the remuneration to Systems for its activities is considered at arm's length "if it obtains an operating margin of 5% of the franchise and service revenue". Any operating margin realised by Systems which exceeds 5% of the franchise and service revenue will be considered an informal capital contribution to Systems by Inter IKEA and thus will not be subject to taxation. The 2006 APA is based on the TP Report. The object of the TP Report is to review whether the conditions under which the transfer prices for the transactions between Systems, located in the Netherlands, and group companies abroad, are consistent with the arm's length principle, as defined by the OECD's

Transfer Pricing Guidelines for Multinational Enterprise and Tax Administrations. In conclusion, the Commission takes the preliminary view that the TNMM applied on Systems as a tested party has been misapplied, leading to a decrease of the total operating profit of Systems, and consequently of its taxable profit. The Commission considers that the 2006 APA conferred an advantage by endorsing transfer prices that departs from a reliable approximation of a market-based outcome in line with the arm's length principle leading to a reduction of the taxable profit of Systems.[5]

2.4.4 The 2011 APA

"APA Determination Agreement". It was signed on 19 December 2011 between Systems and the Dutch tax administration. It concerns the "arm's length character of the value of the IKEA PROPRIETARY RIGHTS at the time of the acquisition of those rights by Systems". The 2011 APA is effective from 1 January 2012 and applies for a period of 12 years. The 2011 APA assumes that Systems will acquire the PRs for an initial amount of EUR 9 billion. Therefore, Systems will hold after the acquisition the legal and economic ownership of both the PRs and the IKEA Franchise Concept and therefore will not owe any remuneration to any other parties for the use of the PRs. The 2011 APA also states that the Loan will bear an

[5] The entire paragraph was taken from the document published by European Commission "Netherlands Possible State aid in favour of Inter IKEA "

"objective interest [which [6]shall be set at the beginning at a fixed percentage of the principal". In relation to the price adjustment mechanism described in Recital (36), the 2011 APA stipulates that it may give rise - in case of an increase in the value of the PRs - to future payment obligations which are attributable to and accrue in previous years. 119 Therefore, the 2011 APA allows Systems to set aside tax provisions for the interest related to those future payment obligations. The tax provisions are justified since, although these potential obligations will materialise only on 31 December 2013, the risk and the accumulation of the obligation has its origin in the first several years.

Tax treatment of Systems:

The 2011 APA stipulates that Systems shall not depreciate the PRs during the life of the APA.121 It also stipulates that the interest due on the Loan is at arm's length and can be deducted, no interest deduction limitations being applicable. The Commission considers at this stage that the EUR 9 billion value attributed to the PRs and accepted by the 2011 APA may be higher than the price that independent operators would have agreed to pay for these rights in the market at arm's length. The consequence of this would be that by endorsing the deduction of the interest generated by the Loan granted by Interogo Foundation to Systems to finance the payment of the Purchase Price, the 2011 APA would be granting a tax treatment to

[6] The entire paragraph was taken from the document published by European Commission "Netherlands Possible State aid in favour of Inter IKEA "

Systems that does not reflect a market-based outcome. In conclusion, at this stage the Commission considers that by endorsing the deduction of the interest of the Loan, the 2011 APA seems to be granting a tax treatment to Systems that would depart from a reliable approximation of a market-based outcome at arm's length.

3 CURRENT SITUATION

The economic reality of today has made it extremely difficult to contain the avoidance activities carried out by the large firms that populate the market. Transactions are now almost entirely computerized, and most businesses do not involve physically quantifiable assets. Recent sanctions against hi-tech giants have opened a new horizon in the attempt to tax profits, with the implementation of increasingly specific procedures for the tax treatment of multinationals. In Italy, important milestones have been reached by the tax authorities with the conclusion of numerous settlement procedures with large companies. However, abuse of rights remains a widespread phenomenon and is particularly difficult to combat, given the regulatory heterogeneity within economic systems. The attempt to find a dialogue with individual administrations, institutions and companies, in an attempt to standardize regulations and develop a general system of taxation, should be the responsibility of supranational entities. The complexity of existing corporate links and triangulations implies the need for closer dialogue between individual state

entities, which should collaborate with each other to curb abusive practices. However, it is not only conceivable that the drive for alignment of regulations comes from individual situations, for which very often the differences in treatment represent real advantages. A first attempt, drawn up by the OECD, did not bring the hoped-for effects due to the non-uniform reception of the indications issued at EU level, and did not actually solve the problem at source. The reciprocal exchange of information between the individual tax authorities plays a crucial role in these contexts in unmasking the tricks that large companies use to evade tax obligations, and joint action could have a potential impact far greater than that achieved by individual countries. Direct and decisive action is also needed against those legislations that encourage the shifting of profits and gains and that create a mechanism of tax competition that is particularly damaging, especially for high-tax regions such as those in central Europe (Italy, France, Germany).

The number of resources currently withdrawn from state taxation remains close to 200 billion per year, and the countermeasures developed have not yet proved capable of at least decreasing the growth rate of the underground economy. There is no doubt that the tax component will remain a determining factor in companies' investment and development choices for a long time to come, and it is foreseeable that they will develop increasingly refined techniques in their search for tax advantages.

3.1 ECOMMERCE AND EVASION

What is challenging the international fiscal most is the rise of e-commerce. The digital economy is the result of a transformative process brought about by information and communication technologies (ICT). The digital revolution has resulted in cheaper, more powerful and largely standardized technologies, improving business processes and supporting innovation in all sectors of the economy. In fact, the use of new economy technologies is increasing business productivity, as only electrification was able to do, during the 19th and 20th centuries. If in the past a company had wanted to invest abroad, it would have had to open a subsidiary office, immediately meeting a series of problems, such as customs duties, slow communication, exchange risks and high transport costs, which made it more difficult to operate on a large scale. Today, however, geographical barriers are irrelevant. The development of ICT technologies, in parallel with the integration of international trade, has made it easier for both large and small-medium enterprises to adopt new business models, globally.

Today, the digital economy is subject of numerous studies by the OECD and the G-20, as it manages to exploit obvious distortions in terms of international taxation. The OECD has identified opportunities for tax avoidance in the business models of digital companies, regarding four issues in particular:

- transactions involving so-called intangible assets, which, thanks to the ease with which they can be transferred within multinational groups, for tax reasons, create substantial opportunities for BEPS;
- the definition of permanent establishment and the use of artificial structures and transactions aimed at circumventing the configuration of the same
- the impact on transfer pricing rules of three elements that characterize these business models, namely the intangible component, the use of data and the spread and fragmentation of value chains on a global scale;
- the possible need to adapt foreign subsidiary rules to the digital economy to address the ease with which such firms limit or eliminate taxation at the parent company level altogether.

3.1.1 CFC

When reference is made to the CFC ("Controlled Foreign Companies") discipline, attention is focused on foreign subsidiaries resident in so-called "tax havens" and on the exchange of information with these countries. These countries allow many multinationals to obtain low levels of taxation and guarantee confidentiality, a necessary condition to allow both individuals and legal entities to obtain and maintain tax savings. It is possible for firms to set up subsidiaries in low- or no-tax countries, purely for tax reasons, by shifting profits from the parent company to the subsidiary. This process can only be implemented if the country in which the

company's registered office is located guarantees exemption for the parent company from the income generated by the foreign permanent establishments that are subordinate to them. The mechanism of tax avoidance is implemented in this way: first, the ownership of intangible assets is transferred and then, subsequently, large amounts of money are transferred to the foreign subsidiary (now the owner of the rights to the intangible assets), in the form of payment for the use of the intangibles, or in the form of royalties. Action 3 of the BEPS package is aimed precisely at preventing fictitious transfers of income to subsidiaries resident in countries with preferential taxation. Unlike transfer pricing, CFC regulations tax foreign companies, controlled by other companies that hold profits made in there and are resident in low-tax countries or countries where taxation is less than half that which would be applied in that specific country. Therefore, in some cases the regulations are complementary, i.e., they lead to the identification of the same evaded income, in other cases the CFC regulations can lead to capture income that those related to transfer pricing would not capture and vice versa. Transfer pricing rules do not eliminate the need for CFC rules. Italian legislation applies DPR 917/86, articles 167 and 168, to foreign subsidiaries and associates. According to art. 167, the income generated by a foreign company, which is resident in a state on the blacklist, controlled by an IRPEF or IRES subject resident in Italy, or in which the Italian subject owns a shareholding of over 20% (10% in the case of listed companies), is taxed in Italy in proportion to the shares held, both directly and indirectly.

3.1.2 EXCHANGE OF INFORMATION

The exchange of information is something that is now more necessary than ever to combat cross-border tax evasion. With the passage of time, a desire for change has emerged that has led to the creation of a coalition of countries, with the common goal of formulating a multilateral agreement for the automatic exchange of information, aimed at combating international tax evasion. In 2013 the governments of Italy, France, Germany, UK, Spain and USA declared their intention to promote a pilot project, hoping for the intervention and cooperation also of other EU member states. In 2014, an international standard was finally defined to ensure the automatic exchange of tax-financial information. The Common Reporting Standard (CRS) regulates in a very articulate way the data to be exchanged, the modalities and the timing to be adopted. The document was drafted by the OECD and signed by 96 countries, both members and non-members, and regulates with particular emphasis the following aspects:

- the nature of financial information. The CRS identifies various constituents of income, including royalties, dividends and interest and revenues from the sale of assets;
- the account holders, who may be either natural or legal persons;

- the financial institutions that must report the information. Financial institutions are not only banks, but also brokers, insurance companies and other organizations with which you can invest.

3.1.3 ICT VS TAX RULINGS

The opportunities for avoidance described above (permanent establishment, transfer pricing, CFC rules, hybrid mismatch arrangements) are, for the most part, taken up by digital companies, since they have business models that allow full exploitation of tax asymmetries at an international level. The practice that will now be explored, namely the tax ruling, does not fall within the group of techniques used mainly by MNEs, but is also used by large multinationals that are not part of the digital sector or that do not sell their products on the Internet. The decision to examine the tax ruling derives from the fact that the latter particularly conditions the strategic choices of large multinational companies.

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ruling derives from the fact that the latter particularly conditions the strategic choices of large multinational companies.

Years have passed since the last modification by the OECD regarding tax evasion, but despite this, also thanks to the favouritism of countries already mentioned such as Luxembourg, Holland and Ireland, the situation does not seem to have changed at all.

3.1.4 GOOGLE VS EU COMMISSION

Despite ongoing attempts to combat evasion, other large multinationals are still following Ikea's example: one of these is Google. The technique of the "Double Irish with a Dutch Sandwich" has been made famous by Google, as it allows to evade billions of euros per year. For this reason, the tax strategy of the famous search engine will now be recomposed. Google has offices all over the world, but its home state is the USA. However, Google has opened an office in Ireland where more than 2,000 people work, "Google Ireland LTD". The search engine still has another company in the European country, the "Google Ireland Holding", but the latter lacks both a physical workplace and the staff at its disposal. "Google Ireland Holding" in fact is managed directly from the Bermuda Islands and owns the intellectual property, brand, technologies, rights and more of the Mountain View giant. According to Irish law, if a company is managed entirely by another

resident elsewhere, the taxation of the Irish company is due to the other State, in this case the Bermuda Islands, which, incidentally, apply a rate of 0%. However, Google also owns another company located in the Netherlands, under the name "Google Netherlands B.V", which has control of Google Ireland LTD. Let's look at a practical example to better understand the links between the companies. A European company buys advertising from Google
USA for $1000; Google USA will pay $800 to Google Ireland Holding, as it handled the sale as it created a promotional campaign, owns the brand and more. Google Ireland Holding will pay $700 to Google Ireland LTD to do all the work. The latter will pay $700 to Google Netherlands B.V, as its parent company. The Dutch company will then ship this $700 to the Bermuda Islands. This step is critical because, under Dutch law, the Netherlands does not withhold tax on outbound royalties. In fact, if there were not this movement of capital to the Dutch company, Google would have to pay the royalty rate that the two Irish companies would exchange. These 700 $ represent Google's profits, on which the tax rate should be applied, but it is null. With the remaining $300 the search engine pays the management costs, expenses, salaries and other remaining costs. In conclusion, with this ploy Google pays neither income taxes nor royalties, managing to avoid taxes where it records its profits. Below is an image that will clarify the movements made by Google and therefore the architecture of the "Double Irish with a Dutch Sandwich".

https://www.youtube.com/watch?v=EFKGmmm-j5M, fermo immagine.

3.2 OECD: PAST, PRESENT AND FUTURE

From this moment on, the reform proposals that the OECD and certain national governments have proposed to introduce in order to update the legislation against double non-taxation and, therefore, to put a brake on the aggressive taxation policies adopted by multinationals will be analyzed.

3.2.1 THE BIT TAX

The bit tax has gone down in history as the first proposal to tax electronic commerce; in 1997 the OECD met in Turku, Finland, to analyse the main drawbacks that electronic commerce could bring out, and it was here that this proposal took shape. The introduction of this tax was suggested by Arthur J.

Cordell, who proposed the introduction of a payment for each MB transmitted; the same author compared the bit tax to gasoline taxes or to the payment of a toll for crossing a bridge. Cordell's intention was to hit only those interactive digital transactions that create added value. The bit tax would have affected only three broad categories:

- long-distance lines (generally public), through a tax directly proportional to digital flows;
- leased lines (private), through a fixed rate proportional to the capacity to carry bits;
- local traffic, through a variable rate based on the statistical average of gross information flows captured locally by accurate software.

The proposal was not then approved, since at that time the Internet was developing and therefore there was no desire to put a brake on its growth due to too hasty interventions.

3.2.2 OTTAWA CONFERENCE

n 1998, a conference was held in Ottawa that laid the foundations for the development of electronic commerce and established the basic principles for the introduction of taxation systems regarding e-commerce. Let's review these principles set by the OECD to regulate the taxation systems of its member countries:

- neutrality, taxation should seek to be homogeneous and equitable between

different forms of e-commerce and between e-commerce and traditional commerce, to avoid double taxation or unintentional non-taxation;
- efficiency, tax compliance and administrative costs should be minimized as much as possible;
- certainty and simplicity, taxation rules should be clear and simple to understand so that taxpayers can understand how they work;
- effectiveness and impartiality, taxation should produce the right amount of tax and the risk of evasion and fraud should be minimized;
- flexibility, the taxation system should be flexible and dynamic so as to keep pace with technological and commercial advances.

3.2.3 EUROPEAN REFORMS

The European Commission is working in the supranational sphere to put an end to loopholes in tax systems and misalignments between national laws that allow the establishment of aggressive tax policies. On March 18, 2015, the EU's executive arm unveiled a package of tax transparency reforms that aim to extend the exchange of information between EU countries as far as possible and to achieve the conclusion of numerous treaties with blacklisted countries. The European Commission has also identified key areas in which to intervene:
- establishing maximum transparency regarding tax rulings, in order to avoid new Lux Leaks cases;
- improving the automatic exchange of information, making legislation in this regard simpler and expanding the scope of international treaties;
- improving the transparency of multinationals, obliging them to provide precise data and certain tax information;

- updating the code of conduct regarding corporate taxation, since it has been at a standstill since 1997 and does not provide for the analysis of cases of tax avoidance examined thus far;
- estimating the amount of money evaded each year.

3.2.4 FATCA AND SHELL COMPANY

What the governments are trying to do is to set up new regulations intended to reduce tax evasion between MNCs and State. On 2010 United States enhanced FATCA (Foreign Account Tax Compliance Act), a set of rules that requires from institutions, taxpayers and corporations the report of information regarding financial accounts abroad. The problem for tax authorities in this situation is the lack of information and the low level of cooperation from some foreign financial institutions. FATCA introduces the right to levy withholding taxes of 30% on international payments made from the U.S. to financial institutions that do not cooperate in sharing information. EU commission is thinking about the creation of a European FATCA, intended to extend the information exchange between the European member states, and to apply to dividends, capital gains, other forms of financial income and account balances. While the use of shell companies in tax havens has become a widely used tax minimization strategy and is causing huge losses in tax income for various governments around the world. Companies are generally allowed to create foreign affiliates whenever and wherever they want, being that any restrictions from governments might reduce the companies' overall willingness to invest. The main problem is the lack of transparency and openness in some jurisdictions, allowing shell-companies with no real business activity to exist. In order to solve this problem, global transparency standards need to be implemented, and the activity in all existing subsidiaries needs to be measured and reported continuously. Technology might help to increase openness, and a global

network of information exchange could make the job easier for tax authorities. The EU has launched a policy on good governance, because it estimates that 1 trillion euro is being lost from public finances as consequences of tax avoidance. This new policy includes:

- digital taxation debate;
- fight VAT fraud with agreeing on new instruments;
- publish a new report on the VAT gap in the EU;
- increase company transparency.

3.2.5 ACTION 13 BEPS

Action no. 13 of the BEPS Package envisages the introduction, for each country participating in the initiative, of a set of documents which, taken as a whole, are designed to combat the shifting of profits through transfer pricing operations. Only companies with a cumulative turnover more than 750 million euros per year will be obliged to provide data, on a confidential basis, to the tax authorities of each of the countries participating in the initiative and in which the company does business. MNEs will be required to submit three documents annually: the master file, the local file and the country-by-country reporting. The master file provides a general overview of the company's activities, the type of transactions it records and the transfer pricing policy it implements worldwide. The local file complements the master file and identifies in detail all the transactions that have been carried out by the group and the pricing policy that has been decided. The third document is undoubtedly the most important as it provides clear data to the tax authorities to establish the regularity of intra-group transactions. Country-by-country reporting is divided into two documents. The first shows the total turnover, pre-tax profits, taxes paid and accrued, contributed capital, accumulated profits, number of employees and the net value of tangible assets the group records in each jurisdiction. In the

second document, the group must identify all constituent entities present in the jurisdiction of the country where it is filing and must indicate the type of business conducted in them.

3.3 G20 AND GLOBAL MINIMUM TAX

The G20 has given the green light to the Global Minimum Tax and to the new rules on the redistribution of the profits of large multinationals. The new rules are based on two pillars: the first envisages the transfer of taxation rights to the countries of marketing, i.e., where the consumers who purchase goods and services from a large multinational company reside; the second envisages a minimum rate of at least 15% for internationally active companies. Negotiations are expected to continue during the summer with the aim of reaching a concrete agreement in October, with a view to becoming fully operational in 2023. The G-20 meeting in Venice gave its backing to the agreement signed days ago by 131 countries for a minimum corporate levy of "at least 15%" and new rules to relocate a portion of the net profits of the world's largest companies, particularly U.S. tech giants. However, some slippery points remain: the first concerns the withdrawal of national digital taxes, more than 40, in force today; then there is the pressure, especially from France, for an increase, even in the future, of the current rate (from 15% to 18%); and again, the green light does not erase the difficulties that OECD experts will encounter in refining the rules and procedures of this unprecedented "tax revolution". The consensus, in fact, is on the basic structure of the two pillars, not on the detailed technical rules. Negotiations are expected to continue over the summer with the goal of reaching a concrete agreement in October. The OECD has developed a series of proposals to adapt corporate taxation over the long term to the new realities marked by the digital revolution. In essence, the current Global minimum tax is the combined derivative

of the meeting of the work done at the OECD, starting with BEPS, with a new international tax vision proposed by the US Administration led by President Biden. The U.S. plan would consider a company's actual profitability in determining whether a greater share of its income should be taxed by the countries in which it operates. Thus, it would look not only at the general revenues of multinationals but at their respective profitability ratios. A change in pattern that should resolve longstanding disputes over which companies should be targeted by the new global tax rules. In addition, the rate considered would rise from the 12.5% proposed by the OECD to 21%, although the application scheme would change.

3.3.1 OECD'S INCLUSIVE FRAMEWORK

On July 1, 2021, after the G7 gave the green light to the US proposal, the OECD's Inclusive Framework, of which 139 countries are currently members, incorporated the changes and published the principles of future taxation of internationally active large companies without, however, distinguishing between those operating in digital sectors and those active in more traditional fields. The new rules, thus fixed in advance by the OECD and submitted to the G20 for final "validation", are based on two pillars:

- the first pillar provides for a transfer of taxing rights, i.e., the power to tax, to marketing states, "market-States," i.e., where consumers who purchase goods and services from a large multinational corporation reside. Companies with an annual turnover of more than 20 billion euros and a profit margin of 10% will therefore be taxable, they will be taxed on the part of their profit earned in the State of marketing. The introduction of a new principle of taxation, precisely because the company will be taxed even in the absence of a real, concrete, material presence on the market or within a given country. This is a revolution of the connecting factors or nexus, from which we generally start to determine whether a country is entitled to tax certain

revenues in the hands of a company. In practice, the purpose of Pillar 1 is to ensure that a given country can tax non-resident companies that, while not having any physical establishment (offices, facilities, etc.) in that jurisdiction, nevertheless derive a certain amount of revenue from it through, for example, online transactions made by its residents;

- The second pillar provides for a minimum tax rate of at least 15% for internationally active companies. France, for example, would be in favour of raising the rate to 18%. However, in addition to this condition, there is the threshold of 750 million euros of revenue that the multinational must register in each jurisdiction to see its revenues taxed at 15%. Provided that that jurisdiction applies a rate lower than 15%. In essence, Pillar 2, as opposed to the profit shifting criterion of Pillar 1, translates into a global minimum tax, based on a new "Globe Rule" designed to address the remaining problems of corporate tax base erosion and profit shifting to low- or zero-tax jurisdictions.

Some major Caribbean tax havens have not yet signed the agreement, potentially weakening the effectiveness of the Biden administration's plan to undo the shifting of profits to low-tax countries. They are joined by European Union members Ireland, Estonia and Hungary. So, not all countries have signed on to the joint OECD/Biden proposal. The smaller nations that have long benefited from being tax havens are resisting, raising the prospect of a clash with the larger countries. Just think of Ireland (12.5% tax rate on profits), Hungary (9%) and Estonia. Then there are Luxembourg and Holland, special observers, and Switzerland, which vehemently disagrees but will cash in without waging war.

3.3.2 HOW PROFIT'S RELOCATION WORKS

The profit margin of 10% (i.e., an average rate of profitability) is one of the conditions from which the multinational is taxable to the new global tax or at least

to the relocation of part of its profits on an international scale. In essence, it represents the effective profitability of the company. In fact, it indicates the percentage of net profit calculated on the net proceeds of individual sales, less discounts, returns and refunds. Basically, in corporate finance, the profit margin tells you how much you earn on the sale of each product or service. Ten percent, in this regard, is considered a standard, average, acceptable value. So, this factor will condition the application of the global tax on whether the multinational is healthy, with an in-line rate of profitability.

The first pillar establishes the rules for redistributing the residual or excess profits of multinationals over the 10% threshold. At present there is talk of a quota of between 20 and 30% of these extra or residual profits that should be redistributed among the countries where the consumers reside; with the second pillar, on the other hand, there is a global minimum tax of 15% which applies to the subsidiaries and subsidiary companies that depend on the multinationals. Basically, in this case, if a multinational has its base in a jurisdiction where it applies a rate of 24% and at the same time some of its subsidiaries operate in jurisdictions with a rate lower than 15%, for example 9%, the new tax will be triggered.

3.4 CONCLUSIONS

The aim of this paper has been to highlight the evasive behaviours of the large multinationals, which are only now becoming public knowledge, following the opening of tax recovery proceedings against these companies and criminal proceedings against their managers. For many years, internet companies have taken advantage of misaligned tax systems around the world, especially in Europe, with the help of countries such as Ireland and Luxembourg. These multinationals have taken advantage of the lack of legislation to gain competitive advantages over their direct competitors, who were unable to replicate aggressive tax planning systems.

However, today we are at a turning point: the OECD and the European Commission, at a supranational level, and above all Great Britain and Italy, at a local level, have approved interesting reform proposals, which will place a limit on the elusive opportunities which have been allowed up to now. It is possible to affirm that fundamental steps forward have been taken towards the elimination of tax opportunities used by companies, however it will be necessary to wait a few more years for the creation of a body of rules at supranational level and for their implementation by national states, to finally put an end to illicit tax savings, which, we recall, are well over one hundred billion dollars per year.

What is certain is that this struggle will continue until conditions acceptable to all can be created: first for the most fragile countries, those that urgently need foreign capital to expand their connections with the outside world, and above all to try to contain all those countries that are considered more attractive: Holland, Switzerland, Luxembourg, Ireland and Liechtenstein. In fact, one of the most difficult challenges will be to limit the power of these countries, which benefit from bilateral agreements with the most influential multinationals, making it impossible for government authorities to counter them. This considerations are being created after a long and in-depth analysis of international law, companies and reforms, but the real reason that pushed me to analyse this type of case is the actual situation, where small and medium companies fight every day against taxes, clients and jurisdiction to improve their position inside the society. I grew up inside a company, both of my parents are entrepreneur, and I perfectly understand the difficulties behind the management of a company, but this doesn't justify the continues research of manager to evade or elude taxation, letting poor or small businessman to pay everything they should, only because they haven't the financial resources or competencies to afford this type of way. What should be changed is the mentality all over the world, because we must understand that taxes are paid to support the

entire country (it should be like this), from public sources to the street we drive on, and if anyone played their part, a lot of problem would not exist at all. The concept that most suggests a continuous increase in tax evaders depends on the fact that, as analysed above, these large companies exploit their visibility and power at the economic and political level to take advantage of states in need of investment or liquidity, which in turn offer these giants the possibility of "staying" with shell companies within their borders with a taxation that sometimes barely exceeds one percent of total turnover. In conclusion, in my opinion, in order to change this complex mechanism, a great deal of work needs to be done by the commission and the member states, so that this enormous regulatory hole would be resolved once and for all.

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