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TRANSFER PRICING PRACTICES IN THE DIGITAL ECONOMY: THE WEB GIANTS' TAX AVOIDANCE

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ABSTRACT

Il business portato avanti dalle aziende multinazionali di successo si è sempre focalizzato su un unico grande principio: cavalcare l'onda del progresso per sopravvivere, o meglio, prosperare e dominare il mercato.

L'avvento dell'Economia Digitale e la rivoluzione tecnologica hanno fatto si che il progresso viaggiasse ad una velocità alla quale non tutti sono in grado o hanno i mezzi per tenerne il passo. Innumerevoli sono le attività che non riescono a sopravvivere nel mercato rispetto ad alcune "fortunate" che sono riuscite a sfruttare la tecnologia a proprio vantaggio e renderla parte integrante della loro visione, missione e del loro operato. Le così dette "Digital Companies".

Con il presente elaborato si vuole andare ad analizzare e successivamente argomentare l'evasione fiscale praticata dai giganti del web.

Più specificatamente, durante il primo capitolo e parte del secondo, ci si è soffermati maggiormente su una delle strategie di pianificazione fiscale preferite da tutti i giganti del web e ben nota alle autorità fiscali di tutto il mondo, il "Transfer Pricing".

Con il termine Transfer Pricing o Prezzi di Trasferimento infragruppo si intendono operazioni aventi luogo tra imprese appartenenti ad uno stesso gruppo multinazionale, le quali, nei casi che saranno analizzati in questo elaborato,

trasferiscono i redditi e i profitti, anche sotto forma di royalties, da paesi con una tassazione d'impresa maggiore verso paesi a tassazione agevolata, comunemente denominati "paradisi fiscali", in cui le compagnie stabiliscono preventivamente la residenza fiscale dell'azienda cosi da sfruttare i vantaggi di una determinata giurisdizione.

Chiaramente, l'economia digitale ha indirettamente incentivato questi comportamenti elusivi da parte delle aziende del web, che sfruttano la possibilità di operare su moltissimi mercati senza vincolarsi nel dover stabilire una presenza fisica per poter esercitare il proprio business. Questa sorta di dematerializzazione fisica dell'azienda funge da mezzo principale per la realizzazione delle strategie di pianificazione fiscale.

Il documento, dopo aver approfondito la tematica centrale dei prezzi di trasferimento, ed aver analizzato i casi presi come modello (rispettivamente Google e Amazon), andrà a toccare altre tematiche riconducibili al fulcro dell'elaborato. Ovvero le soluzioni introdotte per arginare l'elusione fiscale, quali le Linee Guida sui Prezzi di Trasferimento e il piano BEPS composto dalle 15 azioni per contrastare l'erosione fiscale e lo spostamento dei profitti. Purtroppo, nonostante i governi di tutto il mondo cerchino ripetutamente di contrastare queste pratiche tramite verifiche fiscali e l'introduzione di contromisure, il problema del trasferimento dei prezzi si amplifica di giorno in giorno, portando allo spostamento di somme di denaro sempre maggiori, con un calo indirettamente

proporzionale del carico fiscale al quale sono sottoposte le web companies.
Nel lungo termine si ritiene che questo carico andrà a gravare sempre più sul privato cittadino sotto forma di nuovi tipi di tassazione, conseguentemente aumentando l'impoverimento della società.
Nuove iniziative per impedire tutto ciò sono state proposte dal 2018, come la Web Tax, l'Imposta sui Servizi Digitali a livello internazionale e locale e la Global Minimum Tax. Tutte norme potenzialmente risolutive ma che di fatto trovano difficoltà nell' approvazione o nell' effettiva applicazione, a causa principalmente di una mancanza di armonia tra tutte le parti interessate, ovvero i governi mondiali, i quali non riescono a trovare un punto di incontro univoco. Questo disallineamento è legato essenzialmente alle differenze di pensiero che caratterizzano i vari governi e ancor di più agli interessi interni dei paradisi fiscali, che si potrebbero andare a minacciare se un'effettiva norma sulla tassazione dell'economia digitale valida a livello internazionale entrasse in vigore.
Il capitolo sulla tassazione digitale è tuttora aperto, la Global Minimum Tax proposta dal presidente USA Biden sembra essere stata approvata dalla maggior parte dei paesi durante l'ultimo G20 tenutosi a Venezia, ma un avanzamento nel percorso di approvazione o contrariamente, un prolungamento dei tempi di attesa è un risultato equamente possibile che si potrebbe presentare al prossimo G20 di Roma che si terrà ad ottobre. Non resta che aspettare, nel frattempo l'unica opzione possibile è seguire attentamente lo svolgersi dei fatti.

INTRODUCTION

The present document has been written with the objective of describing the strategy implemented by digital multinational companies in order to succeed in effective tax avoidance practices exploiting the mismatch among the jurisdictions of the world. The main aggressive tax planning that will be analyzed is *Transfer Pricing,* a strategy exploited by MNEs that aims at dramatically reducing their "*fiscal risk"*[1] carrying out plans designed for the tax saving. The tax planning strategies have been one of the most relevant problems afflicting the economy of a country since their origin. This because they are the main stressor of *Base Erosion and Profit Shifting* manifestations*,* from which can be distinguished strategies such as *income offshoring*[2] to more advantageous jurisdictions, price determination not in compliance with the *Arm's length principle* in order to increase the price and finally erode the tax base.

And last but not least the establishing of a fictitious fiscal residence in a nation characterized by a lower tax rate.

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[1] according to Kopits (2014), fiscal risks denote the uncertainty associated with the outlook in public finances and can be defined as the probability of significant differences between actual and expected fiscal performance, over the short to medium-term horizon. (OECD Library). Read kopits, G. (2014), "coping with fiscal risk: analysis and practice".

[2] the practice of basing a business or part of a business in a different country, usually because this involves paying less tax or other costs (Cambridge Dictionary).

In the first chapter the topics covered will start from a brief introduction of the digitalization phenomenon and the rise of the digital companies, strictly linked to the advent of the e-commerce, which is the following topic together with the exposition of the issue tied to digital economy that immediately brings us to the core subject of the document, transfer pricing and tax avoidance.
The second half of the first chapter will focus on the historical background from the origin of OECD to the evolution of *Transfer Pricing Guidelines*, with an additional analysis of the fundamental Arm's length principle.
Finally, chapter number one will provide also a more practical vision by exposing the two most popular cases of web companies' fiscal avoidance through the exploitation of Transfer Pricing, Google and Amazon.

The second chapter will make way to the actual framework of fiscal elusion and the impoverishment of high jurisdiction coffers due to the aggressive fiscal planning of multinational companies, which leads to a restyling of the norms concerning transfer pricing trough the introduction of the *BEPS Action Plan* and its consequential integration to TP Guidelines.
The continuous efforts of digital companies in deceiving international fiscal rules will result in the proposal of the *Digital Service Tax*, firstly at the European level and then at the local one.
The last paragraphs of the second chapter outline the concept of *"permanent*

establishment" and its evolution until arriving at the recognition of the *"virtual permanent establishment"*, that are fundamental notions whose evolution has been forced by the technological advancements.

The last chapter opens giving an up-to-date view of the situation, which seems to not have changed so much, mainly due to the spread of the Covid-19 pandemic which has caused unavoidable delays in the adoption of the latest norms, but anyway, this problems are not only linked to the virus, indeed in the last paragraph it will be explained how the lack of harmonization among governments has a negative impact on the process of introduction of a new *Global Minimum Tax*.

Finally the document provides some final consideration on the matter, trying to detect the real problem at its root, which triggers from decades a chain of problems involving the fiscality of the entire world, thus encouraging Web companies to exploit strategies like transfer pricing on their advantage.

CHAPTER 1

DIGITALIZATION GOES HAND-IN-HAND WITH TAX AVOIDANCE

1.1 DIGITALIZATION AND DIGITAL COMPANIES

The introduction and spread of ICT technologies during last decades have dramatically changed our worldwide society and economy, kicking off a sort of industrial revolution, which can be called more properly "Digital Revolution". *This forth revolution, labeled as " Industry 4.0" refers to the increasing trend of enterprises to implement a radical technological and organizational change, with the aim of improving working condition, productivity and profitability levels, as a response of the continuous changes in the environment* (Oesterreich and Teuteberg, 2016; Ustund and Cevikcan 2018).

In recent years, the market has become more and more competitive, and companies are trying to keep up with it. The digitalization is a fundamental aspect that a firm is in some way "forced" to include in its strategic asset if its objective is to survive and overall prosper in the market. The constant implementation of adjustments and updates is now became such a routine activity that companies have the necessity to hire new specialized employees, assigning to them the task of enabling the company's digital development, which nowadays comprehends a great part of the corporate image itself.

Digitalization is not only a factor that influences marketing activities of an enterprise, it overwhelms every single department of a company. From sales to administration, R&D, logistic etc..

Years ago, when our grandparents opened the doors of their activities, far fewer

aspects were necessary for the good performance of a business, what really mattered was just to have an innovative idea, passion and obviously some resources to make it concrete. This is how the great businesses that are still famous all over the world started (McDonalds, Lamborghini, Luxottica).
But during the second half of 1980's something changed, traditional businesses started to be downgraded by even more innovative enterprises, which were the first to incorporate the digitalization principle directly in their mission and vision. Companies like Apple, Microsoft, Google, Amazon, just to name a few. Obviously, these enterprises had not the 100% certainty to prosper in the market, in fact there are also a plenty of examples of enterprises that entered the market as digital companies, that tried to introduce progressive ideas but after some years have found themselves forced to give up because they have not been able to handle the progress and keep up with it (Blackberry, Kodak, Tower Records, Blockbuster).

1.2 THE DIGITAL GIANTS AND THEIR HUNGER FOR SUCCESS

All the successful multinational companies dominating the market have something in common. They all started from zero, form a garage (Apple, Amazon) or in a college dormitory room (Facebook, Google). Maybe it is for this reason that this multinational companies are every day more hunger for success.

They constantly try to ride the wave of the future, but this implies huge quantitative of resources to invest in R&D and marketing activities. It could be attributable to this reason the fact that each digital giant has been investigated for tax evasion at least once.

With respect to this, according to R&S Mediobanca report, in 2017 it has been estimated that digital companies have saved up to 46 billion euro from 2012 thanks to various intricate fiscal manipulations, such as advantageous taxation in the so-called *"tax heavens"*[3] and some "*tax avoidance"*[4] practices. Nevertheless, the rise of the "*e-commerce"* has facilitated the exploitation of these methods, since companies use to sell their products and services through the internet towards any corner of the world, without feeling the necessity to have a stable physical presence in the countries where they close the contracts.

This benefits and sort of "discounts" on profits are possible to be reached thanks to very low taxation rates that some countries offers, in order to attract multinational companies that will have a positive impact on the state coffers. On the other hand, this also implies that to other countries, which should have benefited from the tax paid on profits by these enterprises, enormous amounts of

[3] Tax heaven: It refers to a country offering a privileged tax treatment with respect to the average of other nations, with the cope to attract foreign capitals (Treccani).

[4] Tax avoidance: ways of paying only the smallest amount of tax that you legally have to (Oxford learner's Dictionary).

income are subtracted. In order to face the problem and try to find an effective solution, international organizations such as OECD and European Commission work from years and are still working on an appropriate international tax regulation which would discourage competition among worldwide governments to grab the most economically flourishing companies.

1.3 E-COMMERCE DEFINITION

OECD defines *e-commerce* as *"the sales and purchase of goods or services, carried out via internet through methods that are specifically designed to send and receive orders".* Goods and services are sent exploiting these methods, whereas both payment and delivery must not be done online. The transaction may occur *intercompany*[5], between families, individuals, governments and other organizations either public or private. In the definition, also orders made through the web, the *extranet* [6]and the interchange of data between informative systems are included. On the other hand, orders carried out via phone call, e-mails and fax are excluded.

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[5] Intercompany: Between, or involving, two or more companies (Collins Dictionary).

[6] Extranet: an intranet that is modified to allow outsiders access to it, esp one belonging to a business that allows access to customers (Collins Dictionary).

Under the name of e-commerce plenty of activities are identified:

- The commercialization of goods/services via the web;
- The online distribution of digital contents;
- The electronic completion of stock market and financial transactions;
- The signing of public procurement and applying of settlement procedures of public administration.

Nowadays the e-commerce channels are:

1) Interactive television, through which the consumer can purchase goods by using remote control;
2) On-line TV sales, by which the consumer is persuaded to buy a product by watching TV spots and advertisings, calling the dedicated phone number.
3) On-line sales, that is the purchase of a good/service made by the consumer by utilizing a mean which allows internet navigation.
4) *AI (Artificial Intelligence)* [7] which is a brand-new purchasing method that is increasingly taking hold. The most known are Personal Assistants like "Siri" (developed by Apple), "Alexa" (Amazon) and "Google". By using these devices it is also possible to purchase something on the web without

[7] Artificial intelligence: is a type of computer technology which is concerned with making machines work in an intelligent way, similar to the way that the human mind works. The abbreviation AI is also used (Collins Dictionary).

watching at the screen of our laptop, as the voice control is the only thing needed.

1.3.1 Direct and indirect e-commerce

Direct e-commerce refers to a totally on-line transaction, indeed with direct e-commerce the whole purchase process, delivery included, is executed through the internet. This type of commerce concerns digital contents or intangible assets which are at the disposal of the customer by downloading it directly in the laptop or in the phone.

Direct e-commerce is the opposite of ***Indirect e-commerce,*** that is recognized as all those transactions according to which the contract conclusion between buyer and seller is carried out through the utilization of a digital device, while the delivery of the good or service occurs through traditional channels such as express courier.

1.3.2 Classification of direct e-commerce

In the art.7 paragraph 2 of the regulation 282/2011/CE, the European Commission identifies all those services considered direct e-commerce methods:

a) *The general supply of digital products, included software and their updates.*

b) *Services conveying or supporting the presence of an enterprise or a private individual on an electronic channel, such as a website or webpage.*
c) *Pc-automatically generated services through the internet or an electronic channel, as a response of a specific data entry by the recipient.*
d) *The concession for pecuniary interests, of the right to put a product or services on sale on a website which operates as an online market, where potential buyers make offerings through an automated process according to which the parties are informed about the sale by automated e-mail.*
e) *Flat-rate offers of web services, in which the telecommunication component is an accessory and subordinate item (it means that flat rate offer refers not only to an internet access, but it includes also other services like news, weather forecast, games, turistic services etc..).*

1.4 THE DIGITAL ECONOMY ISSUE

The expession "digital economy" refers to the utilization of *ICT*[8] infrastructures to run corporation's activities for the provision of services, which may also be under digital form, addressed to the final consumer.

[8] ICT: activities or studies involving computers and other electronic technology. ICT is an abbreviation for 'Information and Communications Technology'.

In a world that is constantly changing, where almost everything can be converted into digital form, and where most of the enterprises driving the world economy are digital as long as the products they are offering to the market; it has become more and more crucial to recognize the relevance of digitalization and to promulgate norms able to regulate in a very exhaustive manner the whole world economy, which is threatened by elusive practices such as fiscal evasion.

The fair taxation of digital services is a topic that has led to heated debates at the international level. As a consequence of the need to find a common solution which can be internationally applied and respected, several schools of thought were born, offering different somehow “resolutive” ways to face the tax avoidance problem with the aim to provide an effective response for the distribution of taxing rights.

According to the American mind, multinationals’ profits should be always taxed in the country where the company has its *Fiscal residence*[9]. From the European point of view, instead, profits should be taxed in the country where they are generated.

These two main currents have provoked frictions and distortions among the

[9] Fiscal residence: the country where you are resident for tax purposes can usually tax your total worldwide income, earned or unearned. This includes wages, pensions, benefits, income from property or from any other sources, or capital gains from sales of property, from all countries worldwide. (europa.eu).

various norms adopted by the single governments, besides *double taxation*[10] and fiscal elusion cases.

A set of initiatives designed to contrast multinationals' illicit practices have been proposed. A couple of these are the *OECD Guidelines for Multinational Companies* (approved in 2011 by all the member countries) and the *BEPS Action Plan* (Base Erosion and Profit Shifting) adopted by OECD in 2015.

1.5 THE BEGINNING: BIRTH AND DEVELOPMENT OF OECD

The Organisation for the Economic Co-operation and Development is an international institution serving as the round table among member countries, where it is possible to all governments to confront and discuss, with the aim of coordinating the single policies of all members and solving common problems in economic and international trade matter.

Its mission is the promotion of policy at the global level, designed to improve the economic and social well-being of citizens, through the member countries' markets integration, and the realization of the highest level of economic growth and employment rate.

OECD was officially constituted at the end of 1960, and definitely substituted its

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[10] Double taxation: it is the situation occurring when one or more taxes hit the same income of a taxpayer. This phenomenon is frequent in relations among countries. It may occur, indeed, that to two different states a tax on the same revenue is imposed. In order to avoid these drawbacks, international conventions are usually signed. (Treccani)

predecessor, OEEC (founded in 1948) in 1961. Indeed, the organization is currently celebrating its 60th years from birth this year.

From the beginning with only 18 member nations, the OECD accounts for 36 member countries at the moment, with other 6 countries waiting to be included as members.

1.6 WHAT IS TRANSFER PRICING?

The concept of "transfer pricing" defines the process of determination of an appropriate price in operations concerning the transfer of the property of goods and services. This process occurs and involves companies belonging to the same multinational conglomerate.

Transfer pricing aims to determine the price, and also the profit in the respect of the *"arm's length principle"* [11]for the transaction happening between two associated companies located in two distinct countries.

Recently, it was discovered that transfer pricing has been a practice implemented as the key for the mechanism through which sale's prices do not correspond to the exact value of goods and services transferred, but actually they are determined, in

[11] Arm's length principle: This valuation principle is commonly applied to commercial and financial transactions between related companies. It says that transactions should be valued as if they had been carried out between unrelated parties, each acting in his own best interest. (OECD, 2006, Annual Report on the OECD Guidelines for Multinational Enterprises: Conducting Business in Weak Governance Zones, OECD, Paris).

the multinational company's framework, to transfer profits from high-taxation countries to low-taxation countries, also known as tax heavens. It is not casual, indeed, that multinational companies decide to locate their "back offices" in countries with favorable taxation, like Bermuda or Luxembourg. For example, a company resident in a high- taxation country, like Italy, could record higher "*royalties*[12]" on the brand or on the costs of R&D of goods produced elsewhere, or also acquire goods or services at high prices from a member company resident in a low-taxation country.

By doing so, the company is able to deduct higher costs, reducing fiscal pressure on the income that will emerge in the tax heaven where it will be subjected to a consistently lower taxation. This procedure can also be followed without exchanging goods and services, but it can also be fulfilled with *operating costs*[13]. It is obvious that this kind of practice would not be detected if the price agreed between the two companies would have been appropriate to the value in the market. With respect to this, the Italian regulations talk about "normal value" (*"the price or the corresponding practiced on average for goods and services of the same kind, in free competition condition or at the same marketing level, in the time and location where the goods have been purchased, and, in lack of these*

[12] Royalties: Payments made to someone whose invention, idea, or property is used by a commercial company (Collins Dictionary).

[13] Operating costs: a cost relating to producing a company's goods or services (Cambridge Dictionary).

circumstances, in the nearest time and location. Art.9, co.3 TUIR) which is a concept directly linked to the above mentioned "arm's length principle" coined by the OECD.

Obviously, high-taxation countries tried to arginate the problem of the misuse of transfer pricing by companies that implement these measures in order to deceive the fiscal system of the country of residence. For this reason, the *OECD Guidelines for Multinational Enterprises and Tax Administrations* have been approved by the Council of the Organization for the Economic Cooperation and Development on the 22nd july 2010.

According to art. 26 of DL 78/2010 converted in L.122, of 30th july 2010 (that has been adapted to OECD directives for the documentation "transfer pricing") it has been established that it should be demonstrated through a drawn up documentation that transfer prices between partner companies equal the normal value of transfer goods applied between independent enterprises. Just in this case sanctions won't be applied but only major taxes and interests in favor of the state from which a higher tax or lower credit will come from.

1.6.1 Transfer Pricing and OECD approach

The OECD "*Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations"* establishes which are the behaviors that all member

governments expect the enterprises to adopt concerning the transfer pricing practices. The guidelines are based on a mechanism of resolution of controversies in order to take action in case of misleading behavior of companies.

The Guidelines have been first introduced in 1979 and approved by the Foreign Affairs Committee (the organization that had the task to take care of international fiscality) in 1995.

In the first version of the Guidelines ,*"Transfer Pricing and Multinationals",* it is possible to find a special focus on the criteria defining the "normal value" in intercompany operations. Another important topic discussed in the document is the phenomenon of "double taxation" and the "arm's length principle", according to which the transfer of goods and services between companies belonging to the same parent company should be carried out at the normal market price. The main objective of the Guidelines is to avoid the transfer of income from high taxation to low taxation countries.

It is important to specify that over time the Guidelines have been gradually integrated with additional modifications and improvements that were considered necessary to be added in order to make the regulations consistent with economic, social and technological developments (Report on intangible goods and services, cost allocation, procedures for the monitoring with regard to OECD Guidelines on Transfer Pricing and others).

In 2011 the *Transfer Pricing Guidelines for Multinational Enterprises and Tax*

Administrations have been subjected to increasing improvements, linked to the art.9 of the OECD convention model reported below:

Article 9

ASSOCIATED ENTERPRISES

1. Where

a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two 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.

2. Where a Contracting State includes in the profits of an enterprise of that State — and taxes accordingly — profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would

have accrued to the enterprise of the first-mentioned State if ***the conditions made between the two enterprises had been those which would have been made between independent enterprises****, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.*

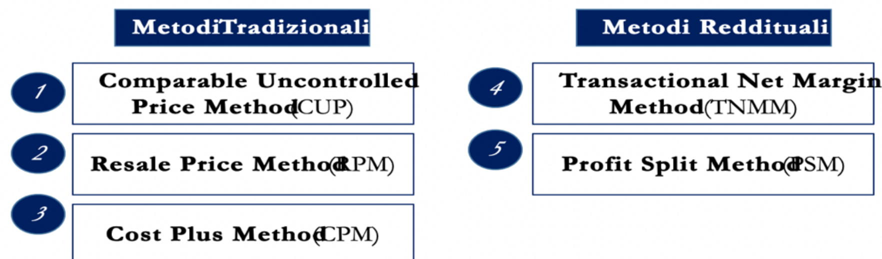
The most remarkable updates in this phase concern "The Arm's Length Principle" (chapter 1), "Transfer Pricing Methods" (chapter 2), "Comparability Analysis" (chapter 3). More precisely, more options to the hierarchy in the methods of application for transfer pricing determination are added besides the "*Traditional Transaction Methods*". With this regard, the "Transactional Profit Methods", "Profit Split Method" and "Transactional Net Margin Method" are reported in the 2011 version.[14]

In the following chapter we will enter more deeply in what are the recent developments about the transfer pricing issue, having a look to the new modifications applied by OECD from 2017 Guidelines' revision until today.

[14] It is possible to find all the transaction methods' text included in the Transfer Pricing Guidelines for the Multinational Enterprises and Tax Administrations on the library of OECD website: https://www.oecd-ilibrary.org/

I cinque metodi di Transfer Pricing

Le Linee Guida OCSE e la prassi amministrativa italiana hanno individuato una serie di **metodologie** che permettono di quantificare il **prezzo di libera concorrenza** da applicare alle transazioni inter-company. I metodi attualmente previsti sono i seguenti:



Il rapporto **OCSE** del **1995** scoraggiava espressamente l'applicazione dei **metodi reddituali**, i quali dovevano essere considerati dei *checking methods* o da utilizzare in **ultima analisi** qualora non fossero applicabili i metodi tradizionali a causa dell'insufficienza o inattendibilità di dati sulle transazioni con (o tra) soggetti indipendenti.

Source: https://slideplayer.it/slide/11639365/

1.6.2 Brief analysis of the Arm's length principle in art.9

The basis of this article of OECD Guidelines is *"The arm's length principle"*, and in order to fully understand it, a comparability analysis is necessary, in other words, we should compare *"controlled transactions"*[15] with *"independent transactions"*[16]. We should ask ourselves "is there any relevant difference in running these two types of transactions?" and in the case there is a difference, "could it really affect the elements (cost, price, margin etc..) subject to verification?"

[15] Controlled transaction: Transactions between two enterprises that are associated enterprises with respect to each other. (https://www.oecd.org/ctp/glossaryoftaxterms.htm).
[16] Independent transaction: a transaction between unrelated parties. (lawinsider.com)

In order to assess a right analysis we should find criteria on which we can focus, such as the economic framework of the two parties ("do same transactions differ in some way if executed in different countries?"), contract terms or even the type of good/service transferred. Then we should also assign some sort of score according to the answer related to that criterion.
Obviously it is a very difficult task to realize this sort of comparison, we certainly need much more skills in statistics in order to assess a classification of this kind. So, we limit ourselves to think about possible elements that could help in determining the type of transaction both *intra-group* [17]and independent ones. Overall, we absolutely do not know if companies belonging to the same multinational could run transactions that normally are not carried out between independent enterprises. In other words, we do not have a comparison measure.

1.6.3 Transfer Pricing in Italy

According to art.10 comma 7 of the TUIR (Testo Unico Imposte sui Redditi) "*Income components coming from operations with society that are not resident in the Italian territory, that manage the enterprise, both directly or indirectly, or are controlled by the same company managing the enterprise, are determined with*

[17] Intra-group transaction: all transactions by which regulated entities within a financial conglomerate rely directly or indirectly on other undertakings within the same group. (lawinsider.com)

reference to conditions and prices that would have been agreed between independent entities acting in a free-competition framework or in similar circumstances, in the case of an increase in the income deriving from that practice. The same condition is applied also if a decrease in the income is derived".

At the moment the Italian fiscal system applies its dispositions according to art.9 of the OECD model, following the "arm's length principle" or free-competition price. In this way, prices applied between partner companies coming from different countries will be the same as the ones applied to external parties that do not belong to the multinational.

1.7 EXAMPLES OF TRANSFER PRICING MISUSE: THE GOOGLE CASE

Italian fiscal authorities have subjected Google to an investigation for tax evasion for a period ranging between 2010 and 2013, precisely for an amount of 800 million euros of non-paid taxes. Indeed, it seems that the multinational moved profits to a 0% tax rate country through the exploitation of artificial means.

By having a look to the following table, showing income and tax paid by Alphabeth Inc. (Google's parent company), it is glaring the evidence that there is a substantial difference between the tax/revenue ratio in Europe in comparison with the rest of the world. The main observation that can be made refers to the

strong inversely proportional relation between the tax rates present in the European area and the tax paid. Indeed, the table shows that to high tax rates in EU than the rest of the world corresponds a lower tax payment. In the following paragraphs we will see how this situation is possible.

Revenue, profit, tax and effective tax rates of Alphabeth Inc. 2013-2015

		Revenue (m EUR)			EBT (m EUR)			Tax (m EUR)			Tax / EBT			Tax / Revenue		
		Total	EU	Rest of the world	Total	EU	Rest of the world	Total	EU	Rest of the world	Total	EU	Rest of the world	Total	EU	Rest of the world
Alphabet Inc. (Google)*	2013	40.257	18.614	21.643	11.529	343	11.186	1.986	84	1.902	17%	25%	17%	4,93%	0,45%	8,79%
	2014	54.362	19.159	35.203	14.215	285	13.930	2.997	69	2.928	21%	24%	21%	5,51%	0,36%	8,32%
	2015	68.879	25.320	43.559	18.050	586	17.464	3.034	207	2.827	17%	35%	16%	4,40%	0,82%	6,49%

Source: Orbis database (Bureau van Dijk) and SEC Form 10-K;
* The data for Europe is the total of Google Ireland Ltd., Google UK Ltd., Google Germany GmbH, Google France, Google Netherlands B.V., Google Spain SL, Google Italy S.R.L., Google Poland SP Z.O.O., Google Sweden AB, Google Belgium and Google Denmark APS.

1.7.1 The origin of the digital giant

Google is a reality born in 1995 in USA, it is the brainchild of Larry Page and Sergey Brin, two brilliant guys attending the Stanford University, with a great unique mission: *"Organize worldwide information and make them accessible to anyone"*.[18]

[18] https://about.google (Google mission)

The creation of Google did not attract just the interest of the academic world, but also the attention of the Silicon Valley investors who recognized the two students' project so great and unique that they decided to invest a huge quantity of money on it. Just after a few years the Google headquarter was moved from a garage of the Menlo Park suburb to the actual "Googleplex" in Mountainview, California.

1.7.2 The strategy used

Today Google counts more than 60.000 employees in 50 different countries and it is the most visited website in the world.

One of the most important office of the Multinational is the one located in Ireland, in the so-called "Silicon Dock" (the place where Google as well as all the digital giants like Microsoft, Amazon and Facebook have established their offices with the aim of exploiting the favorable taxation rate), where the "Google Ireland LTD" is hosted. Nevertheless, the USA company also owns the "Google Ireland Holding" in the same country, even if this last one has not a physical sit in Ireland, but it is managed from the Bermuda Island, where all the intellectual rights, properties, technologies, the brand and much more is owned.

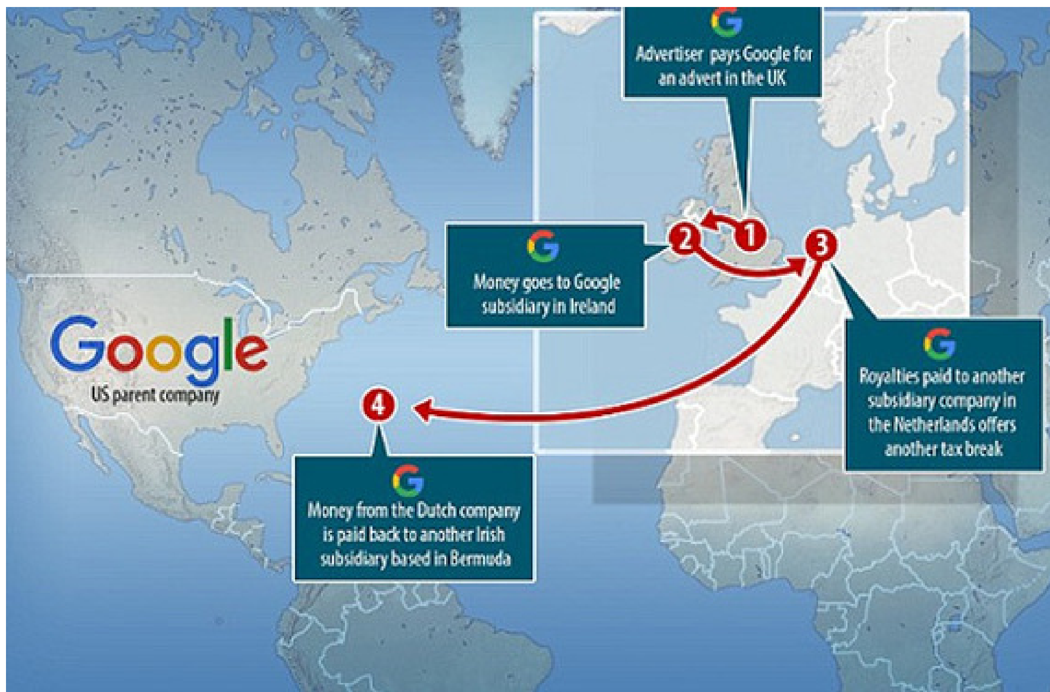
According to Irish regulations, if an enterprise located in Ireland is 100% managed by another one with residence in another country, the company tax should be up to the other state (Bermuda), that casually applies a 0% tax rate.

Moreover, Google also owns another company that follows the same management scheme, the “Google Netherlands B.V”, located in the Netherlands that on its turn has the control on the “Google Ireland LTD”.

It is clear that the Mountainview multinational owns several companies, obviously this is mainly due to the fact that Google would save some money to not pay taxes in countries characterized by a high tax rate. The real issue is that the mechanism implemented by Google is so well triangulated that the company does not have to pay any kind of tax neither on revenue nor on royalties.

In order to clarify the various passages that lead to this great fiscal avoidance we report a scheme that will better explain the strategy.

Double Irish with a Dutch sandwich scheme



Source: https://www.dday.it/redazione/25291/16-miliardi-dallirlanda-alle-bermuda-ecco-come-google-ha-risparmiato-miliardi-di-dollari-in-tasse

1.7.3 How it went: Double Irish with a Dutch Sandwich

The Double Irish with a Dutch sandwich is one of the most popular tax avoidance schemes that generally are implemented by the biggest digital multinationals, included Google.

The mechanism of this practice consists mainly in moving profits to a company located in Ireland, then to a Dutch company and again to another Irish one with

residence in a tax heaven, where the tax rate is very low or even 0. This strategy allows enterprises to consistently reduce the percentage of taxes that they have to pay or even to not pay taxes at all.

In the Google case the Double Irish with a Dutch sandwich is exploited in such a way that Google USA sells an advertising to a European company (say an Italian one) at a given price, the Italian society pays Google USA for advertising. From this sale, profits linked to the Italian territory are generated and so Google should pay taxes related to that sale in the country where the sale took place in two specific instances: if the Google company is physically present in Italy or if there is a permanent establishment in Italy. In case no one of these requisites is satisfied, the profit won't be taxed in Italy.

In the case of Google, the sale of an intangible good such as an advertising does not make compulsory the physical presence of Google in Italy, so for this reason profits coming from the contract with the Italian customer will not be taxed in Italy. This is a peculiarity of a web company.

Then Google USA should pay taxes in USA but for some reason tax on profits are paid elsewhere.

The parent company has established subsidiaries in countries that benefit of favorable fiscal regimes such as Ireland, Netherlands and the Bermuda. These subsidiaries have the whole control on the brand, property rights, technologies and much more.

The next step is that Google USA appoints Google Ireland LTD to manage the contracts with the European, in this case Italian, customer. Google Ireland LTD is a full-fledged active company since it employs 2000 people and it pays taxes on employees. Anyway, this subsidiary is controlled by the Google Netherlands Holding, which on its turn is controlled by the Google Ireland Holding through a subcontract. Having this last one no physical presence in Ireland but being managed from the Bermuda, and having full control on the brand, property rights, technologies and much more, all the profits are taxed in the Bermuda island, which applies 0% rate, against 12,5% of tax on profits in Ireland and 24% in Italy. The multinational is subjected neither to income nor to royalties' taxation thanks to some precise regulation that Google has exploited. Indeed, according to the European regulation the payment of royalties between two countries of the EU is not taxed and profits are allowed to come back to Ireland thanks to Dutch tax regulation according to which the transfer of profits to a country outside EU is not subject to taxes.

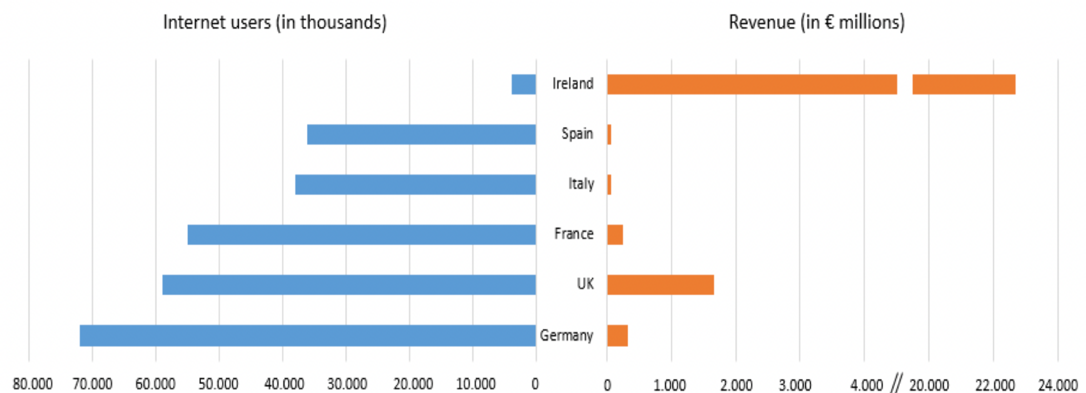
So, being more specific, an Italian company pays Google for online advertising, since the customer is located in the European territory it will turn to the European subsidiary Google Ireland LTD which is in charge by the parent company in USA to conclude the contract. Since the subsidiary does not satisfy the requisite for taxation in Italy, as said above, profits coming from the sale won't be under the Italian jurisdiction. Then the same profits will be transferred to the Google

Netherlands B.V(Netherlands) under the form of royalties on the intellectual property. On its turn, the Dutch company will shift the profits to the second Irish company (Google Ireland Holding) thanks to a subcontract between the two. Finally, the Google Ireland Holding has received the royalties which will be taxed in the Bermuda as it is managed in that jurisdiction.

Thanks to this intricated mechanism Google is able to not pay taxes on profits. On the other side, this practice attracted the attention of the whole European government, overall of those countries, like England and Italy, where million of euros of taxation on profits have been denied and were diverted to the so-called tax heavens.

The outcome of the tax planning scheme adopted by Google, which has been already explained above, is clearly depicted in the following graph, where the amount of the registered revenue is not correlated at all to the number of internet users in the 5 largest EU member states and Ireland.

Google's revenue vs. internet users in Ireland and 5 largest EU countries (2015).



Source: Orbis database (Bureau Van Dijk) and Internet World Stats

1.7.4 The outcome

The digital giant has responded to the prosecution for fiscal evasion by sustaining the legality of the practice, and the fact that the company has established subsidiaries in the above mentioned countries obviously due to the fiscal benefits they offer in order to persuade companies to set facilities and subsidiaries, to consequently create workplaces and keep the economy moving ahead.

However, Google has declared that from 2016 forward it will pay taxes according to the yearly invoice done in every country where it will conclude contracts. Moreover, it has come to an agreement with England and Italian fiscal authorities to settle the past tax controversies,

according to which Google will pay respectively 130 million pounds and 306 million euros.

Italian fiscal authorities declared: “the signing of prior agreements for the future fair taxation in Italy of Google’s activities linked to our country will be enshrined. The company declares its commitment in following an exhaustive fiscal control policy for what concerns its operations in Italy”. At the end of the story the Milan prosecutor reported the names of 3 managers of Google Ireland Ltd. For omitted income tax-return (art.5 of TUIR, Income tax code).

1.8 THE AMAZON CASE:

The homonymous company owned by the US billionaire Jeff Bezos has been subject of analysis and investigations for its illicit activities of tax evasion by the Italian tax authorities. The total sum arounds 2.5 billion euros in a five years period (from 2009 to 2014). For what concerns the Italian territory, the tax evasion amounts at 130 million euros.

1.8.1 How it started

All began in 2005, when Amazon decided to move its registered office in Luxembourg Grand Duchy, creating the *“Amazon EU Sarl”* and registering EU sales there. This strategy was set mainly to minimize taxes. Indeed, Amazon

succeeded to escape from its fiscal obligations, thanks to the *tax ruling*[19], the fiscal agreement regulating transfer pricing within intra-group activities that were granted by Luxembourg. It consisted in the transfer of incomes towards companies located in Ireland and Luxembourg, where taxation rates are lower than other EU countries.

In Italy Amazon owns two companies, "*Amazon Italia Logistica S.r.l"* which is in charge of the stock management in Castel San Giovanni and "*Amazon Italia (Corporate) Services S.r.l",* located in Milan, this office has the task related to the marketing management and merchandising activities (in addition to that, Amazon also owns a customer service in Cagliari).

Both subsidiaries are 100% controlled by the headquarter in Luxembourg, Amazon EU, which operates in the European territory since 2014 and employs more than 500 people. It was thanks to this relationship that taxes of sales generated in Italy were paid in the Grand Duchy, applying the minimum rates. Amazon EU managed any phase of the contract, from supply to delivery, but anyway Amazon's invoice was registered in Luxembourg (where a shell company was located, without employees or offices), but both shipping and delivery of ordered goods occurred in Italy, through Italian personnel. The Luxembourg

[19] Tax ruling: a practice that clarify in advance the tax treatment that a country will apply to a company. Through this mean, multinational enterprises choose the most advantageous jurisdiction where locate their headquarters and subsidiaries. ("Tax Rulings" in the EU Member States, Study for the ECON Committee, 2015).

company was just the link that the multinational needed to move profits from Amazon EU to the parent company, located in the USA.

The Seattle multinational justified this action by stating that the most important business decisions (e.g. price politics and distribution) were taken at the corporate level in Luxembourg. The Milan office, instead, was commissioned only to apply headquarter directives.

In the paragraph about the permanent establishment, we will dwell for a while on the new proposals to define this concept that OECD is taking into consideration to adopt and apply in order to respond to the new necessities that has risen as a consequence of the *new economy*[20].

The main idea is that it should be reached the definition of permanent establishment for those companies that own physical facilities and structures for the storage and the delivery of goods

which operates as core activities of the corporate business. This possibility should include Amazon's warehouses, dislocated in the whole European territory, in the definition of permanent establishment, provoking a consequential modification of the multinational tax strategy.

[20] The term "New Economy" describes aspects or sectors of an economy that are producing or intensely using innovative or new technologies. This relatively new concept applies particularly to industries where people depend more and more on computers, telecommunications and the Internet to produce, sell and distribute goods and services. (Government of Canada, Economic Concepts, OECD website 2004).

1.8.2 How it ended

In 2015 Amazon has declared that it would have started to pay taxes in the states where subsidiaries that directly manage the business handed over them are located.

This has led the company to stop applying the *reverse charge*[21] mechanism, to pay VAT[22] no more in Luxembourg but in Italy, to register invoice in Italy, given that the company's structures that have been found in Italy were immediately recognized as permanent establishment.

According to the European Commission, the tax ruling established between Amazon and Luxembourg was not legitimate, it was a strategy mainly planned to retain the big multinational in the country. At the end of the investigation it was discovered that three quarters of European profits have not been taxed. Moreover, the tax ruling was an extension of an agreement signed in 2003 between the two parties, in the circumstances in which Luxembourg provided 250 million euros of state aids to Amazon after the economic crisis.

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[21] Reverse charge: Reverse-charge means that under certain conditions the liability to pay the VAT is shifted to the recipient. The recipient has to calculate and pay the VAT on the transaction. He has to announce that tax in his tax returns, and he is allowed to deduct that VAT under certain conditions. (Federal Ministry Republic of Austria, Finance).

[22] VAT = value added tax (= a type of tax in European countries that is paid by the person who buys goods and services) (Cambridge Dictionary).

CHAPTER 2

THE FIGHT AGAINST TRANSFER PRICING MISUSE: FROM THE BEPS ACTION PLAN TO THE VIRTUAL PERMANENT ESTABLISHMENT

2.1 THE ACTUAL SITUATION

The global economic crisis of the last decade has inevitably revealed the evasive behaviors of the big Multinationals. The reaction of the world's governments, that found themselves deprived of resources, fundamental for the fulfillment of public expenditure and that as a response increased fiscal pressure on citizens, was the introduction of the Guidelines and consequently of the *Beps Action Plan*[23].

When the OECD *Guidelines for Multinational Enterprises* were officially approved by all member countries, mainly for the well management of bilateral agreements against double taxation, several additional cases of Multinational's tax avoidance by the exploitation of misleading activities such as *Transfer pricing, Tax residence, Double Irish* and many others were discovered and those companies were put under investigation by the fiscal authorities of the countries where they did not pay contributions. Most of the multinationals involved in these cases are digital companies (Apple, Microsoft, Google, Amazon etc..). This factor has set off the "wake-up call" for all the Governments, that have found a framework in which multinational companies were exploiting for their benefit the lack of coordination among national fiscal norms and the actual fiscal conditions of international markets, which were very undeveloped if compared with the fast

[23] Beps Action Plan: Developed in the context of the OECD/G20 BEPS Project, the 15 actions set out below equip governments with domestic and international rules and instruments to address tax avoidance, ensuring that profits are taxed where economic activities generating the profits are performed and where value is created. (oecd.org).

digitalization that the world was living. Clearly the Guidelines are not enough to fight the tax evasion, so a solution to this issue should be found soon.

2.2 THE BEPS ACTION PLAN

The reaction to the issue of the intensive tax avoidance practices is the *Base Erosion and Profit Shifting Action Plan*. It is an initiative adopted by OECD and G20 in 2013. This document has provided crucial means to contrast tax avoidance practices, in such a way that it could have been possible to ensure profits to be taxed in the nation where they are generated and the value added created.

With Base Erosion and Profit Shifting we refer to the practices adopted by taxpayers, according to which they benefit from deductible payments such as interests and royalties in order to reduce the amount of taxable profits in the country where they are generated, while the transfer of profits from a high taxation to a low taxation jurisdictions is carried out through intra-group transactions of goods and services producing those incomes.

BEPS Action Plan is born as a response of OECD member countries and G20 countries to contrast the phenomenon of the tax base erosion and the artificial transferring of profits. It was launched on 12th February 2013 through a first report realized by OECD and after having published the plan composed by 15 Actions,

G20 decided to support the project, thus the final plan has been issued and published on 5th October 2015.

The main objectives that the two organizations want to reach with BEPS are:

- The elimination of the mismatch effect deriving from some unidentifiable strategies;
- Preventing treaties' misuse;
- Avoid fiscal elusion of the *Permanent Establishment* status and improve the efficiency of controversies' resolution mechanisms.

This project has interested 135 different countries and jurisdictions (among which United Kingdom, USA, Germany, France, Italy and many others) in order set up a collaboration for the concretization of a common purpose.

Concerning transfer pricing, in the first version of 2013 the BEPS project has dedicated three Actions (from 8 to 10) to the topic:

ACTION 8 - INTANGIBLES

Action 8 addresses transfer pricing issues relating to controlled transactions involving intangibles, since intangibles are by definition mobile and they are often hard-to-value. Misallocation of the profits generated by valuable intangibles has heavily contributed to base erosion and profit shifting.

ACTION 9 - RISKS & CAPITAL

Work under Action 9 considers the contractual allocation of risks, and the resulting allocation of profits to these risks, which may not correspond with the activities actually carried out. Moreover, Action 9 addresses the level of returns to funding provided by a capital-rich MNE group member, where those returns do not correspond to the level of activity undertaken by the funding company.

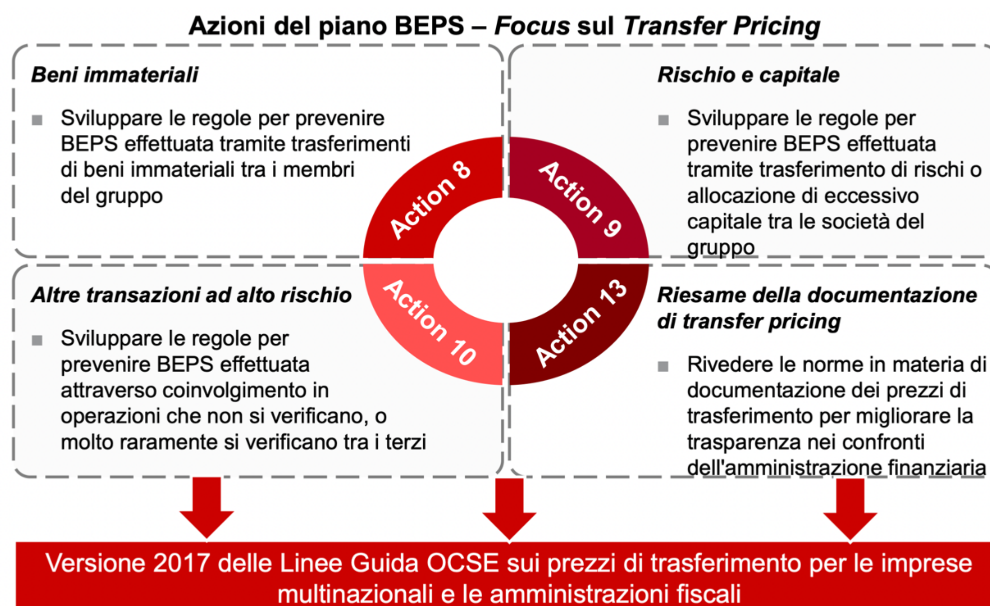
ACTION 10 - HIGH-RISK TRANSACTIONS

Action 10 focuses on other high-risk areas, including the scope for addressing profit allocations resulting from controlled transactions which are not commercially rational, the scope for targeting the use of transfer pricing methods in a way which results in diverting profits from the most economically important activities of the MNE group, and the use of certain type of payments between members of the MNE group (such as management fees and head office expenses) to erode the tax base in the absence of alignment with the value-creation. [24]

Over time the BEPS Actions have been subject to revisions and modifications, as long as the above treated *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*.

[24] https://www.oecd.org/tax/beps/beps-actions/actions8-10/

As we can see, in 2017 an additional action has been included in the Transfer Pricing matter (Action 13) as the picture below depicts.



Source: https://www.odcec.roma.it/

Under BEPS Action 13, all large multinational enterprises (MNEs) are required to prepare a country-by-country (CbC) report with aggregate data on the global allocation of income, profit, taxes paid and economic activity among tax jurisdictions in which it operates. This CbC report is shared with tax administrations in these jurisdictions, for use in high level transfer pricing and BEPS risk assessments.[25]

[25] Minimum Strandards (Action 13), (https://www.oecd.org/tax/beps/beps-actions/action13/).

2.2.1 Intangibles

The intangibles are one of the main reasons that has led to OECD initiative to propose the BEPS Action Plan, indeed the misleading transfer pricing practices implemented by several enterprises, which we have also analyzed in the previous chapter (e.g. Google) are just based on the transfer of profits generated by intangible goods, which in the Google case are on-line advertisings.

According to *chapter VI of Transfer Pricing Guidelines*, the concept *"intangible*" refers to "*something which is not a physical asset or a financial asset, which is capable of being owned or controlled for use in commercial activities, and whose use or transfer would be compensated had it occurred in a transaction between independent parties in comparable circumstances*".

Before the technological development the main distinction that was made was the one between products and services, but digitalization has led to the introduction of a new distinction, the one between tangible and intangible goods. Nowadays it can be stated that the volume of intangible goods is overcoming the tangible ones, so that it is becoming more and more easy for companies to transfer profits of "invisible" goods, while at the same time establishing the right addressing of those profits is harder for fiscal authorities.

2.2.2 Transfer Pricing Guidelines and BEPS integration

On 10th July 2017 Beps Action Plan has been officially integrated to *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*, of which a new version is published.

The integration of BEPS actions to the Guidelines is an additional vehicle to ensure that transfer pricing regulations enable the right determination of profit allocation and taxation in accordance with the economic activities that have generated those profits.

Moreover, thanks to the revision and update of action 13, the member countries' jurisdictions ask for a specific and detailed documentation called *"Country-by-country reporting"*. In the specific, the activities that must be declared inside the documentation are the following:

- Tax jurisdiction;
- Revenues;
- Profit (loss) before income tax;
- Paid tax on profit (on an accrual basis);
- Income Tax accrued;
- Declared capital;
- Retained earnings;
- Number of employees (in the tax jurisdiction);
- Tangible assets other than cash and cash equivalents;

- Constituent entities resident in the tax jurisdiction;
- Tax jurisdiction of organization or incorporation, if different from tax jurisdiction of residence;
- Main activities.[26]

As previously said in the first paragraph of this second chapter, notwithstanding the continuous international regulations updates, big multinational companies are still trying to flout the international fiscal rules. The companies in question are obviously the so-called *"Digital companies"*[27]. For this reason OECD has declared that within 2020 common rules concerning a taxation addressed to digital companies would have been adopted.

2.3 FROM THE EUROPEAN TO LOCAL DIGITAL SERVICE TAX

The *Digital tax* refers to the introduction of a taxation applicable to Multinational companies, which until not so long time ago were able to exploit international regulations, as well as bilateral agreements with low tax jurisdictions to their advantage and save billions of euros/dollars on income tax. Italy is following the same line as other OECD member countries, indeed it has introduced an

[26] https://www.odcec.roma.it/images/file/FPC%20Materiale%20didattico%202017/Convegno%20BEPS%205%20ottobre%202017.pdf

[27] Digital company: an organization that uses technology as a competitive advantage in its internal and external operations. (searchcio.techtarget.com).

“independent” tax, valid starting from the 1st January 2020, waiting for a clearer plan designed by OECD and approved by members, in such a way that there will be the same norm among all countries. With regard to this, it has been established that with the entry into force of a common fiscal legislation for digital companies, all the single national norms on digital tax will be automatically abrogated.

The *Digital Service Tax* - DST (ISD - Imposta sui servizi digitali) consists in a 3% rate applied on taxable revenues earned in a year. For what concerns Italy, the tax is charged to enterprises that reach a revenue exceeding 750 million of euros or a revenue linked to digital services carried out in Italy higher than 5.5 million euros. Consequently to various debates on the individuation of the companies subjet to digital tax, some countries, included Italy, have decided to not apply the tax to those enterprises carrying out activities of digital intermediation such as banks, company’s web sites, phone operators and digital contents suppliers like TVs and newspapers.

The first payment of the DST has been executed by the 16th May of this year, while the 30th June has been set the deadline for the statement of digital services provided in 2020 by companies. “98 millions paid by 49 companies. The result is an overall *income from the levy* [28] on digital services of 233 million euros” (Daniele Franco, Italian Minister of the Economy).

[28] Income from the levy: Income generated from an amount of money, such as a tax, that you have to pay to a government or organization. (Cambridge Dictionary).

The initial Web Tax proposal was made in 2018 by The European Commission. According to the Commission, this will be a mean forcing the "*digital giants"* to adopt higher transparency about the activities producing profits and the nations where they are produced.

The Web tax bases its enforcement on the concept of a "*digital taxable presence*" that will allow the local fiscal authorities to subject certain companies to local fiscality. The enterprise in question will be recognized as taxable if the following requisites are satisfied:

- Annual revenue over 7 million euro;
- Over 100.000 signed users in a country;
- Having more than 3000 digital service contracts to business users.

The web tax will be applied on services like data transfer, Intermediation between users and businesses, sales of advertising. With regard to this last one, the Google case, exhaustively explained in the previous chapter, is a perfect example of the misleading fiscal practices implemented by international enterprises generating incomes linked to the sale of intangible goods, whose profits were easily convertible into royalties for which certain jurisdictions apply advantageous conditions. In fact, we have seen how Google has been able to move those royalties to the Bermuda without paying taxes on profits because of the fiscal residence of its subsidiary owning all the major intangibles (the intellectual rights, properties, technologies, the brand etc..).

Concerning the intermediation between users and businesses, the Italian authorities were not agree on the inclusion of *digital intermediation*[29] activities as subject to taxation, this is the reason why we can find our country among the group of nations in disagreement with the EU Commission's web tax proposal.

2.3.1 Critical aspects of the Italian Digital Service Tax

Italian DST shares similar characteristics to those of Digital Tax proposed by the European Commission, that by now is still not entered into force due to the lack of harmonization among international fiscal systems, controversies and disagreements among OECD member countries and overall the lack of a meeting point between OECD and United States (the mother country of the majority of the digital companies subject to taxation).

As previously said, Italy along with France, have established local Digital Service Taxes, waiting for a common international legislation. The introduction of such local norms are initiatives taken by single countries in order to give an input to boost towards a necessary advancement of international fiscality. However, the Digital Service Tax still presents gaps that should be fixed.

[29] Digital Intermediation: The act of operating in digital space to allow users or customers to interact and transact digitally. (https://www.igi-global.com)

The DST is a tax on revenue, this means that there is a great probability that it will be dumped on users, becoming a penalty for Italian enterprises and thus provoking a slowdown in the digital transformation of our society. Nevertheless, US finds the Tax as inquisitorial towards itself, indeed according to the US Government the Digital Tax is basically a duty on imports of digital services provided by the big American multinationals. Since it is considered a discriminatory rule, US has declared that it will impose duties on its turn towards those countries applying the Digital Service Tax (mainly Italy and France).
After the entry into force of the Italian DST, and so also the payment of the relative tax occurred last 16th May, the effective tax revenue has been considered incredibly lower than the income that Italian fiscal Authorities have estimated and were expecting.

2.3.2 Debate between USA and EU on Digital Service Tax

The proposal of the Digital Service Tax, addressed to the digital enterprises, by the European Commission has exacerbated the debate with the US Government. This is the main reason of the ongoing postponing of the implementation of a common international taxation on digital services. OECD is struggling from years with the aim of finding a common solution to this issue. On one side we find EU, which would attract the tax income on its territory for the businesses carried out in

the European countries, on the other side there is US arguing that most of the Digital multinational companies are native American, so these companies should pay taxes in the American jurisdiction.

As previously said in the above paragraph, USA has taken retaliatory measures against countries that have instituted local digital taxes on multinationals. These countries are Italy, France, Spain and Austria, which in their turn will be subject to a 25% duty on imported products, as a consequence of the report drafted by US concerning an analysis of the norms on local DST introduced by each one of the above said nations. On this regard, the US Government has defined the web taxes **unreasonable, discriminatory and onerous**.

The USA Trade representative, Katherine Tai has declared that this duty is a response to the tax that burden on American companies like Facebook and Alphabet *(Il Sole 24 Ore, June 2nd 2021).* However, the actual implementation of the American duty has been just suspended for the next 6 months, with the hope to find a point of agreement with OECD by this autumn. In the third and last chapter we will return to this matter outlining the novelties about the agreement reached by EU and USA during the G20 in collaboration with OECD on the institution of a Global MInimumTax.

2.4 THE CONCEPT OF “PERMANENT ESTABLISHMENT” AND ITS REGULATION

The advent of digital economy brought with it several changes on the social, economic and fiscal context that has made “*traditional economy”*[30]*,* that was used to be applied and observed, so much obsolete that a norm refreshing was essential in order to face the world evolution. In addition to that, the continuous development of new ways to do business and the already mentioned lack of coordination among worldwide Governments has fueled the ease of non-compliance of Multinational enterprises and so the tax avoidance phenomenon.

It is considered that the present document should give great relevance to the concept of *permanent establishment* and its development, as well as the legislative modifications in accordance to its evolution.

Art.5 of OECD Model and the Italian law (Art. 162 of TUIR) identify the concept of *“permanent establishment”* as *a fixed office through which a non-resident company pursues, in whole or in part, its business activity on the territory of the hosting country.*

With this definition, the fixed office is intended to be stable and physically present on the territory over time, keeping a strong relation with the headquarter located

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[30] Traditional economy: Traditional economy means an economy where customs, traditions and believes prescribe the principles of economic organization for production of goods and services. (Rosser et al., 1999).

in the country of fiscal residence. It is crucial to clearly understand this concept in order to localize the profits produced by a company outside its mother land, so that it will be subject to the jurisdiction and also the taxation of the hosting country, for the income taxation of the profits deriving from the commercial activities carried out through the above mentioned permanent establishment inside the nation in question.

Moreover, another prerequisite in order to consider a certain company as having a permanent establishment in a country, is the physical presence of at least one individual (it is advisable that the person in question is resident in the hosting country, virtual *"digital residence"*[31] is not accepted) in charge of the management of the activities addressed to that office.

Generally, a company is considered as having a permanent establishment in a country if it owns: *a head office, a branch, a department, a workshop, a laboratory, a mine, oil or natural gas field or any other location addressed to the natural resources extraction* (comma 2 art.162 TUIR).

In contrast to the previous definition, a permanent establishment is not considered as such *if the office in question is employed as a warehouse and the goods present inside the office are stored only for storage, exposition and delivery reasons* (e.g.

[31] Digital residence: an electronic address elected from a certified electronic mail service or qualified certified electronic delivery service, as defined by Regulation (EU) 23 July 2014 n.910 of the European Parliament. (aruba.it).

Amazon, as we have seen in chapter 1), *if goods are stored waiting to be processed by another company, or any other preparatory and ancillary activity, or if the office is employed solely for purchasing goods or for collecting information* (comma 4 art.162 TUIR). Obviously, if a company wants to create a permanent establishment in another country, the establishment in question must satisfy all the necessary conditions and all the constitutional element required by the regulation, otherwise we can suppose that the permanent establishment has been created only to enjoy fiscal benefits (illegal practice).

However, art.162 of TUIR has also an open clause in which it is reserved the right to verify and analyze the single situation in order to recognize or not a permanent establishment.

2.4.1 Hidden Permanent Establishment

The hidden permanent establishment is the mean through which Amazon has implemented its tax planning scheme. As exhaustively explained in the previous chapter, Amazon's revenues, generated in Italy were transferred to Luxembourg, where the company has registered its Tax Residence and a Tax Ruling with the government was agreed. This was possible mainly because Amazon's offices in Italy were initially not classified as permanent establishments, since the main activities that were carried out by those offices were the storage and delivery of

goods.

Summing up, we can state that the *hidden permanent establishment*[32], together with the exploitation of transfer pricing practices allowed the digital retail giant to save billion of euros of taxes. This behavior is one of the some pursued by multinational companies, which consequences fall on fiscal pressure to which citizens are subject by higher taxation countries, with the increase of taxes like VAT, second home tax and tax on waste.

2.4.2 Advent, recognition and regulation of the "Virtual Permanent Establishment"

With the aim to avoid elusive schemes, OECD along with G20 (and later also OECD member countries jurisdictions) have recognized the new concept of *"Virtual Permanent Establishment"*[33] and incorporated it in the legislations in force.

Beps project focuses its Action 1 *(Addressing the Tax Challenges of the Digital Economy)* on the recognition of the permanent establishment, and on the

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[32] Hidden Permanent Establishment: Usually used by the tax authority to dispute to an Italian company, managed by a foreign company, that in the first one there is a hidden permanent establishment of the second one; the foundation for these observations come from the assumption that some functions carried out by the first enterprise's managers are functional for the business of the foreign mother company. And so the controlling company owns a permanent establishment able to produce taxable income in Italy. (https://www.ecnews.it/stabile-organizzazione-occulta-e-iva/).

[33] Read "Are the current treaty rules for taxing business profits appropriate for e-commerce? Final Report"; paragraph: "Adding a new nexus of "electronic (virtual) permanent establishment" (page 65) (https://www.oecd.org/tax/treaties/35869032.pdf).

development of the same concept concerning the digital revolution.

Factors enhancing the criticality linked to digital economy are: the localization of the value creation, the not necessity of physical presence in the export market, the undefinability and mobility of value intangibles.

According to the already mentioned factors it is reasonable to say that the even more higher dematerialization of the digital companies has not facilitated the establishing of a taxable presence through a permanent establishment. So, OECD has tried to figure out the problem identifying three possible solutions: the definition of a new *Nexus*[34] of the enterprise in a different country to the one of residence focusing on the concept of *"significant economic presence"*[35] *(SEP);* establishing a withholding on some payments made by individuals residents in a specific country for the sale of digital goods/services by the non-resident company in question; the institution of a taxation varying in accordance with the business volume of the enterprise and subject only to those companies exceeding a yearly threshold.

Moreover, in the Final Report of Action 7 "*Preventing the Artificial*

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[34] *Nexus*: The possibility offered by the new technologies and new business models to maintain a significative physical presence in the target markets arises the issue of the appropriateness of actual fiscal rules relating to the determination of the link of a taxpayer with a specific fiscal jurisdiction *(thresholds)*
Source: Ordine dei Dottori Commercialisti e degli Esperti Contabili (2018).

[35] Significant economic presence: A significant and continuous economic presence in the territory of the state built in such a way as not to result in any physical presence in the same territory (The Canadian Tax Foundation Digital Tax Log).

Avoidance of Permanent Establishment Status", OECD has introduced the anti-abuse clause called ***anti-fragmentation rule***[36] (described in art.5 of paragraph 4.1).

2.4.3 The italian approach

The art.162 comm. 2 lett. f-bis present in 2018 Budget Law (Legge di Bilancio) regulates the concept of *Virtual Permanent Establishment*, a new type of permanent establishment that mainly refers to digital enterprises, namely pursuing their business activities through the web.

According to the norm, the virtual permanent establishment is recognized in the case in which there is a significative and ongoing economic presence of the company in the interested territory, constituted in such a way that there would not be an effective physical presence in the country.

[36] 4.1 Paragraph 4 shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and
a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of this Article, or
b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,
provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation. *(OECD Update to the Model Tax Convention, 2017) - https://www.oecd.org/ctp/treaties/2017-update-model-tax-convention.pdf*

So, with the introduction of this comma, we no more have a real and concrete link between a business activity and the territory.

With the introduction of this comma the Italian Government wants to issue a clause properly acting against tax avoidance practices implemented by foreign digital companies, that skillfully conceal the presence of a permanent establishment in the Italian country. *The norm is considered an anti-circumvention disposition not contrasting with the conventional fiscal law, in fact, the objective is the full compliance with it* (relazione emend. Senato).

CHAPTER 3

TAX AVOIDANCE: A NEVER ENDING STORY

3.1 A VICIOUS CYCLE: THE DIGITAL GIANTS ARE STILL NOT PAYING TAXES

The Covid-19 pandemic has severely affected the worldwide economy in a way that anybody could have imagined before.

The spread of the virus, coming from China, has been a totally unexpected event that every country in the world found itself be faced with, without having ideas about what could have been the right economical, administrative and health strategy which could enable Governments to win the fight against this invisible enemy.

The rise of the infection and mortality rates and the rapidity of transmission of the virus have led the Governments of all corners of the planet to establish measures to control and contrast the virus. These actions have been set up with the aim to save peoples' lives and come back to normality as soon as possible, but on the other hand they have caused also negative consequences for the economy. Indeed, due to lockdowns and curfews, thousands of businesses have been forced to close or declare bankrupt.

The actual situation, after more than one year of restrictions and spread of Covid-19 variants is anything but purposeful.

Among all the businesses that have faced a multitude of difficulties, from the working point of view people have discovered the benefits of working remotely from home (unfortunately it is not a possibility adaptable to all businesses).

But in some way the pandemic has speeded up the digitalization process, that has been revealed as an indispensable help for the survival of a lot of activities.
Clearly there are businesses that have gained more benefits than others, and in this context it is quite logic to figure out who are the companies that have exploited this framework to their own advantage to make a fortune.
Digital companies' incomes during 2020 have reached levels that nobody has seen before.

"Powered by Google, Alphabet earned $18.53 billion, or $27.26 per share, during the quarter, a nearly threefold increase from last year's earnings of $6.96 billion, or $10.13 per share. Google's advertising revenue soared 69% to $50.44 billion thanks to what CEO Sundar Pichai called "rising tide" of online activity among consumers and businesses".[37]

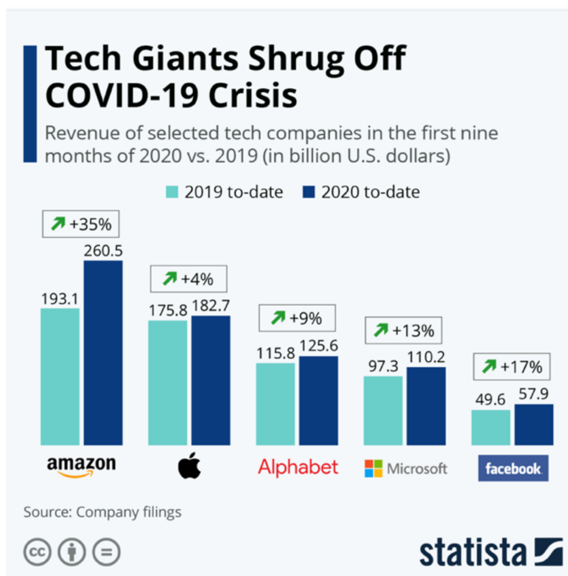
Moreover, as we could expect, Mr. Jeff Bezos, who we have already mentioned during this essay has been confirmed as being the richest man in the world, considering that his multinational, Amazon, only in 2020 has registered a turnover of 100 billion of dollars more than 2019, for a total of 386.1 billion of dollars of

[37] Source: https://apnews.com/article/technology-business-health-coronavirus-pandemic-covid-19-pandemic-fb038130d5f04c07bafcb940453f2ebf.

revenues, with 44 billion that were registered only in Europe (12 billion more than the previous year).

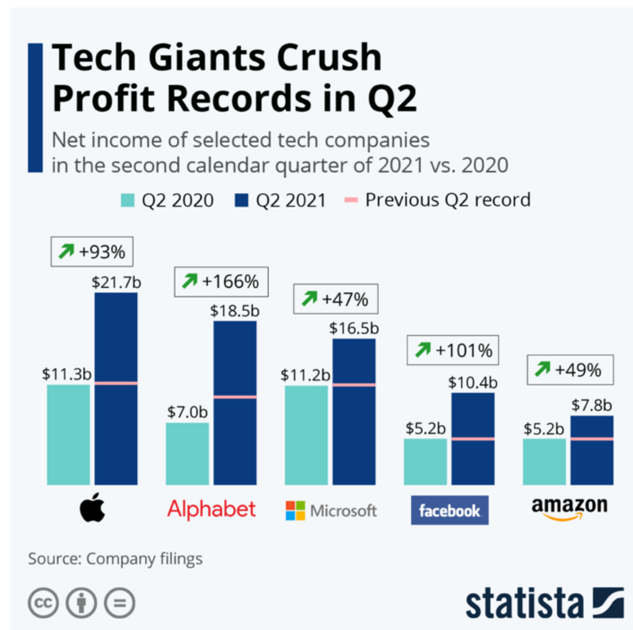
In the following tables you can see the enormous growth experienced by digital companies during the first part of the Covid-19 pandemic (Figure 1), and also a comparison of the same companies' profits during Q2 of 2020 and 2021 (Figure 2).

(Figure 1)



Source: https://www.statista.com/chart/21584/gafam-revenue-growth/

(Figure 2)



Source: https://www.statista.com/chart/24775/gafam-net-income/

Consequently to these numbers, one may imagine that also the amount of tax deductions paid by Amazon would have been significant, moreover after its homonymous backgrounds of fiscal tax avoidance.

But the situation has not changed at all. With respect to this, The Guardian has investigated on Amazon's last year businesses, on revenues and also on its fiscal contribution in Europe, and what is emerged is that the world most flourishing business is still not paying taxes at all. The company has still its headquarters located in Luxembourg Gran Duchy, where Amazon Europe is registered since

2003, but what is striking on this matter is that over the damage there is also the joke, because the e-commerce giant has certainly not paid taxes in Europe, but in addition to that it has declared a loss of 1.2 billion euros in 2020 due to the pandemic. As a result, the company has also received 56 million euros of tax credit from the Gran Duchy, to be used for the tax payment in order to compensate the loss caused by the pandemic.

Similarly, the other digital giant we have talked about in the first chapter, Google, is still paying less taxes than the real amount it is supposed to pay in Europe. After the past controversies and accusations of tax evasion, Alphabet (Google parent company) has paid only 6 million euros of taxes in 2019, considering its 20 billions of dollars of revenue registered in the Bermuda, where the multinational has its fiscal residence.

3.2 A SOLUTION TO THE UNDECLARED REVENUES OF DIGITAL PLATFORMS

It is quite absurd to think that still in 2021 there is not a norm imposing to multinational corporations to declare their revenues in every nation where they make business. In fact, this is a little detail that has facilitated even more the fiscal strategies applied by these companies, such as the shifting of large amount of money under the form of licenses and royalties from one jurisdiction to another. But it seems that The EU Council has established a norm enforcing fiscal and

administrative cooperation, focusing mainly on the digital platforms' incomes. Entering into force from the 1st January 2023, according to which all multinationals will be obligated to declare the incomes generated in every single country, inside and outside EU. This will allow national fiscal authorities to detect the revenues earned through digital platforms in such a way that it will be also possible to attribute more precisely the due fiscal obligations to all corporations.

3.3 A NEW POSSIBILITY: THE GLOBAL MINIMUM TAX

The European Union has decided to suspend the work on the digital tax proposal after the last G20 of economics which took place in Venice the 9th and 10th July, in collaboration with OECD.

131 countries on 139 have agreed on USA proposal of a Global Minimum Tax addressed to MNEs, which is a new possible way to fight multinational companies' fiscal avoidance, in order to make corporations pay taxes where they produce profits.

The Global Minimum Tax bases on two main pillars, respectively the *re-allocation of profits of big multinational corporations* (I pillar) and a *Global minimum corporate tax rate* (II pillar).

This new idea of taxation comes from a suggestion made by the new USA Administration driven by Joe Biden, who is against the institution of a Digital

Tax, since, as said before, most of the tech - giants are American and the choice to establish a kind of norm would be discriminatory towards US companies. But anyway the new US President has proposed the introduction of a Minimum Tax on Offshore services equal to 21%. An idea which is still meeting the overall opposition of the Republicans, given that the ex-president Donald Trump has driven the opposite fiscal strategy during his previous mandate by sharply decreasing enterprises tax rate from 35% to 21%.

1) I Pillar: Re-allocation of Profits

The re-allocation of profits consists in the payment of a taxation around 20% and 30% in each "Market-State"[38] where the enterprise is operating and consumers are resident, all types of multinationals, together with digital companies are included, counting a yearly total revenue exceeding twenty-billions euros and a profit over the margin of 10% of the total revenue. The taxation will apply in case the company will be producing more than 1 million euros of revenues in the country in question.

According to OECD, this first pillar will provide increasing incomes from taxation reaching around 100 billion dollars. A significant amount of revenues

[38] https://www.ipsoa.it/documents/fisco/fiscalita-internazionale/quotidiano/2021/07/14/global-minimum-tax-regime-2023

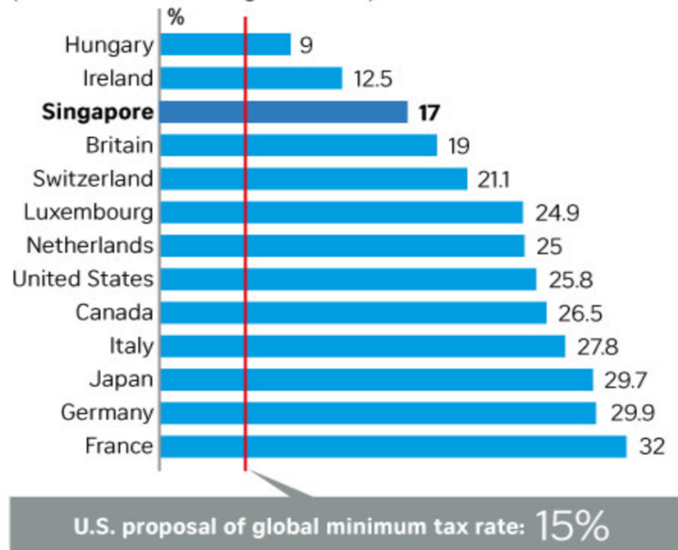
which by now corporations were not paying by exploiting intricate and elusive mechanisms, such as profit shifting, transfer pricing and tax residence.

2) II pillar: Global Minimum Tax

The Global minimum Tax is the II pillar of the new solution for the taxation of multinational corporations. To this pillar are subject all those businesses with a revenue of at least 750 million dollars to which a minimum tax rate of 15%, in every country where the enterprise in question operates, is applied irrespectively of the place where the legal headquarter is located.
At the moment OECD has estimated an additional income of 150 billion dollars coming from the Global Minimum Tax, anyway the real amount will depend on rates applied by each country.

The Global tax has been first proposed by President Joe Biden during the G7 meeting in London (5th June 2021) and it was largely agreed by the seven most developed economies of the world. In second place the proposal needed to be examined and agreed also by the G20 in collaboration with OECD.
This solution is praised and criticized by contrasting thoughts. With regard to this, the 15% tax rate is higher than the rate offered by all the fiscal paradises, for instance Ireland's current corporate tax rate is 12.5%, mainly this rate level aims at discouraging MNEs to move profits to more advantageous

jurisdictions, but on the other side, 15% is clearly below all the rates applied by the majority of countries. *“They are setting the bar so low that companies can just step over it” (Max Lawson, Oxfam’s head of inequality policy)*. While the German Finance Minister, Olaf Scholz has stated that *"Companies will no longer be in a position to dodge their tax obligations by booking their profits in the lowest-tax countries"*.



The Global Minimum Tax, has been agreed this July by 131 countries on 139 during the G20 in Venice, then it will be finally ratified next October at the G20 that will take place in Rome, and finally it is supposed to entry into force in 2023, once it will be approved by all countries. At the moment of the entry into force of the reform, any kind of local Digital Service Tax (like the current ones in Italy and France) will be automatically abrogated and they will be no more valid and applicable.

The main issue at the moment is the attempt to persuade also the remaining nations to adhere to this plan. It is quite logic to guess which are the countries in disagreement with the approval of the Global Tax: the Carribean, Ireland, Hungary, Estonia, Cyprus, Luxembourg, the Netherlands and Switzerland. Obviously, these jurisdictions are characterized by advantageous fiscalities and are reluctant on the matter since they do not want to lose their "*fiscal paradise*" status and stop their "*fiscal dumping*"[39] practices. Indeed, each of these nations has a taxation rate below the minimum proposed of 15%.

[39] Fiscal dumping: The charge of attracting trade or investment 'unfairly' by virtue of 'harmful' or 'predatory' (that is, lower) taxes. Source: http://www.euro-know.org/europages/dictionary/f.html

3.4 THE LACK OF HARMONIZATION

The main obstacle for the adoption of any kind of reform at the European and also at the Global level has always been the lack of harmonization among all the governments, which are one by one characterized by different, sometimes contrasting, ideas. The lock point is reached clearly at the time of veto, since a reform or a law need to be approved at the unanimity in order to be put into force. This is a very hard point to overcome and no alternatives to this methodology have been yet set up by now. So, the real issue on the matter is not the adoption of a Global Web Tax, rather, it is the further back method of elaboration and collection of the consensus for the reforms in general to be not suitable at all. With this mind we do not want to say that the global bureaucracy system is wrong, but it is not the most appropriate considering the huge number of member countries that are called to vote and the need of unanimity.

Analyzing the facts, the European Commission presented the Web Tax Plan on march 2018, that is more than three years ago, but in the meanwhile several things happened, like the USA threats to stop imports if the tax would have been applied, a move that has convinced Germany taking a step back on the decision; the spread of the pandemic, which has led to delays and postponement of the web tax entry into force; and last but not least the indecision of others EU countries which would have gone against their own

fiscal interests in adhering to the new digital taxation. This last point is the result of the condition according to which each European Union country is allowed to freely set up its fiscal policy singularly, which becomes on its turn a mean to attract foreign companies in the territory, thus generating a downward competition among member countries. Digital enterprises easily take advantage of this fight for the lowest tax rate in order to set up fiscal residence in the most advantageous country, this makes possible to tax a part of the profits or even all of them in a low jurisdiction area thanks to tech giants' worthlessness of physical presence in the countries to carry out their businesses.

Having recognized the main problem, it is now clear that the lack of harmonization is not only creating troubles at the endorsement stage, the reality is that this issue is producing a chain of other problems that if taken individually may not seem to be so crucial, but once the chain is overall analyzed, the effect due to the lack of harmonization can be seen as dramatic as it is.

Indeed the actual situation caused by the above mentioned issue is the consequential absence of a clear and specific regulation addressed to digital companies, as a result these tech-giants are not paying what they should and are not paying where they should. This leads to a lack of public funding depleting the welfare and causing the rise of other kind of taxes encumbering

on the less propertied classes. All this is translated in an overall decrease of the social well-being.

FINAL CONSIDERATIONS

The present Document has analyzed some of the most common strategies implemented by digital multinational companies for the building of a successful and efficient elusive tax scheme.

The document has covered multiple topics surrounding MNEs' tax avoidance, starting from a general overview of the new globalized economy, then focusing on Transfer Pricing, one of the most used strategies to circumvent the fiscal system, involving intra-group transactions with the ultimate goal of reducing the taxable base produced in high-taxation countries and "shifting" it in low-taxation jurisdictions. We also have explained the topic treating it with a more practical footprint by exposing and analyzing two case models of digital multinationals' fiscal avoidance (Google and Amazon cases).

Following the path, an exposition of BEPS Action Plan and secondly of Transfer Pricing Guidelines has been given, followed by the Digital Service Tax proposal, along with its opportunities and critical aspects. From DST we then moved to the concept of permanent establishment and its evolution during the time. In the third and last chapter the new proposal of a Global Minimum Tax has been reported together with a description of the fiscal framework in which the tech giants are still not paying what they should.

Concerning what has been exposed along the document it can be stated that globalization and digitalization are the foundation of the great change of the

structure of multinational groups during last decades. The fast computerization has enabled the discussed companies to better face the transition started from the traditional economy in order to turn those enterprises into digital economy giants. Informatization has also allowed MNEs to live a sort of physical dematerialization creating an unnecessity of physical presence for the carrying out of the business worldwide. On the other side, one of the final results is that those companies are currently undertaxed, since an international anti-elusion norm has still not been approved and valid. It seems that steps ahead have been done, but the official situation by now can be depicted as an overlaying technological and digital progress incorporating also enterprises' strategic management with itself, which is running faster than the international tax system that on its turn is not able to keep up with a digital revolutionary world. It is mainly for this reason that for years digital companies exploited for their benefits the lack of harmonization among national fiscal systems, and the worst aspect is that this behavior has been powered by countries like Ireland, Luxembourg, Bermuda and others, in ways which can be considered "at the bounds of the law". So, the outcome is a combination of two main factors: (1) Transfer Pricing practices supported by other auxiliary stratagems that we have previously analyzed in the first two chapters (*Double Irish with a Dutch Sandwich* and the *Hidden Permanent Establishment*); (2) the support given by the aforementioned nations by offering advantageous tax rulings and fiscal benefits.

Along the document we have seen how the most famous and profitable tech-giants are continuing following the pattern of fiscal avoidance they have started decades ago, a pattern which seems to be growing instead of decreasing.
The conclusion which the document wants to reach is the affirmation of the inexistence of a unique solution for the individuation of the right taxation addressable to digital economy. The law has always enacted generic norms that have been normally used as a point of reference, but what actually is done during a trial for fiscal evasion, is a reinterpretation of the law relating to the type of illicit that the company in question is charged with. This is to say that legislation is generic since ever, but it is inconceivable that digital companies and traditional ones are still sharing the same kind of regulation.
One of the main factors generating the legislative gap is the concept of "Permanent Establishment", that has been firstly introduced in the League of Nations Report of 1933, just in 2004 in Art.5 of OECD Model and in the Italian law in art. 162 of TUIR with the same definition given in 1933, and it was designed for absolutely different businesses to those attributable to the digital economy, mainly in the fulfillment of the requisite of physical presence on a country.
In addition to that, the comma 4 of art.162 of TUIR is the perfect gap served as loophole through which for years Amazon has been allowed to be subject to a meaningless tax power in Luxembourg Grand Duchy. Notwithstanding the

concept has been recently revised, it seems of being still anchored to the concept of materiality that has nothing to do with digital presence.

Another factor enhancing the gap is the founding element on which Transfer Pricing is based, that is art.9 of OECD Guidelines, namely the Arm's Length Principle, which is exhaustively clarified in the written norm, but in practice, it is still very difficult to compare controlled transactions to independent ones since there is not a clear comparison measure in order to perform a comparability analysis and find the right price of a transaction.

Due to this gap of a dedicated fiscal regulation, the tech giants are seen as fiscally privileged businesses, since they pay derisory sums if compared with amounts of tax paid by more traditional businesses. And moreover, all this unfairness is completely carried out in the open, nearly looking like a sort of mockery towards non-digital companies.

Advancements on the matter have been done recently, with proposals such as the Digital Service Tax or the brand new Global Minimum Tax and we can read it as a wish of renewal. Anyway this attempt of the majority has been more than once hindered by other few jurisdictions, which tend to oppose to the wave of renewal, probably fearing to lose their "fiscal paradise" status and the earnings generated by the presence of the big multinational companies on their territories.

Another crucial gap hindering the progress of international fiscality, which has been mentioned along last paragraph is the lack of harmonization leading to

organizational difficulties, delays and oppositions in the implementation of a common international tax system. The final consideration that the document wants to propose on this matter is that as long as an unanimous voting system will regulate the entry into force or the abrogation of a norm in the international legislative framework (at the decisional level in international organizations like OECD, EU Commission or G20) a decisive point of agreement will never be reached, thus resulting in a continuous procrastination of the set up of a regulation and consequently the exploitation of the global fiscal disorganization by digital MNEs.

The point that the document wants to reach is the following: we are no more facing the same framework of 1961, when norms and reforms were approved only within OECD and the unanimous vote should have been reached only by 18 member countries. Now we are living in a more globalized world, and as a consequence we also find 139 countries adhering to 3 different organizations (OECD, EU Commission, G20) which are collaborating with each other for a common trade policy among jurisdictions. With a scenario of this kind is obvious that the unanimity consensus is far to be reached.

The more this situation will go on, the more the amount of unpaid taxes will encumber on the society. So, a possible solution that can be suggested could be to change the voting system, converting it into a majority vote, so that even if a few number of nations will keep on opposing on a bill for personal interests, their

objection will not leave the legislative proposal on the uncertainty for an extended period of time.

At the moment we do not know how this fight for digital corporate taxation will end, the world must wait next October for the G20 in Rome, where maybe a final decision will be reached, or maybe the chain of procrastination will keep on along with the increasing tax avoidance.

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