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MCDONALD’S AND ITS UTILIZATION OF TRANSFER PRICING

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ABSTRACT (in Italian)

L'obiettivo di questo lavoro di tesi è quello di analizzare, attraverso lo studio di un caso reale, la gravità delle pratiche abusive di Transfer Pricing all'interno di un contesto aziendale multinazionale/globale. In particolare, l'elaborato mira alla chiarificazione del comportamento e delle conseguenze delle risorse intangibili possedute da un'azienda, che ne sfrutta le caratteristiche al fine di attuare comportamenti di elusione fiscale mirati alla riduzione dell'incidenza fiscale della stessa. A tal proposito vengono anche esaminate delle forme particolari di debito, diffuse soprattutto nei paesi anglofoni, che meglio consentono lo sfruttamento di tali falle all'interno dei vari sistemi fiscali dei diversi paesi.

Alla sua origine, il presente lavoro introduce quello che è il debito, soprattutto all'interno di un'ottica aziendale, e si occupa quindi di tutte le forme di debito più diffuse e maggiormente riconosciute. Successivamente vengono introdotte delle forme di debito leggermente meno diffuse, che però trovano applicazione in diversi ambiti soprattutto in paesi come il Regno Unito o gli Stati Uniti. Ultimo, ma non meno importante, passaggio di questa prima fase è la spiegazione di come tali strumenti di debito vengono tassati in tre diverse giurisdizioni che si andranno poi a ricollegare con l'ultima parte dell'elaborato.

Nella seconda parte dell'elaborato, partendo dal concetto di MNC insieme alla differenza Branch-Subsidiary e ad un'introduzione alla tassazione, si arriva alla definizione di Transfer Pricing; dalla sua definizione e regolamentazione si giunge

alla spiegazione dei principali metodi che le aziende utilizzano per nascondere i propri profitti in giurisdizioni a basso regime fiscale. Questa parte del lavoro si conclude con un duplice rimando a quello che vedremo poi nel terzo capitolo, ovverosia il ruolo del Transfer Pricing sia quando si tratta di beni intangibili, sia quando si parla di ristrutturazioni aziendali.

Nella terza e ultima parte dell'elaborato andremo ad analizzare un caso reale di utilizzo del Transfer Pricing al fine di abbattere drasticamente l'incombenza fiscale di un'azienda globale. Si tratta del caso McDonald's, di cui prima andremo a vedere qualche dato introduttivo e poi i casi di elusione avvenuti in varie giurisdizioni, soffermandoci in particolare sul caso riguardante il trasferimento di beni intangibili (in questo caso diritti di riscossione dei profitti di vari franchising) da una subsidiary stabilita in Singapore a una stabilita nel Regno Unito, attraverso l'utilizzo di strumenti di debito che hanno protetto i profitti dell'azienda dalla scure della tassazione. Per concludere si guarderà alle possibili opzioni delle autorità fiscali in materia, al fine di capire se esista la possibilità di contrastare tali movimenti sospetti e quindi portare le aziende a versare le tasse dovute.

INTRODUCTION

The context where companies operate nowadays is a fast and dangerous one. The globalization has created the table where firms play their game of surviving and thriving, with winners and losers at every turn. Yes, the globalization has allowed to break commercial barriers and so permitted companies to start commercializing their products in new markets, but inherent in this advantage hides the question of how to get to these new places. Firms that may have the resources might decide to open new offices around the world, in at least one country different from its original, to be more reactive and serve better the new market(s), and by doing this they become a multinational company (or MNC). But by establishing in a new country, some other points come up that need to be sorted out: one, for example, is the taxation. Companies are faced with different tax rates, and the most cunning ones might decide to engage in activities aimed at reducing their tax burden around the world. The firms, with this in mind, might start transferring their assets through different offices, and intangible assets are just perfect for this role; by effectively performing such activities, big companies manage to shelter their profits from the tax authorities.

The thesis is divided into three chapters.

In the first chapter we will see what is debt and most precisely what it represents for a firm and the different types of debt instruments. We will then introduce how

some debt instruments are treated in a taxation point of view by different jurisdictions, as we'll need this in the last chapter. The second chapter opens with the definition of what is an MNC and the possible stages of it, highlighting then the differences between a branch and a subsidiary. From there we move to what is Transfer Pricing, giving a precise definition and its main regulatory framework; we will list the different types of methods utilized and in the end we will introduce two topics that we will find later in the last part, which are the relationship of Transfer Pricing with both intangible goods and business restructurings. In the last chapter we will take a look at a real-life case of an MNC, McDonald's, being involved in Transfer Pricing activities, sheltering profits through a series of operations aimed at cutting the tax burden. The chapter will conclude with a research for possible allegations based on the violations committed during the transactions.

The objectives of this thesis are:

- To understand how corporate debt can be used, also from a taxation point of view
- To deepen the phenomenon of Transfer Pricing, highlighting in particular the role it plays when dealing with Intangible assets and Business restructurings
- To raise awareness of the McDonald's case, that has created a prior and serious consequences

Chapter 1: DEBT, IOU & LOAN NOTES

What is debt? We can start from this question to open up the chapter. Debt is, in a very simple and direct way, the money that one subject, called the debtor, owes to another subject that has lent that money, called the creditor. This last party is usually expecting a remuneration from this operation, which is called an interest. Debt is a financial "instrument" widely spread across the economies of the entire world, both in the private and public sectors but also obviously in the business area. For the purposes of this thesis, we are focusing on corporate debt, so debt taken on by companies.

Every firm, intended as a legal entity that operates to generate sales and profits through its business activity (or activities), is based on some key characteristics. At the foundation of an enterprise, from years now we can find both theoretical aspects that indicate the way, like the mission and the vision, but also more practical aspects, which are the resources that the firm employ to pursue its goals. The resources can be divided into different categories:

- Physical resources: the tangible equipment held by the company. Based on the business type, there will be computers, machineries, vehicles, buildings, and the materials used in the production process

- Intellectual resources: the intellectual properties, so patents, trademarks, trade secrets, licenses, but also the perception of both company and products that public opinion and other players have
- Human resources: identifiable with the people working in the company, along with their experience, know-how and also personal objectives
- Financial resources: what we will discuss about from here on out. As capital resources we define every monetary asset that the company possesses at that moment

1.1. Debt inside the firm

In its life cycle, a firm may need to use the instrument of debt to carry on its operations. The reasons do not include only the lack of monetary resources of the firm that finds itself constrained to "borrow" money; in fact, there are multiple reasons for a firm to use debt:

- Debt is cheaper than equity: obviously debt requires an interest to be paid, but the amount owed is certain or at least predictable, and this helps in the budgeting process. On the contrary, equity hides the fact that, if the company performs well, the ownership will receive a great amount.
- Debt allows to not dilute the ownership: when a firm utilizes equity financing, it means it gives away a given percentage of ownership to new investors. In this way these new financiers, carrying new liquidity, gets the

possibility to enter the property of the company. Meanwhile, with debt, the ownership gets to remain still while just receiving money from third parties

- Interests are sometimes tax-deductible: for income-producing activities that use debt to pay business expenses or anyway finance its activity, the interests to be paid on the loan are tax-deductible. This means that enterprises can choose to not consider those expenses for their business costs and ultimately save in taxes

One thing that is important to clarify is that debt isn't the first option for every case. Each firm, faced with the challenge to choose whether debt or equity financing, must be willing to carefully analyze its situation, conditions and goals to identify and choose the modality that best fits it.

1.2. Instruments of Debt

We have briefly introduced the environment in which we find ourselves. Carrying on, how can a firm gather new monetary resources utilizing debt?

When a firm decides to finance itself utilizing debt, the paths to follow are multiple, but here find described a few methods

1.2.1. Loans

Loans are the most classic and standard instrument when it comes to debt. Through loans, firms get to raise money by obtaining capital from other entities. The first one of these entities that can be mentioned is of course the bank, that collects money

from its clients and reinvests it. But the banks aren't the only subject that can lend money through loans; in fact, a company can receive money from other firms, from financial institutions, but also from States and even private citizens. With a business loan, the firm takes these new monetary resources to finance its own activities or expenses, like[1]:

- Startup costs
- Equipment/inventory purchases
- Acquisitions/expansion
- Refinancing

As any other financial instrument, a loan to be considered as such must include:

- Date of the contract
- The amount of the loan
- Terms, like the interest rate, the time within which the loan must be repaid, any eventual collateral provided by the debtor, the form of repayment and any other legal consideration that can be agreed by the parts

[1] https://www.investopedia.com/how-do-business-loans-work-7550170#toc-types-of-business-loans

1.2.2. Bonds

Bonds are the second most common instrument utilized by firm to make debt. Bonds are financial instruments when companies need to raise money for upcoming purchases; the debtor emits this title in multiple quantities hoping for investors to finance his activity. The bonds contain the promise to refund the lender with a remuneration at the end of its life-cycle, so when it reaches the maturity date, that can go from a couple of years to 10-20+ years. The title, once it is "purchased" by the lender, can be transferred to another subject, so the debtor is in every case obliged to refund the owner of the bond at the time of maturity. This is just one example, but in fact there are multiple types of bonds that differ: there are bonds that only contemplate a unique refund at maturity; others that require a periodic remuneration of the interest rate that, depending on the type of title issued, can be fixed or variable. Alongside these types of bonds, there are two others that deserve to be mentioned: the callable bonds and the convertible bonds. The callable bonds allow the debtor to refund, before the maturity date, the title owned by the lender; the convertible bonds instead allow the lender, at certain conditions, to convert the title into stock.

1.2.3. Lines of Credit

A line of credit is a different type of loan. With the line of credit, the two parts establish a limit, a maximum amount that can be borrowed by the debtor, which can take from this cash pool at any time. To make it clear we can think of an example: suppose we are a financial institution, and a very well-known company of the sportswear industry comes knocking at our door, wanting to expand their business, but without knowing the exact amount of money they need to do it. After a careful analysis of their situation (credit score, overall trend of the company) and considering the fact that they are trusted, we decide to open up a line of credit of, without needing to specify the precise amount, millions of euros. The sportswear company can, inside this amount, take as much as needed to finance its activities. While refunding the credit, they can take more money and so on. Of course the line of credit, due to the nature of its variable amount, usually has a higher interest rate with respect to the classic loan, but this is a good option in the case where the debtor company wants to have a higher flexibility.

1.2.4. Commercial Papers[2]

A commercial paper is a short-term promissory note. A promissory note, we will see it later, is another type of written acknowledgment between two subjects, where is stated that one subject owes another. A commercial paper, being a form of debt created to collect money in a short period of time, is usually reserved to large companies and financial institutions. It is issued in order to finance a time-close expenditure. The company issuing the paper "promises" to repay the debt within a short period of time and the value of the paper is the money needed by the company plus the interest that will mature during the duration of the instrument. At the deadline, the debtor repays the lender. If we take a close look, we may think that the Commercial Paper is similar to a Bond. But in the real case, the two are different, for some reasons:

- First, the duration: the commercial paper usually expires within months, within the year at maximum, so it is intended as a short-term instrument. On the other side, the bond is a long-term instrument
- Second, the remuneration modality: the commercial paper doesn't provide periodic payments of the interest, and everything is expected to be repaid at

[2]https://www.investopedia.com/terms/c/commercialpaper.asp#:~:text=Commercial%20paper%20is%20an%20unsecured,a%20discount%20from%20face%20value.

maturity. This is different, at least in part, from the type of bonds that require a periodic payment of the interest rate

These were just some of the methods a firm can use to take money from other subjects using debt, so without having to give up to participation quotas. But there is one macro-instrument, quite generic, that must be discerned for the purposes of this work.

1.3. IOU

The instrument mentioned earlier is the IOU. This acronym, which exactly sounds like, but - de facto - means "I Owe You", represents the simplest form of debt possible. It is in fact just an acknowledgment of the existence of the debt between two subjects, the promise of one part to repay the other.

IOUs can be dated back to the eighteenth century, as at that time there weren't still precise norms or contracts that could regulate each situation and this was the most intuitive arrangement available. Nowadays this term is still used, and it is often misused and abused, because of its wide possibility of adaptation. In fact, the term IOU can be found discussing about credits and debts, and also bonds. Digging deeper in the meaning of those instruments in fact, we can say that they are a resembling of an IOU, because in the end they record an obligation of the debtor firm to pay back another one. But in reality things are different, and each instrument has its own name and regulation.

The content of the IOU is pretty basic, because it might just include:

- Both debtor's and lender's name
- The amount lent
- The current date
- The signature of the borrower

We can see from here how it is a very poor instrument, since normally it does not include neither the lender's signature or the terms for the refund of the amount, like the due date, the cadency of the repayments, the way of refund or the interest rate. For this reason, an IOU is both:

- Not considered a negotiable title, meaning it can't be transferred or sold to other subjects
- Not considered a binding document, so it does not hold in a court of law.

For this particular matter, other more specific instruments would be of better utilization, like for example promissory notes.

A Promissory note[3] is a more complete version of the IOU that is utilized mostly in the United States for:

- Student loans: students sign promissory notes that allow them to repay their debt in a time span of a decade or more

[3] https://www.investopedia.com/terms/p/promissorynote.asp#toc-types-of-promissory-notes

- House mortgages: the borrower signs a promissory note in which he promises to repay the lender of the total amount and the interests
- Corporate credits: it is the case of a company without assets to pay its suppliers, so underwrites a promissory note that contains the promise to pay in a second time

Unlike an IOU, a promissory note can be considered, if not specified otherwise, a transferable title. With the transfer, the original lender receives an immediate payment from the buyer of the note, which in exchange receives the rights to collect the debt repayment from the borrower subject.

1.3.1. Loan Note

For the purpose of this dissertation (see Chapter 3) it is necessary to introduce and explain another instrument, almost similar to a Promissory note, which is the Loan note.

A Loan note is another type of debt instrument, considered a more complete title with respect to an IOU or a Promissory note. In fact, a Loan note usually contains:

- The amount
- The current date
- The name of the parties involved and both signatures'
- The interest rate
- The maturity date
- The repayment schedule (full repayment at maturity or periodic payments)
- The collateral, in case of debtor's defaults

Further on a Loan note, being a complete title that presents several useful information, it is considered eligible for securitization, so it can be grouped together with other financial assets and sold in the primary or secondary market as a single instrument purchasable by more investors. These investors will receive the payment of the interest rate just like any normal original lender. The differences between the three instruments are highlighted in the table below (Table 1):

	IOU	**Promissory note**	**Loan note**
Amount	Yes	Yes	Yes
Date	Yes	Yes	Yes
Parties involved	Yes	Yes	Yes
Signatures	Borrower's only	Borrower's only (lender's one is not mandatory)	Both are mandatory
Interest rate	--	Not mandatory	Yes
Maturity date	--	Not mandatory	Yes
Repayment schedule	--	Not mandatory	Yes
Collateral	--	Typically not	Yes
Transferability	--	Yes	Yes
Securitized	--	Yes (optional)	Yes
Amendments (for modification of the agreement)	--	Not mandatory	Yes
Laws governing the title	--	Not mandatory	Yes

Table 1: Differences between IOU, Promissory note and Loan note. Source: Own production

Another aspect that differs is the utilization. With respect to IOU and Promissory notes:

- IOUs are used in less formal contexts and for operations of small amounts
- Promissory notes instead are used in business loans or any other operation that requires a minimum formal draft;

Loan notes are instead more used for:

- Corporate financings
- Public money raising
- Purchasing of shares of another company

- Any other operation that requires a complete, clear and legally binding contract

From this description we could clearly see the evolution of the instruments used in debt financing. Among the last instrument described, we could argue trying to understand which – between the IOU, the promissory note and the loan note – is the best, but it would be a pretty useless discussion. If we focus on the characteristics of these titles, then it is safe to say that the Loan note is the best instrument among the three; providing a clear, complete and articulated description of the relationship between the debtor and the lender, it can be considered the main debt financing form among these. If instead, the focus is on the purpose of the title or the nature of the relationship between the subjects, the answer is different from time to time, strictly based on the situation.

1.4. Tax implications

When a firm is involved in an operation of loaning money to another company, at the time when interests are due the subject lending the amount is actually making a profit, because it is earning on an "invested" capital. As profits are usually subjected to taxation, also the interests provided for loans of any kind are considered to be taxable. Now, the revenue jurisdiction varies from country to country, since every State has its own rules, so exact percentages and taxable income definition is different for each country (will see a few later), but there's another concept that can be discussed, and it is: the instruments that we discussed about, are all considered

taxable? And inside the given jurisdiction, are they all taxed the same? The answer is no.

Starting from the IOU, this title is often not eligible for determining taxable income. Being just a simple acknowledgment of a debt incurring between two subjects, without any specification about interest rate or repayment terms, there is no clear and legally binding declaration of an interest amount to be paid. For this reason, the IOU can't be considered a taxable-income-defining document.

Continuing with Promissory note, this title is considered to be taxable. Offering a clearer view about the debt, with at least the additional information about interest rate or interest amount and the repayment schedule (periodic or lump-sum) the promissory note is considered eligible for building taxable income.

The discussion about the taxation of the Loan notes is a little more complex. Loan notes can be divided into two categories:

- Qualifying Corporate Bonds (QCBs) are "debt securities that are exempt from tax on chargeable gains"[4]. They must be expressed in sterling and only redeemable in sterling

[4] https://uk.practicallaw.thomsonreuters.com/Glossary/UKPracticalLaw/I250197bae8db11e398db8b09b4f043e0?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk

- Non-Qualifying Corporate Bonds (Non-QCBs), being jurisdictionally opposite to the QCBs, are to be considered for the determination of taxable income and so capital gains tax.

For the purposes of this research (Chapter 3) we are going to briefly explain the tax jurisdiction policy of some countries (relevant for this research). The countries analyzed are:

- Delaware, United States
- United Kingdom
- Singapore

Delaware is one of the 50 States of the USA, considered a tax-favorable one alongside Alaska, Tennessee, Wyoming, Florida, South Dakota, New Hampshire, Texas, Nevada and Washington. Delaware offers a low-percentage income tax-rate to companies with legal residence in it. The State clearly rules that companies that are not conducting business in Delaware are not required to file the Delaware Corporate Income Tax Return, while the ones that do conduct business in the State are taxed at a Corporate Income Rate of 8.7%. With particular attention to interest expenses, Delaware only specifies that there are no deductions for such type of earnings. Just from what we've read in this short description, we can clearly see that Delaware is a very tax-friendly State, and so an inviting habitat for companies.

United Kingdom, fresh out of the European Union after the Brexit initiated in 2016 and ended in January of 2020, has modified its tax legislation in recent years. The reasons are mainly two:

- The Brexit itself, which gave the UK a greater degree of freedom in terms of legislation, not being bound anymore to the monitoring of the European Union
- The Covid-19 pandemic, which drove a shock which brought the GDP to a record fall of 19.8%. The household spending decrease was even steeper, with a decrease of over 20%. This negative shock was then followed by a positive one, which in the summer of the same year brought the GDP to an increase of 17.6%

Before the outbreak of the Coronavirus, the UK Government had approved a reduction of the Corporate Tax Rate from 20% to 19% within a time span of 3-to-4 years (from April 1st 2017 to April 1st 2019), and a further discount of another 1% to reach 18% (starting April 1st 2020). Due to the pandemic instead, in 2021 the UK had been constrained to retreat on these numbers, bringing the Corporate Tax Rate to a higher 25% from the 19% already in play. This move, which was largely expected due to the loss of revenues for the State, became official in April of 2023.

Last but not least, Singapore. The Republic of Singapore is one of the most important centers for economy and finance of the world. Singapore, unlike most might believe, is not considered a tax haven. In fact, in the EU report for cooperating

jurisdictions, Singapore is considered as a cooperative jurisdiction without pending commitments. The Republic of Singapore offers favorable conditions both to individuals and corporates. For corporates, the CTR is at a flat rate of 17%; anyway, it is possible to obtain tax exemptions for most start-ups and there are plenty of favorable conditions for companies. In the determination of the income, Singapore does not impose a tax on capital gains; also dividends are exempt from being considered taxable. As for interest, it is divided into non-taxable and taxable[5].

In the previous chapter it has been introduced one of the two main elements that we will find in the third chapter, where we will discuss about a peculiar company case. Now on this second chapter we will introduce the second topic that we need in order to better understand the case. And so, we will be talking about Transfer Pricing.

[5] https://www.iras.gov.sg/taxes/individual-income-tax/basics-of-individual-income-tax/what-is-taxable-what-is-not/interest

Chapter 2: TRANSFER PRICING

2.1. Introduction to the MNC

Before talking about Transfer Pricing it is appropriate to introduce the context where it is exploited.

With the globalization, and so the opening of new frontiers and the demolition of the existing economic barriers, exchanges between world economies have increased more and more, year after year. As per Eurostat data for EU countries (Image 1[6]), in the decade 2012-2023 the percentages of GDP for import/export have increased, in particular:

- Export: from 44.8% in 2012 to 52.7% in 2023, with a record high in 2022 at 56.3%
- Import: from 41.9% in 2012 to 49.0% in 2023, with a record high in 2022 at 54.5%

[6] https://ec.europa.eu/eurostat/statisticsexplained/index.php?title=Economic_globalisation_indicators

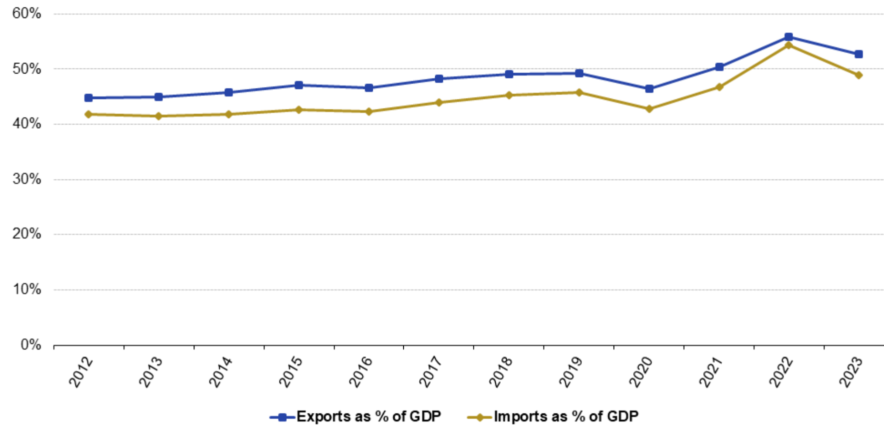

Image 1: EU imports and exports of goods and services, 2012-2023. Source: Eurostat

While regarding the world economy, as per data presented by the World Bank (Image 2[7]) regarding the period 2004-2021, the percentages are lower:

- Export: represents the 28,88% of total world GDP
- Import: represents the 27,94% of total world GDP

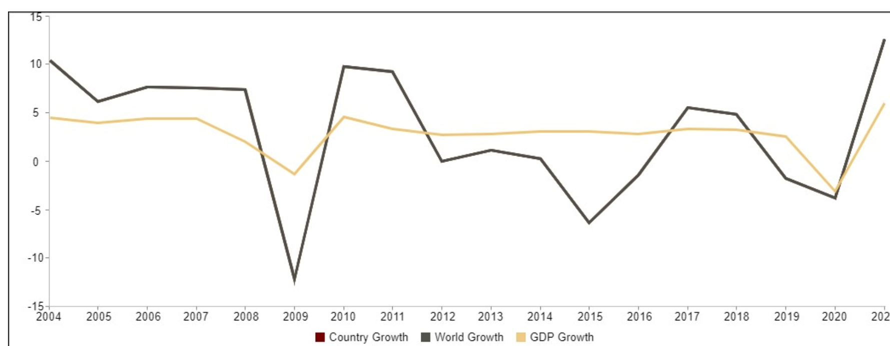

Image 2: World imports and exports of goods and services, 2004-2021

[7] https://wits.worldbank.org/CountryProfile/en/WLD#

The world perspective shown in Image 2 is affected by the low import/export rates of countries that are not developed or that have policies that restrict exchanges with the external environments, anyway the overall data is still remarkable and shows how critical the globalization is for today's economy.

In this environment, many firms decide to take the risk and start the commercialization of their products in other countries. The reasons are multiple, we will cite just a few:

- Increased profits: it is the first reason that comes to mind naturally. By being present in a different number of markets allows to have multiple streams of income
- Broader customer base & brand recognition: new countries where to sell the products or services mean a higher number of possible customers, and this results ultimately in a higher profit. The better a company manages to place in different markets and performing well, the better its brand will be recognized
- R&D: many firms might decide to go international, especially in specifically selected countries, when they want to exploit the opportunity to get in touch with new technologies and innovation that might help developing a better product or a better service
- Incentives: many countries, in order to be more attractive to foreign companies, are gladly willing to offer special conditions to firms that decide

to establish their presence in the country. Clear examples of incentives provided are State aids or lower tax rates

Clearly companies that want to go international must ponder this passage with extreme attention. This is a key step in the life of a firm, as mistakes in the planning phase can cost a lot. To give a little help to firms in this decision, the professor Carl Arthur Solberg developed the “Nine Strategic Windows Framework” (Table 2) which, through the combination of two variables, suggests to the companies how to behave when faced with international markets.

Preparedness for internationalization	**Adult**	3. Seek new business development	6. Prepare for globalization	9. Strengthen your global position
	Adolescent	2. Consolidate in existing markets	5. Consider international expansion	8. Seek global alliances
	Child	1. Stay at home	4. Seek niches in international markets	7. Seek new owners with extensive international networks
		Multi-local	**Potentially global**	**Global**
		Industry globality		

Table 2: Nine Strategic Windows Framework, Solberg (1997). Source: A. Perna slides, International Sales Management course

From this framework, firms that find themselves in a favorable position towards internationalization can start developing their plan for entering new markets.

When making the leap, firms have multiple options:

- They might decide to start selling products and services in new markets on their own without establishing permanent positions. In a B2C context, think for example to a firm that, through its website, allows customers from other countries to buy its products. This option is pretty simple, since there is no research made to understand whether the expansion would be profitable or not, so the expenditure for the setup of the operation is pretty low
- Another option foresees firms partnering up with other ones from the new countries, to make them run the business in the new context. With this option, firms might do some prior market researches to understand whether the operation would be profitable or not; on the other hand, if they find it convenient, they will rely on the existing structure of the firm abroad to sell their products.
- Another option is franchising. With franchising, the “original” firm allows entrepreneurs from the new country to use the company name, brand, logo and so on to carry on the business. The clearest example of franchising is McDonald’s (which we will find also later in the third chapter), as most of the restaurants are run by franchisers

Another option, more expensive for sure but that can result in a strong boost for the profitability of the company, is the permanent establishment in the foreign country. The step of opening a new “section” in another country transforms the company

into a Multinational Corporation (or MNC). As per the definition given by Dunning and Lundan, an MNC (or MNE, Multinational Enterprise) is "*an enterprise that engages in foreign direct investment (FDI) and owns or, in some way, controls value-added activities in more than one country*"[8].

Going into the specific, a newborn MNC is faced with the decision regarding how to establish its position in the new country. The options are two: open a branch, or open a subsidiary. The two, even at first sight might sound equal, are different:

- Branch: a branch is a direct extension of the main company. The new office runs business under the "mother's" name and is not entitled to make decision on its own, as it entirely depends on the head office.
- Subsidiary: a subsidiary instead is a completely different entity from the legal standpoint. The mother company creates this separated office and owns at least 50%+1 of shares

There isn't an absolute better option between the two, as the approach depends on a various number of factors, but both have pros and cons that deserve a thorough analysis, depicted in Table 3:

[8] Dunning, John H., and Sarianna M. Lundan. *Multinational enterprises and the global economy*. Edward Elgar Publishing, 2008.

Branch	
Pros	**Cons**
Losses consolidation	Complete control from parent company
Unified financials with the parent company	No limit responsibility for the parent company (there is no separation)
Easier and cheaper setup	Taxation (income taxed as part of the parent company)
No withholding on passive incomes	Double compliance (local country and parent's country laws)
Subsidiary	
Pros	**Cons**
Subject to taxation only in the foreign country	More expensive and more complicated setup
Independence	No consolidation of foreign losses
Limitation of liability for the parent company	No unified financials with the parent company
	Subject to tax inversion test

Table 3: Branch vs Subsidiary. Source: S. Samperna slides, International Financial Regulation Course

So from this table we can see that, as said, there is no absolute best, but for each and every situation the MNC in question will have to find the better approach that fits most the context.

2.2. Taxation

In this context, where MNCs have offices in multiple countries in order to boost their chances of profitability, another key aspect of the business is also the taxation that the various offices are faced with. The taxation aspect is a really tricky one for companies, as the profits might get really affected by the percentages required for taxes.

As per Tax Foundation, the average of the global corporate tax rate (measured across 181 countries) is 23.45% (Image 3), with Asia as the continent with the lowest rate (19.80%) and South America as the one with the highest (28.38%)[9], and the global tax rate average has been constantly decreasing from 1980, when it was at 40.18%.

Image 3: "Corporate Tax Rates around the World". Source: Tax Foundation & OECD, "Table II.1. Statutory corporate income tax rate"

[9] https://taxfoundation.org/data/all/global/corporate-tax-rates-by-country-2023/

The image just shown almost creates a sort of geographical distinction, with the bottom part (yellow) above average, the upper right one (blue) below average and the upper left one (grey) in the average. In fact, taking a look at the data provided by Tax Foundation, nine out of the ten countries with the highest corporate tax rates are located between Central and South America (Cuba, Puerto Rico, Argentina, Colombia, Suriname) and Africa (Comore, Equatorial Guinea, Sudan and Ciad), with the lone exception of Malta; these countries (and many others following them) are defined high-tax jurisdictions, because of their higher corporate tax rate. On the opposite side instead, there are countries that are defined as low tax jurisdictions, since they have a lower corporate tax rate. Here the situation is different, as geographically the situation among the top ten countries are more spread around the world, with a particular focus on Central America (which had also high-tax jurisdictions).

Among the countries with a low tax rate, there are some that require particular attention. In fact, there is a list of them spread all around the world that are considered to be particularly favorable for both individuals and companies, because they offer tax rates so low or even null; These countries are known as "tax havens". There is no quite univocal definition for what a tax haven is, and the concept has been evolving in time. The main features of a tax haven are that it offers low-to-zero tax rates and financial secrecy, even though this last one has been in decline for the past years. The list of tax havens has been changing over the years, as the

requirements depend on the conditions of the economy at that specific moment in time. The following list has been created in 2017 based on the profits reported by U.S. companies in the top 10 tax havens (Table 4):

Tax haven country	**U.S. Companies' profits (billion $)**
Netherlands	165
Ireland	135
Bermuda	104
Luxembourg	68
Cayman	46
Switzerland	44
Singapore	23
Bahamas	23
Hong Kong	10
British Virgin Islands	7

Table 4: Top 10 tax havens per profits reported by U.S. MNC. Source: Richard Phillips; Matt Gardner; Alexandria Robins; Michelle Surka (2017). "Offshore Shell Games 2017" (PDF). Institute on Taxation and Economic Policy. Amount of Tax Haven Connections (Figure 1, Page 11), Amount of Tax Haven Profits (Figure 4, Page 16)

Alongside the tax havens, the EU has created another list, made of the "non-cooperative jurisdiction". This list includes all the countries that do not meet the EU standards in

- Tax transparency
- Fair taxation
- Anti-BEPS measures (see further Paragraph 2.3)

The list is in continuous updating, as countries can always improve to meet the EU minimum requirements. As of June 2024, the list is made of 12 countries, with Bahamas, Belize, Seychelles and Turks and Caicos that made it out in February

2024: American Samoa, Anguilla, Antigua and Barbuda, Fiji, Guam, Palau, Panama, Russia, Samoa, Trinidad and Tobago, US Virgin Islands, Vanuatu[10]

The implications of this taxation matters are clear: countries that have a high tax rate suffer from it, as entrepreneurship is discouraged from the large amount of tax liability requested. On the contrary, countries that are able to offer lower tax rates see themselves becoming "home" for various firms from other countries, that want to exploit this advantage for a higher profit level after taxes.

Due to this reason firms, within the scope of their tax strategy[11], can decide to implement particular actions for the sole purpose of reducing the amount of tax they have to pay. One of these actions is the transferring or the establishment of the fiscal residence in a low-tax jurisdiction, in order to ensure a lower tax burden. This is not an illegal practice per se (until a certain point), as firms can establish wherever they prefer, but is important to specify that, once that the residence is established, the business must be mainly run from that place and not from somewhere else. This latter case is called tax inversion (known in Italy as "esterovestizione") and belongs to the bigger concept of tax avoidance, which must not be confused for tax evasion:

- Tax evasion includes any illegal practice aimed at intentionally avoiding pay taxes or fraudulently reduce the amount due

[10] https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/#criteria
[11] "The plan, based firmly on data and the facts of the business, which sets out the tax decisions made in supporting the organization's goals". "Responsible Tax Sustainable Tax Strategy", 2008, Deloitte LLP (UK)

- Tax avoidance, instead, is the utilization of any legal method to reduce the amount of taxes due. To do it, firms may utilize deductions, loopholes in the legal systems, tax residence practices and more

Within the tax avoidance strategies, we can find one of the main topics of this dissertation, which is Transfer Pricing.

2.3. Transfer Pricing: definition and regulation

Transfer Pricing, as a general definition, is the policy which by a company sets prices for goods or services that are involved in transactions. The price at which the goods or services are transferred is defined transfer price.

Transfer Pricing is a complex mechanism utilized by MNCs as, running their business from office to office in different countries, they need to "avoid misallocation of resources or distortions in the final prices of products"[12]. To do that, it is fundamental for them to set an optimal transfer price that allows the firm's managers to make a profit out of the operations.

The methods to determine the Transfer Price are different, but they are all based on one concept, which is the Arm's Length Principle. The Arm's Length Principle was first introduced in the Article 9 of the 1997 Model Tax Convention of the OECD as follows: "[When] conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be

[12] U. N. C. T. A. D. "Transfer Pricing." (1999).

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."[13]

Basically, the Arm's Length Principle states that any transaction between two related firms must be treated like any other transaction between non-related firms; and so, that any firm, whether it is related with the other or not, must treat the other like it was an independent company. The example is the following:

- Suppose there are four different firms: A, B, C and D.
    - Companies A and B are independent, not related with each other (uncontrolled transaction). A is an independent firm that produces fridges and sells them to other firms that sell in the retail distribution, in this case B. A spends €300 to produce the fridge and sells it to B for €500 (Image 4)

NON RELATED (UNCONTROLLED) TRANSACTION			
	Company A		**Company B**
Production cost	300,00 €	**Purchasing cost**	500,00 €
Selling cost	500,00 €		

Image 4: transaction between unrelated firms. Source: own production, Microsoft Excel

[13] OECD, Model Tax Convention, 1999.

- Companies C and D instead are related with each other (controlled transaction), belonging to the same multinational corporation which owns both production (Company C) and retail (Company D). The Arm's Length Principle expresses that the transaction between C and D, even though is happening between related firms, should be comparable to the one between A and B.
  - In the occasion where the transaction is in compliance with the ALP, Company C produces for €300 and sells to Company D for €500 (Image 5)

CORRECT RELATED (CONTROLLED) TRANSACTION			
	Company C		**Company D**
Production cost	300,00 €	**Purchasing cost**	500,00 €
Selling cost	500,00 €		

Image 5: transaction between related firms correctly applying the ALP.
Source: own production, Microsoft Excel

  - In another occasion, where this time the ALP is not respected, Company C produces for €300 and sells to Company D for €350 (Image 6)

WRONG RELATED (CONTROLLED) TRANSACTION			
	Company C		**Company D**
Production cost	300,00 €	**Purchasing cost**	350,00 €
Selling cost	350,00 €		

Image 6: transaction between related firms wrongly applying the ALP.
Source: own production, Microsoft Excel

The reason for the existence of the Arm's Length Principle lies in the difference between the two transactions:

- As the uncontrolled transaction is carried on between two independent firms that want to do the best for their own interests, each will act in order to maximize their "utility"
- Instead, the controlled transactions happen under the eye of the "mother" company, the MNC itself. In this situation, the MNC might play as a puppeteer and "rig" the transaction characteristics; for example, the two companies involved might inflate or shrink the prices. In the high interest of the MNC, the two firms involved take second place

Actually, in fact, transfer pricing is not an illegal practice per se, but its improper utilization can lead to wrong and legally questionable behaviors. The OECD in its Guidelines gives different alternatives for the determination of the transfer prices. The 2022 version of the OECD Guidelines defines two different macro-categories, and in total five different methods[14]:

- Traditional methods
    - Comparable Uncontrolled Price (CUP): it is the most common method for the determination of the transfer price. The CUP simply takes into consideration the price of a transaction between

[14] Avolio, Piazza, "Il transfer pricing: analisi, casi e questioni [aggiornato alla circolare n.15/E/2021 e alle linee guida OCSE 2022]", Giuffrè Francis Lefebvre 2022

associated enterprises and the one of a transaction between non associated ones. The distinction is also brought further with the differentiation between internal comparable (the operations took into consideration involve one of the original subjects) and external comparable (no original subjects). Normally, because of the high information available, the internal CUP is preferred. But the CUP method in general requires generally a high degree of comparability between the transaction and the goods' characteristics; for this reason, especially if there is another method that fits better the situation, the CUP is discarded

- Resale Price Method (RPM): the RPM compares the gross margin of a transaction between associated firms and the one of a transaction between non associated ones. Also here there is the distinction between internal and external comparable, and the internal one is favorite because it is more adapt to give a higher grade of comparability thanks to the possibility of obtaining more information of different nature. With respect to the CUP, the RPM requires less adjustments
- Cost Plus Method (CPM): the CPM takes into consideration the direct and indirect costs of production sustained by the supplier in an operation between associated firms and the ones between non

associated firms. This method is particularly appropriate when semi-finished products are sold from one party to another. In fact, the example shown above is very similar to a CPM

- Profit methods:
    - Transactional Net Margin Method (TNMM): the TNMM examines the net income earned by subjects in controlled transaction versus the one earned in uncontrolled transactions. The adoption of TNMM is particularly reliable when one of the two companies carries on simpler activities and has less risks. In fact, net margins are less sensible to differences in products, and the TNMM also just needs the financial results of one firm, eliminating any difficulty coming from the double analysis of both firms' financial results
    - Profit Split Method (PSM): the PSM is utilized in highly interrelated relationships between two firms. The income distribution between firms is carried on based on an according economic criterion. The PSM aims at eliminating any divergences (in the income earned by the firms) between controlled and uncontrolled transactions

The Arm's Length Principle and so the deriving methods to determine the Transfer Price are just a part of the regulation of Transfer Pricing. Anyway the Arm's Length sometimes can be difficult to apply, as related firms might operate transactions that

non-related firms would not do, or sometimes information about the transactions is just too little.[15]

Another part of the regulation regarding Transfer Pricing can be given by the BEPS (Base Erosion and Profit Shifting), introduced by the OECD in 2012 (failed in 2016)[16] and again in 2019. An official definition come from the OECD itself, that states that "*BEPS refers to tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to locations with no/low tax rates and no/little economic activity, resulting in:*

- *Little or no corporate tax being paid*
- *Annual revenue losses for governments of at least 100 – 240 billion USD, equivalent to 4 – 10% of global corporate income tax revenue*"[17]

Going deeper:

- Base Erosion is the sum of activities aimed at reducing the taxable amount of companies. Less the amount, less the taxes to pay
- Profit shifting intends the practices through which a company shifts its profits from a high-tax jurisdiction to a low-tax jurisdiction through intragroup operations

[15] OECD (2022), OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022, OECD Publishing, Paris
[16] https://en.wikipedia.org/wiki/Base_erosion_and_profit_shifting#
[17] OECD/G20 Inclusive Framework on BEPS (2020)

Inside the BEPS, there can be found important updates regarding the application of the PSM, and the treatment of intangibles. Going on, concerning the profit shifting part, the OECD has presented a new standard. To fight back the newest challenges given by the digital economy, the Organization has introduced a two-pillar solution[18]:

- Pillar One provides a redistribution of the taxes collected from the most profitable MNCs, allocating them to the jurisdictions where the profits are made. More precisely, companies with 20+ billion euros get taxed where sales and costumers are located
- Pillar Two instead widens the “audience” of a new measure. It rules that the MNCs with 750+ million euros of annual revenue are now subject to a global minimum tax of 15%. In countries with a lower tax rate, the tax would be still set at 15%

With this new standard, the OECD tries to stem the diffusion of legally questionable transfer pricing practices.

[18] OECD, Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, OECD, 2022

2.4 The utilization of Transfer Pricing in Tax Avoidance

As said, Transfer Pricing isn't an illegal practice in principle. In fact, every transaction generates a transfer pricing, which represents the money paid from one subject to the other for the transfer of goods/services; the transactions, in turn, generate profits that are then taxed. In this scheme, it is clear that there is no violation or deception of the law. But Transfer Pricing can also be utilized as an instrument to generate distortions in the transaction and so end up in the grey area of tax avoidance. But how can exactly Transfer Pricing be utilized to avoid taxes?

In this occasion, Transfer Pricing is closely linked to base erosion and profit shifting; furthermore, the particular structure of the MNC, alongside with Transfer Pricing and BEPS, creates an important issue that needs critical attention. As we have seen before, firms can establish wherever they want, and each country has a different corporate tax rate level; the main objective of companies in this juncture relies on this factor. In fact, the goal is to reduce in the best way they can the amount of taxes that they have to pay exploiting this differences.

The problem is created when a company, which has subsidiaries in different countries, utilizes intracompany operations to artificially shifts profits from those high-tax jurisdictions to the low-tax jurisdictions. The consequences are easily deduced:

- In the high-tax jurisdiction, the income of the subsidiary results being less than the real ones. With less profits, there are less taxes paid
- In the low-tax jurisdiction, the income results being more than normal. Thus, having to face a smaller tax rate, the company has a higher income after taxes

How does a company to shift profits from one jurisdiction to another? This is the focal point of the matter. And we can look at two examples to understand better. Both examples deal with the reflex cameras industry:

Example 1 (Image 5): Suppose there are two companies, PrimeGlass and ShutterPro, related with each other. PrimeGlass produces lenses, while ShutterPro is the company responsible for the retail sales. PrimeGlass is located in a high-tax jurisdiction, while ShutterPro is in a low-tax jurisdiction. Now, PrimeGlass sells lenses to ShutterPro for a given price, say p_1. At the same time, PrimeGlass sells the same type of lenses to another independent company, Zenith, for a price p_2, bigger than p_1. After that, ShutterPro sells cameras and earns an income that then gets taxed at the low rate of the residence country. The problems are two:

- A Transfer Pricing problem: per the Arm's Length Principle, PrimeGlass should not charge different prices to different customers. Both ShutterPro and Zenith should be charged the same price

- A Profit Shifting problem: ShutterPro runs the sales from a low-tax jurisdiction, meaning that they will have then a lower tax burden, in turn resulting in a higher profit after taxes

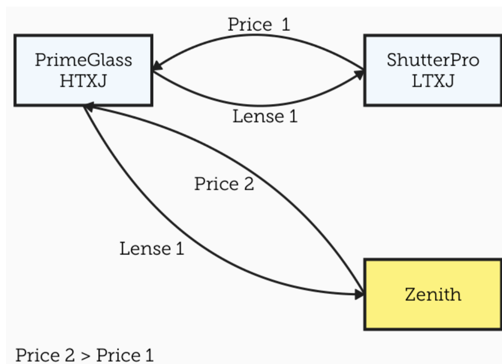

Image 5: representation of Example 1. Source: own production, Mural

*Example 2 (*Image 6): Take the same two companies, PrimeGlass (in the high-tax jurisdiction) and ShutterPro (in the low-tax jurisdiction). Both companies have the same duties as before in *Example 1.* Suppose that PrimeGlass produces lenses for $50 and sells them to ShutterPro for the same price, $50. In turn, ShutterPro sells the camera at retail for $500, generating a $450 profit on the single unit. The problems here are always two:

- A Transfer Pricing problem: PrimeGlass produces and sells lenses to ShutterPro while generating zero profit. It is hardly believable that they PrimeGlass keeps the same price for another firm, so this would be another violation of the Arm's Length Principle
- A Profit Shifting problem: the MNC in charge of PrimeGlass and ShutterPro makes 0$ profit in the high-tax jurisdiction and $450 profit in the low-tax

one. It goes without saying that they will have zero taxes paid in the high-tax rate jurisdiction, and they will also manage to pay less taxes since they have profits only in the low-tax country

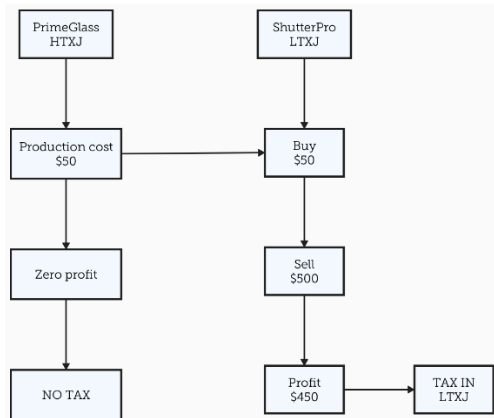

Image 6: representation of Example 2. Source: own production, Mural

The schemes are a bit different, but in the end the result pursued by the companies is always the same: keep the most, if not all, of the profits where they are taxed the less.

The next two subchapters will be presented for the purposes of the dissertation (Chapter 3).

2.5. Transfer Pricing and Intangible goods

Transfer pricing, as it concerns goods and services traded between enterprises, can be applied also to intangible goods. There are plenty of similar definitions for an intangible good, we will stick with the one provided by the OECD, that says that[19]:

- Intangibles cannot be material or financial, they need to be owned or controlled for commercial purposes and their transfer generates a proper remuneration

The list of intangibles presented by the OECD contains:

- Patents, trademarks, trade names and brands
- Know-how and trade secrets
- Licenses and rights
- Goodwill and ongoing concern value

The intangible goods represent a particular situation of the transfer pricing regulation. As they are not a physical asset kept in a specific place, they cannot be treated as a normal tangible good. In fact, firms involved in questionable transfer pricing operations exploit the unclear position of intangible goods to strongly reduce their tax burden, ending up in avoiding to pay an important amount. As we will see in the case analyzed, firms might transfer their intellectual property through

[19] Avolio, Piazza, "Il transfer pricing: analisi, casi e questioni [aggiornato alla circolare n.15/E/2021 e alle linee guida OCSE 2022]", Giuffrè Francis Lefebvre 2022

subsidiaries in different countries with different and mostly favorable tax rates, making it difficult to control the exact transfers went on the overall operation.

2.6. Transfer Pricing and Business restructurings[20]

The last subchapter before going on with Chapter 3 and the introduction of the business case regards the business restructurings and how transfer price is considered inside of those.

Firms undergo restructurings for a different number of ways, the most important are:

- The maximization of synergies and economies of scale
- The optimization of processes and supply chain
- The exploiting of new technologies able to facilitate the development of global organizations
- The necessity to maintain the profitability and to limit losses in periods of crisis

After a business restructuring, it is clear that one or more entities see their assets changed, as there are "winners" (subsidiaries that get to earn from the restructuring) and "losers" (subsidiaries that lose assets). Whether a subsidiary is determined as a winner or a loser inside the big picture of the whole group, a key role is played by

[20] Avolio, Piazza, "Il transfer pricing: analisi, casi e questioni [aggiornato alla circolare n.15/E/2021 e alle linee guida OCSE 2022]", Giuffrè Francis Lefebvre 2022

the transfer pricing. To be in line with the rules, of course any transaction inside the restructuring operation must be coherent with what an independent firm would do.

The OECD in 2008 created a workgroup that came out with the "Discussion Draft on the Transfer Pricing aspects of Business Restructurings"; this document highlighted four main topics:

- The importance of risk allocation
- The Arm's Length implications in the restructuring operations
- The application Arm's Length and OECD Directives in post-restructuring intragroup operations
- The cancelation of certain considerations about intragroup transactions

In 2010, updated in 2017 to receive the BEPS, the OECD added to this document a Chapter IX titled "Transfer Pricing aspects of Business Restructurings", which highlights the fact restructuring operations need to be analyzed not only on behalf of the current conditions, but also future ones. The Chapter speaks about two technical parts, I and II:

- Part I defines the methods to analyze the transaction, concerns the risks taken and the economic reason and benefits expected from the restructuring. Also the analysis needs to consider what are the other option available, so what independent firms would have done in that situation. This part also

discusses about the valorization of the transferred goods and the problems that can arise during the determination of the prices

- Part II instead is focused on the fair remuneration of post-restructuring intragroup operations. The OECD discusses about the fact that the Arm's Length Principle must remain in play, even after an eventual change of the environment after the restructuring, and about the choosing of the appropriate Transfer Pricing method. In the end the Part concludes with the discussion of the pre/post comparison, which obviously can provide better understanding of the characteristics of the reorganization

With Chapter 3 of this dissertation we will look in detail to a real world business case of Transfer Pricing, observing how the things explained in the previous paragraphs actually apply.

CHAPTER 3: MCDONALD'S CASE

3.1. Introduction to the Company

The glorious history of McDonald's begins in 1940, when Maurice and Richard McDonald's open their first restaurant in San Bernardino, California. The restaurant has a great success, undergoing two different redesigns to achieve the best efficiency possible. But it's in 1954 that the story of the modern McDonald's begins. On that year Ray Kroc, a blenders' representative, comes across the restaurant and met with the two founder brothers to get into business with them. Kroc successfully managed to expand the business via franchising, an option not well seen by the brothers. In 1956 Ray Kroc met Harry J. Sonneborn, which proposed a new business model based on two revenue streams: the food income and also the income coming from the lease of the plants where the restaurants were. In 1961 Kroc managed to buy out the McDonald brothers (it is still not clear whether this was a hostile takeover or a more genuine and voluntary transition) and begin the process for the IPO. The success of the company grows and grows every year, and in 1971 McDonald's opens its first restaurant in Europe, most precisely in Amsterdam. After the fall of the Berlin Wall and the consequential opening of the Soviet Union to globalization, in the early 90s the expansion begins also in China and Russia.

Nowadays McDonald's is the world's most famous fast food chain in the world. It is one of the strongest symbols of globalization and has largely entered the everyday life of people spread all across the globe.

McDonald's has now more than 41.000 stores worldwide and over 150.000 employees (almost 2 million in reality, considering all the employees from the franchisees), distributed around 116 countries. Two of the great drivers of success of McDonald's are two opposite concepts: standardization and adaptation. Standardization because McDonald's is immediately recognizable with some of its iconic logos and objects (just think about the paper bag, or the burger's and the fries' envelopes), and of course the products (burgers, French fries, etc.); every individual immediately associates McDonald's to these images. But also adaptation was vital to the company, because every country has different menus. There are some burgers that are the same all over the world (like the classic hamburger or the McChiken®) but every country has its own dishes. In this way McDonald's can adapt to the local market, managing to respect traditions and cultures and still be a major force in the worldwide market of the fast food industry.

3.2 Business model evolution and financial results

When it first opened in 1940, the McDonald's restaurant was a carhop drive-in, so the employees had to go car by car to take the order and bring the food to the customers. In 1948 they shifted to a streamlined system with a simple menu containing only hamburger or cheeseburger, chips, soft drinks and little else, and in 1952 they made another change to increase the efficiency, redesigning completely the kitchen to make it as most efficient as possible.

After the entering of Ray Kroc in the business, this latter assumed the responsibility to expand the business, and managed to open 228 franchises. In 1956, the meeting with Harry J. Sonneborn meant probably the biggest financial turning point of the company; in fact, they created a new business model, called the "Sonneborn model". As just said McDonald's operates via franchising, as most restaurants are opened by franchisors. These franchisors naturally have to pay royalties to the mother company for the utilization of the brand and all the rest of the intellectual property; but the model isn't just that. Sonneborn in fact, created a model based on different revenue streams for the mother company:

- Income coming from the food business, so the usual selling of food products and everything connected to it
- Secondly, the model relies on a pretty important real estate part. More in detail, when a franchisor finds the land to open the restaurant, McDonald's

buys this land and leases it to the franchisor that will have to pay the mother company the rent. In fact, we get to know that the tangible goods as the real estate and the equipment make up "for $37.7 billion on balance sheet and little over 99% of the company's total assets"[21]. This generates a solid, fixed and reliable revenue stream for the company

So to sum it up, McDonald's revenue streams are:

- Food business (of both company-owned and franchise restaurants)
- Royalties (coming from the franchisees)
- And "rent" for the land where the restaurant is built (coming from the franchisees)

Up to these days McDonald's is still using this business model, as it has proven its reliability.

From here we can take a look at the financial results of McDonald's, which are absolutely stunning. As of April 30th 2024, McDonald's presented the report for the last quarter (from January 1st to March 31st) (next quarter would end on June 30th, too late for this dissertation)[22]:

- 2% increase in global sales
- 13 consecutive positive quarters for sales growth

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[21] Brownlee, Adam (September 21, 2018). "McDonald's Corporation: A Real Estate Empire Financed by French Fries". Motley Fool
[22] McDonald's reports first quarter 2024 results, 2024

- $6.169 million in revenues (+5% vs. same period of 2023)
- $2.736 million in operating income (+8% vs. Q1-2023)
- $1.929 million in net income (+7% vs. Q1-2023)
- $2.66 earnings per share (+9% vs. Q1-2023)

These results of Q1-2024 are pretty in line with the financial results of the whole 2023[23]:

- $25.494 million in revenues
- $11.647 million in operating income
- $8.469 million in net income
- $11.56 earnings per share

3.3. McDonald's tax strategy

McDonald's has its headquarters established in Chicago, Illinois. After the headquarters, the company has several subsidiaries spread across the world (China, France, Russia, Austria, UK, Canada, Germany, Australia, Netherlands and Switzerland)[24] and also in the U.S., precisely one also in Illinois and others in Delaware (which has special tax laws). This strong establishment of subsidiaries outside of U.S. soil is justified by the fact that the American government asks to domestic companies to pay tax on income earned outside of the United States. To bypass this "problem", MNCs (McDonald's makes no difference) use subsidiaries

[23] McDonald's reports fourth quarter and full year 2023 results, 2024
[24] https://www.sec.gov/Archives/edgar/data/63908/000119312510042025/dex21.htm

(and so royalties) to “dilute” the earnings before bringing them to the American parent company. With this system, MNCs manage to significantly cut their tax burden. In Luxembourg for example, the Intellectual Property Box (established in 2007 and renewed in 2018) allowed companies to benefit from a deduction of 80% on royalties deriving from the licensing of intellectual property rights[25]

Another way for companies to dodge taxes is to reinvest earned capital abroad. With this move, income goes down and taxes decrease. In fact,[26] this option has been one that McDonald’s has used pretty much: from 2005, the money invested in foreign subsidiaries and affiliates was $3.9 billion while in 2014 it got to $15.4 billion.

As we have seen already, the royalties are a powerful instrument when it comes to reducing the tax owed by a company. McDonald’s in particular is arguably the biggest franchiser in the world, as most of its profits come from royalties from the franchisees. As we have listed them before, McDonald’s has multiple subsidiaries across the world, some of them are in high-tax jurisdictions (think to France or Germany for example) and others instead are in low-tax jurisdictions (think to the U.K.); among the low-tax ones, there are also tax havens (Switzerland and Netherlands i.e.). McDonald’s exploits these locations and place the intellectual property there, so that other subsidiaries need to pay royalties to those. The royalties are then usually treated as deductible expenses or, if not, the company may have a

[25] https://brucherlaw.lu/en/news/three-questions-on-the-new-ipbox-regime-in-luxembourg/
[26] Golden Dodges. How McDonald’s Avoids Paying its Fair Share of Tax. IUF, PSI, SEIU, 2015

preferential tax treatment; either way, "the big M" successfully manages to bring down the income level and reduce the tax burden.

More precisely, McDonald's charges:

- 4% fee to U.S. franchisees: of this fee, half goes to the McDonald's group, while the other half is reinvested in the system (as a reinvestment, it is not taxed)
- 5% fee to non-U.S. franchisees: this time, the whole percentage is passed through subsidiaries and arrives in the end to a foreign McDonald's subsidiary in a low-tax jurisdiction (or a tax haven)[27]

Image 7: McDonald's scheme for foreign franchisees. Readapted from: Golden Dodges. How McDonald's Avoids Paying its Fair Share of Tax. IUF, PSI, SEIU, 2015

3.4. McDonald's TP cases before 2015

Before discussing about the main business case, we are going to see three other cases happened before. For the purposes of this dissertation we will consider two time windows, one between 2008 and 2015, and another one after 2015; we consider this division because of the changings occurred in the structure of McDonald's. As we will see, the company has always been pretty incline to utilize tax havens and strategic moves to lower its fair share of taxes.

[27] Unhappy Meal. €1 Billion in Tax Avoidance on the Menu at McDonald's. EPSU FSESP EGÖD, EFFAT, War on Want, SEIU, Change to Win, 2015

Between 2008 and 2009, the European structure of McDonald's went through two major changes, that reshaped the tax strategy of the brand:

- In late 2008 the intellectual property and franchising rights for Europe were transferred to McD Europe Franchising Sárl, the subsidiary resident in Luxembourg, with branches in Switzerland and U.S. This setup allowed to establish an artificial structure that most likely was just a smokescreen to tangle the tax system. In fact, in the 2013 Annual Accounts the registered employees were only 13, probably not enough for a subsidiary with an income of €3.7 billion[28]. Considering other data from the Unhappy Meal report, McD Europe Franchising Sárl across those four years managed to save a little over a billion dollars, while only paying €16 million in taxes in Luxembourg. As the Grand Duchy established a 5.8% tax rate on income coming from royalties and IP, the Company in 2013 was actually on a 1.4% effective tax rate
- In July of 2009, reacting to a series of changes in the tax treatment of royalties and IP both in Luxembourg and United Kingdom, McDonald's decided to move the European HQs from London (they will be back again years later, we will see it further) to Geneva in Switzerland. The move here is merely tax-oriented of course, but the company has spoken through a

[28] Unhappy Meal. €1 Billion in Tax Avoidance on the Menu at McDonald's. EPSU FSESP EGÖD, EFFAT, War on Want, SEIU, Change to Win, 2014

spokesperson and said that this “will enable us to conduct the strategic management of key international property rights, which includes the licensing of those rights to McDonald’s franchises in Europe, from Switzerland.”[29]

This chain of events, alongside with the reinvestment of profits outside of U.S. (as explained before), allowed McDonald’s to successfully limit the tax liability on foreign business. Now we get into the three cases.

3.4.1. The McDonald’s – France case

France is one of the largest market in the world for McDonald’s[30], and the biggest in Europe. In 2013 the company counted 28 fully-owned subsidiaries, with McDonald’s France SA being the biggest of those, that controls smaller stores. Of this subsidiaries nearly half of them were unprofitable, generating a collective loss of €0.9 million on €439 million in turnover[31]. This loss was explicable by the larger percentage of “other charges” due from the subsidiaries with respect to the franchisees. For the French authorities, the “other charges” category can be referred to royalties or other types of costs. So the subsidiaries utilized this “other charges” grey area to transfer royalties to the mother offices. In fact, the fee charged to the

[29] Dow Jones, “McDonald’s European HQ moving from London to Geneva”, Chicago Tribune, 2009
[30] McDonald’s Fact Sheet, McDonald’s Investor Relations, November 2020
[31] Source: Golden Dodges

subsidiaries was of 20%, while the one charged to franchisees was the standard 5%[32]. The table here (Table 5) shows the consequence of this different treatment:

	Franchisee range	Franchisee average	Subsidiaries range	Subsidiaries average
"Other charges"	5%	5%	19-21%	20%
Profit/(Loss)	6-10%	8%	(7)-2%	(2%)

Table 5: Impact of "Other charges" on the profit of McDonald's France. Source: own production, adapted from Golden Dodges

What stands out from this previous table is that sometimes subsidiaries, with this actual policy of percentages, are not profitable. Thus, McDonald's France and McDonald's do not care, as long as they manage to keep royalties out of taxation and so maintain a higher profit after all.

We can better understand it by analyzing the table below (Table 6), related to the financial data of McDonald's France SA. As we can see from the "OC" entries, we clearly notice that the total amount has basically doubled from one year to another between 2009 and 2010. And the last two entries, that represented the percentage of OC on NT and SS, have also doubled or even more.

[32] Source: Golden Dodges

	2007	2008	2009	2010	2011	2012	2013
Systemwide sales (SS)	3.551	3.849	4.177	4.222	4.340	4.398	4.416
Net turnover (NT)	569	637	694	751	812	850	875
Other charges (OC)	146	163	337	378	410	426	437
OC/NT	26%	26%	49%	50%	50%	50%	50%
OC/SS	4%	4%	8%	9%	9%	10%	10%

Table 5: McDonald's France SA "other charges" in relation to turnover and systemwide sales, 2007-2013, millions of euros. Source: Golden Dodges

If we maintain a closer look to the events, we see that the increase is not casual. The change in the percentages has happened in 2009, year of the restructuring of the European structure. Now, if two clues make a coincidence and three make an evidence, we can deduct that the profit shifting was really happening.

This situation indeed started to create some suspicion. In fact, in 2013 the French government launched an investigation regarding a potential tax avoidance. This situation carried on until 2022, when McDonald's decided to settle for a fine of more than €1.2 billion, composed of:

- €510 million in "public interest fine"
- €737 million in unpaid taxes

This amount was intended as a recovery for the taxes avoided from the Company in the period 2009-2020. Even though they tried to get to the right side of the

discussion, by saying that in that period they already paid €2.2 billion in taxes and created 25.000 new jobs positions. [33]

3.4.2. The McDonald's – Luxembourg case

The French investigation wasn't the only one carried out on European soil. Even though this one doesn't regards precisely McDonald's, it deserves a mention.

Again in 2014, this time it was the European Commission to open up an investigation against McDonald's. The purpose of the prosecution was to verify a possible violation occurred in the treatment that the Grand Duchy of Luxembourg reserved to the Company, translated into a favorable taxation that could have fallen under the State Aid spectrum. The basis on which the European Commission has based the investigation are the articles 107 and 108 of the Treaty on the Functioning of the European Union. Specifically:

- Article 107 defines what a State Aid is and in what terms it can be provided. Aids are not allowed to the extent that the receiving company doesn't gain a dominant position. The Aids allowed are the ones that promote economic development of areas or projects that have European relevance
- Article 108 defines the possibility for the Commission to monitor the Aids given by the European States. If the Commission finds that State Aids in

[33] https://www.businessinsider.com/mcdonalds-france-tax-evasion-luxembourg-franchise-restaurants-food-lawsuit-fine-2022-6

question are not in line with the Article 107, it shall decide that the State concerned abolishes or alters such Aids for a given period of time

From the beginning of the investigation, the Luxembourg government has always been cooperative with the European Commission to provide explanations and clarifications on the situation. The prosecution ended without results, as the Commission certified that no State Aid was granted and the case was closed.

3.4.3. The McDonald's – Australia case

The Australian case is very similar to the French one, except that in this occasion there still is no procedure going on to verify the facts; in fact, the main similarities are the MO and the fact that between 2009 and 2013 there has been an unusual level of intercompany payments coming from Australian subsidiaries, with the main one being the McDonald's Australia Ltd.

This subsidiary in 2013 reported an unusually high payment of $367.6 million to McDonald's Asia Pacific, another subsidiary but based in Singapore (we will talk about it later). The amount paid was unusually high based on the fact that the franchisees (which compose 80% of the Australian total stores) paid to McDonald's Australia Ltd a total of $154.5 million; the rest of that was coming from corporate owned stores.

	Normal rate (5%) fee	Artificial rate
Franchisees	154.5	154.5
Corporate owned stores	47.6	213.1
Total	202.1	367.6

Table 6: unusual treatment of franchisees and subsidiaries regarding royalty payments. Source: own production. Source of the data: Golden Dodges

It is clear, at this point, that this strategy is one that is working for McDonald's, no wonder that they have utilized it in different markets around the world.

We now move on to the main case of this dissertation.

3.5. After 2015. The second restructuring and the Singapore IOU

As stated in the previous paragraph, we ideally considered two time windows: before and after 2015. As we have already discussed about what's happened before 2015, we now focus on what's happened after.

The earthquake caused by the "Unhappy Meal" report in 2015 had serious consequences, that have also been heavily addressed from the 2022 report "Secrets and Fries", published by the British anti-poverty society "War on Want" together with the Center for International Corporate Tax Accountability and Research.

The Company in 2016 underwent a new restructuring campaign, the second in less than 10 years, to change the royalty-receiving infrastructure[34].

[34] Unhappier Meal. Tax Avoidance Still on the Menu at McDonald's. EFFAT, EPSU, SEIU, 2018

- In December, the HQ of McD Europe Franchising Sárl transferred from Luxembourg to Delaware[35]. The name of the Company remained the same, McD Europe Franchising, only the acronym at the end changed (from Sárl to LLC, which stands for Limited Liability Company, both terms equal the Italian SRL)
- The main tax base outside of the United States, which was previously located in Luxembourg too, moved to the United Kingdom. This move occurred a few months after the proposal of the UK government to establish a new corporate tax rate at 17%, and also considering the intent of the UK to get out of the European Union

This restructuring was addressed as a way to "*reorganize its* (McDonald's) *operations from a geographic management model to a globalized management structure to achieve greater efficiency*"[36].

Clearly for McDonald's this declaration was a way to sugarcoat the pill, but the sense was obviously only one. Both decisions of relocating to Delaware and the UK must be seen as a way to put a thicker layer between the Company and the jurisdictions where it conducts business, as Luxembourg was starting to become a place where operations were more and more under the microscope (Luxembourg is

[35] We already talked about Delaware in Chapter 1, as it is one US state with limited disclosure and an affordable Corporate Tax Rate at 8.70%.
[36] McD Global Franchising Ltd, Annual Report and Financial Statement for the Year Ended 31 December 2018, p.1, Strategic Report.

a member of the OECD and so is also involved in the creation and adoption of BEPS measures). On the other hand, Delaware doesn't require the public filing of financial statements, and the UK guarantees a limited oversight from the European Community. As a result, the operations of McDonald's are less and less available to the public, ending up in a higher degree of freedom for the Company.

As we have said before, the main tax base for operations outside of the United States was shifted from Luxembourg to the UK; this coincides with the establishment, in 2016, of a new company, called McD Global Franchising Ltd. The reason for the opening of this new company is written in the financial statement of 2017 of McD Global Franchising Ltd: "*In order to align the intellectual property holding structure with the globalized management structure, the Company was incorporated with a view to becoming a primary franchisor to markets outside of the United States of America.*"[37] The following statement enforces the idea of the restructuring that we mentioned earlier, as it says: "*Some of the franchise rights are held directly by the Company and some by their UK domiciled subsidiary undertakings.*"[38] After its birth, McD Global Franchising Ltd. acquired franchise income rights from McD APMEA Franchsing Pte Ltd., a Singapore-resident subsidiary.

37

38 McD Global Franchising Ltd, Annual Report and Financial Statement for the period from 16 August 2016 to 31 December 2017, p.1, Strategic Report.

More specifically:

- In November 2016, APMEA transferred Singapore's franchise rights for a "price" of $309 million
- In December 2016, APMEA transferred other franchise rights and financial instruments related to various Asian markets for a price of over $2.9 billion
- In June 2017, APMEA transferred Malaysian franchise rights for a price of $286 million, and in the end
- In July 2017, APMEA transferred Vietnamese franchise rights for a price of over $24 million

The total value of the operation was $3.55 billion, including $1.98 billion of net assets and $1.57 billion of goodwill[39]. Now here comes the trick.

The already cited report "Secrets and Fries" affirms that this transaction occurred by utilizing three loan notes (we already discussed them, together with the IOU and the promissory note, in Chapter 1). McD Global Franchising Ltd. emitted these loan notes and passed them to McD APMEA Franchising Pte Ltd. as a payment, and even though this latter one registered a sale (for the franchise rights transferred), it did not pay any tax. This is because the IRAS, Singapore's revenue agency, has determined that income from abroad is exempted at certain conditions.[40] What

[39] McD Global Franchising Ltd, Annual Report and Financial Statement for the period from 16 August 2016 to 31 December 2017, p.1, Strategic Report.
[40] https://www.iras.gov.sg/taxes/corporate-income-tax/income-deductions-for-companies/taxable-non-taxable-income

APMEA did was not to keep the loan notes, but instead it passed them to another subsidiary, called McD Singapore Holdings Pte Ltd., also located in Singapore[41]. The loan notes were transferred as dividends, to shelter them from any tax claim. Once again, the loan notes were passed from the latter subsidiary to another one, named Asia Pacific GA Holdings LLC[42]. This subsidiary, even though the name might induce to think that it is placed in Asia, is instead registered in Delaware (at today, there is no sign of this subsidiary, only one "similar" called McD Asia Pacific LLC[43]). The Modus Operandi for the transfer of the loan notes was the same, as they were passed as dividends, considering the fact that also in the State of Delaware dividends are not eligible for taxation purposes. The final stage of this circular transaction was the ultimate transfer made by Asia Pacific GA Holdings LLC to McD Global Franchising Ltd.[44] and once again, as we have already saw earlier numerous times, a dividend was issued to the receiving entity. The peculiar fact this time is that the receiving end of the dividend is the original issuer of the instruments that started this circulation. This last step allowed McD Global Franchising Ltd. to write off the loan notes, as the Company was both issuer and owner of the inherent debt. Since it is impossible to owe money to yourself, the instruments were wiped out.

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[42] Secrets and Fries. How McDonald's abuses the UK tax regime to dodge its global taxes. War on Want, CICTAR, 2022, p.18

[43] Exhibit 21. McDonald's Corporation Subsidiaries of the Registrant. https://www.sec.gov

[44] Secrets and Fries. How McDonald's abuses the UK tax regime to dodge its global taxes. War on Want, CICTAR, 2022, p.18

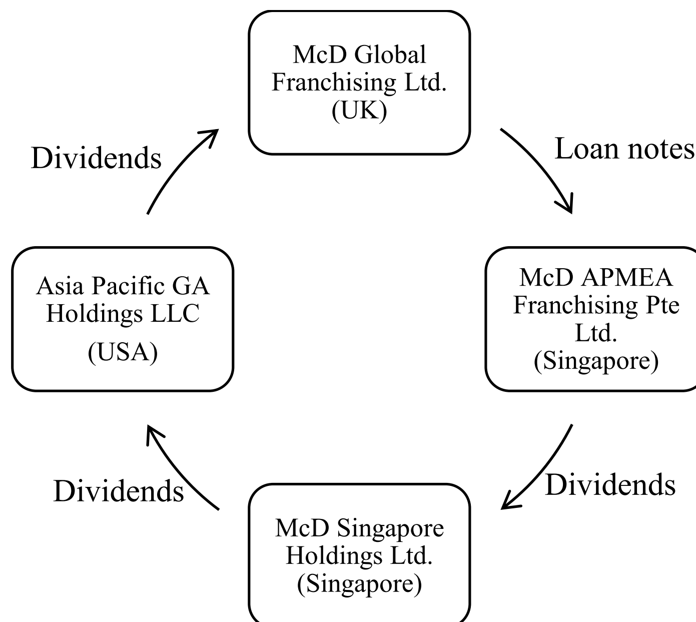

Image 7: Loan notes transfers. Source: own production, readapted from "Secrets and Fries"

The last step of the circular transaction of the loan notes is also verifiable and testified by the 2017 McD Global Franchising Ltd. Financial Statement, which clearly states: "*The profit before taxation for the period includes the effect of the dividend received from Asia Pacific GA Holdings LLC (APGH) […] amounting to $3.559.811.000*"[45]. The report goes on saying: "*The dividend is not subject to UK taxation as a result of a statutory relief which is intended by the UK Government to apply to the great majority of dividends received by UK companies. […] Without the effect of the dividend and resultant impairment of APGH, the Company's total tax charge for the period was $16.234.000 on a loss before taxation of*

[45] McD Global Franchising Ltd, Annual Report and Financial Statement for the period from 16 August 2016 to 31 December 2017, p.24, Notes to the financial statements for the period ended 31 December 2017, Section 10. Tax on profit.

$185.436.000"[46]. [47] Combining the information gathered from the 2017 financial statement and the report, we get that the franchise rights were transferred through different tranches, and that not a single effective payment was ever made nor tax paid, indeed the decision of McD Global Franchising Ltd. to utilize loan notes instead of a more immediate form of payment lies exactly in the intention to minimize every possible outflow of money (both in payment and tax). It turned out in the end that, thanks to the dividend, the Company closed the year with a profit before taxation of $475.662.000 (the original loss before taxation was compensated by the remaining part of an impairment following the dividend[48]). But, and this is not explained in the financial statement, the profit taxed was only $91.846.000, the 19.31% of the total profit before taxation (at a rate of 17.67%). In the end the Company managed to strongly reduce the tax bill (to only a little more than $16 million), which already sees no tax owed to UK authorities (all the UK corporation taxes are compensated by foreign tax relief).[49]

[46] McD Global Franchising Ltd, Annual Report and Financial Statement for the period from 16 August 2016 to 31 December 2017, p.24, Notes to the financial statements for the period ended 31 December 2017, Section 10. Tax on profit.

[47] The information about the loan notes transactions were taken from the "Secrets and Fries" report. For a better outcome of the dissertation, in the research phase have been contacted the author of the report, without getting response on time, and the IRAS, which refused to provide help under Section 6 of the Income Tax Act 1947.

[48] The dividend of $3.559.811.000 was "mitigated" by the impairment of $2.898.713.000 (source 2017 financial statement). The remaining part, $661.098.000, was utilized to cover the losses and get a positive result before taxation of $475.662.000.

[49]McD Global Franchising Ltd, Annual Report and Financial Statement for the period from 16 August 2016 to 31 December 2017, p.24, Notes to the financial statements for the period ended 31 December 2017, Section 10. Tax on profit.

But it doesn't end here. Another quibble that the Company has exploited at its advantage is the amortization of the intangible assets, as the intellectual property belongs to this category, and McD Global Franchising Ltd. is a Company sustaining itself on the rights collected by foreign markets. As amortization is seen a cost, and as such it drives the profits down, less profits mean less taxes to be paid. From the financial statements of both 2017 and 2018 we can see in fact how the amounts for amortization are pretty "important":

- $192.218.000 in 2017[50]
- $213.343.000 in 2018[51]

This "circular transaction" in the end, as addressed by the report, how much money allowed McDonald's to save? We can address this question by looking at it by different angles:

- The first one is represented by the loan notes and dividends matter. What comes up immediately is the fact that McD Global Franchising Ltd. didn't use any immediate form of payment, so there was no money outgoing to Singapore's subsidiary APMEA. If happened in cash, the Company would have paid a flat tax of 17% and the transaction of $3.55 billion would have

[50] McD Global Franchising Ltd, Annual Report and Financial Statement for the period from 16 August 2016 to 31 December 2017, p.24, Notes to the financial statements for the period ended 31 December 2017, Section 11. Intangible assets
[51] McD Global Franchising Ltd, Annual Report and Financial Statement for the year ended 31 December 2018, p.26, Notes to the financial statements for the period ended 31 December 2018, Section 13. Intangible assets

alone generated a tax bill of over $600 million (paid by the APMEA subsidiary to the IRAS). Because of Singapore's secrecy we would have not been able to verify whether this would have been the case or not, and because of the utilization of loan notes this matter has been rendered completely useless

- The second one is represented by the profit before taxation matter. If we recall, the profit utilized to calculate tax was just a tiny part of the entire amount ($91.846.000 on $475.662.000). As the reason for this move is not explained in the financial statement, we hypothesize that the taxation of the whole profit would have generated a tax toll of $84 million, almost $70 million higher than the taxes effectively paid by the Company in 2017. This time, the paying company would have been McD Global Franchising Ltd. to the HMRC (UK's revenue agency)
- Third and last one is the amortization matter. The amounts for 2017 and 2018 are pretty high; as a result, they heavily impact on the net income of the Company and, as said before, less profits mean less taxes. It is hard to think that intellectual properties like the big M and the Golden Arches will lose their significance and value over time, so figures like those written in the financial statements are difficult to imagine. Considering a span of one or two decades (the amortization time range utilized by the Company) and the UK Corporate Tax Rate of around 19%, the amount of money saved by

the Company might as well be higher than $400 million[52]. Considering instead the actual CTR of 25%, the number might be even higher.

From a Transfer Pricing theoretical stand point, we can look to possible violations of the Arm's Length Principle. We are clearly looking at a controlled transaction, between firms that are related to each other. First thing to evaluate is the amount of franchise rights transferred. Those franchise rights, as they concern different countries, are detachable from one another (for subdivision we could take for example the same method utilized during the transaction), and authorities could verify whether the value of each separate transaction reflects the value of an equal transaction occurred between independent firms. After the evaluation of the assets involved, the inspection could also concern the goodwill value. As goodwill was included in the calculation of the amount to be transferred, this is a point in favor of the Company; what should be checked is the value of the goodwill, as it could have been inflated or shrunken.

From what we have read we can say that McDonald's effectively manages to avoid paying hundreds of millions of dollars in taxes. But this isn't something that the authorities can do nothing about; especially in UK, where the whole operation started and ended, the HMRC should start to dig deeper inside the McDonald's accounts, in order to unveil the Company's "legally questionable" actions. The main problem is exactly this, the fact that the operations perpetrated are so well

[52] Secrets and Fries. How McDonald's abuses the UK tax regime to dodge its global taxes. War on Want, CICTAR, 2022, p.20

covered under thick layers of fog, that to get to the point can be hard and wasteful. For this specific case, the HMRC might want to look at the financial statements of McD Global Franchising Ltd., and from there start an investigation that goes beyond the UK borders; in fact, in order to get to the center of the issue, the authorities should also be able to access documents from McD APMEA Franchising Pte Ltd., McD Singapore Holdings Ltd. and Asia Pacific GA Holdings LLC, the two subsidiaries from Singapore and the one from Delaware. But there's one problem. Checking all the financial statements of McD Global Franchising Ltd. from FY 2018 to the latest available which is the one for FY 2022, we can see that McD APMEA is no longer among the undertakings of McD Global Franchising Ltd; with all due probability, once the franchise rights were transferred, the subsidiary got shut down to avoid further risks (unlike McD Singapore Holdings Ltd., that still figures among the Company's undertakings[53]). Considering instead the dividend received by the Company from Asia Pacific GA Holdings LLC, the HMRC could contest its deductibility under Section 864 of the Corporation Tax Act of 2009, which states that the "operation" is not deductible if "*the main object or one of their main objects" is to enable a company to obtain a tax-deductible expense in respect of intangible assets.*"[54]; as the operation was worth billions, and not even a single penny in tax was paid, this might be the case.

[53] McD Global Franchising Ltd, Annual Report and Financial Statements from FY 2018 to FY 2022. Source: HMRC, McD Global Franchising Ltd. https://www.gov.uk/
[54] Secrets and Fries. How McDonald's abuses the UK tax regime to dodge its global taxes. War on Want, CICTAR, 2022, p.19

The thick layers that the Company has put between itself and the outside world has made it very difficult to get in touch with the issue. The vast majority of the population is not aware at all of the circular transaction that has occurred, as people don't have neither the knowledge nor the will to get informed on their own, and also the press hasn't talked about it too much.

To conclude, this isn't a matter that can go under the radar. The amount of money saved by the Company in legally questionable ways is just too important to just let this thing pass. The money that McDonald's should have paid could have been utilized to finance public expenditures like infrastructures, education and public health. In the end, the ones who suffer of this behavior from the Company (and the same speech is also applicable to every other enterprise that behaves the same) are the communities, the people and especially those who are less fortunate than others. Public entities, like Revenue agencies, must act to put an end to this. Great steps forward are being made with the BEPS framework of the OECD, but similar actions must be taken at a global level (United Nations for example), to try to bend also the "toughest" jurisdictions.

CONCLUSIONS

The paper tried to explain the complex system revolving around Transfer Pricing when it gets combined with other aspects of a firm like debt, intangible assets and business restructurings.

First, we have seen what debt is, especially inside the firm, analyzing the various types of different instruments available to companies and their peculiarities. It has emerged that every instrument works better in given situations, and we have especially seen the case of the IOUs and the Loan notes, that allow the debtor to conclude a transaction without an immediate outgoing payment, which is delayed; we have also seen the fiscal treatment that different jurisdictions give to those types of instrument, and from here we have realized that they are an excellent way to try to lower the tax burden of the firm.

Following, we started from the concept of the MNC, so we have seen a multinational corporation is and how and why firms decide to make the leap and become an international company. When they decide to physically invest in a new territory, they initiate what are called FDI, and among those we find the two models by which firms can open a new office in a new country, so Branch and Subsidiary, each carrying its own pros and cons. From this point on, with firms being present in multiple parts of the world, we arrive to discuss about different corporate tax rates and tax havens, starting the discussion about Transfer Pricing. We have then

listed some methods by which these transactions are perpetrated and after that we went on to define the legal framework of TP, which is based on the Arm's Length Principle. We have then discussed the fact that TP is exploited by firms to carry on their tax avoidance operations, by which they manage to shift their incomes from high tax jurisdictions to low tax ones, resulting in a bigger proportion of profit after taxes. To conclude the chapter, we introduced two different utilizations of TP, that would have come useful in the third chapter: the role of TP with Intangible assets, and the role of TP in operations of Business restructuring. We have saw how dealing with Intangible assets in such operations is complex, as they are difficult to quantify not being a physical asset. As for the Business restructuring side, we introduced other regulatory frameworks for this specific matter.

In the last part of the paper we explored the real-life McDonald's case. We started by introducing some background information about history and the most recent financial results, we analyzed the business model and then we went on exploring some smaller cases. We have seen how McDonald's has effectively used TP to shift its profits outside of various high-tax jurisdictions (the cases of Australia and France) and another case regarding some suspicious State Aids (the Luxembourg case). After a brief discussion about these cases, we proceeded to talk about the central topic of the thesis, which is the case about the "Singapore IOU". The case has definitely shown how McDonald's heavily relies on TP practices to avoid paying large amount of taxes owed in certain jurisdictions, this time in the UK. On

another hand, the fact that McDonald's is involved in charity operations, like the Ronald McDonald's Foundation, isn't enough when the Company itself denies the local entities of the money to finance infrastructures and services for the population. As the Secrets and Fries report says: "*Playgrounds made out of recycled toys cannot make up for a business failing to pay its fair share of tax.*"[55] Combining this information with the ones from the previous case analyzed, we can safely say that McDonald's .

The conclusions we can draw from this case and from the overall work are multiple:

- Debt instruments like the Loan notes allow a great degree of fiscal flexibility
- The Arm's Length Principle, in its fundamental role for the verification of intercompany transactions, is unfortunately of difficult application when discussing about movements involving Intangible assets. New standards should be considered in order to deal better with these types of transactions
- Tax havens make it difficult for international regulations to work in the most effective way. There must be some normative revolution; the BEPS framework is a good start but it's not enough, it is necessary that all nations (tax havens included) converge into a global-wide shared regulatory accordance

[55] Secrets and Fries. How McDonald's abuses the UK tax regime to dodge its global taxes. War on Want, CICTAR, 2022, p.22

- McDonald’s, with its global franchising network and the clever administration of its IP, has successfully exploited the possibilities of these two instruments to create a highly efficient system for the reduction of its tax bill
- McDonald’s aggressively utilizes tax avoiding strategies to lower the tax burden around the world; the utilization of jurisdiction like UK, Delaware and Singapore aims at reducing the possibility of scrutiny from external agents, and so get the possibility to conduct aggressive actions more freely and without the risk of being exposed
- The precise combination and utilization by McDonald’s of loan notes and business restructurings has given the Company the possibility to operate without any disturbance from the outside. Such “experiments” should give the authorities the hint to start tighten the regulation frameworks
- Even though tax avoidance practices are not properly illegal, they raise a lot of questions by the moral and ethical standpoint. What we have learned in reality, is that tax avoidance makes tax evasion look like legal, because not paying taxes on a cash transaction is not allowed, while not having to pay taxes thanks to different legal loopholes is doable. If small businesses like family-conducted craftshops pay their fair share of taxes, why shouldn’t MNCs do the same? The impact on the communities is enormous, as public

services for example like education and health do not get the proper financings

This thesis wanted to highlight the relevant case of TP perpetrated by McDonald’s. An ideal continuous of this work would be a thorough research of all the movements made during the transactions; as information were missing for this paper, following studies should try to gain access to the rest of the financial statements needed to have a clear look at the complete frame. And proceeding on the same line, authorities should also start getting their hands deep in the matter, to find eventual violations of the laws and make McDonald’s pay their fair share of tax.

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