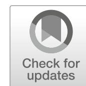
Profit Shifting and Tax Base Erosion in the Twenty-First Century



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Abstract The aim of this chapter is to provide the background of profit shifting, explain the concept of profit shifting, the relevance of this phenomena in the context of the twenty-first century and the importance of tax havens in these areas. Furthermore, the development of corporate taxation during the last century was mentioned with a stress on its weaknesses and obstacles that have been faced or are currently being faced. Moreover, a brief summary of the fight against tax base erosion and aggressive tax planning was performed. Lastly, aggressive tax planning opportunities and tax base erosion, were mentioned with respect to post-communist countries.

1 The Concept of Profit Shifting

Profit shifting plays an important role in tax base erosion. Dyreng (2015) defines profit shifting as the strategic actions taken by multinational enterprises (hereinafter MNEs) to report less profit in high-tax countries and more income in low or no-tax

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jurisdictions. The author considers that the most common practices to shift profit are transfer pricing, intra-company debt or the movement of a production plant to another country with comparable tax advantages. However, Dyreng (2015) argues that a narrow conceptualization of a profit shifting concept is needed. Thus, profit shifting represents those strategic actions to report profit in a jurisdiction different from where the economic value is created. The author considers that the main factors or drivers of profit shifting are the loopholes in tax laws from different countries accompanied by the great difficulty in establishing the true value of intellectual property. According to Dyreng (2015), another driver of profit shifting is represented by tax differentials among countries worldwide. MNEs are prone to shift profits as long as there are different corporate income tax rates in different jurisdictions. Moreover, there are cases where profits are shifted or entire companies relocated, because of political or social instability.

Markle (2015) describes profit shifting as the intentional movement of profits by the MNEs from high to low tax jurisdictions when the most common drivers of profit shifting are tax rate differentials and the increasing mobility of intangible assets—intellectual property. One important argument brought by Markle (2015) is the fact that profit shifting itself produces a range of costs that an MNE should take into account. In some cases, shifting profits can involuntarily break some tax rules or local laws. In this situation the MNE could face penalties and fines. Moreover, when a company uses shell companies or special purpose entities (hereinafter SPEs), or hybrid entities to shift profits into tax havens, there are legal costs associated with the creation and the maintenance of such entities. The author also highlighted that a bad reputation or an image loss is another cost that an MNE should consider if found trying to shift profits in order to avoid taxation.

Dharmapala (2014) notes that the existence of base erosion and profit shifting (hereinafter BEPS) appears mainly because of the loopholes and differences in tax laws among different countries. Since there are different tax policies regarding corporate income tax, this context creates opportunities for MNEs to exploit the inconsistencies among different jurisdictions in order to shift profits and avoid taxation.

The main factors that enhance profit shifting according to OECD (2013) are the following: international mismatches in entities such as hybrid arrangements and arbitrage; the abuse of tax treaties related to profits derived from transactions of digital economies; preferential tax regimes related to debt-financing and other intra-company transactions; transfer pricing and artificial splitting of ownership of assets between legal entities; the low effectiveness of anti-avoidance measures such as GAARS; different treatment of Controlled Foreign Companies; and thin capitalization rules and the existence of tax preferential regimes.

Tax base erosion and profit shifting is seen by the OECD (2013) as a result of active and aggressive tax planning and tax strategies aimed to avoid taxation in high-tax rate countries and shift profits towards low or no-tax countries. This practice is not only affecting tax revenues collected by the state (i.e., the integrity of corporate income tax revenues), but also undermines competition between companies as profit shifting gives a competitive advantage to MNEs in comparison to domestic

companies. Moreover, profit shifting, according to OECD (2013), is able to distort investment decisions where the resource allocation does not follow added value creation but aims to shift investment towards locations with low pre-tax return and high after-tax return. Finally, profit shifting could harm the overall voluntary tax compliance by all taxpayers if there is a broad perception that MNEs can legally avoid taxation.

2 The Role of Tax Havens in Profit Shifting

There is a large body of literature concerned with the issue of tax haven contribution to global profit shifting. OECD (1998) defines tax havens as those jurisdictions with low or no corporate income tax rates. Additionally, the concept of tax havens also includes countries that show lack of effective exchange of financial information, no transparency and do not impose rules regarding substantial economic activities for multinational companies. Moreover, OECD (1998) underlines that tax haven countries have granted preferential treatment to foreign companies and do not impose any administrative constraints. OECD (1998) argues that tax havens represent an attractive location to shift profits because their jurisdictions harbor passive investments as mere “money boxes”, or serve as parking places for “paper profits”. Tax havens also offer protection to MNEs because of a detailed control of tax agencies from other countries. OECD (1998) points out that tax havens are reluctant to adhere to international transfer pricing rules by adopting other more advantageous transfer pricing arrangements. Tax havens are also attractive to MNEs because they offer the following: the benefits of a territorial tax system, whereby foreign profits are exempt from taxation; secrecy provisions and granting a negotiated tax base; and providing access to a large network of tax treaties.

Dharmapala and Hines (2009) point out that tax havens are attractive to profit shifting mostly because of discretionary policy towards foreign companies and lack of transparency in addition to the low or no corporate income tax. This secrecy regarding foreign companies’ presence in tax haven countries enhances profit shifting behavior even more.

However, the current literature tends to disagree regarding the appropriateness of the tax haven label. A study by GAO (2008) underlines that tax haven countries are often labeled as financial secrecy jurisdictions or offshore financial centers. Tobin and Walsh (2013) refer to tax haven countries as jurisdictions that offer advantageous tax conditions to MNEs. Cobham et al. (2015) underline that the label of tax haven is outdated and should be replaced by the term offshore financial centers. This label was defined by Zoromé (2007) as, countries that offer financial services to foreign investors and companies without any rules and limits regarding their size or real economic activities on tax haven soil. Murphy (2008) considers the secrecy jurisdictions label more appropriate than the tax haven one, especially for countries that offer a heightened level of secrecy to foreign investors which could not be easily controlled by other tax agencies. Gravelle (2015) uses the criteria proposed by

OECD (1998) and by Dharmapala and Hines (2009) to build a list of 50 world tax haven countries. In comparison, Cobham et al. (2015) use the criteria of financial secrecy and financial transparency of world countries to build a list of the top ten tax havens.

The contribution of tax havens to profit shifting, has also been extensively analyzed in the literature. GAO (2008) underlines that most of the top 100 US MNEs have subsidiaries in countries labeled as tax havens. The main objective of establishing and running a subsidiary in tax haven countries by US MNEs is to avoid the US tax system and gain other unfair competitive advantages associated with profit shifting. Slemrod and Wilson (2009) stress that tax havens have a negative impact on non-tax haven countries' tax revenues, mainly due to income shifted and avoided tax liability by the MNEs. This negative impact leads to less tax revenue collected, which affects the supply of public goods and reduces the overall welfare of countries involved. Also, profit shifting to tax havens enhances the tax competition between world countries which leads to a sub-optimal level of corporate income taxation.

Omar and Zolkaflil (2015) in analyzing the MNEs profit shifting from Malaysia to tax haven countries, found that foreign companies which have links to tax havens tend to report less profits than companies that do not have links with tax havens. The same behavior is identified in the research of Janský and Kokeš (2016). One particularity observed by Janský and Kokeš (2016) is that MNEs rely more on strategic use of intra-company debt to shift profits to tax haven countries. This finding stems from the fact that foreign owned subsidiaries, that have links to tax havens, tend to show a higher debt to asset ratio than companies which do not have links to tax havens. A similar study was done by Nerudová et al. (2018, 2019) that analyzed the contribution of tax havens to profit shifting behavior. The authors found that MNEs that have links to tax haven countries pay less tax per unit of profit than the companies that have no links to tax havens.

Gumpert et al. (2016) found that the increase of statutory corporate income tax rate by 1% increases the likelihood of establishing a subsidiary in tax haven countries by 2.3%. Richardson and Taylor (2015) observe that the use of transfer pricing, thin capitalization, and intellectual property rights to shift profits, tends to increase with tax haven usage by MNEs.

Henry (2012) highlights that a large share of global financial wealth, ranging from 21 to 32 trillion USD, have been hidden in tax haven countries and re-invested using the services provided by offshore secrecy jurisdictions. The author points out that profit shifting through offshore secrecy jurisdictions has a negative impact on overall tax compliances and tax revenues, where more than 3.7 trillion USD avoided taxation until 2010. According to Zucman (2014) almost 20% of US MNEs are booked in offshore financial centers. The role of tax havens in global profit shifting due to low or no tax rates, resulted in a significant corporate income tax rate decrease in the US, from a high level of 30% in 1980, down to 20% in 2010. Zucman (2014) underlines that in order to benefit from tax havens' services, the US MNEs tend to repatriate only 20% of foreign profits, and the rest of the 80% is held in tax havens, and is continuously re-invested.

Tørsløv et al. (2020) found that more than 40% of the profits obtained by MNEs are directed towards tax haven countries through different profit shifting techniques. This behavior tends to negatively affect corporate income tax revenues collected in European and worldwide developing countries. Alvarez-Martinez et al. (2018) analyzing the amount of profit shifting done by MNEs from the the European Union, Japan and the US, estimate that the EU loses more than 36 billion EUR in CIT tax revenues on a yearly basis, Japan loses 24 billion EUR and the US is losing more than 100 billion USD in terms of tax revenues because of profit shifting. As pointed out previously by Slemrod and Wilson (2009) and Alvarez-Martinez et al. (2018), they stress that the negative effect of profit shifting in the EU is leading to a necessary increase of consumption taxes to offset the loss of CIT revenues due to profit shifting. This offsetting measure leads to 0.2% GDP net loss in the EU and close to a half percent of GDP net loss in Japan and the US. Laffitte and Toubal (2018) adopted a different approach to estimate the contribution of tax havens to profit shifting behavior. The authors use the data regarding foreign trade and found that the US MNEs used foreign trade platforms established in tax havens where the amount of trade exceeded 82 billion USD.

There is also a large body of literature which is concerned with the issue of the contribution of tax havens to profit shifting worldwide. Other research studies worth mentioning that have been preoccupied with measuring the level of profit shifting to tax havens, are those of Dowd et al. (2017), Laffitte and Toubal (2018) and Nerudová et al. (2019). In terms of researching profit shifting in Central and Eastern European countries, there are the papers of Procházka (2019), Khouri et al. (2019), Krištofík et al. (2017), Janský (2018) and Nerudová et al. (2020) that should be mentioned. Procházka (2019) argues that Central and Eastern European (hereinafter CEE) countries show an active involvement in ratifying and adopting the Base Erosion and Profit Shifting Action Plan recommendations. Janský (2018), analysing the impact of profit shifting in Czechia and the associated corporate income tax revenue losses, estimates that profit shifting leads to an average 10% loss of corporate income tax revenue. Furthermore, the author stresses that current literature tends to overlook the issue of profit shifting in Central Europe. Khouri et al. (2019) proved more intensive and increasing profit shifting efforts in the Slovak Republic. Krištofík et al. (2017) stress the main motivations of Slovakian companies to establish offshore or onshore companies is a heightened level of secrecy, tax benefits and the flexible arrangement of ownership relations.

In terms of measuring the size of profit shifting, the latest estimations are done by the work of UNCTAD (2015). The authors analyze the difference between the share of inward FDI from tax havens and the correspondent return on total FDI stock. UNCTAD (2015) found that an average of 450 billion USD is shifted from developing countries to offshore investment centers which leads to a yearly tax revenue loss of 90 billion USD. Janský and Palanský (2019) estimate the size of profit shifting of countries worldwide using global FDI data. The authors estimate that the size of global profit shifted was over 650 billion USD in 2016 and the corresponding tax loss was 196 billion USD. This amount of income shifted represented 0.9% of world GDP, or almost 6% of total profits reported by companies

worldwide. A smaller amount of global profit shifting is estimated by the OECD (2015a), which ranges between 100 and 240 billion USD (i.e. annual losses from 4 to 10% of global corporate income tax revenues). Concerning the EU, the annual loss of tax revenue is estimated at approximately 1 trillion EUR, and in the case of corporate taxation approximately 50–70 billion EUR is lost.[1] Cobham and Janský (2018) adopt the model proposed by Crivelli et al. (2016) to re-estimate the global size of profit shifting using a new database. The authors found that the global amount of profit shifting done by MNEs is on average 500 billion USD. Concerning only US corporate income tax revenues, according to Clausing (2016), MNEs profit shifting inflicts a tax revenue loss of up to 111 billion USD on an annual basis.

3 The Development of Corporate Taxation During the Century

From a general point of view, taxation has a very long history, however, income taxation can be considered a "new tax" introduced at the end of the eighteenth century, and corporate income taxation as a separate tax on companies after the 1960s.[2] Regarding income taxation or corporate income taxation, the millstone for their establishment was the development of record keeping and accounting which enabled the ability to determine profit, record it and subsequently to tax it.[3] Moreover, usually their introductions were linked to war and an increased need for additional tax revenue. Other reasons were having the privilege of incorporation (they bore limited liability so they should pay for this privilege), equity (no whole company's retained earnings are distributed to shareholders, therefore corporate taxation should tax undistributed company profits) and lastly, as a good tool for extra revenue.[4] Although income tax was not received positively at first, its introduction has been stabilized in the tax system and is now an integral part of the general tax system.

At the time of the introduction of corporate income taxation and in the pre-globalized era, corporate income taxation did not give rise to such problems as we currently face today. At that time investments and capital were almost immobile, financial markets were not so integrated, and possibilities of how to minimize and avoid taxes were limited. Moreover, international tax rules, such as the arm's length

[1] For more details, see European Parliamentary Research Service (2015).

[2] Income tax was introduced for example in the UK in 1798, in the US in 1891, in Australia in 1915, and in Canada and France in 1917. Corporate taxation as a separate tax on companies was introduced in the UK in 1965 followed by others, for example in Ireland in 1976. For more details see Frecknall-Hughes (2015) and Grapperhaus (2009).

[3] For more details see Frecknall-Hughes (2015).

[4] For more details, see above.

principle,[5] taxation of business profit,[6] permanent establishment,[7] and the tax residency principle[8] were able to capture the main international tax issues related to cross-border activities between MNEs. However, in this time of globalization, dynamic business development, higher levels of cross-border activities and with the digital revolution, we can consider corporate income taxation outdated, not only at the national level, but also at the international level.[9] The first reason is that the common theoretical basis of taxation rights and allocating powers to impose tax, were derived from provisions more than 100 years old by the League of Nations, dated 1923, and then by the OECD. However, nowadays nexus rules[10] absolutely

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[5]The arm's length principle can be considered a rule against the mispricing of any intra-group transaction between associated enterprises with an aim to manipulate the volume of the tax base, and has been used as an international tax rule since 1933. A similar rule is also used in the case of permanent establishment. The authoritative statement of this principle is mentioned in Article 9 (1) of the OECD Model Tax Convention on Income and Capital (hereinafter OECD Model Convention) known as primary adjustment:

"When conditions are made or imposed between two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly." For more details, see also OECD (2017a), Commentary on Article 9(2), MN 6, 2017 (available at: https://read.oecd-ilibrary.org/taxation/model-tax-convention-on-income-and-on-capital-condensed-version-2017_mtc_cond-2017-en#page1) and OECD (2017b), TP Guidelines, MN 4.35, 2017 (available at: https://read.oecd-ilibrary.org/taxation/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-2017_tpg-2017-en#page1).

[6]The authoritative statement on taxation of business profit is mentioned in Article 7 of the OECD Model Convention, OECD (2017a) For more details, see also the OECD Commentary on Article 7.

[7]The definition of permanent establishment is mentioned in Article 5 of the OECD Model Convention, and taxation of business profit generated through permanent establishment is mentioned in Article 7 of the OECD Model Convention, OECD (2017a). For more details, see also OECD Commentary on these articles.

[8]Definition of tax residency is mentioned in Article 4 of the OECD Model Convention, OECD (2017a).

[9]For more details, see also Wilde and Wilson (2018), Schön (2019), Devereux and Vella (2014, 2017), OECD (2015a), Kofler et al. (2017) Avi-Yonah (2000), De Mooij and Devereux (2011), Stiglitz (2014), Merrill (2010).

[10]Nexus rule is based on the assumption that a state's jurisdiction has a right to tax foreign or non-resident persons/entity if they have fulfilled the relevant factors such as physical presence or economic activity, or a combination of both. Moreover, a source country has limited taxing rights instead of most taxing rights in the case of residual—home countries of resident persons/entity. However, due to the rapid nature of business digitalization and the development of the digital economy, business activities are very often performed without physical presence and avoid taxation in the source State under the current nexus rule. This issue is a subject of interest in the BEPS project, Action 1—Tax Challenges Arising from Digitalisation. For more details see OECD (2015b). For other results related to the nexus rule, and a new one, see Falcão and Michel (2014), Collin and Colin (2013), Hongler and Pistone (2015), López (2015), Deveraux and de la Feria (2014), Popa (2016), Hellerstein (2014), Olbert and Spengel (2017), de Wilde (2015), Pinto (2006) and Kemmeren (2006).

changed in connection with the digital economy and rapid globalization. Furthermore, the current tax and accounting legal framework failed to provide a clear definition of the concept of "value creation", "intangible property" and "economic activity".[11] Another reason is that companies are more global, usually without the need for a physical presence in the country of operation and all processes are more integrated compared to the previous traditional business models[12] where levying a corporate tax and its collection was easier. Moreover, financial markets and economies are more integrated so that MNEs can allocate capital and investments wherever they want, use to their advantage harmful tax competition, apply different opportunities, technics of aggressive tax planning (hereinafter ATP) and create aggressive tax planning structures (hereinafter ATPS) with the aim of minimizing and avoiding taxes.

From a European perspective, the European Economic Community (EEC)[13] was fully aware of problems arising from the interaction of different corporate tax systems across Member States and their effects on the main aim of European integration, i.e. a creation of the Internal Market. Therefore, there have been many attempts to coordinate and harmonize corporate taxation systems of Member States since the beginning of European integration, in the 1960s. At first it considered recommendations based on the Neumark Report[14] published in 1962, recommending harmonisation of indirect and direct taxes but not in the sense of a complete unification of tax systems of Member States. According to the Neumark Report, the committee recommended a special tax on companies in case of retained profits, specifically 50%, and a different tax rate on distributed profits (between 15 and 25%). It should be noted that in connection with current developments, the Neumark Report also recommended using a multilateral tax convention[15] which was considered more appropriate than the OECD Model Tax Convention for the purpose of the Internal Market and corporate tax reform. Unfortunately, it has never been fulfilled. Another attempt was performed in 1967 via the Program on Tax Harmonisation, and consequently in 1969 via the Program for the Harmonisation of Direct Taxation. Both programs suggested a lot of measures, and two proposals of directives[16] which are precursors to the Merger Directive and the Parent-Subsidiary Directive introduced 20 years later and successfully implemented by Member States. In 1970 another report was prepared by professor A.J. van den Tempel (1970), and

[11]For more details, see Olbert and Spengel (2017).

[12]For more details about business models see Nerudová and Solilová (2020).

[13]Established by the Treaty of Rome in 1957, signatories Belgium, France, Italy, Luxembourg, the Netherlands, and West Germany. The EEC is considered a precursor to the EU, established by the Maastricht Treaty which came into force in 1 November 1993.

[14]Report of the Fiscal and Financial Committee, prof. Fritz Neumark, 1963.

[15]Using multilateral tax convention was also recommended by the Segrè Report (1966) for the purpose of developing a European capital market. For more details, see the EEC Commission (1966).

[16]Specifically, in 1969 Capital Duties Directive, Council Directive 69/335/EEC as a precursor to the Parent-Subsidiary Directive.

suggested implementation of a classical system[17] of corporate taxation among the Member States. Similarly, as previous reported, suggestions were not followed up on. Consequently, in 1975 the European Commission suggested a partial imputation system of corporate taxation[18] and tried to approximate the corporate tax rates within the range of 45–55% to both distributed and undistributed profits, when according to the partial imputation system, a tax credit on distributed dividends would be applied to the hands of shareholders. However, similarly as in previous cases, all proposals were rejected or withdrawn. As those harmonization efforts were ineffective, the European Commission decided to focus on measures to combat international tax evasion and avoidance[19] and support a tax coordination across Member States via the Mutual Assistance Directive[20] which was introduced to the Council in 1977. Moreover, the efforts also focused on harmonisation of only the provisions affecting the smooth functioning of the Internal Market, therefore, the harmonisation of indirect taxation is at an advanced stage compared to direct taxation, where only partial solutions were performed. However, according to results from the Ruding Report,[21] differences in corporate taxation (tax rates and tax bases), and methods of eliminating double taxation in cases of investments and withholding taxes used across Member States, are so significant that they cause distortions to the Internal Market. The Ruding Report suggested a lot of measures, namely, ensuring transparency of tax incentives for industry, eliminating obstacles to cross-border investments, the establishment of a minimum corporate tax rate and tax base, and others. The Commission agreed with some of them, such as the improvement of transfer pricing rules, thin capitalisation rules, the Merger Directive and the Parent-Subsidiary Directive, and the need for the elimination of double taxation on cross-border investments. However, harmonisation of the corporate tax rate was again rejected by the Council. Since 1997, when the EU introduced a tax package to tackle harmful tax competition,[22] the EU focused on the elimination of harmful tax competition between Member States following the work of the OECD (1998) on this issue. The package addressed three key areas: corporate taxation, savings

[17]In a classical system profits of corporations are taxed at the corporate level, and then if profits are distributed to shareholders it is again taxed as distributed profits via withholding tax.

[18]Proposal for a Council Directive concerning the harmonisation of systems of company taxation and of withholding taxes on dividends, COM(75) 392 final, 23 July 1975. Through a partial imputation system, a reimbursable tax credit is available to shareholders based on the taxation of distributed profits.

[19]See Council Resolution of 10 February 1975 on the measures to be taken by the Community in order to combat international tax evasion and avoidance, OJ C35, 14. 2. 1975.

[20]Council Directive 77/799/EEC of 19 December 1977 Concerning Mutual Assistance by the Competent Authorities of the Member States in the Field of Direct Taxation and Taxation of Insurance Premiums. This Directive was repealed by Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation known as DAC 1.

[21]See Report of the Committee of Independent Experts on Company Taxation, March 1992.

[22]See Toward Tax Co-ordination in the European Union, A Package to Tackle Harmful Tax Competition. Doc COM(97) 495 final, 1. October 1997.

taxation and interest and royalty payments. Although, the package was not positively adopted, a Code of Conduct on business taxation was agreed upon by the finance ministers of all the Member States, and proposals of both directives (i.e. the Savings Directive[23] and the Interest and Royalties Directive[24]) were submitted. Furthermore, the next work focused on the identification of harmful tax provisions in tax systems of Member States which can hamper cross-border economic activity and create distortions in the Internal Market. These results were presented in the Company Taxation Study[25] in 2001. To tackle identified obstacles, the European Commission suggested four long-term alternative proposals, specifically—the Home State Taxation System, as a tax simplification for small and medium-sized enterprises; a Common (Consolidated) Corporate Tax Base suggesting a new optional tax base; the European Union Company Income Tax suggesting both a new single tax base and a uniform tax rate; and a Compulsory Harmonized Corporate Tax Base suggesting both a mandatory new tax base together with consolidation and formulary apportionment.[26] After the discussion of all four models, the European Commission decided to focus on the second one (i.e. Common Consolidated Corporate Tax Base) with the belief that only it can overcome tax obstacles in a systematic way. In 2011, after more than 10 years, the Commission published the proposal of the CCCTB Directive;[27] it represents one of the most ambitious projects, however, it is still undergoing the process of approval. However, since 2001, the Commission has turned from tactics that switch away from hard law, in the form of directives,[28] to

[23]Council Directive 2003/48/EC of 3 June 2003 on Taxation of Savings Income in the Form of Interest Payments. No longer in force, date of end of validity: 31/12/2015 as it was superseded by parts of Directive 2014/107/EC of 9 December 2014, known as DAC 2.

[24]Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States. This act has been changed. Current consolidated version: 01/07/2013, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02003L0049-20130701.

[25]See Company Taxation in the Internal Market, SEC(2001) 1681. The study presented detailed classification of obstacles, such as transfer pricing rules, double taxation, unavailability of cross-border loss reliefs and reliefs/deferrals in cases of cross-border reorganisations/mergers/acquisitions and others.

[26]For more details, see above.

[27]See COM(2011) 121/4, 2011/0058 (CNS), SEC(2011) 316 final. In October 2016, the Commission re-launched the CCCTB, however, not with the aim of harmonizing corporate taxation across Member States, but to make corporate taxation in the EU fairer, more competitive and more growth-friendly. The re-launched CCCTB will be implemented through a two-step approach and will be mandatory for the largest groups in the EU fulfilling the threshold of consolidated net turnover of at least 750 million EUR. Firstly, the common rules for tax base construction without the possibility of tax consolidation will be introduced as CCTB is newly understood as a tool for fair and efficient taxation within the EU eliminating base erosion and profit shifting. Secondly, the consolidation regime should be introduced in the second step.

[28]With regard to directives in the area of corporate taxation, only six Directives solving partial issues and one Convention were approved during this time. The Parent-Subsidiary Directive—Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, previous version

soft law, as many Communications to the Council were published dealing with specific tax obstacles, such as anti-abuse measures, cross-border loss relief, exit taxation, coordination of Member States in taxation issues, double taxation, aggressive tax planning, good governments in the area of taxation and others. Until 2012, the EU performed several steps to address tax evasion and avoidance, such as expanding the automatic exchange of information widely within the EU, it proposed provisions to close loopholes in the Parent-Subsidiary Directive, it established a Platform on Tax Good Governance, it agreed on new instruments (reverse charge mechanism) to better fight VAT fraud, it launched the debate on Digital Taxation and others.[29] However, concerning EU corporate tax legislation, only six Directives solving partial tax issues were approved and implemented by Member States, and one further Convention was agreed upon by Member States.[30] The situation absolutely changed during the second decade of the twenty-first century.[31]

After the Millennium, one of the most important outcomes was the founding of the Global Forum on Transparency and Exchange of Information for Tax Purposes,[32] initiated by the OECD and the G20 countries. The main goal of the Forum is to establish and evaluate global/international standards for information exchange, specifically, the standard for Exchange of Information on Request (EOIR)[33] and the standard for Automatic Exchange of Information (AEOI[34]). These are in parallel with the American Foreign Account Tax Compliance Act[35] (FATCA 2010), followed by inter-governmental agreements on the mutual automatic exchange of information with the United States, which has generated

90/435/EEC of 23 July 1990, amended by 2003/123/EC of 22 December 2003, the Merger Directive—Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States, this act has been changed—current consolidated version: 01/07/2013; the Saving Directive (see Note 23); the Interest and Royalties Directive—Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (see Note 24); the Mutual Assistance Directive (see Note 20) and the Arbitration Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, (90/463/EEC) of 23 July 1990.

[29]See more in European Commission (2013).

[30]See above.

[31]See the following section.

[32]For more details about the Forum see: http://www.oecd.org/tax/transparency/.

[33]For more details about the EOIR and Exchange of information see: http://www.oecd.org/tax/transparency/what-we-do/exchange-of-information-on-request/exchange-of-information-on-request-peer-review-process.htm.

[34]For more details about the AEOI and Exchange of information see: http://www.oecd.org/tax/automatic-exchange/. In 2015, more than 90 countries committed to the AEOI and gradually joined the Common Reporting Standard Multilateral Competent Authority Agreement.

[35]For more details see: https://home.treasury.gov/policy-issues/tax-policy/foreign-account-tax-compliance-act. Furthermore, there are available FATCA agreements and understandings in effect by jurisdiction.

significant political momentum for the development of a global automatic exchange standard. The Forum gradually prepared support and control systems for tax information exchange, and it currently has 161 member states.[36]

Furthermore, with the support of the OECD and the EU in the fight against harmful tax competition, there has been a visible trend in tax policy as several countries are broadening their tax bases with the aim of reaching a sufficient volume of tax revenues and introducing various types of specific anti-abuse regimes. These include transfer pricing standards, Controlled Foreign Company legislation (CFC rules), Specific Anti-Avoidance Rules (SAARs[37]), or General Anti-Avoidance Rules (GAARs), in their domestic corporate tax systems with the aim of protecting their taxable base and tax revenues.[38] However, corporate taxation is very sensitive to international taxation when the correct allocation of taxing rights requires a global solution together with the implementation of complex rules. Corporate taxation is also fickle about international tax planning and harmful tax competitiveness when some countries restrict national tax sovereignty of other countries and erode their tax bases. With this connection, many experts[39] have highlighted that the current international tax rules and principles are not sufficient enough to eliminate tax evasion, aggressive tax planning, profit shifting and tax base erosion, and therefore they are incompatible with today's global economy. Moreover, the experts stress that those principles are based on a fundamental misunderstanding how today's MNEs are performing in their businesses compared to when those principles were incorporated into the OECD Model Convention or the UN Model Convention and subsequently into corporate income taxation at the national level (in some cases). The nature of business and technology were absolutely different then, than today.[40]

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[36]Furthermore, based on the Statistics, in 2020 there were already 4400 activated bilateral exchange relationships within the common reporting standards (CRS) and over 2700 within Country-by-Country Reporting. These include exchanges between the signatories to the CbC Multilateral Competent Authority Agreement (CbC MCAA), between EU Member States under EU Council Directive 2016/881/EU known as DAC 4, and between signatories to bilateral competent authority agreements for exchanges under Double Tax Conventions or Tax Information Exchange Agreements, including 41 bilateral agreements with the United States. For more information about CbC MCAA, see: https://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/.

[37]SAARs are typically very targeted legal statements that remove or reduce the tax effect of certain transactions. Unlike SAARs, a GAAR is intended to apply to all types of transactions and arrangements with the aim of counteracting tax advantages arising from tax arrangements that are abusive.

[38]For more details see also Pistone (2016).

[39]Avi-Yonah and Clausing (2007), Durst (2010, 2011), Avi-Yonah and Benshalom (2010), Keuschnigg and Devereux (2013), Taylor et al. (2015), Solilová and Nerudová (2019), Bartelsman and Beetsma (2000), Wells and Lowell (2014), Hines and Rice (1994) and Huizinga and Laeven (2008) and many others.

[40]For example, until the collapse of the Breton Woods system (early 1970s), the international capital flow was controlled, furthermore, intra-group transactions between associated enterprises were not so significant as they are nowadays. Intra-group transactions between associated enterprises have increased since the 1970s and 1980s, when IT technology (PC and internet) allowed the coordination between MNEs and also the global capital market was reconstructed so that European

Therefore, profit shifting and tax base erosion is performed more easily and the divergence of national corporate income tax systems has created loopholes for mismatches and supported aggressive tax planning.

As a result, another trend during the second decade of the twenty-first century has been global efforts to solve aggressive tax planning, tax evasion, profit shifting and tax treaty abuse via the BEPS project[41] started in 2013, and the global call for increased tax transparency and exchange of information for tax purposes.[42]

4 The Fight Against Tax Base Erosion and Tax Fraud

The OECD (2013) underscores that tax base erosion poses a risk towards tax revenue, tax sovereignty and tax fairness across OECD countries and non-OECD countries alike. To avoid this practice, in February 2013, the OECD, G20 and then also the EU,[43] launched the BEPS project. The BEPS project is the most ambitious project in the history of international taxation. It covers 15 Action plans[44] focusing on huge areas of international tax issues which are crucial for elimination of aggressive tax planning, profit shifting, tax base erosion, and tax treaty abuse. It helps to ensure better tax transparency, tax coordination, fairer taxation and solutions for international tax disputes. The main aim is to design new international tax standards which would be globally applied. Therefore, minimum standards were designed for some recommendations, specifically for the following: Action 5—Harmful tax practices; Action 6—Prevention of tax treaty abuse; Action 13—Country-by-Country Reporting; and Action 14—the Mutual Agreement Procedure. These are considered to be crucial steps and should be introduced/applied in coordinated ways to ensure timely and accurate implementation by all participating states. Minimum standards are also a subject of peer review. For this purpose, the

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and Japanese MNEs returned to the global FDI scene, where only the US MNEs remained. Moreover, since the 1960s, the use of offshore, and also onshore jurisdictions, offering some preferential tax regimes was more often across MNEs. For more details, see Dunning and Lundan (2008).

[41]BEPS project, see in detail: https://www.oecd.org/tax/beps/about/.

[42]For more details see: http://www.oecd.org/tax/transparency/what-we-do/.

[43]The EU confirmed support for work within the BEPS project in May 2013, see Council document 9405/13.

[44]Specifically Action 1-Tax Challenges Arising from Digitalisation; Action 2-Neutralising the effects of hybrid mismatch arrangements; Action 3-Controlled Foreign Company; Action 4-Limitation on Interest Deductions; Action 5-Harmful tax practices; Action 6-Prevention of tax treaty abuse; Action 7-Permanent establishment status; Actions 8–10—Transfer pricing; Action 11-BEPS data analysis; Action 12-Mandatory Disclosure Rules; Action 13-Country-by-Country Reporting; Action 14-Mutual Agreement Procedure; and Action 15-Multilateral Instrument. Final reports covering recommendations are mentioned in the link for each action. For more details see: https://www.oecd.org/tax/beps/beps-actions/.

Inclusive Framework on BEPS[45] was established, whereby all members commit to implementing the minimum standards and participating in peer review.

Each action tries to cover a complex view of the issues and find appropriate solutions. There is a brief summary of individual actions with results reached. Action 1 focuses on the digital economy and related taxation issues (both direct and indirect taxes, tax policy and tax administrations), with the aim of fitting international tax rules for purposes in the modern global economy, where digitalization, mobility, intangible assets, centrality of data, network effects, and new business models represent key elements. It covers amendments of the current nexus rule (which is based on physical presence), re-allocation of taxing rights and profit allocation rules (based on the arm's length principle) with the aim of reaching a comprehensive consensus-based solution which is able to secure tax equity amongst traditional and digital businesses, as well as appropriately taxing and allocating profits resulting from digital businesses between states and eliminating profit shifting of profits to low or no tax jurisdictions facilitated by new (digital) technologies.[46] The solution requires the application of the new Multilateral Instruments[47] (MLI), which are currently in the process of approval, or are being enforced in many countries, and which can speedily modify existing bilateral tax agreements which have been brought to their conclusion.

Action 2 focuses on hybrid and branch mismatch arrangements[48] used in aggressive tax planning to achieve double non-taxation or another tax advantage resulting in enormous tax base erosion of participating states. Other negative aspects of these mismatches are harm to competition, economic inefficiency, and unfairness and non-transparency in taxation.[49] The solution requires amendments to tax treaty provisions (limitation of tax treaty benefits) via multilateral instruments and improvement or introduction of domestic law provisions, such as prevention of exemption or non-recognition of payments, elimination of double deduction or double tax relief, such as an exemption from tax, a reduction in the rate of tax or any credit or refund of tax. Since the announcement of BEPS' Action 2 recommendations, a number of countries have adopted rules to address hybrid and branch mismatches.[50] As for the European perspective, the new Directive[51] was adopted introducing hybrid and branch mismatch rules with an effective date no later than the beginning of 2020.

[45]Until beginning of 2021, it covers over 135 members and 14 observer organisations.

[46]For more details, see OECD (2015b).

[47]For more details about the MLI see OECD (2016a, 2020b).

[48]Usage of differences in the tax treatment of an entity/financial instrument/branch structure under the domestic laws of two or more tax jurisdictions with an aim of reaching tax advantages and/or double non-taxation.

[49]See more in OECD (2015c).

[50]For example, the USA, Australia, New Zealand, and EU Member States (see below).

[51]Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 regarding hybrid mismatches with third countries. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ:L:2017:144:FULL&uri=uriserv:OJ.L_.2017.144.01.0001.01.ENG.

Action 3 focuses on designing effective controlled foreign company rules (CFC rules) which are able to effectively neutralize the possible advantages reached in low-tax countries with previously shifting profits, i.e. the elimination of inappropriate shifting profits to foreign entities/subsidiaries. BEPS recommendations are in the form of building blocks covering the definition of the CFC rule, exemptions and threshold requirements, definition of income subject to the CFC rule, computation of CFC income, attribution of CFC income and prevention and elimination of double taxation.[52] Unfortunately, this new measure is not considered a minimum standard. However, until mid-2019, 49 countries introduced this rule together with the EU Member States who introduced it based upon the ATAD Directive[53] with the effective date being 1 January 2019.

Action 4 focuses on limiting base erosion involving interest deductions and other financial payments which are used by MNEs with the aim of reaching favorable tax results, such as reduction of the tax base via excessive interest expense in high tax countries, using intragroup financing to support the generation of tax-exempt or deferred income, and the reaching of double non-taxation. Debt channel is considered as one of the most often used profit-shifting techniques among MNEs. However, similarly, as in case of the CFC rule, limitation of interest deductions is not considered to be a minimum standard. BEPS recommendations are in the form of a rule connecting net interest deductions to the level of economic activity measured via EBITDA, the so called interest deduction limitation rule (EBITDA rule).[54] According to the OECD Corporate Tax Statistics,[55] published July 2020, 67 countries are in the process of designing an interest limitation rule, and another 67 countries introduced an interest limitation rule in 2019. Regarding the European perspective, EU Member States are implementing this rule based upon the ATAD Directive.[56]

Action 5 focuses on harmful tax practices, taking into account transparency and the substance of this phenomenon, particularly with respect to the assessment of substantial activity/features for any preferential tax regime and no, or only nominal, tax jurisdictions, and the exchange of information on the rules in that regime.[57] This action represents the first of four BEPS minimum standards. Concerning preferential tax regimes, under Action 5, a review and monitoring was undertaken of preferential tax regimes, consolidated regimes, and non-IP regimes, as well as a review of no, or only nominal, tax jurisdictions. Regarding the transparency framework, under

[52]See more in OECD (2015d).

[53]Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016L1164.

[54]For more details, see OECD (2016b).

[55]See OECD Corporate Tax Statistics Database, OECD (2020a).

[56]Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016L1164.

[57]For more details see OECD (2015e).

Action 5, standards for the exchange of information on tax rulings[58] was introduced together with terms of reference[59] and methodology[60] for peer reviews. Regular peer review and monitoring is conducted by the Forum on Harmful Tax Practices (FHTP). Furthermore, the standards[61] for the spontaneous exchange of information were introduced.

Action 6 represents the second of four BEPS minimum standards as it is one of the most important source of BEPS interest. It addresses prevention of tax treaty abuse, such as treaty shopping, through new treaty provisions with the aim of reaching treaty benefits in inappropriate circumstances. The action also focuses on the identification of fiscal policy criteria which should be taken into account when jurisdictions are entering into a tax treaty agreement. Under Action 6, based upon BEPS recommendations, members of BEPS Inclusive Framework have to include in their tax treaties provisions eliminating treaty shopping (generally in the preamble a precise statement on non-taxation, and furthermore it should contain one of three methods of addressing treaty shopping—the principal purposes test (PPT), a limitation on benefits (LOB) provision, or a combination of both) to ensure a minimum level of protection against treaty abuse.[62] Additionally, to foster the implementation of the minimum standards and other BEPS treaty-related measures in the global tax treaty network, a multilateral instrument is applied. According to a regular peer review in 2018 and 2019 a large majority of members are modifying their treaty network via MLI; some of the amended tax treaties have been in force since 1 January 2019.

Action 7 deals with the permanent establishment status and its artificial avoidance. The aim of the action is to change its definition in order to prevent its abuse. As the permanent establishment status is considered an allocation rule, i.e. it gives taxing rights to the Source state to tax income generated through permanent establishment, it is crucial to update its definition and prevent the artificial avoidance of this status. Artificial avoidance of permanent establishment statues results in untaxed income or taxation of income at a lower tax rate. BEPS recommendations include several changes, such as the elimination of a number of exceptions; a restriction of preparatory or the auxiliary nature of activities; changes related to construction sites (activities performed by related person/associated enterprises and the splitting-up of contracts); or intermediary activities resulting in the regular conclusion of contracts that give rise to permanent establishment status. The current OECD Model Tax

[58]For this purpose, the Exchange on tax rulings (ETR) XML Schema, User guide standardised electronic format and the ETR Status Message XML Schema were created for exchange between jurisdictions. Since 1 April 2020 their second version has been introduced and used.

[59]It focuses on the information gathering process, exchange of information, confidentiality of information received and statistics.

[60]It includes the process for collecting relevant data based upon the standardised questionnaires, the preparation of reports and their approval, and outputs of the review.

[61]It includes requirements of the standards, exchange timelines, and standardizes IT format for the exchange and NTJ XML Schema.

[62]For more details see OECD (2015f).

Convention[63] integrated the suggested changes in its 2017 updates. Moreover, due to the fact that changes are required in the tax treaty network, the MLI is applied to modify existing tax treaties, specifically Articles 12 to 15 of the MLI Convention.[64] Until the beginning of 2021, almost 50 jurisdictions and MLI Signatories adopted suggested changes of PE status via MLI.

Actions 8 through 10 focus on transfer pricing, specifically on aligning transfer pricing outcomes with value creation of MNEs. Nevertheless, the arm's length principle is a more than 100 year old standard and there is proof that profit shifting is occurring, regardless of the existence of this standard. The opinion of many experts[65] is that it does not reflect economic reality and cannot ensure the fairest and be the most reliable basis for the determination of where profits are to be taxed; still, no adequate substitute has been found. Therefore, the aim is to strengthen both the key standard, the arm's length principle, and proceed towards sufficient and appropriate pricing of hard-to-value intangibles (HTV) within this standard. Moreover, due to globalization and rapid digitalization, it is also necessary to improve its guidance, i.e. OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations[66] (OECD TP Guidelines) to ensure appropriate application of the standards aligning with the global economy, economic activity carried out and value creation of MNEs.[67] BEPS recommendations include several changes, such as those related to comparability analysis, intangibles, risks and capital, allocation of risks, profit split method, high-risk transactions (management fee; head office expenses) and others. However, not all suggested changes were incorporated into the latest updated version of the OECD TP Guidelines in 2017.[68] Up until the

[63]See in detail OECD (2017a).

[64]Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI Convention), Article 12—Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies, Article 13—Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions, Article 14—Splitting-up of Contracts, Article 15—Definition of a Person Closely Related to an Enterprise. Available at: https://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf.

[65]Hines and Rice (1994), Bartelsman and Beetsma (2000), Swenson (2001), Huizinga and Laeven (2008), Avi-Yonah and Clausing (2007), Durst (2010, 2011), Avi-Yonah and Benshalom (2010), Keuschnigg and Devereux (2013), Wells and Lowell (2014), Taylor et al. (2015), and others.

[66]See more in Schoueri (2015). The current version of the OECD TP Guidelines are available at: https://www.oecd.org/tax/transfer-pricing/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-20769717.htm. However, up until the beginning of 2021, the guidelines were updated several times; separate updates were not included in the comprehensive version of the OECD TP Guidelines. The comprehensive version of the OECD TP Guidelines should be available by early 2021.

[67]For more details see OECD (2015g).

[68]In the 2017 version, the following changes were incorporated: statements aligning transfer pricing outcomes with value creation and related transfer pricing documentation and Country-by-Country Reporting (amendments in Chap. I, II, V, VI, VII and VIII); changes in the guidance on business restructuring related to Actions 8–10 and 13; and changes on guidance for safe harbours in Chap. IV, OECD (2017b).

beginning of 2021, the document was updated several times[69] without integration into the comprehensive version of the OECD TP Guidelines.

Action 11 deals with the establishment of methodology to collect, analyze and monitor data on BEPS measures. At the beginning of BEPS, corporate tax losses were estimated to be between 4–10% of global corporate income tax revenues (OECD 2015a). However, before the BEPS project started, there was not sufficient availability of quality data that could be used to determine the overall economic and fiscal effects of aggressive tax avoidance, profit shifting and tax base erosion. Therefore, it is crucial to increase the quality of data, analytical tools available and methodical approaches in order to determine the overall impact of this undesirable behavior/activity and evaluate the effects of implemented BEPS measures. Under Action 11, new and enhanced datasets and analytical tools are currently available. Furthermore, the Corporate Tax Statistics database[70] was first presented in January 2019 (updated in July 2020) and compiles quality and a variable range of data to support the analysis of corporate taxation and BEPS measures for more than 100 jurisdictions. Since 2020, Corporate Tax Statistics have also included aggregated and anonymized statistics based upon CbCR (according to the Action 13); Inclusive Framework on BEPS is responsible for this action.[71]

Action 12 requires taxpayers to disclose aggressive tax planning arrangements, with the aim of securing timely, targeted, enforceable and comprehensive information for governments to sufficiently identify tax risk areas raised by aggressive tax planning. Under Action 12, a mandatory obligation to disclose aggressive tax planning schemes are recommended. Moreover, it provides a modular framework for designing this regime together with specific recommendations both for rules targeting international tax schemes and the improvement of information exchange and co-operation between tax authorities.[72] Concerning the European perspective, EU Member States implemented mandatory disclosure rules for cross-border arrangements based on Directive DAC 6,[73] and incorporated the rules set out in

[69]Such as Revised Guidance on the Application of the Transactional Profit Split Method-BEPS Action 10 published in June 2018 (available at: https://www.oecd.org/tax/transfer-pricing/revised-guidance-on-the-application-of-the-transactional-profit-split-method-beps-action-10.htm), Guidance for Tax Administrations on the Application of the Approach to Hard-to-Value Intangibles - BEPS Action 8 published in June 2018 (available at: https://www.oecd.org/tax/transfer-pricing/guidance-for-tax-administrations-on-the-application-of-the-approach-to-hard-to-value-intangibles-beps-action-8.htm),Transfer Pricing Guidance on Financial Transactions: Inclusive Framework on BEPS: Actions 4, 8–10 published in February 2020, available at: https://www.oecd.org/tax/beps/oecd-releases-transfer-pricing-guidance-on-financial-transactions.htm.

[70]For more details, see OECD (2020a) Corporate Tax Statistics database, OECD (2020a).

[71]For more details, see OECD (2015h).

[72]For more details, see: OECD (2015i).

[73]Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU regarding mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018L0822. The Directive took effect from July 2020. Implementation was postponed due to the Covid-19 pandemic.

the OECD report Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures,[74] published in 2018.

Action 13 represents the third of four BEPS minimum standards with the aim of eliminating transfer pricing and BEPS risks areas. Therefore, the minimum standard requires preparing a non-public CbCR for the purpose of tax administrations covering aggregate data in the global allocation of income, profit, taxes paid and economic activity among tax jurisdictions in which an MNE group operates, as well as the improvement of transfer pricing documentation. The first reported period was 2016, and a first exchange of CbCR took place in June 2018. Under the action,[75] the template of CbCR for MNE is available together with the CbC Reporting Implementation Package, which includes a legal framework for the filing requirements of CbCR and the fulfillment of this obligation, as well as a model of Competent Authority Agreements[76] to ensure the exchange of CbCRs. As a minimum standard, the implementation of CbCR must be reviewed and evaluated; currently the 2020 review should be finished. The Inclusive Framework on BEPS is responsible for this activity. As was mentioned in Action 11, since July 2020, the Corporate Tax Statistics OECD (2020a) have also included aggregated and anonymized statistics of CbCR data, specifically of nearly 4000 MNEs groups with headquarters in 26 jurisdictions and operating across more than 100 jurisdictions worldwide. According to the current available CbCR for 2016, 58 jurisdictions introduced this new mandatory disclosure rule and a further 90 jurisdictions are implementing this rule. Moreover, over 2500 relationships are in place for the exchange of CbCR between jurisdictions.

Action 14 focuses on the Mutual Agreement Procedure (MAP, presented by Article 25 of the OECD Model Tax Convention[77]) with the aim of resolving tax-related disputes more effectively. The Global tax treaties network contains this MAP provision, however, usually without para 5,[78] allowing them submission of unresolved issues to tax arbitration and to reach an agreement within a reasonable time limit. Due to this fact, a lot of unresolved MAPs are still open without solution and have resulted in double taxation.[79] Access to MAP and resolving tax disputes via MAP, within a reasonable timeframe and more effectively, is the key aim of this action. It represents the last of four BEPS minimum standards, which is responsible for the Inclusive Framework on BEPS. This includes introductions of BEPS

[74]See more in OECD (2018).

[75]See more details in OECD (2015j).

[76]Exchange of CbCRs can be performed via the Multilateral Convention on Administrative Assistance in Tax Matters, Bilateral tax conventions and Tax Information Exchange Agreements (TIEAs).

[77]See also OECD TP Guidelines, Chap. IV, OECD (2017b). The MAP procedure can also be opened through the EC Arbitration Convention on the elimination of double taxation in connection with the adjustment of profits on associated enterprises (90/463/EEC).

[78]Article 25, para 5 was incorporated into the OECD Model Tax Convention in 2008. In the case of the UN Model Tax Convention in 2011.

[79]See also: Schoueri (2016).

recommendations and their regular review and monitoring process, together with reporting of MAP statistics[80] and developing the reporting framework.[81] Under the action, BEPS minimum standard includes 21 elements and 12 best practices for the areas, including how to prevent disputes, how to access MAP, how to solve MAP cases and how to implement MAP agreements.[82]According to the last peer review (at the end of 2016; period 2016 to 2021; 45 reviewed jurisdictions from an overall 79 jurisdictions), many jurisdictions published guidelines on MAP, tax administrations are closing more MAP cases and new MAP cases are also increasing (access to MAP is also for transfer pricing issues—corresponding adjustments, where Article 9/2 was not covered in the tax treaty and access to MAP was not allowed). Furthermore, 990 recommendations have been issued for reviewed jurisdictions in order to be fully compliant with the BEPS minimum standard requirements. From a general point of view, the process of MAP is more effective, MAP cases are closed in a timely manner and access to MAP has increased. Currently, the second stage of peer review is being undertaken.

Action 15[83] deals with the development of a multilateral instrument via the MLI Convention.[84] The MLI offers rapid amendments of the global tax treaties network based upon the suggested BEPS recommendations, resulting in the closing of loopholes in international tax treaties allowing aggressive tax planning, tax abuse, profit shifting and tax base erosion. The MLI also allows implementing BEPS minimum standards in case of tax treaty abuse and MAP. Under the action, a toolkit for the MLI application, including an MLI Matching Database and interactive flowcharts, were developed[85] in order to ensure better and clearer interpretation and application of amended tax treaty provisions and a new MLI legal instrument. Since 2016, more than 100 jurisdictions from all continents have concluded negotiations on the MLI Convention, and more than 90 jurisdictions[86] have enforced the MLI starting 1 July 2018 with an effective date on 1 January 2019.

[80]Mutual Agreement Procedure Statistics for 2019 is available at: https://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm.

[81]MAP Statistics Reporting Framework is available at: https://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics-reporting-framework.pdf.

[82]For more details see: OECD (2015k). Further, also Schoueri and Galdino (2018).

[83]For more details, see: OECD (2015l).

[84]Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI Convention). Available at: https://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf. The explanatory statement providing clarification to the approach taken in the MLI and how each provision is intended to affect tax treaties is available at: https://www.oecd.org/tax/beps/explanatory-statement-multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf.

[85]Toolkit for Application of the Multilateral Instrument for BEPS Tax Treaty Related Measures, where the MLI Matching Database is available. Available at: https://www.oecd.org/tax/beps/application-toolkit-multilateral-instrument-for-beps-tax-treaty-measures.htm.

[86]For more about the MLI Positions of individual Signatories see: https://www.oecd.org/tax/beps/beps-mli-signatories-and-parties.pdf.

As it is obvious from the brief summary of BEPS actions and suggested recommendations, the coordination between all participating jurisdictions, which also requires tax transparency, is a very important aspect of the final solution. If the adoption of final recommendations and the BEPS minimum standards were not coordinated and participating states would have introduced recommendations differently, it could potentially give rise to more tax arbitrations, double taxation, distortions in the market, deter cross-border investment flows and globally worsen business environments. Therefore, international tax coordination has a priority, and as a global solution the OECD suggested the development of the MLI which helps to ensure a speedy introduction and application of new international tax standards and modifications of current tax treaties. However, some tax practitioners stress that new international tax practices are more complicated, as not only tax treaties, but also new amendments made via multilateral instruments, must be followed. Moreover, based on several recommendations in the case of each action, it is possible to expect that different rules (variants of recommended rules) would be implemented by participating states. The near future will show whether or not this is the best way, and how much profit shifting, tax base erosion and aggressive tax planning were eliminated.

To avoid the divergent introduction of BEPS recommendations across EU Member States, the European Commission approved ATAD Directive 2016/1164,[87] which lays down five anti-avoidance rules of minimum standards, of which four (the interest limitation rule, GAARs, the CFC rules and the hybrid mismatches rule), are largely consistent with BEPS recommendations, and the fifth (exit taxation) goes beyond the scope of BEPS. The implementation of the above rules[88] is needed to protect the EU's internal market against tax avoidance practices, thereby ensuring fair and effective taxation in the EU in a sufficiently coherent and coordinated manner. Moreover, ATAD represents a minimum level of protection and ensures the implementation of BEPS minimum standard package, which could be considered a suitable solution for the rest of the world. However, the ATAD Directive was not the only one to respond to BEPS. On January 2016, the Commission proposed the Anti Tax Avoidance Package[89] in order to reach fairer, simpler and more effective corporate taxation in the EU based upon strong and coordinated action against tax avoidance. Learning from past failures, the Commission used a combination of soft law (Communication from the Commission to the European Parliament and the

[87]See Note 53 above. The ATAD Directive was amended on 1 January 2020, in consolidated text: Council Directive (EU) 2016/1164 of 12 July 2016 lays down rules against tax avoidance practices that directly affect the functioning of the internal market; available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02016L1164-20200101.

[88]For more details about the implementation of those rules see chapter "Tax Policy in Relation to Fair Corporate Taxation".

[89]For more details about the Anti Tax Avoidance Package, see https://ec.europa.eu/taxation_customs/business/company-tax/anti-tax-avoidance-package_en.

Council) and hard law in the form of Directives. The Anti Tax Avoidance Package covers the above mentioned ATAD Directive, revision of the Administrative Cooperation Directive (DAC Directive),[90] recommendations on tax treaties[91] against tax treaty abuse, a new EU external strategy for effective taxation[92] and identification of aggressive tax planning among EU Member States. This package follows both the Tax Transparency Package,[93] presented by the Commission on 18 March 2015, with the aim of combatting corporate tax avoidance via tax transparency, specifically via the introduction of the automatic exchange of information between Member States on their tax rulings, and the EU Action Plan[94] for fair and efficient corporate taxation in the EU adopted by the Commission in June 2015.

Under revision of the DAC 1 Directive, all the necessary procedures in terms of exchange of information standards (spontaneous,[95] automatic[96] and on request[97]), were established together with the structure for a secure platform for cooperation in this field. The revision of DAC 1 addressed the political priority of fighting against aggressive tax planning and consequently, future developments in this field (fighting against profit shifting and tax base erosion). Since its adoption, the original Directive

[90]The predecessor of Council Directive 2011/16/EU, known as DAC 1, was a Mutual Assistance Directive released in 1977. Council Directive 2011/16/EU of 15 February 2011, known as DAC 1 is available at: https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32011L0016.

[91]See more: https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/anti_tax_avoidance/c_2016_271_en.pdf.

[92]See Communication from the Commission to the European Parliament and the Council on External Strategy for Effective Taxation COM/2016/024 final, available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016DC0024.

[93]For more details see: https://ec.europa.eu/taxation_customs/business/company-tax/tax-transparency-package_en.

[94]The EU Action Plan contains 5 Key Areas, specifically (1) Re-launching the Common Consolidated Corporate Tax Base (CCCTB), (2) Ensuring fair taxation where profits are generated, (3) Creating a better business environment, (4) Increasing transparency and (5) Improving EU coordination. For more details see: https://ec.europa.eu/taxation_customs/business/company-tax/action-plan-corporate-taxation_en. See also Commission's Action Plan on a Fairer Corporate Tax System (COM (2015) 302) to tackle tax avoidance: https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/fairer_corporate_taxation/com_2015_302_en.pdf.

[95]Spontaneous exchange of information takes place if a country finds out information on possible tax evasion relevant to another country (the source country or the country of residence).

[96]The automatic exchange of information secured automatic electronic channels for the exchange of information and a central directory for storing and sharing information on financial account information, advance cross-border rulings, CbCR, beneficial ownership information or on tax planning cross-border arrangements (tax planning schemes). The first experience in the automatic exchange of information came from the Directive 2003/48/EC known as the Savings Directive, which was repealed by DAC 2 (see Notes 23, 98).

[97]Exchange of information upon request is used when additional information for tax purposes is needed from another country.

DAC1 has been amended five times (DAC 2–6[98]) with the aim of strengthening administrative cooperation and tax transparency among EU Member States. All EU DAC Directives focus on a wide range of information exchange, such as information on non-financial categories, financial account information, advanced cross-border rulings, CbCR, beneficial ownership information or on tax planning cross-border arrangements. With respect to CbCR, it should be highlighted that in the EU other CbCRs are required in the case of specific sectors, specifically for extractive industries and logging of primary forests under the Accounting Directive 2013/34/EU,[99] and for financial institutions under the Capital Requirements Directive 2013/36/EU, known as CRD IV.[100]

Regarding CbCR, from the transfer pricing perspective, the EU transfer pricing documentation requirements[101] do not currently provide any mechanism for the provision of a CbCR contrary with the OECD TP Guidelines where three parts of transfer pricing documentation are newly recommended (i.e. Master File, Local File and CbCR).[102] CbCR is mandatory and automatic exchange is based upon DAC 4 (Directive 2016/881) and all requirements are in line with the international developments of the OECD.[103]

[98]Directive 2014/107/EU (known as DAC 2) dated 9 December 2014 amending Directive 2011/16/EU regarding mandatory automatic exchange of information in the field of taxation in relation to financial account information, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0107. Furthermore, Commission Implementing Regulation (EU) 2015/2378 dated 15 December 2015 laying down detailed rules for implementing certain provisions of Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Implementing Regulation (EU) No 1156/2012, available at: https://eur-lex.europa.eu/eli/reg_impl/2015/2378/oj. Council Directive (EU) 2015/2376 (known as DAC 3) dated 8 December 2015 amending Directive 2011/16/EU (known as DAC 1) concerning mandatory automatic exchange of information in the field of taxation in relation to advanced cross-border rulings and advanced pricing arrangements, available at: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32015L2376. Council Directive (EU) 2016/881 (known as DAC 4) dated 25 May 2016 amending Directive 2011/16/EU regarding mandatory automatic exchange of information in the field of taxation in relation to CbCR, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L0881. Council Directive (EU) 2016/2258 (known as DAC 5) dated 6 December 2016 amending Directive 2011/16/EU concerning access to anti-money-laundering information by tax authorities (to beneficial ownership information), available at: https://eur-lex.europa.eu/legal-content/CS/ALL/?uri=uriserv%3AOJ.L_.2016.342.01.0001.01.ENG. Council Directive (EU) 2018/822 (known as DAC 6) dated 25 May 2018 amending Directive 2011/16/EU regarding mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018L0822.

[99]For more details see http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0034&from=EN.

[100]For more details see http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:176:0338:0436:En:PDF.

[101]EU Transfer pricing documentation and its requirements are mentioned in the Code of Conduct, covering a master file and country specific documentation.

[102]For more details see OECD (2017b), TP Guidelines, Chap. V–Documentation.

[103]For the comparison of OECD CbCR requirements and EU CbCR requirements, see Solilová and Nerudová (2019).

Recommendations on tax treaties against tax treaty abuse, as the third part of the Anti Tax Avoidance Package, follows BEPS recommendations and advises Member States how to improve their tax treaties against abuse by compliance with the EU law. Furthermore, it is also advisable to introduce GAARs and revise the definition of permanent establishment.

Concerning the EU external strategy for effective taxation, the Commission presents a stronger and more coherent EU position in order to introduce and implement BEPS minimum standards in the EU with the aim of promoting good tax governance globally and ensuring effective taxation, and working harder with third countries on good tax governance matters. It also takes into account the creation of a common EU list of non-cooperating third countries for tax purposes. In that respect, in 2016 the Economic and Financial Affairs Council (Ecofin) introduced criteria for screening jurisdictions for the purpose of creating an EU list of non-cooperative jurisdictions which is updated annually. The criteria focus on tax transparency (including information exchange upon request, implementation of Common Reporting Standards for automatic exchange of information and its exchange via the Multilateral Competent Authority Agreement or a bilateral agreement), fair taxation and implementation of BEPS recommendations (namely, minimum standards). The current list adopted by the Council on 6 October 2020, is composed of the following: American Samoa, Anguilla, Barbados, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, the US Virgin Islands, Vanuatu and Seychelles of which Anguilla, Barbados, Panama, Seychelles and Trinidad and Tobago represent countries with major transparency concerns.

The last part of the Anti Tax Avoidance Package presented is the identification of aggressive tax planning among EU Member States via studies on these practices and Member States' corporate tax rules used for the purpose of avoiding taxation.[104]

Finally, a very important step performed by the EU, which should be mentioned, is related to taxation of the digital economy. Terada-Hagiwara et al. (2019) and Devereux and Vella (2014, 2017) stress that digital economy growth can lead to tax revenue losses, missing taxable matters, unclear income characterization and ineffective tax collection (direct and indirect taxes). Aware of the seriousness and significant distortions within the Internal market which can arise through non-taxation of digital businesses, in 2017 the European Commission released a Communication on a Fair and Efficient Tax System in the European Union for the Digital Single Market.[105] Later in 2018, the European Commission proposed new

[104]See the list of all Taxation papers published and available since 2004, available at: https://ec.europa.eu/taxation_customs/publications/taxation-services-papers/taxation-papers_en.

[105]European Commission, Brussels, 21.9.2017, COM(2017) 547 final. Communication from the Commission to the European Parliament and the Council: A Fair and Efficient Tax System in the European Union for the Digital Single Market, available at: https://ec.europa.eu/taxation_customs/sites/taxation/files/communication_taxation_digital_single_market_en.pdf.

rules to ensure that digital business activities are taxed in a fair and growth-friendly way in the EU, including two proposals.[106]

5 Post-communist Countries with Respect to Aggressive Tax Planning Opportunities and Tax Base Erosion

There have only been a few studies measuring base erosion or profit shifting focus on post-communist countries.[107] In the case of the Czech Republic, Moravec et al. (2019) proved there's a significant impact of profit shifting on corporate tax revenue for the period of 2013–2015, particularly the corporate revenue losses were determined to be CZK 9404 mil. in 2013 with an increasing tendency (i.e. in 2015, CZK 10,377 mil.). Janský (2018) is also focusing on profit shifting in Czechia and estimated that profit shifting leads to an average loss of 10% of corporate income tax revenue. He further stresses that current trends are to overlook the issue of profit shifting in Central Europe. In their previous research, Janský and Kokeš (2015, 2016) argue the relevance of BEPS for the Czech Republic and confirm the debt financing profit shifting from the Czech Republic to Luxembourg, Switzerland and the Netherlands. Similarly, it is also the case in the Slovak Republic. Ištok and Kanderová (2019a, b) proved profit shifting through debt financing techniques to low-tax jurisdictions, or to tax havens through general profit shifting techniques (Khouri et al. 2019). In the case of Visegrad countries, Nerudová et al. (2020) concludes that a one-unit increase in tax differential will lead to a less than one percent tax revenue loss in such countries, which is similar to results in other areas, also in Nerudová et al. (2018, 2019).

According to the Study on Structures of Aggressive Tax Planning and Indicators (European Commission 2015), aggressive tax planning opportunities offered by post-communist countries before BEPS recommendations can be identified (see Table 1).

All 11 CEE-EU countries exhibit indicators relating to interest-cost and its tax-deductibility, namely indicator 9. The tax deduction does not depend on the

[106]Brussels, 21.3.2018, COM(2018) 147 final. Proposal for a COUNCIL DIRECTIVE laying down rules relating to the corporate taxation of a significant digital presence {SWD(2018) 81 final}—{SWD(2018) 82 final}, available at: https://ec.europa.eu/taxation_customs/sites/taxation/files/proposal_significant_digital_presence_21032018_en.pdf, and Brussels, 21.3.2018, COM(2018) 148 final. Proposal for a COUNCIL DIRECTIVE on the common system of a digital services tax on revenues resulting from the provision of certain digital services.

{SWD(2018) 81}—{SWD(2018) 82}, available at: https://ec.europa.eu/taxation_customs/sites/taxation/files/proposal_common_system_digital_services_tax_21032018_en.pdf. For more details see link: https://ec.europa.eu/taxation_customs/business/company-tax/fair-taxation-digital-economy_en.

[107]We focus on Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, the Slovak Republic and Slovenia. This group of countries is considered to be CEE-EU countries.

Table 1 Summary of ATP indicators in the CEE-EU countries (European Commission 2015)

Country	Active indicator	Lack of anti-abuse indicator	Passive indicators	Set of combined indicators
Bulgaria	10	4, 9, 11, 24, 26, 27	1, 8, 19	1 + 4 8 + 9
Croatia	10	4, 9, 11, 15, 24, 26, 27	3, 8, 19, 22	8 + 9
Czech Republic	n/a	9, 24, 26, 27	1, 8, 18, 19, 22	8 + 9
Estonia	n/a	9, 12 and 13, 24, 26, 27	1, 2, 8, 14, 19	1 + 2 8 + 9 + 12 + 13 + 14
Hungary	10 and 17	9, 11, 27	1, 2, 8, 14, 20, 18, 19, 25	1 + 2 8 + 9 + 14 19 + 20
Latvia	n/a	4, 9, 15, 21, 24, 26, 27	1, 3, 8, 19, 22, 25	1 + 3 + 4 8 + 9 + 15 19 + 21
Lithuania	n/a	4, 6, 9, 26, 27	1, 8, 19, 22, 23, 25	1 + 4 8 + 9
Poland	n/a	4, 9, 15, 21, 26, 27, 32	8, 19, 22, 23	8 + 9 + 15 19 + 21
Romania	n/a	4, 6, 9, 21, 24, 26, 27	1, 8, 19, 25	1 + 4 8 + 9 19 + 21
Slovak Republic	n/a	9, 24, 26, 27	1, 2, 8, 19, 22	1 + 2 8 + 9
Slovenia	n/a	4, 9, 15, 21, 24, 26, 27, 32	8, 19, 25	8 + 9 + 15 19 + 21

Note: for explanation of the indicators, see Table A.1 in chapter "Economic Analysis from the Macro Perspective" or in the Annex of the study

tax treatment in the creditor's state, it is covered by indicator 9 in the group of lack of anti-abuse measures. Croatia, Bulgaria, Hungary, Latvia, Poland and Slovenia represent countries which combine indicator 9 with one or both indicators 11 or 15, i.e. no taxation of benefit from interest-free debt and no beneficial-owner test for reduction of withholding tax on interest. Moreover, all eleven CEE-EU countries combine passive indicator 8 (tax deduction for intra-group interest costs) with any or all of indicators 9, 11, or 15, which allow general deductibility of interest costs without making it conditional on the creditor being taxed on the interest income or a beneficial-owner test as a condition for withholding tax exemptions. Therefore, the general point of view is that it allows tax base erosion via financing costs. Moreover, Hungary represents a country without effective withholding tax on interest payments under domestic law, similar to Estonia. However, Estonia is also a country without effective thin-capitalization rules and interest-limitation rules. So generally, there is room for tax base erosion via financing costs in CEE-EU countries.

In contrast with the interest-cost theme discussed above, four CEE-EU countries (Bulgaria, Latvia, Lithuania and Romania) combined indicators related to dividends.

That is to say, indicator 1 is too generous of a tax-exemption on dividends received, along with any of the indicators 2–4 representing no withholding tax on dividends paid or on dividend equivalents and no beneficial-owner test for reduction of withholding tax on dividends. Furthermore, only the Czech Republic, the Slovak Republic, Hungary and Estonia were identified as countries where the beneficial-owner test for reduction of withholding tax on dividends is applied; among the rest of the CEE-EU countries it is not.

Regarding interest income, only Lithuania and Romania were identified as a country where income from certain hybrid instruments is considered non-taxable. Moreover, all eleven CEE-EU countries (partly Hungary) do not counter the mismatching tax qualification of domestic partnership/company between one's own state and a foreign state (i.e. indicators 26 and 27) which can lead to hybrid or reverse hybrid mismatches and result in double deductions for the same costs, i.e. tax base erosion. In addition, Hungary, Latvia, Lithuania, Romania and Slovenia also do not follow tax qualifications of foreign partnerships like those of foreign states.

Furthermore, eight CEE-EU countries (the Czech Republic, the Slovak Republic, Bulgaria, Croatia, Estonia, Latvia, Romania and Slovenia) do not have CFC rules in force (i.e. indicator 24).

Regarding royalty or other IP costs, all eleven CEE-EU countries allow tax deduction for intra-group royalty costs, when only six countries (the Czech Republic, Croatia, Latvia, Lithuania, Poland and Romania) have in force R&D tax incentives also for costs that are reimbursed. Moreover, Latvia, Poland, Romania and Slovenia do not have a beneficial-owner test for reduction of withholding tax on royalty, and only Hungary did not introduce withholding tax on royalty payments under domestic law. Hungary was also identified as the only CEE-EU country where patent box or other preferential tax treatment of income from an IP is introduced. Moreover, Hungary also represents the country without effective taxation on capital gains upon transfer of an IP, similar to the Czech Republic.

Furthermore, only Lithuania and Poland allow group taxation with an acquisition holding company from all CEE-EU countries. Poland together with Slovenia also represent countries without general or specific anti-avoidance rules to counter the model ATP structures.

Finally, with respect to the set of combination of indicators it is possible to conclude that:

- all 11 CEE-EU countries allow general deductibility of interest costs without making it conditional on the creditor being taxed on the interest income;
- 7 CEE-EU countries are too generous with tax-exemptions on dividends received together with no beneficial-owner test for reduction of withholding tax on dividends or no withholding tax on dividends paid under domestic law; and

- 5 CEE-EU countries allow tax deduction for intra-group royalty costs in combination with no beneficial-test for reduction of withholding tax on royalty or no withholding tax on royalty payments under domestic law.

It is obvious that there is a room for tax base erosion and profit shifting in CEE-EU countries before the BEPS project started and until anti avoidance rules are introduced. Regarding the roles of entities included in ATP structures, there is another important study by European Commissions (2017). The study focuses on ATP structures using interest payments (debt channel), royalty payments (IP profit shifting channel) and using strategic transfer pricing (TP channel) and the distinguished individual role of an entity in ATP structures (i.e. target entities,[108] lower-tax entities[109] and conduit entities[110]). As it is obvious from Table 2, the highest portion of entities is represented by the transfer pricing channel, the IP profit shifting channel is the second most often used channel and the last one is represented by a debt channel across CEE-EU countries. Furthermore, lower-tax entities are preferred in all cases than target entities. Together with the previous results, it gives a comprehensive view of aggressive tax planning opportunities and tax base erosion within CEE-EU countries.

6 Conclusion

Profit shifting plays an important role in tax base erosion. The existence of profit shifting and tax base erosion appears mainly because of the international mismatches in entities; tax treaty abuse; the existence of preferential tax regimes; mispricing and artificial splitting of ownership of assets between legal entities; the low effectiveness of anti-avoidance measures and thin capitalization rules; and different treatment of Controlled Foreign Companies. The contribution of tax havens to profit shifting is extremely serious in this phenomena; as state Tørsløv et al. (2020) more than 40% of profits obtained by MNEs are directed towards tax haven countries through different profit shifting techniques.

[108] A target entity is an entity in a multinational group that has its tax base reduced as a result of aggressive tax planning. Moreover, at least one lower entity must be determined for the identification of a target entity within an MNE group. For further details, see European Commission (2017).

[109] A lower-tax entity is an entity in the multinational group that has its tax base increased as a result of aggressive tax planning, but the base is taxed at lower tax rate. Moreover, at least one target entity must be determined for the identification of a lower-tax entity within an MNE group. For further details, see European Commission (2017).

[110] A conduit entity is an entity in the multinational group that does not see its tax base significantly affected, but this entity is needed for an aggressive tax planning structure. A conduit entity cannot be identified as either the target or lower-tax entity. Moreover, at least one target entity must be determined to identify a conduit entity within an MNE group. For further details, see the European Commission (2017).

Table 2 Summary of roles of ATP structures using different channels (% of entities classified as) (European Commission 2017)

Country	Interest payments—debt channel			Royalty payments—IP profit shifting channel			Transfer pricing—TP channel		
	Target entity	Lower-tax entity	Conduit entity	Target entity	Lower-tax entity	Conduit entity	Target entity	Lower-tax entity	Conduit entity
Bulgaria	0.0	17.4	26.7	0.0	20.2	31.1	0.0	45.7	29.5
Croatia	1.5	3.1	30.5	4.2	11.4	34.0	10.0	27.8	30.2
Czech Republic	0.2	9.1	27.3	0.2	13.9	31.5	0.5	40.5	28.1
Estonia	1.9	1.7	24.4	3.9	6.1	29.6	10.3	25.0	23.3
Hungary	0.9	9.9	49.0	1.4	20.6	61.2	3.1	39.3	48.6
Latvia	0.0	10.3	23.9	0.1	11.6	27.8	0.1	39.1	26.1
Lithuania	0.0	4.5	28.3	0.1	20.2	35.6	0.2	40.0	32.9
Poland	0.2	12.5	33.4	0.3	19.6	40.2	0.5	44.9	35.3
Romania	0.1	8.7	17.3	0.3	15.3	19.8	0.6	42.5	19.9
Slovakia	1.4	7.8	17.3	1.6	13.2	36.7	2.7	34.3	28.3
Slovenia	4.2	13.0	38.0	5.7	22.5	36.9	11.6	35.0	34.5
High values[a]	–	*BG, PL, SI*	*HU*	–	*SI, HU, LT, BG, PL*	*HU*	–	*BG, PL, RO, CZ, LT, HU, LV*	–
Low values[a]	–	*EE*	*RO, LV, EE*	–	–	*RO, LV, EE*	–	–	*RO, EE, LV*

[a]Only countries from the CEE-EU region are mentioned

However, when corporate income taxation was introduced, i.e. in the pre-globalized era, the corporate income taxation did not give rise to such problems as we currently face. There are several reasons why we can consider corporate income taxation outdated, not only at national level, but also at the international level. These reasons include globalization, rapid digitalization, integration of financial markets, increased mobility, higher integration of MNEs activities and many others. Although a corporate income tax is a relatively "young" tax, from the EU perspective it was very difficult to harmonize it and improve its parts without having distortion effects on the Internal Market. The situation changed significantly during the second decade of the twenty-first century. Since the second decade of the twenty-first century, there have been global efforts to solve aggressive tax planning, tax evasion, profit shifting and tax treaty abuse via the BEPS project started in 2013, and a global call for increased tax transparency and exchange of information for tax purposes.

The BEPS project can be considered as the most ambitious project in the history of international and domestic taxation, it covers 15 Action plans focusing on huge areas of international tax issues, which are crucial for elimination of aggressive tax planning, profit shifting, tax base erosion, tax treaty abuse, and it helps to ensure better tax transparency, tax coordination, fairer taxation and solutions to international tax disputes. The main aim is to design new international tax standards which would be applied globally.

From the EU perspective, the EU introduced the Anti Tax Avoidance Package, Tax Transparency Package and the EU Action Plan for fair and efficient corporate taxation in the EU. To avoid the divergent introduction of BEPS recommendations across EU Member States, the European Commission approved the ATAD Directive laying down five anti-avoidance rules of minimum standards, of which four (interest limitation rule, GAARs, CFC rules and hybrid mismatches rule), are largely consistent with BEPS recommendations, and the fifth (exit taxation) goes beyond the scope of BEPS. Besides the ATAD Directive, the EU revised the DAC Directive to combat corporate tax avoidance via strengthening the administrative cooperation and tax transparency among EU Member States, namely, via the introduction of the automatic exchange of information, such as financial account information, advance cross-border ruling, CbCR, beneficial ownership information or on tax planning cross-border arrangements between Member States.

According to the Financial Secrecy Index 2020, it can be concluded that the automatic exchange of information, beneficial ownership registration and CbCR are considered to be the biggest reforms in the area of international taxation.

Regarding post-communist countries, there is a high risk of profit shifting and tax base erosion as these countries offer aggressive tax planning opportunities, and entities operating there are used in ATP structures of MNEs groups, mainly as low-tax entities and target entities. However, there are not many studies focusing on the determination of volume of profit shifting, tax base erosion and corporate tax revenue losses.

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