

Louvain School of Management

Tax avoidance of multinational enterprises through transfer pricing

The evolution of the battle against tax avoidance through transfer pricing and the impact of the new measures put in place

Author: Charlotte Wéber
Supervisor: Professor Marie Lamensch
Academic year 2022-2023
Dissertation for Master en sciences de gestion, à finalité spécialisée

Foreword

In today's complex international tax landscape, the issue of tax avoidance through transfer pricing has emerged as a significant challenge. To counter such practices, the Organization for Economic Cooperation and Development (OECD), the European Union, and national governments have been introducing various measures. This thesis delves into this complicated domain, seeking to identify the evolution of the efforts aimed at countering such practices and the impact implemented measures have had on this evolution.

In the pages that follow, the context of transfer pricing and the legal frameworks surrounding it are discussed. With the help of all participants to the interviews conducted as a part of this thesis, an overview of the evolution of the battle against tax avoidance through transfer pricing and the impact of the introduced measures is provided.

The work on the battle against tax avoidance through transfer pricing is ongoing. This thesis, which provides a review of the evolution on the battle against such practices and of the measures that have already been implemented, hopes to provide further conversations on the matter. The conclusions and raised questions presented in this thesis wish to contribute to continuous objective of the fair taxation of multinational groups.

Acknowledgements

To my thesis supervisor, Professor Marie Lamensch, for her patience, understanding and guidance throughout my work,

To all the participants of the interviews for their time, their help, and their precious knowledge and insights that were essential for the completion of this thesis.

To my parents, family, and friends, for their love, support, and guidance not only for this thesis but throughout my entire studies,

I would like to thank you sincerely.

Table of contents

List of abbreviations	5
1. General introduction	6
2. The research question of the thesis	8
2.1 The Research Question	8
2.2 Why is this research question relevant today?	9
2.3 How will this thesis answer the research question?	9
3. The literature Review	11
3.1 The difference between tax optimization, avoidance and evasion (fraud).....	11
3.2 The international tax system and organizations	12
3.3 Transfer pricing.....	15
3.3.1. What is transfer pricing?	15
3.3.2. 5 methods of transfer pricing	17
3.3.3. Transfer pricing aspects of intangible assets.....	21
3.4 What has already been done for tax avoidance and transfer pricing?	22
3.4.1. The OECD Model Tax Convention on Income and Capital	22
3.4.2. The Inclusive Framework on BEPS	26
3.4.3. The Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations	31
3.4.4. The Two-Pillar solution	35
3.5 Soft law versus hard law	37
3.5.1. Directive on Administrative Cooperation (DAC)	38
3.5.2. Anti-Tax Avoidance Directive (ATAD)	39
3.5.3. ATAD III proposal	40
3.5.4. EU Joint TP Forum and Council Directive 2017/1852	41
3.5.5. Soft laws and hard laws concerning Transfer Pricing in Belgium.....	41
4. Methodological approach	43
4.1 Sample selection.....	43
4.2 Data Collection Method	44
4.3 Data Analysis	45
5. The analysis and the results.....	46
5.1 How has the battle against tax avoidance through transfer pricing evolved?	46
5.2 The impact of the introduced measures	51
5.2.1 BEPS	52
5.2.2 The Transfer Pricing Guidelines	54
5.2.3 The Two-Pillar Solution.....	54
5.2.4 The Directive on Administrative Cooperation	56
5.2.5 The Anti-Tax Avoidance Directive (ATAD).....	57
5.3 Difficulties and challenges encountered as a result of the measures	58
5.4 The drawbacks and the future of the international tax landscape.....	59
5.4.1 Compliance versus administrative burden?	59
5.4.2 The implementation of Pillar Two: will it be in line with the objectives?.....	60
5.4.3 A new race to the bottom?	60
5.5 The limits of the analysis.....	61

6. General conclusion	62
7. Bibliography	65
8. Appendices.....	78
Appendix 1: Questionnaire interviews/ Common question guide for the interviews.....	78
Appendix 2: Interview with Kurt Van der Voorde and Franscesca Vittoria Bello from EY..	81
Appendix 3: Interview with the Head of Transfer Pricing at Solvay – Nathan Saunders	98
Appendix 4: Interview with Bram Le Bruyn – TP Director at Deloitte	114
Appendix 5: Interview with a Tax and Transfer Pricing Manager at an audit and consultancy Firm.....	126
Appendix 6: Interview Samuel Belotti – Tax Lawyer at DALDEWOLF	148
Appendix 7: Interview with Bernard De Gottal and Sylvain Pierroux from SPF Finance – Transfer Pricing Team at Liege	165
Appendix 8: Interview with Carla Buyens – Director at the GTP Team at PwC	197
Appendix 9: Interview with Zhana Klyukanova – Senior Manager, EMEA Tax at International papers	211
Appendix 10: Interview with Yves de Groote – Transfer Pricing Partner at KPMG	227
Appendix 11: Interview with a Senior Manager Tax at a Multinational company	249

List of abbreviations

MNE – Multinational enterprise

MNEs – Multinational enterprises

OECD – Organization for Economic Coordination and Development

G20 – Group of Twenty

CUP – Comparable Uncontrolled Price

Profit split method – Refers to the Transactional Profit Split Method by the OECD

The Model, the Convention, the Model Tax Convention – Refers to the OECD Model Tax Convention on Income and Capital

BEPS – Base Erosion and Profit Shifting

IF – Inclusive Framework on BEPS

TP – Transfer Pricing

TPG – Transfer Pricing Guidelines

The Guidelines – Refers to the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations

CBCR– Country-by-Country Reporting

Two-Pillar Solution – refers to the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy

GloBE – Global Anti-Base Erosion

1. General introduction

“Tax avoidance” can be defined as the use of legal ways to obtain a tax advantage that was not intended by the legislator. The concept of “aggressive tax planning” refers to the same objective of minimizing the overall tax liability via legal means. Both “tax avoidance” and “aggressive tax planning” can be described as tax strategies that abide by the letter of the law but not the spirit (Onu, and al., 2019). Tax avoidance / aggressive tax planning is therefore different from “tax evasion”, which is illegal, and which implies a fraudulent behavior (Merks, 2006).

Tax avoidance of multinational groups through so-called “profit shifting and base erosion” has been one of the key priorities for international bodies regarding international taxation. This profit shifting is the practice whereby multinational enterprises (MNEs) legally shift income from entities in high-taxed jurisdictions to entities situated in low-tax jurisdictions. Through this operation, MNEs are able to reduce the overall tax liability of the group. A common way to achieve this is through “transfer prices”, which are the prices charged for transactions involving several associated parties. In practice, MNEs use transfer pricing (TP) to reallocate income to low-tax jurisdictions by charging artificially high or low prices that are not reflecting the true value of the transaction and of the activities undertaken by each entity (Beer, and al., 2018).

To avoid that MNEs use transfer pricing for aggressive tax planning purposes, the rules state that such prices need to comply to the arm’s length principle, meaning that they should be a reflection of the market prices that would have been charged between unrelated enterprises involved in a similar transaction. However, because of the complex international tax landscape surrounding companies and the asymmetry of information between taxpayers and tax authorities, the arm’s length principle has not always been respected (Beer, and al., 2018).

A myriad of measures, Guidelines, rules, laws, and guidance have been introduced on the topic to oblige transparency from companies and help tax authorities to collect the rightful amount of taxes. However, it is essential to discover how the measures and laws are impacting companies and how the evolution of this battle against tax avoidance has been led and how companies are coping with it.

Against this background, the objective of this thesis is to understand how the battle against the use of transfer pricing as a tax planning strategy has developed in the past years and how the rules that have been adopted over time are providing support to that battle. To do this, an empirical approach to the topic has been used through interviews with several tax and transfer pricing specialists from different organizations.

To tackle the aforementioned objective, this dissertation has been divided into several sections. A first part is dedicated to the definition and objectives of the research question used in the thesis. It defines the line of reasoning behind the research question and discusses its relevance before moving on to how it will be answered through the thesis.

The second section is a literature review providing an overview of the latest measures introduced on the topic. As transfer pricing is enormously broad and additional guidance is continually being introduced, the literature review has a limited scope and does not encompass all subjects and measures related to tax avoidance through transfer pricing. However, it provides a clear and general overview of the latest changes and rules that have been shaping the evolution of transfer pricing.

Next, the methodological approach used to have the empirical and on-site approach to the measures on MNEs has been detailed. In this section, the sample of participants for the interviews has been introduced, the method of data collection has been explained, and the benefits and limits of the method have been identified.

Following that, an analysis of the insights gathered through the interview has been detailed. It starts with describing the key pillars of the evolution of tax avoidance through transfer pricing and the measures. Then, it moves on to discussing the key impacts of the introduced measures and the challenges MNEs are facing as a result thereof. The drawbacks and the remaining questions on the future are mentioned before ending with the limits of the analysis.

The last section offers a general conclusion including a summary of the main findings to give an answer to the research question of the thesis. Furthermore, the implications of the findings are mentioned, and the final contributions of the thesis are explained. To bring the thesis to a close, recommendations for future research and analysis are given.

2. The research question of the thesis

2.1 The Research Question

Transfer pricing was originally a management tool used to assess the performance and enable the evaluation of the profitability of the different entities that composed a multinational enterprise. The mechanism was to appropriately invoice the goods and services exchanged between the associated entities to ensure that central management could view the branches as separate identities and assign performance indicators to those branches (Carasco, 2017).

At first, transfer pricing wasn't at the center of tax discussions. This changed in the recent years with the different aggressive tax planning and transfer pricing strategies of big MNEs that have been brought to light through the press. Since then, governments and the general public have been more aware of MNEs who use transfer pricing to shift profits to jurisdictions with favorable tax regimes and consequently lower their overall tax liability. Hence, many jurisdictions did not collect their rightful amount of tax income (Carasco, 2017).

Starbucks is a perfect example of how transfer pricing strategies can be used in a negative and abusive way. In 2012, the group had sales of £400 million in the UK but paid no corporation tax on that amount because of its transfer pricing strategies and the shift of the profits to states with favorable tax regimes (Barford et al, 2013).

Nowadays, the amount of MNEs continues to increase and taxation issues for tax administrations and MNEs themselves are even more complex. As the taxation of multinational groups needs to comply with the laws and requirements of separate jurisdictions, it cannot be viewed in isolation and must be addressed in an international context (OECD, 2022). Therefore, governments, tax authorities, and international organizations have come together to counter this issue and ensure fair taxation in all jurisdictions. Those different organizations created and published many requirements, conventions, and guidelines to help MNEs and tax authorities on the matter.

But with all of this, one question arises: are those measures effective?

The research question in this thesis will answer this question and is formulated as follows:

“How has the fight against tax avoidance through transfer pricing evolved and do the new measures put in place act as a brake on tax avoidance by multinational enterprises? An empirical approach”

2.2 Why is this research question relevant today?

A lot of focus and attention has been put on the transfer pricing aspects of multinational groups' tax strategies and practices. The evolution of the topic historically reserved to experts to an everyday issue concerning all organizations and jurisdictions called for new ways to combat aggressive tax planning through these means (Rogers, and al., 2022). Hence, various rules and measures have been implemented and reinforced over the past decades. Moreover, jurisdictions and their tax authorities are more aware and informed on the matter through the exchange of information and thus they are now armed with several tools to act against it (Cahanin, 2018).

Many of these evolutions that have a significant impact on transfer pricing have emerged in the past few years. Consequently, understanding the evolution of the topic of tax avoidance through TP and the evaluation of the effects and effectiveness of the measures aimed at battling against it are crucial. This will be done through answering the research question of this thesis that is aimed at exploring the dynamics of transfer pricing regulations. Through the answer, this thesis hopes to provide valuable information and insights to potentially inform stakeholders in shaping the future landscape of tax avoidance through transfer pricing.

2.3 How will this thesis answer the research question?

To answer the research question mentioned above, the remaining portion of this thesis consists of four main parts. First, a section is dedicated to the literature review on the subject to paint a contextual understanding of the topic. Then, the second part describes the methodology used that will generate the data that will be analyzed in the following portion of the dissertation.

Finally, a general conclusion will shed light on the main findings of the thesis and will provide an answer to the research question.

As a matter of conclusion, through this approach, this thesis intends to provide a comprehensive review of the battle against the misuse of transfer pricing strategies for tax purposes and a nuanced understanding on the efficacy of the measures proposed to address this issue. Altogether, this will enable to provide an answer on how the battle against tax avoidance has evolved and on whether the measures that have been introduced are acting as breaks on such aggressive tax planning strategies.

3. The literature Review

In this thesis on tax avoidance, many terms, topics, and measures must be explained to fully understand what transfer pricing is, how it may be used for tax purposes, and how the current measures are aiming to prevent the misuse of transfer prices. To provide this comprehensive overview, the literature review of this thesis is divided in four main sections.

The first one will explain the difference between tax optimization, avoidance, and evasion. The second section will focus on our current international tax system and the different organizations that are actively participating in it. Then, a segment dedicated to transfer pricing details what it is, the methods used for transfer pricing and the aspects of transfer pricing for a specific complex type of asset. Last, the fourth section discusses the different guidance offered by international organizations and the legislations adopted by States to help multinationals and tax authorities on transfer pricing issues.

3.1 The difference between tax optimization, avoidance and evasion (fraud)

As a start to this literature review, the difference between tax optimization or tax planning, tax avoidance and tax evasion must be explained.

First, with tax optimization or tax planning, businesses will be involved in such actions to minimize their tax liability but with no intention of deceit (Bruce, 2016). Tax avoidance, like tax planning, entails the practice of reducing the amount of tax that a taxpayer is required to pay, all while complying to tax obligations and staying within the limits of the law (Akthar, 2019). The difference often lies in the fact that with tax avoidance, companies will bend the rules of the tax system to gain a tax advantage that was not intended by the authorities (Seely, 2021). In cases of tax avoidance, aggressive or excessive tax planning is used, and companies take advantage of the gaps in the architecture of our international tax system (OECD, n.d.). This may involve artificial transactions that have as main purpose or as sole purpose to produce the tax advantage (Seely, 2021).

Tax planning and tax avoidance, which are considered to be ‘creative compliance practices’ are legal, and countries recognize that companies may arrange their activities in such a way to

be more tax efficient, i.e., pay less tax. However, governments and international organizations tend to dislike such practices as they are contrary to fiscal equity and lead to serious budgetary effects. Furthermore, these strategies also distort international competition between companies (Merks, 2006). Furthermore, it is considered immoral and seen as an abuse of the tax system (Seely, 2021).

In contrast to tax planning and tax avoidance, which are not considered as criminal offences as stated earlier, tax evasion or fraud is an inherently unlawful activity that is subject to potential criminal sanctions. When committing tax evasion, a taxpayer is breaking the law and is taking actions with the deliberate intention to evade the payment of taxes (Merks, 2006). This process may involve companies that will deliberately misrepresent or conceal their presence or taxable sources to reduce their overall tax liability (Akhtar, 2019 ; Seely, 2021).

3.2 The international tax system and organizations

As mentioned above, companies may make use of ‘creative compliance practices’ and bend the tax rules to gain advantages that were not intended by the tax authorities. To understand how companies are able to exploit such tax mechanisms, it is necessary to describe the international tax system they are embedded in and the international organizations that are surrounding them.

Before the 2008 Global Financial Crisis, tax avoidance didn’t receive much attention and tax authorities focused their work on tax evasion (Leroy, 2019). However, the tax landscape of our world has changed a lot with the rise of digitalization and the mobility of labor and capital. This evermore growing globalization provides companies and especially multinationals with many opportunities to take advantage of the international tax system through strategies such as transfer pricing (Akhtar, 2019).

This international tax framework multinational companies are embedded in determines the ways in which they are taxed. This framework consists of a myriad of national legislations, a wide network of bilateral and multilateral treaties, and European or international regulations (Beer, and al., 2018). However, as pointed out by Devereux and others (2021), this system is complicated and it misses structure and clear principles, especially due to the countries taxing

companies in different ways. Hence, in response to this, global organizations, the European Union, and individual countries have come together to propose new laws, guidelines, and penalties based on common framework and conventions to strengthen the international tax environment (Akhtar, 2019) (Devereux and al., 2021).

Consequently, due to the many opportunities caused by this fragmented tax system, tax considerations and strategies are becoming increasingly important. Today, they have become part of the decision-making process in firms as finding ways to shift profits between entities may reduce the group's tax liability and hence, result in a maximized firm value. It is therefore important that those aforementioned organizations enlighten companies and tax administrations on the grey area which is called tax avoidance (Akhtar, 2019).

Today, in Europe, the international tax system can be explained through three different layers. Namely the domestic laws and bilateral or multilateral treaties, the European Union laws, and the regulations from the global organizations.

The first layer of the regime is composed of the domestic laws and the bilateral (or multilateral) treaties. All countries have the right to tax companies based on their state of residence or on the basis of the source of their profits. In a residence-based system, the country will tax the companies that are a resident of the country itself, whether or not the profits were earned elsewhere. On the contrary, in a source-based system, the country will tax the profits arising in the country, even if that company is not a resident of that State (Devereux, and al., 2021).

Many difficulties arise with those taxing rights. Multinationals engaging in cross-border activities could be confronted to two or more countries having the right to tax their profits. As countries can unilaterally decide if they exercise this right, without coordination, the same profits could be taxed multiple times, which is called double taxation (DT). This issue has traditionally been addressed in two ways, the first being through unilateral measures in domestic laws. In this case, a country could decide to grant a residing company a deduction or credit for the tax paid in another country. Secondly, the countries concerned by the cross-border activity could solve the problem of double taxation by coordinating and creating bilateral double tax conventions (DTCs) and multilateral tax conventions. In such conventions, the taxing rights over the types of profits are allocated between the countries (Devereux, and al., 2021). Most of the bilateral or multilateral treaties are based on a common underlying

framework, namely the OECD Model Tax Convention which lays out a model for concluding such conventions (see *infra* p.22). However, due to the differences in domestic laws and implementations, incoherence at country-level on those matters may still arise (Devereux and al., 2021).

Then, the second layer of the international tax system is the European Union (EU) laws. As the laws of Member States must comply with the EU law regarding direct taxation, EU countries are directly impacted by this. Furthermore, the Fundamental Freedoms of the Internal Market by the Court of Justice of the EU (CJUE) also influence the first layer of the tax system. When domestic laws aren't in accordance with the EU laws, the CJUE can order them to be dismantled (Devereux, and al., 2021).

Finally, the last layer consists of the global organizations, namely the G20 and the OECD, especially with their jointly created Inclusive Framework on Base Erosion Profit Shifting (BEPS) (see *infra* p.26). Their works are currently governing the international tax regulation. The G20 or the "The Group of Twenty" was founded in 1999 and upgraded to the "premier forum for international cooperation" with the Global Financial Crisis. This forum plays an important role regarding major international economic subjects and the fight against tax avoidance has become one of the regular points on the agenda (Sivieude, 2018 ; G20, 2023).

The Organization for Economic Co-operation and Development or OECD builds policies and together with many stakeholders they work on establishing international standards and guidelines (OECD, n.d.). Furthermore, the OECD has been at the forefront of fighting against tax evasion and addressing tax avoidance by multinational corporations since the London Summit in April 2009. The contributions of the OECD also help the G20 to reform and modernize the international tax architecture (OECD, n.d.). The OECD also disposes of a Committee on Fiscal Affairs which is the principal global body for setting international tax standards and is the main forum for the OECD's discussions on taxation (OECD, 2023). Reports, guidelines, and recommendations on tax matters are often published by this Committee (Carasco, 2017). The OECD has made many contributions to the fight against tax avoidance which will be discussed later in this thesis (see section 3.4).

These organizations play a crucial role in the development of an international tax system with unified norms. Thanks to the different works of those organizations, the architecture of our international tax system is becoming increasingly coordinated (Carasco, 2017).

3.3 Transfer pricing

As mentioned above, our international tax system provides companies with the possibility to enter tax avoidance mechanisms. Many instruments and tools exist for those companies to enter this grey area of tax avoidance and an important one is transfer pricing (TP). Transfer pricing strategies and issues related to the subject are at the heart of many of the works of the OECD. In this section, transfer pricing, transfer pricing methods and the transfer pricing aspects of intangible assets are detailed.

3.3.1. What is transfer pricing?

Transfer pricing is the general term used for the process of establishing transfer prices for cross-border, intra-group transactions, which are the prices at which associated enterprises transfer physical goods, intangible assets, or provide services (OECD, 2022) (United Nations, 2011). It refers to the terms and conditions of the transactions within multinational companies (Taxation and Customs Union, n.d.).

Multinational groups are required to apply this mechanism of transfer pricing for their transactions within the group as the international tax framework of MNEs operates under the principle of ‘separate accounting’ principle, meaning that the taxation of such groups is at the level of individual entities operating in different countries (Beer, and al., 2018). In other words, transfer prices are used to ensure that all associated enterprises from MNEs are treated as separate entities (OECD, 2022).

The article 9 of the OECD Model Tax Convention (see *infra* p.22) defines two associated enterprises as follows: “an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State” (OECD, 2017, p.34) or “the same persons participate directly or indirectly in the management, control

or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State” (OECD, 2017, p.34).

Transfer prices serve the objective of avoiding double taxation all while securing the appropriate tax base in each jurisdiction. They are of major importance as they determine the income and expenses of associated enterprises in different jurisdictions and therefore, their taxable profits in that jurisdiction. Consequently, transfer pricing strategies will define the overall corporate income tax liability of MNEs (OECD, 2022) (Ping, and al., 2007). However, members of a multinational group may benefit from transfer prices as their connections enable them to establish special conditions in their intra-group transactions that are different from those that would have been applied between independent enterprises operating in open markets (OECD, 2022). In other words, as those transfer prices are set by MNEs themselves, they may not reflect an independent market price (Taxation and Customs Union, n.d.).

Consequently, to determine prices that do reflect independent market prices and approximate as much as possible market forces, transfer prices must satisfy the ‘arm’s length principle (ALP)’. This ALP is the international transfer pricing standard OECD members have agreed that should be used for tax purposes by MNEs and tax authorities. If necessary, associated enterprises will have to adjust their prices to correct any deviations to ensure the ALP is satisfied. For these adjustments to be appropriate, the conditions and prices of the transaction in question should be a reflection of the ones that would have been found between two independent enterprises in a comparable transaction under comparable circumstances. This process of adjustment by comparison is called the “comparability analysis” and is at the core of the arm’s length principle (OECD, 2022).

As defining appropriate transfer prices isn’t easy, different methods have been detailed by the OECD (see *infra* p.17) to guide companies in their transfer pricing strategies and help tax authorities in case issues arise (OECD, 2022).

It is important to point out that transfer pricing per se is not illegal, and it does not by itself mean tax avoidance. It is when transfer prices do not reflect market forces and do not satisfy the arm’s length principle and where they do not abide by the applicable international or domestic norms that they may be considered as mispriced (United Nations, 2011). It is at this moment that transfer pricing may enter the grey area of tax avoidance. Therefore, the

consideration of transfer pricing should not be confused with the consideration of problems of tax fraud or avoidance, even though transfer prices may be used for such purposes (OECD, 2022).

3.3.2. 5 methods of transfer pricing

As mentioned previously, MNEs must establish transfer prices that satisfy the arm's length principle and ensure fair taxation. To provide guidance and help MNEs and tax administrations to accomplish this, five transfer pricing methods have been suggested by the OECD (OECD, 2022 ; Carasco, 2017).

These transfer pricing methods outline ways to calculate the profit margin of transactions or establish transfer prices that adhere to the arm's length principle, ensuring compliance with required standards for transactions between associated companies (United Nations, 2011). Alternative methods or a combination of methods may be used provided that this alternative is justified, coherent and also follows the ALP (Carasco, 2017). The companies should have the means and documentation to justify this choice for the tax administrations to accept it. However, such method may not be used if one of the five OECD-recognized methods is considered to be more appropriate (OECD, 2022).

Depending on each case, some methods will be more appropriate to provide for an arm's length outcome than others. The starting point to find and select the most reliable method is the functional analysis. This analysis is a major part of the transfer pricing documentation and is composed of three elements: the analysis of the functions performed by each party, the risks undertaken by each party, and the assets that have been used or contributed by each party. Through this analysis, it is possible to identify to what extent risks and assets are attributable to the different associated entities. Once this is done, it is possible to determine the most suitable transfer pricing method for the transaction under review (United Nations, 2011).

Furthermore, the choice of method for each case must also consider the four following criteria (OECD, 2022 ; Carasco, 2017):

- The strengths and weaknesses of the methods
- The appropriateness of the method considered in view of the nature of the controlled transaction

- The availability of reliable information
- The degree of comparability between the controlled transaction and the independent uncontrolled transaction

The OECD defines a controlled transaction as “a transaction between two enterprises that are associated enterprises with respect to each other” and an uncontrolled transaction as “a transaction between independent and unrelated enterprises” (OECD, n.d.).

The five OECD-proposed methods are divided into two categories. The first type includes the three traditional transaction methods which are the comparable uncontrolled price method (CUP), the resale price method and the cost-plus method. The second group consists of two transactional profit methods, namely the transactional net margin method and the transaction profit split method (OECD, 2022).

The traditional transaction methods

The traditional transaction methods are considered to be more direct and reliable to establish whether a transaction is at arms’ length in case they can be used (OECD, 2022).

The comparable uncontrolled price method (CUP)

With this method, the price charged for property or services transferred in a controlled transaction is compared to the price that is charged for property or services transferred in a comparable uncontrolled transaction. The circumstances surrounding both transactions must be comparable (OECD, 2022).

To ensure that two transactions are comparable under the CUP method, one of the two following requirements must be met. First, any differences between the two compared transactions or the enterprises involved in the transactions do not significantly impact the price in the open market. Second, if such differences do exist, it is possible to make reasonably precise adjustments to eliminate the substantial effects of those differences (OECD, 2022).

When it is possible to use this method, it should be preferred over all others as it is the most direct and reliable method to ensure that a transaction is at arm’s length (OECD, 2022).

Resale price method

The resale price method starts with a resale price which is the price at which one enterprise resells a product that has been purchased from an associated enterprise to an independent enterprise. From this resale price, an appropriate gross margin is subtracted to cover the expenses of the reseller and generate an appropriate profit considering the functions that have been performed. The resale price minus the gross margin can be regarded as a price that is at arm's length for the original transaction between the two associated enterprises (OECD, 2022).

The margin of the reseller in the controlled transaction may be determined by comparing it to an internal comparable, meaning the price margin this same reseller made on products purchased from and sold to independent enterprises (uncontrolled transaction). If no internal comparable is available, an external comparable which is the margin earned by an independent enterprise in a comparable uncontrolled transaction may serve as a guide (OECD, 2022).

The same conditions as in the CUP method apply to ensure that the controlled and uncontrolled transactions are comparable (OECD, 2022).

Cost plus method

The cost-plus method considers the costs of the supplier in a controlled transaction for the transfer of property or services to an associated enterprise. To this cost, an appropriate cost-plus mark-up is added to make an appropriate profit considering the functions performed and the market conditions. The costs together with the cost-plus mark-up may be regarded as an arm's length price for the controlled transaction (OECD, 2022).

The cost-plus mark-up may be based on an internal comparable, meaning the mark-up the same supplier earns when selling to an independent enterprise (uncontrolled transaction). When there is no internal comparable, an external comparable consisting of the mark-up earned by an independent enterprise in a comparable transaction may serve as a guide (OECD, 2022).

The two conditions that have to be satisfied for the CUP and resale price methods also apply for the cost-plus method (OECD, 2022).

Transactional profit methods

A transaction profit method will examine the profits that arise from controlled transactions to find out whether the transactions are at arm's length (OECD, 2022). Two methods are recommended by the OECD and are explained below.

Transactional net margin method

This method examines the net profit a taxpayer realizes from a controlled transaction relative to an appropriate base (such as costs, sales, etc.). The process used for this method is similar to the ones for the resale and cost-plus method and therefore, it should be consistent with the way those aforementioned methods are applied. Consequently, the net profit realized should be established by reference to an internal comparable, namely the net profit earned by the same taxpayer in an uncontrolled transaction. If there is no available internal comparable, an external comparable from an uncontrolled transaction of an independent enterprise may serve as a guide (OECD, 2022).

This method should not be considered when the parties to a transaction make unique contributions as the results of the method are unlikely to be reliable (OECD, 2022).

Transactional profit split method

Contrary to the transactional net margin, the high degree of integration and unique contributions of parties should be an indicator for the use of the transactional profit split method (OECD, 2022).

This method will identify the profits that should be split from the controlled transaction and will then split them between the associated enterprises on an economically valid basis. The basis used for the split will approximate the compensation that would have been agreed on in comparable transactions between independent enterprises. The aim of this method is to make sure that the profits received are aligned with the contributions made and with the arm's length principle (OECD, 2022).

As is the case for all methods, the transactional profit split method is designed to ensure that profits assigned to the different associated entities reflect the value of their contributions. The main strength of this approach is that it can be used for cases where both parties bring unique and valuable inputs to the transaction, leading to challenges in identifying a reliable

comparable. Furthermore, this method is also used when the associated enterprises are part of highly integrated business operations and where transactions cannot be evaluated in isolation (OECD, 2022).

3.3.3. Transfer pricing aspects of intangible assets

As we have seen from the previous sections, many transfer pricing methods may be used to ensure that the conditions of a controlled transaction are at arm's length. However, in situations where the transaction involves intangible assets, the determination and control of transfer prices is much more complicated.

Intangible assets are difficult to recognize, as a wide range of definitions and interpretations are used to define this type of assets (PwC, 2010). However, the OECD defines intangible assets as follows: “intangible assets are assets that do not have a physical or financial embodiment” (OECD, 2011, p.1). Those intangibles are often referred to as knowledge assets or intellectual capital. The broad range of intangible assets can be divided into three classes: computerized information, innovative property (such as R&D and trademarks) and economic competencies (brand-equity, know-how, aspects of marketing and advertising, etc.) (OECD, 2011).

Transactions involving such assets may consist in the use of the intangibles in the production of goods or the delivery of services (such as the use of trademarks, patents, know-how, etc.) and in the transfer between associated enterprises of the rights to those assets (Silbertzein, 2011).

As this topic is very complex, many transfer pricing disputes happen and risks of double or less-than-single taxation occur (Silbertzein, 2011). It is also very difficult to ensure that controlled transactions involving intangible assets are at arm's length, as the value of such assets is complicated to quantify. Furthermore, as such assets are often unique, no comparable uncontrolled transaction often exist and consequently, applying appropriate fees or royalties is complicated (Ishiwaka, and al. 2020).

Intangible assets are becoming increasingly important as investments in such assets are growing and, in some cases, exceeding the ones made in more traditional capital such as fixed

assets (OECD, 2011). Moreover, many multinational corporations attribute a significant part of value creation to the ownership and exploitation of such intangibles, which implies a risk of tax base erosion. Consequently, tax planning opportunities arise for companies who have this type of intangible assets and from their location (Silbertzein, 2011).

The Transfer Pricing Guidelines of the OECD and the five preconized methods of transfer pricing are a guide for companies on the matter. However, as this subject is crucial for companies, different sections of those guidelines focus specifically on the matter. For example, in the latest editions, chapter six of the guidelines is entirely dedicated to special considerations for intangibles and a new annex has been added which focuses on Hard-to-Value-Intangibles (HTVI) (OECD, 2022). Furthermore, the difficulties arising with such transactions are also discussed (Silbertzein, 2011). The OECD also published the “Guidance on Transfer Pricing Aspects of Intangibles” in 2014 (OECD, 2014). These documents are essential because as mentioned before, companies do not systematically have the intention of manipulating their profits through transfer prices, and it is therefore important that guidance exists (Ishiwaka, and al. 2020).

3.4 What has already been done for tax avoidance and transfer pricing?

As we can conclude from the sections above, many issues can arise when multinational groups must apply transfer pricing to intra-group transactions. To ensure the most correct application of transfer prices and to guide companies in their strategies and help tax authorities, the OECD has developed many frameworks and instruments on the matter. In this section, those different tools are discussed.

3.4.1. The OECD Model Tax Convention on Income and Capital

Introduction

As mentioned before, double taxation is an issue that arises in our international tax system and is harmful for cross-border activities of organizations. To help companies and tax authorities on the matter, the OECD created the OECD Model Tax Convention on Income and Capital. This instrument is a model for countries that conclude bilateral tax conventions, and the OECD

recommends countries to conform to the model when revising or concluding bilateral tax treaties (OECD, 2017).

This Model serves as the foundation for countries to negotiate and draw up bilateral tax treaties. Its main objectives are to clarify and standardize the fiscal situation of taxpayers who are engaged in business-related activities in different countries through the application of common solutions on matters of double taxation. Additionally, the Model also aims to enhance the administrative co-operation on tax matters between countries through the exchange of information and the assistance in tax collection. Moreover, the Model encompasses various means and procedures for settling common issues and disputes that may arise from double taxation (OECD, 2017).

Since its creation, the Convention has had a significant impact on the negotiation, implementation, and interpretation of tax conventions. Both member and non-member jurisdictions have increasingly aligned themselves with the Model when establishing or modifying bilateral treaties. Furthermore, the number of conventions concluded between countries has increased significantly since then (OECD, 2017). The worldwide recognition of the Model and the growing incorporation of its provision into the majority of bilateral treaties have made this Model Convention a widely accepted guide and reference for the interpretation, application, and conclusion of the provisions of bilateral treaties (OECD, 2017).

Structure and content of the Model Tax Convention on Income and Capital

The latest Model Tax Convention has been published as a condensed version in 2017 (OECD, 2017) and as a full version in 2019 (OECD, 2019). Important elements have been modified and added to the Model's content by the OECD/G20 Base Erosion and Profit Shifting Project (see infra p.26) (OECD, 2017).

As mentioned before, this Model Tax Convention is a tool to clarify the fiscal situation of taxpayers and the taxing rights on Income and Capital of jurisdictions (OECD, 2017). Hence, the different Chapters and Articles included in the Model Convention outline the taxing rights of the Contracting States, namely the States of residence and the States of source, depending on the type of income or capital of the transaction. The OECD leaves a certain degree of flexibility to countries for the implementation of the supervisions of the Model when it could not define a single rule for specific situations (OECD, 2017).

The different chapters are structured as follows: Chapter I and II describe the scope of the Convention and define the terms used in the text. Then, Chapters III to V account for the main part of the Convention and describe the extent to which Contracting States may tax income and capital on their territory and how double taxation is to be avoided. By way of illustration, Chapter V explains two methods (the exemption and credit methods) used to eliminate double taxation. Next, the Special Provisions are detailed in Chapter VI and lastly, the Final Provisions of the Model are mentioned in Chapter VII (OECD, 2017).

The Model Tax Convention and Transfer Pricing

Several Articles of the Model provide guidance to companies and tax authorities on transfer pricing matters. Guidance can primarily be found in Article 9 on associated enterprises, but additional transfer pricing aspects are addressed in the Articles 5 on Permanent Establishments, 7 on business profits, 12 on Royalties, and 25 on the Mutual Agreement Procedure (OECD, 2017).

First, Article 5 of chapter II of the Model defines the term ‘Permanent Establishment’ (PE) which is crucial for the understanding and implementation of the provisions of the other Articles. The OECD defines it as follows: “the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on” (OECD, 2017, p.31). Moreover, terms associated to a Permanent Establishment are discussed and the conditions for establishments to be considered as PEs are explained as well as examples of undertakings that shall not be characterized as PEs (OECD, 2017).

Then, Article 7 focuses on business profits. This section deals with the correct allocation of taxing rights of business profits of an enterprise that is conducting business in both Contracting States of a treaty through Permanent Establishments (OECD, 2019). This Article mentions that the profits of an enterprise in a Contracting State are taxable only in that State unless the enterprise carries on business in the Other Contracting State through a Permanent Establishment (PE) (OECD, 2019).

If this is the case, then the profits that may be attributed to the business unit in the Other Contracting State may be taxed in that other State. The profits attributable to the PEs of each State are the ones it might be expected to make would it be a separate and independent

enterprise engaged in similar activities under comparable conditions (OECD, 2017). In other words, the profits attributed to the business units of the controlled transaction should be comparable to the attribution that would have been made in an uncontrolled transaction. If one Contracting State taxes the profits of the PE of the enterprise according to the provision of the model, then the other State must make appropriate adjustments to its level of imposition to avoid double taxation (OECD, 2017).

Next, Article 9 deals with associated enterprises and how to tax such organizations to avoid double taxation and tax avoidance or evasion (OECD, 2017). It guides enterprises and authorities on the adjustments of profits that may be made when transactions between two associated enterprises are not at arm's length (OECD, 2019). To put it another way, the Model explains that where the conditions of a controlled transaction between associated enterprises in one State differ from those that would occur on the open market, then the profits that would not have been earned in the uncontrolled transaction may be considered as part of the profits of the enterprise in that State and taxed accordingly. In this case, the other State must make the necessary adjustments to the imposition of those profits in his country to prevent double taxation (OECD, 2017). The work of the Fiscal Committee of the OECD on both this Article of the Model and the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (see *infra* p.31) are closely related (OECD, 2019).

Subsequently, Article 12 on royalties is also relevant to transfer pricing and especially transfer pricing of intangible assets as it includes elements such as patents, trademarks, knowhow, etc. Ordinarily, royalties arising in a Contracting State owned by a resident in the Other Contracting State are only taxable in that Other State. However, if the beneficial owner of the royalty carries on business in the Other Contracting State through a PE, then the provisions detailed in the abovementioned Article 7 apply (OECD, 2017).

Last, Article 25 sets out the Mutual Agreement Procedure for resolving issues arising out of the Model Tax Convention. It sets out the different competent authorities of mutual agreement procedures to resolve situations where taxpayers have not been taxed in accordance with the principles set forth in the Model Tax Convention. Furthermore, in this Article the OECD also mentions that taxpayers may seek multilateral Advance Pricing Arrangements (APAs) to have tax certainty on transfer pricing matters (OECD, 2017). Such an arrangement is between a taxpayer and one or more tax authorities and will determine in advance the transfer pricing

treatments related to one or more specific controlled transactions (Piergiorgio, 2020). APAs are the main vehicle for dispute prevention (Markham, 2022).

3.4.2. The Inclusive Framework on BEPS

what is BEPS?

As mentioned previously, the international tax rules are complex and due to existing asymmetries between domestic laws, certain loopholes exist. Multinational companies have been using these loopholes to their advantage, often through legal means, to shift profits to countries with preferential tax regimes to avoid the payment of taxes. MNEs are thus engaging in tax planning strategies, mainly through transfer pricing, to erode their tax bases (Ouelhadj & Bouchetara, 2021).

The acronym BEPS stands for ‘Base Erosion and Profit Shifting’, which refers to these tax planning strategies where MNEs exploit the gaps and mismatches in tax rules to reduce their overall tax liability. As BEPS results in huge annual revenue losses for governments ranging from 100 to 240 billion dollars, it is crucial to address this problem, and this is done through the Inclusive Framework on BEPS (IF) (OECD, n.d.).

What is the Inclusive Framework on BEPS?

As mentioned above, governments are worried about this erosion of tax bases and thus, the OECD has taken the initiative to fight against this tax avoidance by implementing a BEPS Project comprising 15 actions. Among these actions, several are addressing the tax challenges concerning transfer pricing (Ouelhadj & Bouchetara, 2021).

In 2012, the G20 asked the OECD to come up with measures to prevent MNEs that make use of the disharmonized international tax system and erode their tax base and shift their profits (Blevin, 2022). Consequently, in 2013, the OECD published their initial report on the project, namely ‘Addressing Base Erosion and Profit Shifting’. This report proposed a holistic approach and a rapid development of a comprehensive action plan to tackle BEPS. Both G20 and OECD countries made significant contributions to the project and its 15-point Action Plan that was to be delivered within two years (Picciotto, 2017).

Two years later, in 2015, the OECD/G20 BEPS Project was delivered with the participation of 60 countries with the publication of the final package of thirteen reports on the 15 Action Points of the Project. This is seen as an outstanding achievement with regards to the complex and detailed proposal that had to be negotiated and which required consensus among a large number of participants in a short timeframe (Picciotto, 2017).

The IF on BEPS aims to harmonize the different national legislations and to achieve international tax transparency. To do this, the BEPS Project led to a revision of longstanding international tax standards that had largely remained unchanged for nearly a century. Furthermore, these 15 Actions also equip countries with tools to battle base erosion and profit shifting to ensure that taxation aligns with the location of the profit-generating activities. Even though the adoption of the BEPS Project's recommendations isn't mandatory, over a hundred countries have voluntarily committed to incorporate these new standards within their legislation (Blevin, 2022). Today, the IF counts over 135 Members that continuously work together within the framework for the implementation of the 15 measures against tax avoidance (OECD, n.d.).

The implementation of the revisions from the BEPS Inclusive Framework may be immediately applicable or may require changes in the tax treaties. Other revisions may require changes in the domestic laws of the State (OECD, 2016).

The IF on BEPS and Transfer Pricing

Transfer pricing is a significant aspect of the BEPS Project and many of its Actions are directly or indirectly related to transfer pricing. The key Actions of the Inclusive Framework on BEPS that are directly related to transfer pricing aspects are included in Actions 8 to 10, Action 13, Action 14, and Action 15.

First, the Actions 8, 9, and 10 of the Inclusive Framework are aimed at aligning transfer pricing outcomes with value creation and prevent the artificial shifting of profits through transfer prices (OECD, n.d. ; OECD, 2020). Action 8 focuses on the TP challenges related to transactions involving intangible assets, as the misallocation of profits generated by such intangibles have contributed significantly to BEPS. Next, Action 9 is dedicated to the contractual distribution of risks and how profits are allocated to those risks, which may not be aligned with the actual activities performed or value created. Last, Action 10 targets other high-risk areas. This

includes addressing profit allocations from transactions lacking commercial rationality, the use of transfer pricing methods which are diverting profits from the most vital MNE group activities, and neutralizing the use of certain intercompany payments to reduce tax liabilities (OECD, 2015).

Action 8, which has a specific focus on intangibles, and Action 9, have introduced the ownership of intangibles. The guidance outlined in this Action emphasizes that the mere legal ownership of intangibles does not automatically entitle one entity to all, or any, of the returns generated from exploiting them. Furthermore, it states that entities within a multinational group that are engaged in value-creating functions concerning the development, enhancement, maintenance, protection, and exploitation (DEMPE) of intangibles, or that have used assets or assumed risks regarding the intangible, should receive a fair compensation for their contributions (OECD, 2015). In other words, it emphasizes that the ‘legal ownership’ does not entitle one entity to the profits of intangibles. Instead, it is the entities with ‘economic ownership’, that are performing significant economic functions, who must be fairly compensated for their contributions (OECD, 2015).

It is through the functional analysis (see supra p.17) that one can determine which entity is responsible for performing and controlling DEMPE functions, providing funding and assets, and assuming intangible-related risks, which may not necessarily be the legal owner. Once the entities legally owning the intangibles and those contributing to the intangible’s value are identified, an arm’s length outcome for the transaction can be established, ensuring fair remuneration for all parties (OECD, 2015)

These developments were crucial for the arm’s length principle and the determination of transfer prices that are reflecting the true creation of value. While the ALP has been a vital standard for taxpayers and tax administrations, the previous emphasis put on contractual allocation of functions, assets, and risks allowed MNEs to manipulate transfer prices, leading to outcomes that did not align with the actual value created by each associated party (OECD, 2015).

The BEPS Actions 8 to 10 also introduced the concept of Hard-to-Value-Intangibles (HTVI). Simply put, the term HTVI refers to intangibles whose value is hard to be determined due to the lack of comparable information and whose future projected income is uncertain. For such

intangibles, there is an asymmetry of information between the taxpayers and tax authorities, as it may be challenging to identify the data that is relevant for the transfer pricing arrangement of the transaction. As a result, tax administrations may face difficulties for TP-related risk assessments or to determine if the intangible was transferred at a fair value according to the ALP. In response to this, the OECD proposed an approach where tax authorities may verify whether the transfer pricing arrangements (ex-ante) are appropriate by looking at the actual outcomes (ex-post) after the transaction. If there are no unexpected events causing big differences between the agreed upon TP arrangement and the ex-post results, it may indicate that the initial TP arrangement might not have considered all the important factors (OECD, 2015).

Next, Action 10 concentrates on other high-risk areas of transfer pricing, specifically focusing on transactions that are unlikely to happen between independent parties (OECD, 2013). The profit allocation of such commercially irrational controlled transactions results in a distortion between operational profits and value creation as MNE groups shift their profits from one location with economically important activities to another to erode their tax base (e.g., management fees or head office expenses) (OECD, 2016). Furthermore, Action 10 also provides additional guidance and clarifications on the transactional profit split method and when it may be considered as the most appropriate method for transfer pricing (OECD, 2018 ; Rödl & Partner, n.d.). One of the latest works on Action 10 of the BEPS Inclusive Framework is the ‘Revised Guidance on the Application of the Transactional Profit Split Method’ of 2018 (OECD, 2018).

Action 13 and 14 are two Minimum Standards that are also related to transfer pricing matters. The first Minimum Standard, Action 13, tackles the examination of transfer pricing documentation and is aimed at developing documentation requirements and rules to improve transparency for tax administrations (OECD, 2013). In the Final Report of this Action, a three-tiered approach to transfer pricing documentation is developed (OECD, 2015).

First of all, all large MNEs having annual consolidated revenues exceeding EUR 750 million, are required to file a Country-by-Country report containing the annual aggregate data of the MNE on elements such as the allocation of their income, taxes paid, number of employees, etc. in each entity in which the group operates. In other words, this report shares indicators of economic activity among the different jurisdictions in which the MNE is conducting business.

Furthermore, action 13 requires MNEs to provide tax administrations with a ‘master file’ containing information on their global operations and transfer pricing strategies, and a ‘local file’ with detailed transfer pricing documentation relating to specific intragroup transactions and specific to each jurisdiction (OECD, 2015). The local file is aimed at complementing the master file (OECD, 2022).

These documents help tax administrations in their battle against Base Erosion and Profit Shifting and assess where controls must be carried out (OECD, 2015). Furthermore, the CBC reports are shared with the different jurisdictions in which the MNE conducts business and allows them to have better transfer pricing and BEPS risk assessments. The OECD provides guidance for the BEPS Action 13 and the implementation of these CBC reports through its CBC implementation package, common template (OECD, n.d.) and its latest report ‘Guidance on the Implementation of Country-by-Country Reporting: BEPS Action 13’ (OECD, 2022).

Action 14 concentrates on the improvement of the effectiveness of the Multilateral Agreement Procedure (MAP) provided in Article 25 of the OECD Model Tax Convention (OECD, 2015). It proposes dispute resolution mechanisms and solutions to address the obstacles and issues that prevent countries or tax administrations from solving tax-related conflicts, which may be transfer pricing related (OECD, 2013). As part of BEPS Action 14, a focus has also been put on advance pricing arrangements (APAs) (OECD, 2023).

Last, Action 15 of the BEPS Project allows countries to amend current bilateral tax treaties with the different BEPS measures through the Multilateral Instrument. This Action was needed to facilitate the synchronization of tax treaties that may allow for base erosion or profit shifting (OECD, 2015).

The clarifications and principles set out in the different Actions of this Inclusive Framework on BEPS resulted in substantial revisions in both the 2017 and 2022 editions of the Transfer Pricing Guidelines (OECD, 2022).

3.4.3. The Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations

Introduction

The Transfer Pricing Guidelines (TPG) for Multinational Enterprises and Tax Administrations of the OECD serve the objective of securing the appropriate tax base in each State as well as avoiding double taxation (OECD, 2022). To ensure this, the focus is put on the arm's length standard and on its application to evaluate transfer pricing strategies of associated enterprises. They provide guidance on the matter to taxpayers and tax authorities (Vega, 2012). Consequently, they aim to minimize conflicts that may arise between tax administrations and companies and promote the development of international trade and investment (OECD, 2022).

As mentioned before, the Guidelines are closely related to the OECD Model Tax Convention on Income and Capital and the Actions of the BEPS Project, as the concepts they brought are incorporated in the Guidelines (OECD, 2022). In applying the principles of the Model Tax Convention and the BEPS Project, MNEs often encountered obstacles relating to the establishment of appropriate transfer prices. Therefore, these Guidelines also propose solutions and guidance to reduce the difficulties encountered (OECD, 2022).

What are these Guidelines?

These Guidelines focus on the main issues that arise in the transfer pricing area. The Committee on Fiscal Affairs of the OECD has made many revisions and reflection works since the first introduction of these Guidelines in 1979 and it intends to continue working on the matter. For example, these Guidelines have been significantly revised in order to reflect the decisions made in the BEPS Project and reports (OECD, 2022).

The Guidelines should help tax administrations and MNEs by indicating ways to find mutually satisfactory solutions to transfer pricing cases. Consequently, this minimizes the conflicts that may arise amongst tax administrations and between tax administrations and associated enterprises (OECD, 2022). There is a clear intention from the OECD to govern with these Guidelines the resolution of transfer pricing cases (OECD, 2022).

Furthermore, the TPG also analyze the methods (see supra p.17) for evaluating whether the conditions of commercial and financial relations within an MNE satisfy the arm's length

principle and discuss the practical application of such methods. Taxpayers are encouraged to follow these Guidelines in evaluating for tax purposes whether their transfer pricing complies with the arm's length principle. At the same time, tax administrations are also encouraged to consider the taxpayer's commercial judgment about the application of the arm's length principle in their examination practices and to undertake their analyses of transfer pricing from that perspective. Furthermore, these Guidelines also give guidance on how adjustments should be made when such a request has been made (OECD, 2022).

Although not legally binding, these Guidelines have significant importance and influence, not only on international law but also on national legal systems of countries (Vega, 2012). The OECD Guidelines form the international standard used by both OECD member and non-member countries in their domestic laws (Calderón, 2007).

Structure and content of the Transfer Pricing Guidelines

The Guidelines are structured around different chapters. First, there is a brief introduction on the Guidelines, an overview of the abbreviations and the acronyms and a glossary defining the different terms used throughout the Guidelines. Then, the Guidelines addresses the different transfer pricing aspects through its chapters (OECD, 2022).

The first chapter covers the arm's length principle. This principle is, as mentioned before, the transfer pricing standard that OECD countries have agreed should be used for tax purposes by MNEs and tax administrations. This section is aimed at providing guidance to enterprises and authorities to apply the principle (OECD, 2022).

Chapter II focuses on the transfer pricing methods (see supra p.17). This section provides guidance on how to select the most appropriate method to establish transfer prices that are at arm's length for each particular situation (OECD, 2022).

Chapter III that explains the comparability analysis and how to perform it. This chapter details the typical process that may be followed to perform a comparability analysis. This comparability analysis has the aim to find the most appropriate and reliable comparable for each case. It must be done while considering the functions performed, the assets used, and risks assumed by each business unit of the enterprise and by the two independent entities. Through

this analysis, it may be possible to determine that some comparable transactions have a lesser degree of comparability, and hence, they should be removed from the process (OECD, 2022).

Chapter IV is on the approaches to avoid and resolve disputes related to transfer pricing. In this chapter, several administrative procedures and approaches that could be applied to minimize or resolve transfer pricing issues are explained. Furthermore, a section in the chapter is dedicated to the clarification of examination practices, the burden of proof, and penalties. This part of the Guidelines is linked to the OECD Model Tax Convention and its Articles 9 on associated enterprises and 25 on the Mutual Agreement Procedure and the APAs (OECD, 2022).

Chapter V focuses on the different documentation requirements. This Chapter describes the suggested standardized three-tiered approach to the documentation as introduced in Action 13 of the BEPS Project. As a reminder, this three-tiered approach included the master file, the local file, and the Country-by-Country Report (OECD, 2022).

Chapter VI focuses on special considerations for intangibles. This section of the Guidelines helps enterprises and tax administrations to identify intangibles. Furthermore, it also develops the ownership and the transactions involving intangibles. Lastly, this part includes extra guidance for MNEs and tax authorities to appropriately determine arm's length conditions in situations where intangible assets are involved (OECD, 2022).

Chapter VII covers the special considerations for intra-group services. It includes the main issues that may arise and example of intra-group services.

Chapter VIII that details the cost contribution arrangements. It starts by defining the term before moving on the application of the arm's length in cases where such arrangements are involved (OECD, 2022).

Chapter IX deals with the transfer pricing aspects of business restructurings. This section is divided into three main parts starting with an introduction, followed by a part on the application of the arm's length principle for restructurings and one on the remuneration of post-restructuring controlled transactions (OECD, 2022).

Chapter X focuses on the transfer pricing aspects of financial transactions. A series of annexes complete the Guidelines and include examples, documentation and implementation processes, etc. (OECD, 2022).

What is new in the 2022 Guidelines?

The original version of the TPG was published in 1979 and approved by the OECD Council in 1995 and several revisions have been made since then (OECD, 2022). As mentioned before, in 2017, the TPG were revised to reflect the Actions of BEPS, especially for Actions 8-10, and Action 13. In January 2022, the OECD released the latest edition of the OECD Transfer Pricing Guidelines which is the merger of several changes that mainly reflect a consolidation of three reports resulting from the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project that have been adopted since the 2017 edition (EY Global, 2022).

The first revision is based on the following report focused on Action 10 of the BEPS project, namely the ‘Revised Guidance on the Transactional Profit Split Method’ from 2018. This revision replaces the guidance in Chapter II, Section C (paragraphs 2.114-2.151) and Annexes II and II of that same chapter of the 2017 Transfer Pricing Guidelines (OECD, 2022). The objective is to clarify and expand on when the profit split method is the most appropriate method for transfer pricing and on how it should be applied. Furthermore, several examples are also included in the new Guidelines to illustrate the method even more (EY Global, 2022).

The second change is from the report ‘Guidance for Tax Administrations on the Application of the Approach to Hard-to-Value Intangibles’ from 2018. This has been incorporated in the new editions as Annex II to Chapter VI (OECD, 2022). The Hard-to-Value Intangibles were addressed in the Actions 8 to 10 of the BEPS Project. The aim of this guidance is to tackle the asymmetry of information between taxpayers and tax administrations regarding the value of the intangible asset in a transaction. With this revised edition, the OECD hopes to reach a common understanding on how to apply adjustments for those intangibles and to improve consistency and mitigate risk of double taxation. Besides, the Annexes include examples to clarify the approach (EY Global, 2022).

The third revision is a result of the report ‘Transfer Pricing Guidance on Financial Transactions’ that has been adopted in 2020 by the Framework on BEPS. The changes related to this report have been incorporated into Chapter I with a new Section, namely D.1.2.2 and in

the new Chapter X (OECD, 2022). This amendment is related to Action 4 and Actions 8 to 10 of the BEPS Project. This guidance, detailed in the new Chapter X of the Guidelines, aims at addressing specific issues regarding the transfer pricing of financial transactions such as intra-group loans and guarantees (EY Global, 2022).

Lastly, changes have been made throughout to the rest of the Guidelines to ensure consistency with the newly incorporated revisions (EY Global, 2022). Those changes were needed to produce a consolidated version of the Transfer Pricing Guidelines which were approved by the OECD/G20 Inclusive Framework on BEPS in January 2022 (OECD, 2022).

As new changes have been approved by the OECD on the Transfer Pricing Guidelines through the 2022 edition, domestic tax systems and laws should adapt. For this incorporation of the new Guidelines into the countries' domestic tax systems, different approaches exist. Some countries will explicitly refer to the OECD Transfer Pricing Guidelines and in this case, the updates will be automatically incorporated into their domestic tax system. Other countries will require some form of administrative or other action to incorporate the new edition of the Guidelines into their domestic law (EY, 2022).

Consequently, because of the changes in domestic laws and tax systems, companies should beware and analyze the implications of the new Guidelines in the jurisdictions in which they carry out business. Companies should review the revisions of the TP Guidelines with respect to their global operations and transfer pricing strategies as there will likely be more scrutiny by tax authorities (EY Global, 2022).

3.4.4. The Two-Pillar solution

As mentioned before, The OECD/G20 Inclusive Framework on BEPS (IF) aims to modernize the international tax rules aimed at ensuring coherence and transparency in the international tax system (OECD, n.d.). However, even though the IF and its implementation have led to significant progress, some gaps remained allowing MNEs to continue earning income in jurisdictions without paying any corporate income taxes in that country. This was possible due to modern business models that rely on digitalization and intellectual property. To keep up with the changes in digitalization and globalization of the 21st century, The IF agreed in 2021 on the 'Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the

Economy’ (OECD, 2021). In 2021, 136 jurisdictions joined the Two-Pillar Solution and as of the 9th of June 2023, this number increased to 139 jurisdictions (OECD, n.d.).

The Two-Pillar Solution is composed of two Pillars. On the one hand, Pillar One focuses on ensuring a fairer distribution of profits and taxing rights among countries with respect to the largest MNEs. On the other hand, Pillar Two is a measure to prevent excessive corporate income tax competition between jurisdictions by establishing a minimum global corporate tax rate of 15% (OECD, 2021).

To be more precise, Pillar One is the response of the OECD to the remaining problems and inadequacies in the international tax framework concerning the digitalization of the economy. The objective of the proposal is to achieve a solution based on common agreement as the idea behind Pillar One conflicts with the current standards used for the allocation of taxing rights on business profits, such as the need of a physical presence and the use of the arm’s length principle (Navarro, 2021). The scope of Pillar One will target multinational groups having global turnovers exceeding 20 billion euros (OECD, 2021).

This Pillar is composed of two components. The first element, ‘Amount A’, gives the market jurisdictions the right to tax a small part of the profits of in-scope MNEs using formula-based calculations. This responds to the necessity of reevaluating the current taxing rules that require a physical presence for taxing right. Nowadays, the economy has changed significantly, allowing companies to participate actively in a jurisdiction’s economic life without having a local physical presence (Navarro, 2021). Consequently, Amount A introduces a new ‘nexus’, which won’t be based on tangible existence as is currently the case, but rather on a revenue-based allocation key (OECD, 2021).

The second component, ‘Amount B’, aims to standardize the remuneration of associated party distributors who perform baseline marketing and/or distribution activities. This standardized remuneration for such activities will be a fixed return on sales which will be determined to provide a result that approximates an outcome that would have been achieved through the arm’s length principle. Through this standardization, the OECD hopes to enhance tax certainty and reduce the compliance and administrative burden put on companies. The entities that will be concerned by Amount B are defined through a list of typical functions performed, assets owned by the entity, and risks assumed by that routine distributor (Navarro, 2021). For example,

distributors falling within the scope of Amount B should not possess unique or valuable intangibles, nor should they undertake substantial economic risks (OECD, 2023). Furthermore, a list reflecting the different types of entities who are not concerned by Amount B is also available (Navarro, 2021). Amount B is directly related to transfer pricing, making it easier to apply the ALP to basic marketing and distribution activities in a country (OECD, 2021).

Then, Pillar two, also known as the Global Anti-Base Erosion (GloBE), will set mutually agreed limitations on tax competition between jurisdictions through a global minimum corporate tax rate of 15% for MNEs with annual revenues exceeding 750 million euros (OECD, 2021). It works in the following way: taxpayers subject to the Model Rules will have to calculate their effective tax rate in each jurisdiction where they conduct business. If this effective rate is lower than the 15% minimum rate, then they will have to pay a ‘top-up tax’ to compensate the difference. The Rules that explain the calculations behind this reasoning are included in the Chapters 2 to 5 of the Pillar Two Model Rules (OECD, 2021). Moreover, Pillar Two, through its Model Rules, provides a template for jurisdictions to translate the rules into their domestic law, ensuring enough assistance to the timely and coordinated implementation of Pillar Two among jurisdictions (OECD, 2021). The obligatory minimum global tax rate under the Pillar Two Model Rules will be applicable in Belgium in 2024. This will result in hundreds of million euros of additional revenues for the country (July, 2022).

3.5 Soft law versus hard law

As mentioned before, the OECD provides international guidelines on many tax-related matters. However, it is up to the Member Countries to decide whether they adopt these measures in their domestic laws. In other words, the different measures and Guidelines proposed by the OECD are soft law. Nevertheless, the OECD being a standard setter through those different measures, sees its standards and principles often adhered to as if they were binding. Hence, they are effective and useful in many cases (Gurría, 2011).

Several measures of the OECD have become binding as countries decided to transpose the principles and tools set forth in those guidelines in their own domestic laws (Gurría, 2011). Furthermore, various elements of the projects of the OECD have been included in Directives

at the European Union level, such as in the Directive on Administrative Cooperation and the Anti-Tax Avoidance Directive discussed below.

3.5.1. Directive on Administrative Cooperation (DAC)

The Council Directive 2011/16/EU on administrative cooperation in the field of taxation, more widely known as the Directive on Administrative Cooperation (DAC), has been created by the European Union to help Member States manage the international taxation system they are embedded in (The Council of the European Union, 2011). This Directive focuses on the systematic exchange of information between tax authorities from different Member States and the enlargement of the scope of that information regarding direct tax matters (de Fontaine, 2020). Hence, it is aimed at increasing administrative cooperation between tax authorities and in this Directive, nowadays referred to as DAC 1, the rules and procedures regarding the spontaneous exchange of information are outlined (The Council of the European Union, 2011).

The DAC has been amended several times and several of those amendments are directly related to transfer pricing matters, namely DAC 3, DAC 4, and DAC 6. First, DAC 3 of 8 December 2015 amended the Directive with the aim of having more transparency and a higher legal certainty for taxpayers. Consequently, DAC 3 added the exchange of advance cross-border rulings and advance pricing arrangements (APAs) to the automatic exchange of information included in DAC 1. This also includes tax rulings on transfer pricing matters (The Council of the European Union, 2015).

Next, DAC 4 amended the Directive in 2016 to ensure that Member States have access to relevant information on multinational groups that may more easily engage in aggressive tax planning practices compared to domestic companies. DAC 4 introduces the mandatory exchange of the Country-by-Country reports between Member States which include various types of information for each tax jurisdiction ranging from the amount of revenue to the number of employees, and so on. Furthermore, each entity within a tax jurisdiction must be identified and its activity explained (The Council of the European Union, 2016).

Finally, DAC 6 has the objective of increasing transparency even more by making sure that Member States obtain information about potentially aggressive cross-border tax arrangements. DAC 6 is related to BEPS Action 12 and brings the obligation for taxpayers and intermediaries

to inform tax authorities on cross-border arrangements that could potentially be used for aggressive tax planning. This reporting obligation concerns all actors involved in the cross-border transaction and consequently, if no intermediary is used, the reporting obligation is on the taxpayer himself. The reportable arrangements are the ones that meet at least one of the hallmarks described in Annex IV of the Directive. The ones related to transfer pricing are threefold: the first one is related to safe harbors, the second one is for Hard-to-Value-Intangible (HTVI), and the last one is related to the intragroup border-crossing transfer of functions, risks, or assets and their projected EBIT (The Council of the European Union, 2018).

To sum up, this Directive is not only aimed at exchanging information relative to illegal tax behaviors, but it is also aimed at aggressive tax planning strategies that may need to be investigated to enable tax authorities to take the necessary precautions (de Fontaine, 2020).

3.5.2. Anti-Tax Avoidance Directive (ATAD)

The Council Directive (EU) 2016/1164 of 12 July 2016 also known as the Anti-Tax Avoidance Directive (ATAD) is the European Union's answer to the OECD BEPS Project (The Council of the European Union, 2016 ; Haslehner, and al., 2016). The ATAD is aimed at coordinating the responses of the Member States for the implementation of the BEPS conclusions at the European Union level. Besides, this Directive is also aimed at putting an end to the mismatches in the international tax system all while providing legal certainty to taxpayers (The Council of the European Union, 2016).

It marks a break-through in direct tax harmonization in the EU by including a General Anti-Abuse Rule (GAAR) and several Specific Anti-Abuse Rules (SAAR) (Haslehner, and al., 2016). Those measures against tax avoidance are the interest limitation rule, the exit taxation, the general anti-abuse rule, the controlled foreign company rule, and the hybrid mismatches. The general anti-abuse rule allows Member States to treat arrangements, including transfer pricing arrangements, as non-genuine if they lack valid business reasons, don't match economic reality, and are mainly aimed at obtaining tax advantages. Hence, such arrangements should be incorporated in the corporate tax liability of that company with respect to the national laws in the country. The implementation of these rules and the general provisions included in the Directive are left to the Member States for them to be able to transpose them in a way that fits their domestic tax system the best (The Council of the European Union, 2016).

The Directive has been amended in 2017 with a particular focus on hybrid mismatches with third countries, resulting in ATAD II or the Council Directive (EU) 2017/952. Furthermore, this amendment is also to be consistent with BEPS Action 2 (The Council of the European Union, 2017).

3.5.3. ATAD III proposal

Since their introduction, both the ATAD and the DAC have brought significant progress in establishing a unified and fair tax system within the European Union. However, the presence of shell entities, which lack substance and economic activity, continue to pose a threat for base erosion and profit shifting. Hence, as a response, the European Commission drafted in 2021 a proposal for the next amendment of the ATAD Directive, commonly known as ATAD III. The primary objective of this proposed Directive is to discourage the improper use of shell entities for tax-related purposes (European Commission, 2021).

On 17 January 2023, the proposal draft of the European Commission for ATAD 3 was approved by the European Parliament incorporating the different amendments made by the Committee on Economic and Monetary Affairs (European Parliament, 2023). When this Directive will be adopted, it will introduce specific criteria to assess minimum substance requirements to shell entities to determine whether they lack minimal economic activity. If such entity is indeed used for tax purposes, national tax authorities may take action which could in turn lead to the refusal of certain tax benefits (Stibbe, 2023). If presumed as shell entity, the importance of transfer pricing documentation is emphasized in the Proposal. This documentation is crucial in demonstrating that the entity has been actively managing control and assumed the risks over the business activities generating the in-scope income or assets (Baker & McKenzie, 2022).

Furthermore, it is important to mention that ATAD III will have a significant impact on Small- and Medium Sized companies (SMEs) as contrary to Pillar Two, its scope is not limited to companies having annual consolidated revenues over EUR 750 million (Stibbe, 2023).

3.5.4. EU Joint TP Forum and Council Directive 2017/1852

As mentioned before, OECD and EU Member States set transfer prices based on the arm's length principle. The interpretation of the rules surrounding transfer pricing and the arm's length principle are various and may differ between multinational groups and tax administrations. Those differences in interpretation as well as the differences in the implementation of the laws regarding international corporate taxation and transfer prices result in uncertainty for taxpayers. Therefore, to respond to this uncertainty, the Commission of the European Union set up the EU Joint Transfer Pricing Forum (JTPF) in 2002. The objectives of the JTPF are to find and explain pragmatic solutions to problems that may arise by transfer pricing practices (European Commission, 2011). Furthermore, the Council of the European Union has also adopted the Council Directive 2017/1852 on tax dispute resolution mechanisms in the European Union. This Directive is aimed at introducing a practical framework for ensuring fair dispute resolution by setting rules for mechanisms that resolve disputes effectively and efficiently (The Council of the European Union, 2017).

3.5.5. Soft laws and hard laws concerning Transfer Pricing in Belgium

Rules governing Transfer Pricing

In the Transfer Pricing Circular 2020/C/35, the Belgian Tax Authority (BTA) confirms that it follows the rules and adheres to the principles outlined in the Transfer Pricing Guidelines of the OECD of 2017 and that it can be assumed that Belgium will adhere to future modifications to the TPG. Furthermore, in this Circular, the BTA also confirms the use of the definition of associated enterprise outlined in Article 9 of the OECD Model Tax Convention on Income and Capital (SPF Finances, 2020).

Besides, as an EU Member State, Belgium has implemented the EU Directive 2011/16/EU (DAC) on administrative cooperation as repeatedly amended, and the Anti-Tax Avoidance Directive (ATAD) (Engels, and al., 2023 ; Loyens & Loeff, 2019).

At first, transfer pricing adjustments in Belgium were made based on the principle of “abnormal or benevolent advantage” described in the Articles 26, 79, and 206/3 of the Belgian ITC. Later, in 2004, the OECD's arm's length principle was codified in Article 185 of the ITC. Furthermore, Section 2 of this Article was aimed at improving the interpretation of the

“abnormal or benevolent advantage” and to set out the legal basis for performing transfer pricing corrections (Engels, and al., 2023).

Transfer Pricing Documentation requirements in Belgium

As mentioned before, the BTA confirmed through the Circular that it adhered to the principles outlined in the TPG, and consequently, to the documentation requirements outlined in Chapter V. In this Circular, it also refers to the Articles 321/1 to 321/7 of the ITC that specifically tackle the transfer pricing documentation requirements for Belgian taxpayers (SPF Finances, 2020 ; Engels, and al., 2023).

The thresholds for the Belgian transfer pricing documentation requirements are twofold. For the Country-by-Country reports, this obligation includes groups with annual consolidated revenues over EUR 750 million. Regarding the master and local file, this concerns companies meeting at least one of the following criteria: total of EUR 50 million in operating and financial income, a balance sheet total of EUR 1 billion, or an annual average headcount of 100 full-time equivalents (Engels, and al., 2023).

The Belgian local file is one of the rare exceptions where Belgium does not adhere to the principles of the TPG of the OECD. The Belgian local file form is different from the one set out in Chapter V of the TPG and there is no obligation for the Belgian taxpayer to also prepare and file the OECD local file form (Engels, and al., 2023).

Dispute Resolution of Transfer Pricing Issues in Belgium

In Belgium’s TP Circular 2020/C/35, the BTA encourages the taxpayer and the tax authorities to work together to determine the transfer pricing strategies used in cross-border intragroup transactions. However, if there is a rectification of a transfer price of a particular case, this may lead to double taxation. To resolve this, taxpayers may use the procedures outlined in the Belgian law of 02.05.19 transposing the Directive (EU) 2017/17852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union (The Council of the European Union, 2017 ; SPF Finances, 2020).

4. Methodological approach

This section presents an overview of the methodological approach used to tackle the research question of this thesis (see *supra* p.8). It encompasses three key sub-sections, namely the sample selection, the data collection method, and the data analysis.

4.1 Sample selection

As transfer pricing within multinational groups is often cross-border, the selection of participants for the research objective of this thesis had to include individuals working in a multinational environment or involved in a professional context where their activities and interactions span across countries. Due to the specialized and niche nature of the topic, in addition to personal network connections, the LinkedIn platform was also used to identify and contact potential interview participants.

Following the identification and contact phases, the final sample of interviewees included individuals with a strong background in transfer pricing from multinational groups, audit and consultancy firms, a tax authority, and a law firm. This diverse sample was chosen to ensure that various perspectives and insights on the subject could be gathered.

The selection criteria for the transfer pricing experts from multinational groups focused on individuals who held senior positions, such as heads or managers of transfer pricing or tax departments, who are directly involved in the transfer pricing strategy and decision-making process. Regarding consultancy or audit firms, individuals were selected based on their specialization and experience in advising multinational clients on transfer pricing matters. This ensured that the interviewees possessed in-depth knowledge and practical experience in managing transfer pricing within multinational organizations.

To ensure a comprehensive understanding of the subject and to capture a different view on transfer pricing and the associated regulations and policies, two advisors working in the Transfer Pricing Team of the Belgian tax authority were included in the sample. This provided key insights on the topic due to their role in transfer pricing regulations and audits.

Furthermore, to incorporate a legal point of view, a tax lawyer with a background in transfer pricing also contributed to the improved interpretation of the subject.

The size of the sample was determined following the principle of data saturation (Roussel, and al., 2005). Hence, no additional interviews were organized once data saturation was reached, indicating that new interviews would no longer provide significantly new insights. However, it is important to note that this sample selection was based on the objective of this thesis and consequently, it may not encompass all possible perspectives.

4.2 Data Collection Method

The data collection method in this thesis was based on the conduction of qualitative interviews with the selected sample. The interviews were designed to discover the perspectives, insights, and experiences of the participants and derive key takeaways. A common question guide (see Appendix 1) served as the basis for structuring the interviews.

This common question guide provided for semi-structured interviews which ensured consistency in the data collection across the participants while also allowing flexibility for open discussions, extra follow-up questions, and clarifications. The questions addressed various features of transfer pricing ranging from general questions on the evolution of tax avoidance through transfer pricing to more specific questions on certain measures and rules impacting this topic. To finish, an open question was asked to make sure that any topic hadn't been overlooked during the interview.

The interviews were held either in person at the offices of the different companies or via video conferencing, depending on the participant's preferences and logistical considerations. The duration of each interview varied depending on the depth of discussion and the time that was available, typically ranging from 40 to 90 minutes. All interviews were audio-recorded with the participants' consent to ensure the capture of their responses and to facilitate the later transcription (see Appendices 2 to 11) and analysis (see section 5).

Ethical considerations were taken into account during data collection through asking for the interviewees' consent to participating in the interviews and by giving the interviewees the possibility to answer confidentially.

4.3 Data Analysis

The data analysis process of this thesis implicated a thorough approach to ensure a complete analysis and the extraction of the key takeaways gathered from the data collection.

First, all interview recordings were transcribed through a non-verbatim approach, meaning that the transcriptions are not word-for-word reproductions of the interviews (Halcomb, and al., 2006). Hence, word repetitions, unfinished sentences, pausing, and hesitations were not included. This allowed to improve readability and comprehension all while ensuring an accurate representation of the participants' responses. Moreover, this enabled the removal of any confidential information.

The second phase was the immersion into the data. By reading and re-reading the interview transcriptions together with the information gathered from the research and literature review enabled to have a deep understanding of the topic and to start identifying common themes, opinions, or patterns from the interviews. Next, these elements were organized into different categories to structure the main ideas and concepts.

Finally, through the different steps of this methodological approach and the interpretation of the data, an analysis to answer the research question of this thesis is presented in the following section.

5. The analysis and the results

In this section, an analysis has been made to answer to the research question of the thesis which is aimed at examining the ongoing battle against tax avoidance through transfer pricing and at finding out whether the different measures that have been implemented have been acting as brakes for multinational companies. The approach to answer this research question is empirical and based on the views and impressions from the field. The analysis will reflect the evolution and impact of the measures as felt by the tax experts actively involved in the practice. All the results of the analysis are based on the in-depth overview of the qualitative insights gathered from the interviews (see appendices 2 to 11). In other words, all data included in this section is from the analysis of the conducted interviews.

This analysis is structured as follows: first, the evolution of the battle against tax avoidance through transfer pricing is explained through six core areas. Then, the different measures and their impact in practice have been detailed. Next, the difficulties and challenges encountered by companies as a response to these measures are mentioned. The drawbacks and the remaining interrogations on the current tax landscape have also been identified. Last, a final section is dedicated to the limits of the analysis.

5.1 How has the battle against tax avoidance through transfer pricing evolved?

The evolution of the battle against tax avoidance through transfer pricing can be structured around six core areas, namely compliance, transparency, value creation, awareness, audits, and shifts in mentality.

Compliance

A lot of compliance requirements on tax and transfer pricing have been introduced and have become mandatory through the measures of the OECD, the European Union, and at national level. The information companies are required to disclose and share on an automatic basis with tax authorities is much broader than compared to the pre-BEPS era.

The documentation requirements, which are at global and individual entity level, have obliged companies to provide detailed information on their activities to the tax authorities. Nowadays,

companies must file ‘local files’, ‘master files’, ‘country-by-country reports’, and other documentation depending on their size, activities, and the local laws applicable for each business entity. The rules specific to documentation such as the master file and local file are dependent on the domestic laws of each country and hence, one transfer pricing transaction involving two countries may result in very different documentation covering the same transaction. Consequently, this compliance has increased the administrative burden on taxpayers significantly.

This additional administrative burden caused by the increased compliance and the diverging national rules has been pointed out by all interview respondents. However, they have also claimed that this administrative burden depends on the quality and resources spent on the compliance. Companies who put a lot of focus on the compliance and aim to provide qualitative documentation will experience more administrative burden compared to companies who comply to the minimum that is required.

Another important impact of compliance on transfer pricing and the battle against tax avoidance through such means is that TP teams within companies and within tax authorities have been growing, improving the application, reporting, and control on transfer pricing matters. This has been confirmed by the consultancy firms, the MNEs, and the Belgian tax authority.

Transparency

The implementation of the different measures, and the increased compliance requirements they have introduced have created an unprecedented level of transparency within the international tax landscape.

Nowadays, companies must provide information on their intercompany cross-border transactions and the associated transfer pricing models to tax authorities. This is very different compared to the past, where companies felt that they could act in the dark and hope that they would not get caught. This has changed, and companies cannot think like this anymore as they must provide detailed data to the authorities. Consequently, through these reporting requirements, MNEs aim to provide data and proof that the pricing of their transactions is at arm’s length.

Furthermore, as the transparency is also at global level and tax authorities are working together to tackle the issue of tax avoidance through transfer pricing, companies know that having transfer pricing strategies that exploit gaps or inconsistencies in the international tax system are likely to be detected and challenged by tax administrations. Consequently, this level of transparency is bringing an end to many loopholes that may have been used in the past to avoid taxes or to shift profits to low-tax jurisdictions through transfer pricing.

Moreover, this transparency on transfer pricing matters has also impacted tax authorities in a significant manner. This increased compliance and improved transparency are the main tools tax authorities have to identify and address potential transfer pricing issues.

Furthermore, there is also an increased demand for transparency from the public and the society as a whole. Shareholders are asking for more transparency on tax matters, and public interest on the topic has surged in the past years. A lack of transparency on transfer pricing matters could damage a multinational group's reputation and lead to negative publicity. Therefore, companies have an additional pressure to comply, be transparent, and abide by the rules.

This increased transparency has been highlighted as one of the key developments in the battle against tax avoidance through transfer pricing.

Value creation

The shift in the definition and understanding of value creation has also been emphasized during the interviews as a key milestone in the fight against tax avoidance through transfer pricing. The different measures and regulations have broadened the view on what creates value in a company, and they have changed the way companies and tax authorities look at the concept.

Previously, in transfer pricing matters, the contractual ownership of functions, assets, or risks was often used as the driver of value to determine the remuneration of entities. Today, through the new measures, this has changed and economic ownership, DEMPE functions, and 'significant people' are now considered to be the main drivers of value. This development impacted the battle against tax avoidance through transfer pricing significantly, as it changed the ways in which companies remunerate their entities. Today, MNEs must remunerate their entities with respect to the actual economic activity they perform, rather than on the mere legal ownership of assets, risks, or functions as was the case in the past. In other words, using transfer

pricing based on legal ownership alone to shift profits between jurisdictions is no longer viable today.

Awareness

A common consensus between the different participants to the interviews is that the measures have resulted in a wake-up call for companies. All are aware that they have no other choice than following the reporting requirements and hence, they want to make sure it is done right to avoid any trouble or disputes.

In other words, companies are not only focusing on the documentation requirements, but also on the correct application of the rules and measures on transfer pricing matters to ensure that what will be written in the documentation is a true reflection of what is happening inside the business and is abiding by the laws. Moreover, MNEs are increasingly aware of the high probability of being challenged by tax authorities which may lead to important consequences. Hence, it is even more essential to make sure and verify that the transfer pricing strategies of the company are accurate and complete.

Furthermore, transfer pricing matters have also become a topic of interest at many levels within organizations. In the past, transfer pricing was a topic reserved to tax experts and today, the requirements require information encompassing different departments asking for coordinated teamwork on it.

In the past, companies were required to file some information but without much focus put on it from countries and tax authorities. Consequently, the awareness within the company was much lower and companies focused less on the correct application of transfer pricing strategies. Furthermore, the topic was reserved to tax experts where nowadays, transfer pricing has become a key topic discussed at many levels.

Audits

The four aforementioned developments all led to big evolutions in audits performed by tax administrations. With the additional layers of compliance and the increased transparency in the international tax landscape, tax authorities now have access to huge amounts of data. Consequently, in contrast to the past, tax authorities are much better informed and well-prepared when they initiate an audit. Furthermore, they now have mandatory and upfront access

to that information. This helps them to target audits more efficiently, to be more informed about the company, and understand the tax structure beforehand. This also means that companies can't hide in the shadows anymore, expecting that tax authorities won't catch onto their actions.

Furthermore, tax authorities have developed their expertise on transfer pricing, and they have broadened their teams. Today, tax authorities have accumulated significant knowledge, experience, and people which puts additional pressure on companies. All of this has resulted in tax audits that are much more in-depth and where tax auditors examine everything closely. They are challenging the taxpayer much more, and on qualitative aspects rather than quantitative aspects. Tax authorities are not relying on the paper facts of the cases, they rather want to see for themselves what is happening behind the curtains. They want to understand and verify where decisions are made, where the significant people are located, where risks are situated and the control over that risk. Moreover, tax audits in the past involved more general tax questions and they rarely involved transfer pricing matters. Today, interviewees claim that questions on transfer pricing are part of each and every audit.

Companies are aware of this change, and they have been experiencing that tax authorities are challenging them a lot on transfer pricing matters. MNEs are careful and they want to comply to the implemented measures to avoid tax assessments, which may in turn lead to double taxation. Therefore, this pressure on companies by tax authorities has been a big shift in the battle against tax avoidance through transfer pricing.

However, one element that has been pointed out by some interviewees is that the evolution of tax authorities and their tax audits may differ from one country to another as it depends on their level of maturity and their objectives with regards to tax. Jurisdictions focused on attracting investment and creating a good business environment for companies will often be more flexible in their audits. Jurisdictions where their main goal is to collect taxes will be very thorough and less flexible.

Shifts in mentality

There is a common agreement amongst all participants on the fact that there is a substantial shift in the mentality of companies towards transfer pricing. The priorities of MNEs on tax matters and transfer pricing have changed, and the focus is now on abiding by the laws and on being transparent. The companies and advisors have claimed that they still aim to be tax

efficient, but this all while following the rules and having tax and transfer pricing strategies that reflect the operational reality of the business.

This shift in mindset is due to several elements. First, as mentioned previously, companies know that the loopholes used to shift profits and erode tax bases through transfer pricing are vanishing and that pursuing such strategies are no longer beneficial. Second, more and more companies consider paying a fair share of tax as being a part of their corporate social responsibility goals. An increasing number of shareholders also share this opinion. Hence, this is putting an additional pressure on companies as having dissatisfied shareholders can have a big impact on the value of the company. Next, one participant mentioned the change in the generations of the employees within companies, where younger generations focus much more on ethical and sustainable aspects of taxes because it is needed for society.

Another factor causing this change in mentality is because companies are looking for tax certainty due to the increased compliance, and the challenging audits. Today, when companies are making changes or decisions regarding their tax structure and their transfer pricing models, they want to mitigate risk as they want to avoid that tax audits are launched on these matters in a couple of years, resulting in a potential assessment and double taxation. Tax certainty through upfront cooperation with tax authorities (such as through APAs) has become a crucial element of today's very complex tax landscape. As transfer pricing is complex and is never black or white, this upfront tax certainty reduces the pressure put on companies a lot.

5.2 The impact of the introduced measures

To achieve the evolution of the battle against tax avoidance through transfer pricing mentioned above (see section 5.1), international bodies, the European Union, and national governments have introduced various measures and policies. Their objective is to arm tax authorities with the necessary tools to fight unfair tax practices and ensure that profits are taxed where they should be.

5.2.1 BEPS

The introduction of the 15-action plan of BEPS was according to all MNEs, consultancy and audit firms, and the Belgian tax authority the milestone of the evolution of the fight against aggressive tax avoidance. Through all the different actions introduced with BEPS, many of the loopholes MNEs could make use of to erode their tax base and shift their profits have disappeared. The impact of the BEPS project on tax avoidance through transfer pricing specifically can be divided into two main categories, namely the technical concepts it introduced, and the impact of the additional reporting requirements (and transparency).

The different technical concepts introduced by BEPS through Actions 8 to 10 have been mentioned by all participants as being a key development brought by BEPS to help governments in their battle against tax avoidance through transfer pricing. As mentioned previously, in the past it was the contractual organization of the MNEs that was used as the basis for determining the remuneration of entities through transfer pricing. Hence, the introduction of BEPS Actions 8 to 10 aimed to introduce new concepts of value creation and ownership to move away from this allocation of profits based on legal aspects to a more economically valid allocation.

The different participants to the interviews all stated that the introduction of the new concepts by the BEPS Project have made it no longer possible to have structures to shift profits away from one jurisdiction to another based solely on the legal ownership of the asset. The concepts of the ‘DEMPE functions’, and ‘risk and control over risk’ are now governing the transfer pricing strategies of MNEs. In other words, we can state that they are used as was intended by the BEPS Project as companies now use these concepts to determine the rightful remuneration of entities.

The different reporting requirements brought by the BEPS Project have also been highlighted as a major tool acting as a brake on tax avoidance through transfer pricing by multinationals. The documentation obligations brought by the BEPS Project (e.g., CBCR, master file reporting, local file reporting, etc.) have brought an unparalleled transparency within the international tax system. The interviewees also mentioned the importance of the documentation that must reflect where the ‘economic ownership’ of assets is located and how they remunerate it accordingly. This closes the possibility of remuneration based on legal ownership alone even more.

Furthermore, this additional documentation ensures that tax authorities have access to a huge amount of data, which allows them to target audits better. As mentioned before, all participants agree that the additional information brought to tax authorities through the documentation requirements has acted as a break on tax avoidance by multinationals. However, all interviewees claimed that the impact of the CBCR is limited. As this report gives a high-level overview of the consolidated group, no specific conclusions on transfer pricing can be made through looking at this on a standalone basis. All multinational groups and consultancy/audit firms have stated that they do not recall any audit being launched based on an analysis of the CBCR. The Belgian tax authority confirmed this and added that the intent of the OECD was for the three files to be looked at together. Hence, they do not start audits based solely on CBCR, as they analyze it together with the master file and local file of the entity. As a result, all participants agree that the biggest impact of the documentation requirements brought by BEPS are through the more specific and in-depth documentation, such as the master file and local file.

The consequences on transfer pricing brought by BEPS have caused a change within the international tax landscape. The BEPS Project aimed to remove existing structures used for base erosion and profit shifting through mechanism such as transfer pricing. All participants confirmed that this happened in practice, as groups having entities with no or little substance had to dismantle such structures or add substance to comply with the BEPS Actions. Hence, this again shows that one of the OECD's objectives through the BEPS Project has been achieved.

Several interviewees pointed out the importance of the Multilateral Instrument (Action 15) on the magnitude of the impact of BEPS on transfer pricing issues. Thanks to this, many countries agreed to automatically amend their bilateral treaties with the different principles and requirements introduced by the BEPS actions. As mentioned by one of the tax specialists, modifying bilateral treaties may take years and Action 15 was the OECD's response to act quickly and narrow down the loopholes that were still used before BEPS.

The concepts introduced by BEPS and the obligation to report on them in different documentation has also allowed tax authorities to challenge multinational groups if they have doubts on the matter. The different MNEs and tax advisors interviewed confirmed that they know that tax authorities will launch audits on such matters if their documentation and the

application of the concepts is not bulletproof. They know that the transfer pricing models they have must reflect the reality of the business, otherwise the consequences will be considerable. The Belgian tax authority strengthens this point of view as they confirmed that they will conduct rigorous research and analysis to understand the structure of a company and identify where all key activities are taking place.

5.2.2 The Transfer Pricing Guidelines

The impact of the Transfer Pricing Guidelines of the OECD isn't something that has been pointed out as a major breakthrough by the interviewees. They rather see the TPG as the continuity of BEPS within which the actions focusing on transfer pricing have been detailed and put into examples. Several interviewees mentioned that the added value of the TPG is that the Guidelines often offered interesting clarifications and guidance on the BEPS actions and how to implement it.

Moreover, another value brought by the TPG is that they have been used as the basis for the preparation of the tax policies within MNEs. The Chapters of the TPG that have been mentioned by the interviewees as important and which have been guiding several participants are Chapter I which detailed the risk and control over risk, Chapter VI on the intangibles, Chapter IX describing the exit tax and Chapter X on the financial transactions. According to several of the participants, these were the topics through which groups could have more aggressive tax plannings and aggressive tax setups in the past.

5.2.3 The Two-Pillar Solution

The Two-Pillar Solution, often referred to as BEPS 2.0 is considered to be the next gamechanger in the evolution on tax avoidance through transfer pricing. All concur that it will have a significant impact on the international tax landscape and hence, MNEs are already preparing its implementation for a considerable amount of time.

Even though still unclear and yet to be determined, all MNEs and tax advisors see eye to eye on the fact that Pillar One has a very high potential impact on tax through transfer pricing. Previously, companies were taxed in jurisdictions through a physical nexus. When Pillar One will be implemented, amount A will introduce a new artificial nexus in the jurisdictions where

the customers of the MNE are situated. With amount A of Pillar One, a new taxable reality will be created. Several participants agree that through this Amount A will definitely have an impact on the fair distribution of profits, which was the intention of the OECD with Pillar One. Hence, as pointed out by the statements on the Two-Pillar Solution, some interviewees mentioned that the concept of the arm's length will have to be revisited, as the principles it is currently based on won't be applicable with this new nexus.

Regarding amount B, companies believe that this may ease the administrative burden on the taxpayers as it could result in less time and resources needed to make benchmarks for the determination of the remuneration of all the limited-risk distributors. By having one margin applied to all those types of distributors, a considerable amount of resources could be spent on other considerations and companies will save time and money to companies.

However, even though they believe Pillar One will have a considerable effect on companies and their tax strategies, they all shared that not a lot of attention has been paid to it. On the one hand, because it still needs to be finetuned a lot and the focus today is on Pillar Two as the EU has led the way and the implementation in Member States is imminent. On the other hand, also because only a small portion of MNEs will be in the scope of Pillar One based on the current rules.

With regards to Pillar Two, many of the participants believe that it won't have much influence on transfer pricing. On the contrary, transfer pricing has been suggested as a solution in coping with the global minimum tax rate of Pillar Two. In jurisdictions where a group has an activity that can benefit from special regimes, such as in Belgium where pharmaceutical companies can often benefit from the Innovation Income Deduction (IID), it may be interesting to add entities with different activities and sufficient substance. Then, through the rightful remuneration given to those entities through transfer pricing, companies could have a blended rate of 15%, while having one activity taxed at a higher level and having the R&D-entity taxed at a very low level.

However, many have pointed out that using aggressive tax planning and misusing transfer pricing to shift profits to lower tax jurisdictions won't be relevant in the future as all MNEs having annual consolidated revenues over 750 million euros will have the global minimum tax rate of 15%. The participants stated that the benefit and sense of putting efforts into transfer pricing schemes for profit shifting purposes will vanish with the implementation of Pillar Two.

5.2.4 The Directive on Administrative Cooperation

The result of the analysis on the views on the Directive on Administrative Cooperation (DAC) is that this Directive didn't impact the way multinational groups are operating and setting their transfer pricing strategies. No company, tax advisor, or tax authority felt that the DAC and its different amendments related to transfer pricing had a significant operational impact on companies. For example, many mentioned as only consequence from DAC 6 the fact that they must share additional information to tax authorities, and if they don't, the advising firms will. It is an extra element they must take into account in their compliance burden. In other words, DAC is considered to be the continuity of that thrive towards transparency that authorities are aiming for. This transparency on transfer pricing matters is the main impact all interviewees have given as a result of DAC.

The MNEs and tax advisors have mentioned that they have no certainty that the information from DAC is actually used by the tax authorities. Furthermore, they have not heard of audits that have started based on DAC reporting. The Belgian tax authority has shared that the additional information from DAC is added to the database that is used for risk analysis to target audits. However, they also explain that there are enormous amounts of data available to them today, and it is also a challenge for them to analyze and digest the data and make sense out of it.

What several participants acknowledged is that it was a positive evolution in terms of the cooperation and collaboration between tax authorities. The different reporting obligations of the Directive are automatically available and exchanged between tax authorities, which is putting supplementary pressure on companies. Previously, that information (e.g., tax rulings, cross-border transactions, etc.) was not shared between jurisdiction unless it was provided through bilateral treaties. However, the Belgian tax authority pointed out that oftentimes, companies spontaneously provide that type of information to the tax authorities, and generally more complete information than what would be exchanged through DAC.

An important point that has been mentioned is the importance of DAC 6 in identifying aggressive tax planning strategies before they get implemented. This is an important difference with the other DAC amendments which focus on past events.

5.2.5 The Anti-Tax Avoidance Directive (ATAD)

ATAD is viewed as an added pressure on companies and a way of closing the loopholes that hadn't vanished yet. Many agree that the consequences of ATAD weren't a big breakthrough in the battle against tax avoidance through transfer pricing, especially as a lot of changes had already been made since BEPS. Therefore, many of the structures targeted by the Directive had already been dismantled and disappeared. For those reasons, many felt that this was rather an additional compliance burden.

Conversely, some believed that the ATAD package was an important innovator. Within this view, the rules on Controlled Foreign Companies (CFC) were felt to be significant, especially in Belgium where rules on CFC were lacking. In Belgium and the countries where it has been implemented in a similar way, this rule is felt to be directly linked to transfer pricing as its methodology boils down to a transfer pricing analysis. This because if the transfer pricing model between the controlled foreign entity in a low tax jurisdiction and the controlling entity is genuine and the economic reality is reflected, no reallocation of profits will be done through the CFC rules. Certain tax professionals commented on the General Anti-Abuse Rule (GAAR) which they believe is an important tool for tax authorities. This has given a lot of additional possibilities to tax authorities to challenge companies on their tax structures and transfer pricing setups. One interviewee mentioned that the GAAR together with all the different Specific Anti-Abuse Rules introduced by ATAD and other measures have spoiled the tax auditors with choices to confront companies during tax audits.

Although ATAD I and II weren't considered as turning points, the views on the proposal of ATAD III are very different. Many believe that the rules proposed in this future Directive will have a significant impact on transfer pricing as it touches more closely upon the concept of 'substance'. This because to meet the ATAD III on empty shell entities, MNEs will be required to have substance in such entities otherwise they won't be able to benefit from the tax regimes within the jurisdiction. Consequently, by adding substance in those entities, the transfer pricing models of the MNEs will change and adapt to the new reality.

5.3 Difficulties and challenges encountered as a result of the measures

As mentioned before, there was a clear evolution in the battle against tax avoidance through transfer pricing. Many measures and tools have been introduced which have had a significant impact on the rules and practices governing the international tax system. However, this evolution and the execution of the measures and rules have brought several struggles.

One of the most important challenges that many MNEs have been affected by is the administrative burden they are coping with. A significant factor contributing to this burden is related to the implementation of the measures at national level. MNEs and tax advisors have oftentimes felt the hurdle resulting from the contrasting ways in which countries have implemented the international measures or European Directives into their domestic laws. One of the reasons given for this lack of standardization is the individual objectives of each country where they interpret the rules differently. The structure, the information that needs to be reported, and the language of reporting are some examples in which national rules differ from one another. This is adding an extra layer of administrative burden on top of the one they already having to report the data. That is to say, for one single transaction, different transfer pricing documents may be required because of the differing implementation of documentation requirements in local laws.

Another common difficulty impacting MNEs in navigating through all the rules is the complexity of the landscape and the rapidity in which it is evolving. The rules of international taxation have become very complex, and companies need to have the right advisors to deal with this and stay up to date to ensure that they are abiding to all the measures. Furthermore, the aforementioned heterogenous implementations between jurisdictions increases this complexity even more. Tax assessments from audits can result in huge amounts of taxes to be paid to the authorities and in double taxation. As a result, this challenge has been experienced by all interviewees. The complex international tax landscape and rules are not only affecting MNEs, tax authorities also have had to take actions to navigate within this environment.

5.4 The drawbacks and the future of the international tax landscape

5.4.1 Compliance versus administrative burden?

As mentioned several times in this thesis, a lot of additional compliance has been established through the years. For that reason, a dilemma has been brought up by several of the interviewees, namely the balancing act between the additional requirements put on taxpayers and the incremental value it is bringing. The shared opinion is that additional compliance requirements should not be introduced if they do not add significant value to the existing documentation and are gathering dust and are never used by tax authorities.

As we can see that many of the requirements, such as CBCR or the DAC, are not considered to have a significant impact on the operations of the company but are just an added layer of compliance. The question that arises is whether that information is necessary? On top of that, the distinctive reporting filed in all the jurisdictions concerned by the same transaction are also leading to the same question. Furthermore, as mentioned before, MNEs are wondering if some of the documentation they file is actually used by tax authorities.

Compliance has an enormous cost for companies in terms of resources needed. Furthermore, even when complying, there is still a risk that they will be challenged through a tax audit that may result in a tax assessment. Therefore, this is creating some frustration and worries within MNEs as they sometimes feel that the compliance burden introduced by some measures is disproportionate with the incremental value they bring. There is doubt on whether tax authorities could be satisfied with part of the documentation they have access to.

This balancing act is also to ensure that there is a right balance between catching the few very aggressive and fraudulent companies with all the compliance and providing support and stability to MNEs that want to follow the rules. As a result, a question arising from this analysis is whether there aren't more fruitful ways of collaboration that could both enhance compliance and transparency all while reducing the high administrative burden put on companies. Additionally, it leads to wonder if introducing more compliance is the future path that should be followed.

5.4.2 The implementation of Pillar Two: will it be in line with the objectives?

As mentioned before, international organizations and the European Union provide the common framework for the measures, but countries decide individually how they implement this within their jurisdiction. With reference to Pillar Two of the Two-Pillar Solution, MNEs and tax advisors are curious on how it will be implemented at national level. Moreover, as tax incentives were often used in the past to attract investment, many MNEs are wondering how countries will react to the minimum effective tax rate of Pillar Two that is taking this incentive away. Plenty of countries will find alternative ways to attract investment and several believe that they may potentially use the tax revenue generated by Pillar Two for that use. Consequently, if this is the case, this would be contrary to the intentions of Pillar Two and this would again lead to some groups benefitting from favorable positions compared to other, often smaller-sized groups.

Consequently, will the battle against tax avoidance through transfer pricing shift towards another battle? As such incentives or benefits may again give rise to unequal competition between domestic companies and bigger multinational corporations.

5.4.3 A new race to the bottom?

The collective conclusion is that tax avoidance through transfer pricing as has happened with cases such as Starbucks (see supra p.8) has vanished, and that aggressive structures and transfer pricing strategies that were used before BEPS will not be possible anymore. However, there is a common agreement that there will always be groups that will try and find the last existing loopholes in the system. The only difference is that the 'race to the bottom' will change from being a race to a very low or non-existing tax rate to a tax rate of 15% after Pillar Two is implemented. And who knows, maybe this race to the bottom will include incentives and benefits not related to tax?

As mentioned in section 5.4.3 on the implementation of Pillar Two, will the battle against tax avoidance through transfer pricing change to a battle against unfair competition between companies based on unequal obtained benefits and incentives?

5.5 The limits of the analysis

This section is dedicated to the limits of the analysis detailed above. Few elements have created boundaries to the analysis conducted in this thesis, namely the possibility of potential biases, the depth of analysis, and the timeframe of the study.

First, even though the range of participants from different types of organizations and industries have been interviewed, the analysis is subject to potential biases. First, a selection bias may exist as the sample of participants has been chosen based on individuals with significant experience and knowledge on the matter. Next, a generalization bias may also occur as the analysis is drawing conclusion from a relatively wide but not complete range of tax specialists and hence, it may not be fully representative.

Furthermore, the depth of the analysis is limited. Although the qualitative interviews have provided key insights and a comprehensive understanding of the topic and the research question, all possible areas may not have been explored. As mentioned before, tax avoidance and transfer pricing are broad topics, which have been generating enormous amounts of information in the past years. Hence, in the scope of this thesis, it was not possible to review all possible dimensions.

Last, the extent of the analysis may also be limited to the timeframe used within the thesis. As the focus has been put on measures that have been implemented since a couple of years, and hence, further examination may be done to encompass a broader assessment of the evolution of the battle against tax avoidance. Besides, as additional guidance and developments are constantly published, the time boundary of this thesis is limited.

6. General conclusion

As a matter of conclusion, this thesis has examined the evolution of the battle against tax avoidance through transfer pricing and assessed the impact and effectiveness of the newly introduced measures in acting as hurdles on tax avoidance by multinational groups. Through a panoptic literature review, a qualitative methodology involving interviews with tax experts from different groups, and an analysis of the main findings, several key insights have emerged.

The literature review highlighted the complexity of the international tax landscape, of transfer pricing, and of the regulatory framework surrounding TP. It provided a theoretical framework on the topic to ensure understanding of the different parts included in the thesis.

The qualitative interviews with the tax specialist from MNEs, advising firms, a lawyer, and the Belgian tax authorities provided valuable perspectives and experiences from professionals who are directly involved in the field of taxation and transfer pricing. The analysis of the data gathered through these interviews have identified several main findings. It became evident that the evolution of tax avoidance through transfer pricing started through the introduction of the BEPS Project by the OECD. The evolution has witnessed many changes which were driven by the increased understanding and focus on transfer pricing. Furthermore, the increased recognition of the misuse of transfer pricing through entities with low substance has also been a key driver in the developments. The progress on the battle against tax avoidance through transfer pricing with reference to the introduced measures has been described around six pillars.

First, the significant growth of compliance requirements put on the taxpayers has been an enormous breakthrough together with the unparalleled transparency it brought. Next, a key dimension of the evolution is on the changed definition of value creation from contractual and paper facts to actual substance. These three pillars have raised awareness within companies on the importance of tax matters and transfer pricing in business operations. This fourth pillar on awareness is both on the level of decision-making processes and on the consequences tax and TP may entail if not used correctly. Next, the fifth pillar of the evolution is the progress made at the tax authorities' level. The amount of data available to tax administrations has evolved substantially with the implementation of the measures and hence, tax and transfer pricing audits are now much more in-depth which is putting an additional pressure on MNEs and providing

support the ongoing battle against tax avoidance through transfer pricing. Then, the sixth pillar is the shift of mentality that has occurred through the evolution. Taxpayers increasingly want to apply transfer pricing strategies that reflect the economic reality and ensure a fair taxation of the entity.

With reference to the measures discussed in the theoretical framework and during the interviews, many impacts have been identified. As mentioned above, BEPS has been the milestone of all measures and has had the most significant impact on the battle against tax avoidance through transfer pricing by MNEs. Pre-BEPS structures or tax setups that made use of transfer prices to avoid taxes have been largely dismantled. Today, the concepts brought by BEPS on the economic ownership of functions, assets, and risk and the required reporting on them have been a key weapon for the ongoing battle. BEPS has also brought an administrative burden on taxpayers who have seen their documentation requirements increase significantly. The Transfer Pricing Guidelines have not been identified as a major breakthrough in the fight against tax avoidance. However, there is a consensus on the fact that these Guidelines are the basis MNEs use for transfer pricing purposes.

Future ammunition for tax authorities is the Two-Pillar Solution, especially through Pillar One. This Pillar will impact transfer pricing directly and will ensure a fair distribution of profits of MNEs between jurisdictions without the requirement of a physical presence in one country. Furthermore, Amount B will also influence transfer pricing as it will streamline the application of transfer pricing to similar distribution activities. Pillar Two participates to the battle as through its global minimum tax rate of 15%, incentives of profit shifting through transfer prices will be reduced significantly. However, the question remains on how individual countries will implement this Solution and if the intended outcome will be achieved.

When looking at the measures introduced at the European level, the major opinion is that the main consequence from them is increased compliance requirements and hence, an increased administrative burden for taxpayers. Few believe the Directive on Administrative Cooperation (DAC) or the ATAD have impacted the way MNEs operate and apply transfer pricing to their transactions. However, the views on the proposal of ATAD III are completely different and here, the main beliefs are that it will close the last couple of loopholes that still remained, and that it will be impacting transfer pricing models.

The main challenge resulting from these measures is clear, namely the extensive administrative burden put on taxpayers. This difficulty is enhanced due to the heterogeneous implementations of rules in jurisdictions. Another challenge that has been discussed is the complex landscape of regulations that are forcing companies to have trusted advisors in-house or externally.

From the findings mentioned previously, we can conclude that the measures are indeed acting as breaks on tax avoidance through transfer pricing. However, they also highlight the fact that taxpayers are wondering whether there is a right balance between the administrative burden the measures have created and the added value they bring to the ongoing battle. Furthermore, a common raised question is on whether the measures aren't creating a new race to the bottom that simply has different dimensions, which may not be related to tax matters. Hence, the question is whether all the implemented measures and the future developments will not lead to an evolution of the battle against tax avoidance through transfer pricing to another battle tackling the same unequal competition between companies.

As a matter of conclusion, the contribution that this thesis aims to provide is to give an overview of the evolution of the battle against tax avoidance through transfer pricing and the impact and efficiency of the introduced measures until today. Furthermore, this overview also contributes by shedding light on the challenges faced by MNEs and by pointing out the different measures that are having no significant impact. Furthermore, this thesis wants to send a signal to the policymakers on the importance of the administrative burden they are creating for taxpayers. That is to say, a recommendation for the future would be to question whether there is not a more fruitful way to collaborate but also support companies on compliance.

7. Bibliography

Akthar, S., Akhtar, F., John, K., Wong, S-W. (2019). *Multinationals' tax evasion: a financial and governance perspective*. Journal of corporate finance, 57, 35-62. Retrieved from <https://doi.org/10.1016/j.jcorpfin.2017.11.009>

Baker & McKenzie. (2022). *ATAD III: Between fair objectives and uncertain outcome*. Retrieved online from https://insightplus.bakermckenzie.com/bm/attachment_dw.action?attkey=FRbANEucS95NMLRN47z%2BeeOgEFCt8EGQJsWJiCH2WAUuQVQjpl3o%2BY8ONoYARFZv&nav=FRbANEucS95NMLRN47z%2BeeOgEFCt8EGQbuwyypnpZjc4%3D&attdocparam=pB7HEsg%2FZ312Bk8OIuOIH1c%2BY4beLEAeKR0yVzqO3pI%3D&fromContentView=1

Barford, V., Holt, G. (2013). *Google, Amazon, Starbucks: The rise of 'tax shaming'*. BBC News Magazine. Retrieved online from <https://www.bbc.com/news/magazine-20560359>

Beer, S., de Mooij, R., Liu, L. (2018). *IMF Working Paper: International Corporate Tax Avoidance: A Review of the Channels, Magnitudes, and Blind Spots*. IMF, Fiscal Affairs Department. WP/18/168. Retrieved online from <https://www.imf.org/en/Publications/WP/Issues/2018/07/23/International-Corporate-Tax-Avoidance-A-Review-of-the-Channels-Effect-Size-and-Blind-Spots-45999>

Blevin, P. (2022). *Chapitre III. Les dispositifs de lutte*. Dans : Pierre-Alexis Blevin éd., *Les paradis fiscaux* (pp. 80-123). Paris cedex 14: Presses Universitaires de France. Retrieved online from <https://www.cairn.info/les-paradis-fiscaux--9782715410589-page-80.htm>

Boden, R., Killian, S., Mulligan, E., Oats, L. (2010). *Critical perspectives on taxation*. Critical Perspectives on Accounting, Volume 21, Issue 7, Pages 541-544. Retrieved from <https://doi.org/10.1016/j.cpa.2010.05.003>

Bruce, B. (2016). *What's the Difference Between Tax Evasion, Tax Avoidance, and Tax Planning?*. Retrieved online from <https://www.theaccountancy.co.uk/tax/tax-avoidance-tax-planning-tax-evasion-whats-difference->

[6316.html#:~:text=The%20difference%20between%20tax%20planning,with%20no%20intention%20of%20deceit.](#)

Cahanin, P. (2018). *L'évasion fiscale internationale des entreprises*. Gestion & Finances Publiques, 3, 66-71. Retrieved from <https://doi.org/10.3166/gfp.2018.00036>

Calderón, J. (2007). *The OECD Transfer Pricing Guidelines as a Source of Tax Law: Is Globalization Reaching the Tax Law?*. The Intertax, 35, 4. Retried online from <https://heinonline.org/HOL/LandingPage?handle=hein.kluwer/intrtax0035&div=5&id=&page=>

Carasco, P. (2017). *Prix de transfert et stratégies d'optimisation fiscale de la firme multinationale*. L'Harmattan.

Committee on Economic and Monetary Affairs Report A9-0293/2022 on the proposal for a Council directive laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU. (2023). Available at https://www.europarl.europa.eu/doceo/document/A-9-2022-0293_EN.html

Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC. (2011). Available at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32011L0016>

Council Directive (EU) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation. (2015). Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015L2376>

Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation. (2016). Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016L0881>

Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements. (2018). Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32018L0822>

Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. (2017). Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017L1852>

De Fontaine, S. (2020). *Le droit de l'Union européenne et la lutte contre la fraude et l'évasion fiscales : état des lieux*. Gestion & Finances Publiques, 4, 115-122.
<https://doi.org/10.3166/gfp.2020.4.020>

Devereux, M., Auerbach, A., Keen, M., Oosterhuis, P., Schön, W., Vella, J. (2021). *The Current International Tax Regime*. DOI:10.1093/oso/9780198808060.003.0003. Retrieved from
https://www.researchgate.net/publication/350138455_The_Current_International_Tax_Regime

Directive (EU) 2016/1164 of the Council of the European Union of 12 July 2016 on laying down rules against tax avoidance practices that directly affect the functioning of the internal market. (2016). Available at <https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=celex:32016L1164>

Directive (EU) 2017/952 of the Council of the European Union of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries. (2017). Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32017L0952>

Directive (EU) 2021/2101 of the European Parliament and of the Council of 24 November 2021 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches. (2021). Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2021:429:FULL&from=EN>

Engels, A., Bauwens, E., Parduyns, E., Vilardi, V. (2023). *Transfer Pricing 2023 – Belgium*. Chambers Global Practice Guides, Chambers and Partners. Retrieved online from <https://www.loyensloeff.com/transfer-pricing-2023-chapter-belgium.pdf>

European Commission Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee COM/2011/16 on the work of the EU Joint Transfer Pricing Forum in the period April 2009 to June 2010 and related proposals 1. Guidelines on low value-adding intra-group services and 2. Potential approaches to non-EU triangular cases. (2011). Available at https://taxation-customs.ec.europa.eu/system/files/2016-09/c_2011_16_en.pdf

European Commission proposal COM/2021/565 for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU. (2021). Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0565>

European Parliament legislative resolution of 17 January 2023 on the proposal for a Council directive laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU (COM(2021)0565 – C9-OO41/2022-2021/0434(CNS)). (2023). Available at https://www.europarl.europa.eu/doceo/document/TA-9-2023-0004_EN.html

EY Global. (2022). *OECD publishes 2022 Transfer Pricing Guidelines*. Retrieved online from https://www.ey.com/en_gl/tax-alerts/oecd-publishes-2022-transfer-pricing-guidelines#:~:text=The%20revised%20guidance%20is%20intended,the%20appropriate%20profit%20splitting%20factors.

Gurría, A. (2011). *Harmony and dissonance in international law*. OECD, Paris. Retrieved online from <https://www.oecd.org/about/secretary-general/harmonyanddissonanceininternationallaw.htm>

G20. (2023). *A propos du G20*. Retrieved online from <https://www.g20.org/fr/about-g20/>

Halcomb, E., Davidson, P. (2006). *Is verbatim transcription of interview data always necessary?*. Applied Nursing Research. Volume 19, Issue 1. Pages 38-42. Retrieved from <https://doi.org/10.1016/j.apnr.2005.06.001>

Haslehner, W., Pantazatou, K. (2022). *Assessment of recent anti-tax avoidance and evasion measures (ATAD & DAC 6)*. Policy Department for Economic, Scientific and Quality of Life Policies – Study requested by the FISC Subcommittee. Retrieved online from [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/703353/IPOL_STU\(2022\)703353_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/703353/IPOL_STU(2022)703353_EN.pdf)

Ishikawa, J., Okoshi, H., Pil Choi, J. (2020). *Transfer pricing of intangible assets with the arm's length principle*. VOXEU. Retrieved online from <https://cepr.org/voxeu/columns/transfer-pricing-intangible-assets-arms-length-principle>

July, B. (2022). «*L'impôt minimum de 15% sur les multinationales est une avancée historique*». Le Soir. Retrieved online from <https://www.lesoir.be/482856/article/2022-12-13/limpot-minimum-de-15-sur-les-multinationales-est-une-avancee-historique>

Leroy, M. (2019). *Réflexion sur la lutte contre l'évasion fiscale internationale (1) : La régulation internationale de l'évasion fiscale*. Gestion & Finances publiques, 5, 44-52. Retrieved from <https://doi.org/10.3166/gfp.2019.5.005>

Loyens & Loeff. (2019). *Implementation of the Anti-Tax Avoidance Directive in the Netherlands, Belgium and Luxembourg*. Quoted – edition 126. Retrieved online from <https://www.loyensloeff.com/globalassets/02.-publications-pdf/01.-internal/2019/quoted-126nw.pdf>

Markham, M. (2022). *Action 14 of the BEPS Project: Taking the Pulse of Tax Certainty and Determining the Effectiveness of the Peer Review Process Five Years on*. IBFD. Retrieved online from https://www.ibfd.org/sites/default/files/2022-06/OECD_International%20-%20Action%2014%20of%20the%20BEPS%20Project%20Taking%20the%20Pulse%20of%20Tax%20Certainty%20and%20Determining%20the%20Effectiveness%20of%20the%20Peer%20Review%20Process%20Five%20Years%20On%20-%20IBFD.pdf

Merks, P. (2006). *Tax Evasion, Tax Avoidance and Tax Planning*. Intertax, 34(5), 272-281. Retrieved online from <https://www.deepdyve.com/lp/kluwer-law-international/tax-evasion-tax-avoidance-and-tax-planning-ysCLlv0Jbt>

Navarro, A. (2021). *The Allocation of Taxing Rights under Pillar One of the OECD Proposal*. OUP Handbook of International Tax Law (Haase, F., Kofler eds, G., Oxford University Press 2021 Forthcoming). Available at <http://dx.doi.org/10.2139/ssrn.3825612>

OECD. (2011). *A new OECD project - New sources of growth: intangible assets*. Retrieved online from <https://www.oecd.org/sti/inno/46349020.pdf>

OECD. (2013). *Action Plan on Base Erosion and Profit Shifting*. OECD Publishing. Retrieved online from <http://dx.doi.org/10.1787/9789264202719-en>

OECD. (n.d.). *Action 5 Harmful tax practices*. Retrieved online from <https://www.oecd.org/tax/beps/beps-actions/action5/>

OECD. (n.d.). *Action 13 Country-by-Country Reporting*. Retrieved online from <https://www.oecd.org/tax/beps/beps-actions/action13/>

OECD. (n.d.). *Action 14 Mutual Agreement Procedure*. Retrieved online from <https://www.oecd.org/tax/beps/beps-actions/action14/>

OECD. (n.d.). *aggressive tax planning*. OECD website. Retrieved online from <https://www.oecd.org/tax/aggressive/>

OECD. (2023). *BEPS Action 14 on More Effective Dispute Resolution Mechanisms – Peer Review Documents*. OECD/G20 Base Erosion and Profit Shifting Project. OECD, Paris. Retrieved online from <https://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf>

OECD. (n.d.). *BEPS – about*. OECD Website. Retrieved online from <https://www.oecd.org/tax/beps/about/>

OECD. (2016). *BEPS Project Explanatory Statement: 2015 Final Reports. OECD/G20 Base Erosion and Profit Shifting Project*. OECD Publishing, Paris. Retrieved online from <https://doi.org/10.1787/9789264263437-en>

OECD. (2015). *Developing a Multilateral Instrument to Modify Bilateral Tax Treaties, Action 15 – Final Report*. OECD/G20 Base Erosion and Profit Shifting Project. OECD, Paris. Retrieved online from <https://www.oecd-ilibrary.org/docserver/9789264241688-en.pdf?expires=1688922836&id=id&accname=guest&checksum=050409CFD1B59FDE6D5A4A207F3E93CA>

OECD. (2023). *France's Gaël Perraud elected new Chair of the OECD Committee on Fiscal Affairs*. Retrieved online from <https://www.oecd.org/tax/france-s-gael-perraud-elected-new-chair-of-the-oecd-committee-on-fiscal-affairs.htm#:~:text=The%20Committee%20on%20Fiscal%20Affairs,and%20tax%20policy%20and%20administration.>

OECD. (n.d.). *Flyer: OECD/G20 Inclusive Framework on BEPS*. Retrieved online from <https://www.oecd.org/tax/beps/flyer-inclusive-framework-on-beps.pdf>

OECD. (2022). *Further progress on two-pillar solution: OECD releases consultation document on the withdrawal of digital service taxes and other relevant similar measures under Pillar One and an implementation package for Pillar Two*. Retrieved online from <https://www.oecd.org/tax/beps/further-progress-on-two-pillar-solution-oecd-releases-consultation-document-on-the-withdrawal-of-digital-service-taxes-and-other-relevant-similar-measures-under-pillar-one-and-an-implementation-package-for-pillar-two.htm>

OECD. (n.d.). *Glossary of Tax Terms*. OECD Website. Retrieved online from <https://www.oecd.org/ctp/glossaryoftaxterms.htm#:~:text=CONTROLLED%20TRANSACTION%20%2D%2D%20Transactions%20between%20two,of%20a%20corporation's%20voting%20shares.>

OECD. (2018). *Guidance for Tax Administrations on the Application of the Approach to Hard-to-Value Intangibles – BEPS Actions 8-10*. OECD/G20 Base Erosion Profit Shifting Project. OECD, Paris. Retrieved online from <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.pdf](#)

OECD. (2014). *Guidance on Transfer Pricing Aspects of Intangibles*. OECD/G20 Base Erosion and Profit Shifting Project. OECD Publishing. Retrieved online from https://www.oecd-ilibrary.org/taxation/guidance-on-transfer-pricing-aspects-of-intangibles_9789264219212-en

OECD. (2022). *Guidance on the Implementation of Country-by-Country Reporting: BEPS Action 13*. OECD, Paris. Retrieved online from <https://www.oecd.org/tax/beps/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf>

OECD. (n.d.). *G20 – International Taxation*. Retrieved online from <https://www.oecd.org/g20/topics/international-taxation/>

OECD. (2015). *Making Dispute resolution Mechanisms More Effective, Action 14 – 2015 Final Report*. OECD/G20 Base Erosion and Profit Shifting Project. OECD Publishing, Paris. Retrieved online from <http://dx.doi.org/10.1787/9789264241633-en>

OECD. (2015). *Mandatory Disclosure Rules, Action 12 – 2015 Final Report*. OECD/G20 Base Erosion and Profit Shifting Project. OECD, Paris. Retrieved online from https://read.oecd-ilibrary.org/taxation/mandatory-disclosure-rules-action-12-2015-final-report_9789264241442-en#page1

OECD. (2019). *Model Tax Convention on Income and on Capital 2017 (Full Version)*. OECD Publishing. <http://dx.doi.org/10.1787/g2g972ee-en>

OECD. (2017). *Model Tax Convention on Income and on Capital : Condensed Version 2017*. OECD Publishing. http://dx.doi.org/10.1787/mtc_cond-2017-en

OECD. (2022). *OECD releases latest edition of the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*. Retrieved online from <https://www.oecd.org/tax/transfer-pricing/oecd-releases-latest-edition-of-the-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations.htm>

OECD. (2022). *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022*. OECD Publishing, Paris. <https://doi.org/10.1787/0e655865-en>.

OECD. (2022). *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022 – en*. OECD Home. Retrieved online from <https://www.oecd.org/tax/transfer-pricing/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-20769717.htm>

OECD. (2021). *Pillar Two Model Rules in a Nutshell, Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two)*. OECD/G20 Base Erosion and Profit Shifting Project. OECD, Paris. Retrieved online from <https://www.oecd.org/tax/beps/pillar-two-model-rules-in-a-nutshell.pdf>

OECD. (2023). *Public Consultation Document: Pillar One – Amount B*. OECD/G20 Base Erosion and Profit Shifting Project. Retrieved online from <https://www.oecd.org/tax/beps/public-consultation-document-pillar-one-amount-b-2023.pdf>

OECD. (2018). *Revised Guidance on the Application of the Transactional Profit Split Method: Inclusive Framework on BEPS: Action 10*. OECD/G20 Base Erosion and Profit Shifting Project. OECD, Paris. Retrieved online from <https://www.oecd.org/tax/beps/revised-guidance-on-the-application-of-the-transactional-profit-split-method-beps-action-10.pdf>

OECD. (2021). *Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy*. OECD/G20 Base Erosion and Profit Shifting Project. OECD, Paris. Retrieved online from <https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf>

OECD. (n.d.). *OECD – Tax*. Retrieved online from <https://www.oecd.org/tax/>

OECD (2020). *Tax Challenges Arising from Digitalisation – Report on Pillar Two Blueprint: Inclusive Framework on BEPS*. OECD/G20 Base Erosion and Profit Shifting Project. OECD Publishing, Paris. <https://doi.org/10.1787/abb4c3d1-en>

OECD. (2015). *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 – 2015 Final Report*. OECD/G20 Base Erosion and Profit Shifting Project. OECD Publishing, Paris. Retrieved from <http://dx.doi.org/10.1787/9789264241480-en>

OECD. (2020). *Transfer Pricing Guidance on Financial Transactions: Inclusive Framework on BEPS Actions 4, 8-10*. OECD, Paris. Retrieved online from <https://www.oecd.org/tax/beps/transfer-pricing-guidance-on-financial-transactions-inclusive-framework-on-beps-actions-4-8-10.htm>

OECD. (2017). *Tax treaties: update to OECD Model Tax Convention released*. Retrieved online from <https://www.oecd.org/tax/treaties/tax-treaties-2017-update-to-oecd-model-tax-convention-released.htm>

OECD. (2021). *Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy*. OECD/G20 Base Erosion and Profit Shifting Project. OECD, Paris. Retrieved online from <https://www.oecd.org/tax/beps/brochure-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf>

OECD. (n.d.). *OECD – Who we are*. Retrieved online from <https://www.oecd.org/about/>

Onu, D., Oats, L., Kirchler, E., & Hartmann, A. J. (2019). Gaming the System: An Investigation of Small Business Owners' Attitudes to Tax Avoidance, Tax Planning, and Tax Evasion. *Games*, 10(4), 46. Retrieved from <https://doi.org/10.3390/g10040046>

OpenAI, ChatGPT. (2023). GPT-3.5 Model. Retrieved from <https://chat.openai.com/>

Ouelhadj, A., Bouchetara, M. (2021). *Contributions of the Base Erosion and Profit Shifting BEPS Project on Transfer Pricing and Tax Avoidance*. *Financial Markets, Institutions and Risks*, 5(3), 59- 70. [http://doi.org/10.21272/fmir.5\(3\).59-70.2021](http://doi.org/10.21272/fmir.5(3).59-70.2021)

Picciotto, S. (2017). *The G20 and the “Base Erosion and Profit Shifting (BEPS) Project” – Discussion Paper*. German Development Institute, Bonn. Retrieved online from https://www.idos-research.de/uploads/media/DP_18.2017.pdf

Piergiorgio, V. (2020). *Advance Pricing Arrangements: Optimal Tool – Optimal Framework?*. Intertax Volume 48, Issue 1, pp. 67-73. Retrieved online from <https://kluwerlawonline.com/journalarticle/Intertax/48.1/TAXI2020005>

Ping, L., Silberztein, C. (2007). *Transfer pricing, Custom Duties and VAT Rules : Can We Bridge the Gap?*. World Commerce Review, Volume 1, Issue 1. Retrieved online from <https://www.oecd.org/tax/transfer-pricing/39265412.pdf>

PwC. (2010). *Transfer pricing aspects of intangibles: scope*. PwC comments on transfer pricing aspects of intangibles. Retrieved online from <https://www.oecd.org/ctp/transfer-pricing/46043673.pdf>

Rödl & Partner. (n.d.). *BEPS Action 9 – Transfer Pricing: Risk and Capital*. Retrieved online from <https://www.roedl.com/insights/beps/beps-action-9-risk-capital#:~:text=Purpose%20and%20content%20of%20Action,risks%20or%20has%20provided%20capital.>

Rödl & Partner. (n.d.). *BEPS Action 10 - Transfer Pricing: Other High Risk Transactions*. Retrieved online from <https://www.roedl.com/insights/beps/beps-action-10-transfer-pricing-other-high-risk-transactions>

Rogers, H., Oats, L. (2022). *Transfer pricing: changing views in changing times*. Accounting forum, 46:1, 83-107. Retrieved online from <https://www.tandfonline.com/doi/full/10.1080/01559982.2021.1926778>

Roussel, P., Wacheux, F. (2005). *Management des ressources humaines: Méthodes de recherche en sciences humaines et sociales*. De Boeck Supérieur. Retrieved online from <https://doi.org/10.3917/dbu.rouss.2005.01>

Seely, A. (2021). *Tax avoidance and tax evasion*. House of Commons Library. Retrieved online from <https://researchbriefings.files.parliament.uk/documents/CBP-7948/CBP-7948.pdf>

Silberztein, C. (2011). *Transfer pricing aspects of intangibles: the OECD project*. Retrieved online from <https://www.oecd.org/ctp/transfer-pricing/48594010.pdf>

Sivieude, O. (2018). *Comment lutter efficacement contre la fraude fiscale aujourd'hui?*. Gestion & Finances publiques, 3, 35-42. Retrieved from <https://doi.org/10.3166/gfp.2018.00032>

SPF Finances Circulaire 2020/C/35 du 25.02.2020 concernant les directives en matière de prix de transfert à l'intention des entreprises multinationales et des administrations fiscales. (2020). SPF Finances – Administration générale de la Fiscalité – Fiscalité Internationale. Retrieved from https://news.pwc.be/wp-content/uploads/2020/02/2020-02-25_FR_Circular-2020_C_35-on-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-authorities.pdf

Stibbe. (2023). *Proposal for a Directive to prevent misuse of shell entities (ATAD3) and the amendments proposed by the European Parliament*. Retrieved online from <https://www.stibbe.com/publications-and-insights/proposal-for-a-directive-to-prevent-misuse-of-shell-entities-atad-3-and>

Taxation and Customs Union. (n.d.). *Transfer pricing in the EU context*. European Commission. Retrieved online from https://taxation-customs.ec.europa.eu/transfer-pricing-eu-context_en

United Nations. (2011). *Working draft – Chapter 1: An Introduction to Transfer Pricing*. Retrieved online from https://www.un.org/esa/ffd/wp-content/uploads/2011/06/20110607_TP_Chapter1_Introduction.pdf

United Nations. (2011). *Working Draft – Chapter 5: Transfer Pricing Methods*. Retrieved online from https://www.un.org/esa/ffd/wp-content/uploads/2011/06/20110607_TP_Chapter5_Methods.pdf

Vega, A. (2012). *International governance through soft law: The case of the OECD transfer pricing guidelines*. TranState Working Papers, No. 163, Universität Bremen, Collaborative

Research Center 597 - Transformations of the State, Bremen. Retrieved online from
<https://www.econstor.eu/bitstream/10419/59530/1/717832643.pdf>

