Sara Terje

Corporate tax avoidance

A question of morality that could be criminalized?

Helsinki Metropolia University of Applied Sciences

Bachelor of Business Administration

International Business and Logistics

Thesis

2017

Helsinki Metropolia University of Applied Sciences

Author(s) Title Number of Pages Date	Sara Terje Corporate tax avoidance – A question of morality that could be criminalized? 32 pages 5 May 2017
Degree	Bachelor of Business Administration
Degree Programme	International Business and Logistics
Instructor(s)	Ross Kamarul-Baharin (Senior Professor)

The aim of this thesis is to research whether tax avoidance could be made illegal at an EU level and if so to what extent. The thesis will cover the main tax avoidance strategies and take a closer look at what measures EU has taken in the field of combatting tax avoidance.

Corporate tax avoidance is a heavily debated topic with increasing importance. The difficulty with tax avoidance is that the line between when tax avoidance is unacceptable and when it is acceptable is very subjective. Corporate tax avoidance is an issue that lately has raised into peoples' concern after big corporations such as Apple's, AstraZeneca's and Google's tax avoidance strategies came viral.

Regulation corporate tax avoidance within the European Union is a very difficult task. The EU has limited competence in the field of direct taxation and it is up to the Member States themselves to regulate the field as long as it is compatible with EU legislation. For this reason, it is nearly impossible for the European Union to regulate tax avoidance being illegal.

Corporate social responsibility plays an important role in preventing tax avoidance strategies from being utilized. Todays' social media spread the information about corporations trying to avoid taxes very quickly which may in turn reduce the profitability of the company in case the customers sees this as an important factor.

At an EU level the Anti-Tax Avoidance Directive passed in mid 2016 is however a great step towards regulating tax avoidance at EU level. Only the future will tell how big impact it actually has on corporate tax avoidance.

Keywords	Corporate tax, Corporate law, Corporate Social Responsibility, Tax Avoidance, Direct Taxation, European Union Competences, European Union, company law

1 Introduction

Our rapidly globalizing world has led to a situation where corporations no longer are operating on a national level but they more commonly also operating on an international level. Corporate tax avoidance is a heavily debated question and has raised into peoples' concern after big corporations such as Apple's, AstraZeneca's and Google's tax avoidance strategies have come out to the media. This increased people's awareness of how low tax rates some of the big multinational corporations have and people started to think why they should pay so high taxes while corporations so low.

This can be seen by some as unfair market practices because bigger corporations have more funds to do aggressive tax planning and benefit from all tax reductions available as well as "going around" the system. There has been an increased use of tax havens where corporations keep their offshore accounts, for example in Bahamas, Cayman Island or Ireland.

Defining tax avoidance is somewhat challenging since different countries defines it differently. In general however, three factors are usually present when it comes to tax avoidance. First the payment of taxes is lower than it reasonably should be when interpreting the legislation. Second the tax declaration is made in another country than the earnings originally originated from. Finally the taxes are not paid when they were earned (R. Palan, 2010, p. 10). Tax avoidance may in general terms be described as a strategy of tax planning with the aim to lower taxes paid legally. It may be done by for example transfer pricing, tax planning and earnings management. It is the level of aggressiveness however that is the important factor to evaluate (Heitzman, 2010, p. 137). Tax avoidance which is legal shall not however be mixed up with tax evasion which is a non-legal act.

Mr. M.A. Wisselink discussed in the book International Tax Avoidance in chapter VII concepts of international tax avoidance. He concludes that the borderline between these two is very uncertain. He discusses the fact that many times tax avoidance and tax evasion is mixed up and that legitimate tax avoidance where the main difference is that tax evasion is intentionally hiding or falsifying information from the authorities. Mr. Wisselink also discusses the fact that there are two normal rules for corporate residence the incorporation theory and the statutory seat theory, from which the latter is in more frequent use in the European Union and the former according to Mr. Wisselink gives more possibilities to tax avoidance since it is based on the fact that mere incorporation is the factor stating the tax liability. (Wisselink, 1979, pp. 191-213)

This Thesis will be a research on whether corporate tax avoidance among multinational enterprises within the EU should be criminalized or not. I will research what instruments corporations use to avoid taxes, whether the subject matter can be regulated on EU level or whether it is it a matter belonging to a corporation's social responsibility. There has been several researches conducted on tax avoidance on a national level but not so much research has been done on an EU aspect.

The research will be conducted by a deductive desk research. The thesis will mainly be based on EU regulations and directives as well as EU case law for the reason that the thesis focuses on the situation within the EU.

The hypothesis of this thesis is that it would be beneficial to make tax avoidance illegal but in practical terms it would however not be economically worth it since regulating and monitoring this would be very difficult and costly. Furthermore, it would be very difficult to draw a consistent line between when it is tax avoidance and when it is not since this line is very fine, instead the author believes that it is to each and every company's corporate social

responsibility to think soundly and not try to find the loop holes in the legislations.

The chapter following this introduction will cover corporate social responsibility and its influence on corporate tax avoidance decisions. Then the author will discuss some of the most commonly used tax avoidance strategies among corporations. All strategies will not be covered since there are so many of them and it would be impossible to cover all in this thesis. The following two chapters will discuss the legal framework for EU to regulate over tax avoidance. They will also cover various measures taken by the EU including the new ant-tax avoidance directive 2016/1164 of 12 July 2016 that will come into force by 2019. The final two chapters will cover whether tax avoidance may in some occasions be illegal and whether tax avoidance should be regulated or not.

2 Corporate Social Responsibility

Corporate social responsibility linked to tax avoidance is a rather new concept and as mentioned in the introduction not so well covered by literature. Furthermore, often when literature covers tax avoidance and corporate social responsibility they bundle tax evasion and tax avoidance together even though the former is illegal and the latter legal (Panjay, 2015, p. 550).

According to the Commission, corporate social responsibility can be defined in a nutshell as a voluntary practice corporations engage in to contribute to a better society by taking social and environmental concerns into account in their business practices (Commission, 2001, p. 4). This definition was further improved by the Commission in 2011 as being an action "over and above" a corporations legal obligations towards the society (Commission, 2011, p. 3).

Traditionally the relationship between corporate social responsibility and corporate taxes can according to Reuven Avi-Yonah, be divided into three categories depending on the view of the corporation.

First the artificial entity view which holds that it can be held that taxes are a business cost and an issue between the corporation and the government and that it is a test of "corporate claims for social responsibility" (Avi-Yonah, 2004, pp. 1200-1201). Furthermore, it is a vital income for the government to collect taxes since without taxes the government will have difficulties in providing infrastructure and community services neither will it have assets to provide the corporations with services such as financial markets and legal oversight (Sikka, 2010, pp. 134-136).

Secondly the aggregate entity which holds that there is a relationship between the corporations and shareholders and that corporate tax is an indirect way to tax the shareholders. This theory argues that without corporate taxes the

shareholders could source their income through corporations and in that way avoid taxes.

The final theory is the real entity which holds that the corporations are separate from the state as well as the shareholders (Avi-Yonah, 2004, pp. 1200-1210).

3 Corporate tax avoidance

This chapter will cover the main types of corporate tax avoidance strategies used by multinational enterprise's world-wide. It is important to grasp an understanding of these concepts to be able to understand the width of options corporations have available to use for avoiding their taxes. Understanding the complexity of the tax avoidance strategies also gives one an overview of how big issue corporate tax avoidance is. This chapter is solely dedicated to the tax avoidance strategies since it in the authors opinion describes very well what corporate tax avoidance is.

The use of tax havens is probably one of the most well-known forms of corporate tax avoidance strategies. The problem with tax havens is that it has a very vague definition like the case with the definition of tax avoidance there is no official definition available. The Organisation for Economic Co-Operation and Development has for example list some characteristics of what a tax haven is and these include; low transparency and low or no taxes imposed at the corporations (Gravelle, 2010, pp. 3-4).

3.1 Transfer pricing

Transfer pricing is another example of a commonly used strategy in the field of tax avoidance. Transfer price is the price set for a transaction between divisions of a company. Multinational corporations often consist of several companies including for example braches, subsidiaries, agencies and/or permanent establishments which in turn are governed by the parent company. Transfer pricing becomes relevant when these companies enter transactions between each other or with the parent company itself. The transactions may include for example cross-border transfer of goods, intellectual property rights and/or or services. When the transactions take place, it is important to establish the correct transfer price between the related parties. It is then of particular

significance for the authorities to determine whether the companies involved in fact are related parties in order to establish whether transfer pricing rules apply. It is up to the State in question to assess whether the parties are related. The reason for the importance of this assessment is the arm's length principle is applied by the national authorities on transactions between related parties (Issues, 2011, pp. 1-2). Transfer pricing itself is legal, however it is a method that allows, particularly the MNEs to avoid a significant amount of taxes from being paid to certain states and becomes illegal when it does not comply with the arm's length principle (Osbourne, 2011, pp. 814-815).

In the context of EU law the EU has made proposals and taken actions solely devoted to transfer pricing, such as establishing the Transfer Pricing Forum and the Transfer Pricing and the Arbitration Convention (Helminen, 2011, pp. 237-240).

3.2 Thin capitalization

Companies are financed by equity and usually also with some debt. Companies are thinly capitalized when the amount of debt in relation to equity funding is high. Multinational enterprises utilize thin capitalization on a regular basis due to the deductions of paid interests from the taxable income they receive. In general the interests on debt are deductible from the taxable income on a corporate level. To encounter thin capitalization many countries around the world have adapted thin capitalization rules (Blouin, 2014, p. 2).

Many countries in the European Union have adapted thin capitalization rules. In the Commissions Working Paper on thin capitalization rules, there are several key dimensions in the differences between. According to the authors of the paper the first key difference of is the rules that define the maximum debt ratio, under which the interest remains deductible in the country of payment. These rules so forth fall into two different categories: rules restricting total debt

and rules limiting debt from related parties i.e. companies which are part of the same MNE. Second, the rules on thin capitalization can differ in the treatment of interest on debt that is deemed to be excessive, e.g. denial of deductibility of interest or certain unfavorable tax consequences. The third key difference according to the authors, can be found from the level of enforcement in each individual state, which could vary significantly (Blouin, 2014, pp. 2-5).

3.3 Treaty Shopping

Treaty shopping is a practice used by multinational enterprises to minimize the tax needed to be paid. Apple is one example of a multinational enterprise that has utilized treaty shopping (Commission, 2013). The OECD in their Final Report Action 6 describes treaty abuse, and in particular treaty shopping as one of the most important concerns regarding Base Erosion and Profit Shifting for the reason that the practice taxpayers are engaged in claims benefits that were not intended to be granted (OECD, 2015, p. 9). Tax treaties may be utilized in several different ways. Treaty shopping may be used to refer to arrangements that are completely artificial in nature used for avoiding taxes (Panayi, 2010, p. 23).

By choosing the countries with most suitable tax treaties and establishing conduit companies in these states, taxpayer can avoid source taxation, and in some cases, even rely on conflicts that ultimately lead to zero taxation (Helminen, 2013, p. 558). Companies can rely on the different treatment of certain revenues under tax treaties which may lead to conflicts of qualification, where the residence state's internal legislation categorizes certain income as such that the source state has the exclusive right to tax, but the source state in turn categorizes that particular income as something that it does not have the right to tax under the relevant tax treaty (Jones, 2003, pp. 184-186).

In the context of the EU under the previous Parent Subsidiary Directive 2011/96/EU, taxpayers were able to set up companies in Member States for the sole purpose of receiving tax exempt dividends from third countries (Helminen, 2013, p. 599).

3.4 Controlled foreign companies

Controlled foreign Corporations are corporations that can be used to minimize taxation. A controlled foreign corporation is a corporate entity conducting business in a different jurisdiction where the controlling owners reside.

To benefit the most of controlled foreign corporations, companies tend to locate them in countries where profit shifting and the taxation is the most favorable. Utilizing controlled foreign corporations may deprive the country of residence of the transferring company from taxes that otherwise would have been payable there.

This is only to mention a few of the possibilities companies have available for avoiding taxes. In the following chapters I will cover some more tax avoidance strategies especially related to the European Union.

4 THE EUROPEAN UNION IN THE FIELD OF DIRECT TAXATION

This chapter will cover the main steps the European Union has taken towards preventing tax avoidance from. The chapter will cover both the basis for the competences of the EU in the field of tax avoidance as well as the actions already taken by the EU.

4.1 Union Competences in the Field of Direct Taxation

To assess the Union's capabilities to encounter tax avoidance one must first have a general understanding of what competences the EU possesses. Direct taxation is under Member States discretion and has not therefore been covered by the EU treaties (Panjay, 2013, p. 3), yet the European Union has heavily influenced the field of direct taxation in the Member States. Even though Member States are free to regulate direct taxes as long as they comply with EU legislation according to Article 4(3) of the Treaty on the Functioning of the European Union.

The legal basis for the European Union to legislate taxation matters can be found in Articles 110-113 of the Treaty on the Functioning of the European Union, for purposes of indirect taxation and in Articles 114-118 of the same Treaty for matters with an indirect on the internal market (Paternoster, 2016). The Treaty on the Functioning of the European Union does not define nor address direct taxation as a term in a deeper context and the competence in the field of direct taxation is therefore derived from power to legislate over issues affecting the internal market.

Article 4 of the Treaty on European Union states that EU Member States shall ensure that the objectives set out by the Union are followed as well as take any necessary steps to ensure that this is reached. Article 4 is especially significant

in terms of direct taxes for the reason, that the Member State are free to regulate in the area. Almost all practice has emerged from case law stating from the Daily Mail case.

Even though the harmonization of direct taxes has been exercised only to a limited extent there is a possibility for introducing new harmonization directives provided by Articles 115, 116 and 352 of the Treaty on the Functioning of the European Union. According to, these Articles this is possible when three criteria are met namely; the internal markets proper function is limited by the national legislations; the desired objectives cannot be reach by Member State action and if there is a need for new EU legislation to overcome the problem. Furthermore, under Articles 20 TEU and 326-334 TFEU covering the enhanced cooperation may be applied in the field of direct tax. These Articles allows for EU legislation to be introduced and imposed on only a certain group of Member State, i.e. not necessarily all Member States need to be involved (Cerioni, 2015, p. 22). The Union has so far successfully adopted legislation under 115 TFEU a few times, for instance, the Interest Royalty Directive (Union, 2003) and Parent Subsidiary Directive (Council Directive (EU) 2015/121) as well as the Anti-Tax Avoidance Directive during summer 2016.

4.1.1 Invoking State Aid Rules to Tackle Certain Arrangements

The state aid rules are something that impose certain restrictions over Member States in relation to tax matters, since certain exemptions and lowered rates can amount to unlawful state aid. The state aid rules can be invoked in order to combat against certain arrangements otherwise unbeatable. The case arises where a given Member State makes a selective refund or a tax or if it deliberately uses the money to support certain company or group of companies. In accordance with the state aid rules laid down in Articles 107 to 109 in the Treaty on the Functioning of the European Union, if the revenue borne from tax

inflows goes from internal revenue services to support a certain domestic industry, the practice could be challenged as illegal state aid under the afore mentioned Articles (P. Craig, 2015, p. 661).

In August 2016, the Commission published their decision on landmark case against Apple, concerning unlawful state aid from the Republic of Ireland. The subject matter of this case concerned unlawful benefits granted to Apple, which were due to certain arrangements between Ireland and Apple. According to the Commission, certain decisions of the Irish authorities had allowed Apple to operate under corporate tax rate of 1%-0.005% between the years 2003 and 2014. Apple had however enjoyed a significantly lower tax rate since 1991 (Commission IP/16/2923).

Situations where actions of individual states in the field of taxation may constitute illegal state aid are not only limited to undue tax benefits granted by states to companies, but encompass more complex situations such as bilateral advance pricing arrangements between states. The advanced pricing arrangements allow companies for coordination with the national tax authorities prior to the transfer taking place in order to assess the compatibility of the transaction with the arm's length principle. The point where the advanced pricing arrangements become relevant in terms of state aid rules is where they do not align with the market conditions. The Commission has stated that where the advanced pricing arrangements between countries and companies follows the guidelines of the OECD, which provide for five different assessment methods of a correct price (OECD, 2010), and also the guidelines which provide for the appropriateness of use of certain method, that arrangement is not likely to give rise to illegal state aid proceedings (DG, 2016, pp. 4-5).

4.1.2 Administrative Cooperation and the Information Exchange Directive

Administrative cooperation in the field of taxation has been a long term project and is one of the most effective ways to counter tax avoidance as a general issue at EU level. The action plan of 2012 has provisions in relation to cooperation between jurisdiction to equip the Member States better to combat harmful practices with regard to value added tax fraud and business taxation (Remeur, 2015, p. 21).

Since direct taxation is not harmonized across the Union makes it easier for taxpayers avoid them in the country of residence by several different instruments. The instruments on cooperation between jurisdictions are intended to create trust by providing everyone with the same rights, rules and obligations (Commission, 2017). The tax authorities of individual Member States therefore must cooperate in the sense of information exchange to combat the abusive practices conducted by the tax payers. The Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation was an attempt to make this easier for the Member States. The Directive lays down the framework for organizing the information exchange between the Member States. The Directive speaks for automatic information exchange between the tax jurisdictions in the EU. The administrative cooperation between Member States was improved by the 2014 and 2015 amendments to the Directive (Camille Allain, 2016, p. 10). The Directive was created by the rights derived from Articles 113 and 115 of the Treaty on the Functioning of the European Union and aimed at making the information exchange more efficient among the Member States (Union, 2011).

According to the legislators the Directive is based on the achievements of Directive 77/799/EEC but is intended to provide for more clear and precise rules governing administrative cooperation between Member States. The Directive

therefore is intended to widen the scope of administrative cooperation between Member States with regard to exchange of information (Union, 2011).

The Directive includes three types of information exchange: automatic, spontaneous, and on request. The inherent intention of these is to assist individual Member States to become aware of often highly complex tax evasion schemes conducted either by corporations, or even natural persons. One of the reasons for the Directive for being of significant importance has to do with the fact that it places obligations on States, similarly like harmonization would do, even though if the state is one of which could arguably be actively entering into tax competition with the intention to attract foreign investments. Thus, the challenges relating to the competences and issues relating to reluctant individual Member States are overcome by this Directive. Today the Commission has also adopted an implementing regulation that provides for standard forms that have the purpose of enhancing the effectiveness and efficiency of exchange of information.

The 2014 amendment has to do with extending the cooperation between tax authorities in Member States in cases of financial account information (Commission, 2017). This according to the Commission in the explanatory part, was due to the increased number of opportunities to invest abroad, with a wide range of financial products, which so on diluted the effectiveness of previous Union instruments adapted to combat tax related issues (Council Directive2014/107/EU, 2014). The Directive goes further in requiring Member States to take actions in relation to financial institutions and their reporting. The Member States under the amendment to Article 8 are now required *inter alia* to enact legislation requiring financial institutions to enhance the reporting of financial accounts and to perform due diligence in a more effective manner set out in the Annexes I and II of the directive (Directive 2014/107/EU).

The 2015 amendment (Directive 2015/2376) in turn revolves around cross-border tax rulings and APAs. The Commission while adapting the new directive, acknowledged that in certain cases APAs had led to a low level of taxation of artificially large amounts of capital in the state that had given the advance ruling, and therefore it urgently sought increased transparency relating to the matter. (explanatory part) (Directive (EU) 2015/2376). The amendment to the Directive requires relevant authorities of the Member States where the cross-border ruling or APA is issued, amended or renewed, to communicate details of the cross-border ruling or APA, by automatic exchange of information to other Member States and the Commission (Directive 2015/2376, art. 8a). This requirement obviously has great potential in combating tax competition within the Union due to increased transparency. This also relates to previously mentioned issue of illegal state aid in context of APAs and does, at least on paper, seem like a deterrent against such conduct.

4.1.3 The Common Consolidated Corporate Tax Base

As we will see in the following chapter on the Anti-Tax Avoidance Directive, the Union is relatively strongly attempting to legislate over corporate taxation by instruments such as establishing minimum rules on certain kinds of conduct such as exit taxation, CFCs and abusive conduct. Nevertheless, the probably the most ambitious and potentially the most controversial attempt is the common consolidated corporate tax base (CCCTB) which would create a single set of rules that would allow the profits to be allocated between the relevant Member States properly. The CCCTB has been under scrutiny before, with the latest attempt being in 2011 (COM (2015) 302 final, p. 7). Now however, in order for the process to be more 'manageable', the CCCTB will be a two-stage process, first stage being the adoption of the common base, which unlocks all the key benefits to companies operating within the union, and the second phase being the more challenging consolidation (Commission IP/16/3471, 2016). The main difference to the previous proposal in 2011 is the in the scope of application.

The most recent proposal, unlike the previous one, would be mandatory for companies of certain size e.g. most multinational enterprises. The current proposal also emphasizes the importance of leaving the application of the CCCTB optional to companies that do not meet the criteria for mandatory application (COM (2016) 683 final).

The Commission squeezes the CCCTB under competence provided by Article 115 TFEU (COM (2016) 683 final) by relying on elimination of distortion of the internal market. This is made possible by the mismatches i.e. differences in classification of corporate entities or transactions. The Commission in their explanatory memorandum explains that mismatches can create risks of double taxation or non-taxation, which thereby distort the functioning of the internal market (COM (2016) 685 final).

The CCCTB proposal does not contain provision stipulating corporate tax rates per se, but merely seeks to enhance the transparency in the calculation of taxable amounts and allocate these amounts between relevant states (COM (2016) 685 final). The CCCTB has several aims, and the tackling of tax avoidance is merely one of these goals. In addition to the latter goal, the CCCTB aims to improve the single market for businesses by reducing compliance costs, resolve complex double taxation disputes, and also address mismatches between Member States like the ATAD (discussed in the next chapter) does (Commission IP/16/3471, 2016).

As regards tax avoidance, the CCCTB addresses avoidance in a few ways. The first of these is the issues borne from transfer pricing. Garbarino in his article relating to corporate taxation within the Union level points out the connection between profit shifting via TP and the nature of the CCCTB; if there is multi-country consolidation in corporate taxation, aggressive TP is neutralized since there is no need to shift profits between high and low tax jurisdictions (Garbarino, 2016, p. 290). This of course could only be reached at the point

where the second 'consolidation' part of the proposal was adopted. The second tax avoiding technique that has also been discussed in this paper that the proposal addresses is thin capitalization. The Commission, as pointed out by Ryding and Ravenscroft, now recognizes that the current tax systems can incentivize financing a company's operations with debt rather than equity (Ryding, Ravenscroft, 2016). The proposal for the common base addresses the issue in a similar manner by interest limitation rules like the ATAB but leaves rooms for research and development incentives under the 'allowance for growth and investment rules' (AGI) (COM (2016) 685 final). The effectiveness of this measure is however questioned by Ryding and Ravenscroft, as they fear that it will in allow corporations to make deductions for expenses that they in reality haven't had (Ryding, Ravendcroft, 2016).

Garbarino also points out that the common consolidated tax base would obviate cases such as the one that occurred with Apple, where a multinational based in third country obtaining undue tax benefits from an individual Member State, would instead have to deal with single EU system (Garbarino, 2016, p. 289). However, such companies would also benefit from such a system by reduced compliance costs, since the taxes of the whole company's operations within the Union under the proposal the company would declare its taxes in a single Member State, after which the tax authorities would communicate and allocate the taxable profits (COM (2016) 302 final, p. 7). The complexities in operations of cross-border companies would therefore significantly decrease where the companies would have to follow only a single set of rules. In addition to this, the consolidating part of the proposal would offer groups to be able to offset losses occurred in one Member State against profits generated in another (Garbarino, 2016, p. 289).

Another notion pointed out by Garbarino is the impact of the CCCTB on harmful tax competition between Member States (Garbarino, 2016, p. 286). Obviously, even though the tax rates within individual Member States would remain as an

internal matter the increased transparency along with higher level of cooperation has high potential in context of reducing harmful tax competition.

The effectiveness of the proposal remains to be seen. In the current setup, a likely outcome is the adoption of the common base. However, the Commission acknowledges the controversial nature of the consolidation. Thus, the proposal for consolidation might have some rough terrain ahead due to the unanimity requirement. If the CCCTB is to fail in its current form as the proposed directives, Article 20 TEU provides for enhanced cooperation, under which minimum of nine Member States can enter into 'deeper' cooperation and adapt legislation such as CCCTB (Garbarino, 2016, p. 290). This is a genuine opportunity in case either of the proposals are vetoed by some Member States (Chen, 2015).

5 EU Measures

Having explained the general instruments utilized by MNEs and creating an understanding of the arrangements which companies may engage in, the following chapters will discuss the arrangements that occur in the EU level.

It is important to note that for the purposes of this chapter, there are arrangements that occur in relation to the EU may vary in their nature. Garbarino discussed in his article on harmonization of corporate tax law in the Union different categories of EU policies in corporate tax matters. Gabriano categorizes them into three dimension; intra-EU policies, EU-inbound and EU-outbound. Intra-EU policies are related to intra-State mobility of persons and capital among the Member States. EU-inbound refers to the policies of the EU. Finally, EU-outbound refers to policies of the EU as a whole, in respect to EU investors and operating outside of the EU (Garbarino, 2016, p. 277).

5.1 Case Law by the Court of Justice if the European Union

In the Centros case (Centros v. Erhvervs- og Selskabsstyrelsen, 1999), a Danish couple established a limited liability company into the United Kingdom with the purpose of circumventing the Danish requirement of minimum capital. There was no intent to conduct any economic activities in the UK and when the company applied for registering a branch in Denmark they where refused on the grounds that the required share capital had not been paid by Centros (Centros v. Erhvervs- og Selskabsstyrelsen, 1999, para. 23).

The case was referred to the European Court of Justice as a request for a preliminary ruling. The Court was to examine whether the Danish authorities' decision to reject the application on the basis that no economic activities were conducted in the UK parent and that the branch was set up purely for rule

circumventing purposes, was in line with the limits laid down in Articles 52 and 58.

The Court stressed out in their judgement that if a national of a Member State wish to set up a company, and chooses to establish the company in another Member State where the rules of company law are more relaxed and later sets up branches for that company in other Member States, does not constitute an abuse of the right of establishment (Centros v. Erhvervs- og Selskabsstyrelsen, 1999, para. 27). This conduct after all, is inherent for the freedom of establishment and the single market enshrined by the Treaty itself.

The Court concluded that the Member States were not authorized to impose restrictions on the freedom of establishment on the basis of protection of creditors for the sake of preventing fraud in case there are other ways to ensure this protection (Centros v. Erhvervs- og Selskabsstyrelsen, 1999, para. 30).

The Centros ruling was re-affirmed in the Inspire Art case (Kamer van Koophandel en Fabrieken voor Amsterdam v Inspire Art Ltd, 2003), which had similar characteristics as the Centros case where the Dutch law was circumvented by having a company established in the UK with a branch in the Netherlands (Barnard, 2013, p. 339). The Court ruled that rules imposed by the Netherlands had the effect of unjustifiably limiting the freedom of establishment (Kamer van Koophandel en Fabrieken voor Amsterdam v Inspire Art Ltd, 2003, p. 101), and again that the fact that the UK established company carried out its activities solely in the Netherlands through its branch did not constitute and abuse of the freedom of establishment (Kamer van Koophandel en Fabrieken voor Amsterdam v Inspire Art Ltd, 2003, paras. 105).

In the Daily Mail case (The Queen v H. M. Treasury and Commissioners of Inland Revenue, ex parte Daily Mail and General Trust plc, 1988), an

investment company incorporated in London under English laws, attempted to avoid significant taxes otherwise payable to the UK in a transaction concerning the sale of assets. The arrangement was to transfer the central management to the Netherlands prior to the transaction taking place. Daily mail however, wanted to maintain its legal personality and status as a UK company (Barnard, 2013, p. 328).

The approach adapted by the court in Daily Mail was more restrictive in nature, and a line was drawn between acceptable and unacceptable reliance on the freedoms guaranteed by the Treaty. The Court did already at this point identify the points on the freedom of establishment, which were later confirmed in Centros and Inspire Art by stating that the companies do have the right to establish branches and even separate legal entities such as subsidiaries in other Member States (The Queen v H. M. Treasury and Commissioners of Inland Revenue, ex parte Daily Mail and General Trust plc, 1988, pp. paras 16-17). This according to the Court nevertheless, is completely different from a scenario where a company seeks to transfer its central management, control and administration to another state while retaining its status as a company incorporated under the laws of the United Kingdom. The Court concluded that such arrangements fall outside the scope of the Articles 52 and 58. Therefore, these articles at the time did not confer a right to a company to transfer the central management and control from a state of incorporation where it has its registered office (The Queen v H. M. Treasury and Commissioners of Inland Revenue, ex parte Daily Mail and General Trust plc, 1988, para. 25).

This judgment was very important since it set certain limits for arrangements created for solely tax planning purposes. The Court did not expressly state that departing from one state to another, and therefore becoming a non-tax resident in the state of origin constituted an abuse. The Court however clearly laid down that the Treaties did not grant such a right for companies and that

Member States may legislate to reduce such practices. Such practices are harmful for the states where the company would otherwise be liable to pay tax.

One of the most significant Union cases relating to tax planning is the Cadbury Schweppes case (Cadbury's Schweppes, 2005). The case concerned UK's controlled foreign companies rules laid down to prevent companies from setting up subsidiaries in states where the taxation was more favorable. The general idea was that UK parent companies were not subject to controlled foreign companies rules, where they would have been taxed on non-resident subsidiaries' profits(Barnard, 2013, p. 353).

In the Cadbury case a UK parent company sought to establish two subsidiaries to Ireland. The purpose of the subsidiaries was to benefit from the Irish tax and as a result avoid higher taxes that they would otherwise have been subject to in the UK (Cadbury's Schweppes, 2005, paras. 17-18). The UK's Controlled Foreign Company rules were triggered when profits of the UK parent's non-resident subsidiaries were subject to lower taxation (Cadbury's Schweppes v. Commissioners of the Inland Revenue, 2005, pp. 14, 19). Cadbury objected claiming that the tax authorities infringed the freedoms guaranteed by the current European Communities Treaty Articles 43, 49 and 56 EC. The case was referred to the Court of Justice regarding whether the legislation enacted by the UK concerning controlled foreign companies was contrary to the fundamental freedoms (Cadbury's Schweppes, 2005, para. 24). Even though the Court had rule in Centros and Inspire Art on similar matters concerning freedom of establishment, the rules concerning tax-avoidance schemes had not been dealt with very thoroughly.

The court ruled once again that the Controlled Foreign Company rules where contrary to the freedom of establishment guaranteed by Articles 43 and 49 of the European Communities Treaty (Cadbury's Schweppes, 2005, para. 46).

The second question referred had to do with the conduct of Cadbury Schweppes. The national court asked whether establishing and capitalizing companies in another Member State solely to take advantage of a tax regime that was more favorable than the one in the primary state of establishment, consisted an abuse of the freedoms guaranteed by the Treaty (Cadbury's Schweppes, 2005, para. 23).

The Court took a clear standing in relation to this question, continuing in the same direction as they had taken in the Centros and Inspire Art cases. The Court ruled that the fact that the company was established in another Member State to benefit from a more favorable tax regime did not itself constitute an abuse of the freedoms (Cadbury's Schweppes v. Commissioners of the Inland Revenue, 2005, p. 37). The court laid down a specific formula, that could be used to assess the legality of such arrangements. Restrictions such as the Controlled Foreign Company rules in the UK could be justified for preventing abusive practices. The objective of the rules therefore must be the restriction of conduct involving the creation of that it must be a wholly artificial arrangement (Barnard, 2013, p. 354; Barnard, 2013). The Court continued to refer to previous case law stating that to detect an artificial arrangement there must be a subjective element of intention to obtain the tax advantage as well as objective circumstances showing that the was not achieved (Cadbury's Schweppes, 2005, para. 64).

The case was important in terms of tax avoidance and freedoms guaranteed by the treaties by drawing a distinction between arrangements that are justified and the wholly artificial arrangements.

5.2 The Double Irish with a Dutch Sandwich

The double Irish with a Dutch sandwich is one of the more well-known arrangement used by multinational corporations in the European Union. It allows the multinationals to operate in the Union with extremely favorable tax rates, for example Apple that operated in Ireland with tax rates as low as 2.2% (Falben, 2016, p. 273). The double Irish with a Dutch sandwich can be thought of as a hybrid of treaty shopping and transfer pricing.

Zucman in his article about the Dutch sandwich describes the arrangement in the light of Google US, and its subsidiaries in the EU (Zucman, 2014, pp. 121-148). The whole arrangement starts with the US parent transferring part of its intangible capital to H1 in Ireland. This holding company is a tax resident in Bermuda, since the Irish laws allow this if the company is managed from another state. Next, H1 creates another Irish subsidiary (here the C2) who also is granted the license. In turn C2 grants it a license forward to all affiliates within the EU, allowing them to use them in their respective territories, while these rights initially belong to the US parent. Then all the other companies within the EU pay royalties to C2 from the revenue that was generated by the use of these rights (Zucman, 2014, pp. 124-125).

This is followed by the arrangement under which the majority of profits seemed to occur in Bermuda, where there is no corporate income tax (CIT). C2 however, cannot transfer the capital to H1 directly via royalties, as the royalties would be subject to Irish withholding tax since leaving the tax jurisdiction (Zucman, 2014, p. 125). To circumvent this rule, the Dutch shell company S3 comes into play as a detour.

Since both C2 and S3 are within the European Union, the royalty payments between these entities are tax-free (Zucman, 2014, p. 126). This advantage is used and the C2 will transfer royalties to S3. In turn, the magic happens at the

point where S3 pays royalties back to H1. For the Dutch authorities under their relevant legislation and double tax treaties (DTTs), the Irish/Bermudian hybrid is Irish, and the same rules of tax-free royalties between these two countries are taken an advantage of (Zucman, 2014, p. 125), even though the royalties in reality end up under Bermudian tax jurisdiction with the zero CIT.

5.3 Race to the Bottom

After researching on the issue, it seems that race to the bottom is not a Union wide issue in regard of national taxation policies. In general terms race to the bottom occurs on an international level when two or more countries start competing to get for example direct investments trough deregulation. When it comes to taxation country A may narrow down its tax base.

As mentioned at Union level it is not a big issue yet, however, when it comes to the establishment of corporations some general principles of investor protections, such as minimum capital requirements have been abandoned in some countries with the intention to attract corporations. One example is the Centros case where the minimum capital requirements for establishing a limited liability company under United Kingdom corporate law was significantly higher than in the Danish rules on minimum capital requirements. Even though the case itself did not concern taxation the idea behind it is the same.

During the end of the summer in 2016 due to the result of 'Brexit' vote, plans on cutting corporate tax rates in the UK arose. This raised concerns of possible race to the bottom (Schwanke, 2016). In case this would happen one way to counter it at Union level could be the Common Consolidated Corporate Tax Base (CCCTB). The Commission re-launched the CCCTB in October 2016 with the objective of making corporate taxation in the EU more fair, competitive and more growth-friendly. The CCCTB had been proposed in 2011, but it proved to be too controversial for the Member States to agree in one go. If such races to

the bottom were to happen, they could also pave the way for Union wide regulation such as CCCTB (Commission, 2016).

5.4 The EU Anti-Tax Avoidance Directive

In 2016 Council Directive (EU) 2016/1164 was passed concerning tax avoidance and rules against it. This was a very interesting addition in the field of exit taxes since it covered exit taxes thoroughly and created a unanimous understanding of what is meant by exit taxes in the EU. The Directive clarified that assets transferred between the parent company and its subsidiaries falls outside the scope of exit taxes. It furthermore clarifies the way exit taxes shall be computed namely by creating a market value and giving the receiving state the possibility to dispute the value set by the exit State if it does not reflect the real market value (Council Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market, 2016). The Directive covers, interest limitation rules, exit taxes, general anti-abuse rules, hybrid mismatches and controlled foreign companies. The latter I will however not cover since it has already been covered earlier in the thesis. The directive is based on Article 115 on the Treaty on the Functioning of the European Union. The Directive legislates strongly current issues in the field of tax avoidance in the European Union (Navarro, 2016, p. 117).

5.4.1 Interest limitation rule

Interest limitation rules are covered by Article 4 of the Anti-Tax Avoidance Directive (Os, 2016, p. 190). The main concern of the provision is to limit the deductibility of interests. According to the preparatory work such limitations are necessary due to increased engagement of corporations in excessive interest payments (Council Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market, 2016). Such interests

commonly occur in thin capitalization schemes (Helminen, 2013, pp. 304-305). The ultimate purpose of this provision is to therefore mitigate the difference on tax treatment of the debt which as an instrument generates deductible payments, and equity that is generally non-deductible with regard to the payments (Navarro, 2016, p. 118).

Since interest payments are generally tax deductible in the EU, the Commission sought it necessary to adapt interest limitation rules. The interest limitation under the directive establishes a threshold for deductibility of interests that exceed 30% tax payer's earnings before interest, tax, depreciation and amortization (EBITDA) (Navarro, 2016, p. 118). Alternatively, the tax payer may be allowed to deduct interests below 3 million € limit, which is to be considered for the entire group (Council Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market, 2016, p. Art. 4). As discussed previously, this limit of 3 million € however is proposed to be raised to 5 million € by the consolidating CCCTB proposal (COM(2016) 683 final).

The interest limitation rule has received its fair share of criticism. Van Os in his article assessing the interest limitation rule in the Directive describes the rule as a safeguard measure to protect tax revenue rather than anti-avoidance rule (Os, 2016, p. 190). The reason why this could be problematic is that where the aim of the directive is to 'combat tax avoidance', the interest limitation rule limits the tax deductibility of arm's length interest expenses. The ECJ however, is that tax deductibility of arm's length interest expenses, do not by themselves constitute tax avoidance, which according to van Os, could be problematic from the point of proportionality principle (Os, 2016, p. 198).

5.4.2 Exit Taxation

Exit taxation essentially comes down to the state of departure taxing the EU taxpayer when the taxpayer moves residence or assets from one jurisdiction to another. This is due to unrealized gains that could otherwise be completely tax exempt in the state of departure. According to the preparatory work of the ATAD it is imperative that the cases in which taxpayers are subject to exit tax rules and in fact taxed on unrealized capital gains which have accumulated in their transferred assets (Directive 2016/1164). To elaborate on this one may imagine there is an IT company established in state A, since state A offers an ideal environment for an IT startup to operate during its first operational year. However, the CIT in state A is relatively high, and the company decides to move its unrealized assets to a PE in another Member State or transfer its tax residence to state B with significantly favorable tax regime, even though the economic value of the capital gains were created in the territory of state A but had not realized at the time of the exit.

Navarro, Parada and Schwarz categorize three different situations, where the Member State should in accordance with the Directive, impose an exit tax on the difference of book and market value: First, in the cases of cross-border transfer of assets, where head office transfers assets to its PE or vice versa. Secondly, cases where two PEs transfer assets between themselves. And lastly, the previously mentioned transfer of tax residency from state A to state B (Navarro, 2016, p. 118). In addition to these rules, paragraphs 2-7 of the Art. 5 of the ATAD lay down specific rules in relation to recovery of transfers within the EU or the European Economic Area (EEA) (Council Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market, 2016).

In addition to the specification of the cases where the tax payers would be subject to exit taxation, the Commission highlights the importance of fixation of

the market value of the transaction that took place, and its compliance with the arm's length principle (Council Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market, 2016). The differences in valuation and cross-border transactions, can give rise to certain issues inherent to them. One of them is the issue of judicial double taxation. Nevertheless, in intra-EU transaction this issue has been mitigated by the obligation imposed over Member States, to accept the market values established by other Member States (Navarro, 2016, p. 120).

The preamble of the directive instructs the Member States to inter alia, that they could for instance require companies to include all necessary information in the declaration upon exiting. However, it is specifically stated that the exit tax should not be charged when the transfer of assets is temporary in nature, and the transfer is concluded in order to fulfil certain requirements (Directive 2016/1164). Hence it is important to keep in mind the nature of the provision as it bears title of directive and Member States still remain free to transpose it in their national legislation.

5.4.3 General anti-abuse rule

The general anti-abuse rule (GAAR) seems to act as a 'catch-all' or a 'gap filling' provision. This anti-abuse rule is designed to apply to arrangements which are 'not genuine'. This thus allows the taxpayer to choose the most tax efficient structure for its commercial affairs. The wording of the Article itself is fairly vague and the nature of the Article seems to follow similar conditions that were established by the CJEU in Cadbury Schweppes; (Directive 2016/1164, Article 123) "a Member State shall ignore an arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the applicable tax law, are not genuine having regard to all relevant facts and circumstances…" (Directive 2016/1164 Article 6 para 1).

The Commission's Staff working document describes the 'Action 6' of the OECD to be direct counter measure to Treaty shopping and other forms of Treaty abuse strategies, which are used by the tax payers in order to obtain benefits from the provisions Treaties that were not intended to be granted (COM (2016) 2016 final). The GAAR does not in its wording directly address Treaty shopping or conduct such as artificial avoidance of PE status. Nevertheless, it seems that wording of Article 6 requires to address such conduct on a national level (Directive 2016/1164., Art. 6 para 1).

5.4.4 Hybrid mismatches

Hybrid mismatches play a significant role in tax avoiding arrangements. Hybrid instruments can for instance be something between equity and liability, such instruments can become an issue in the situations of so-called 'qualification conflicts' (Helminen, 2013, p. 315); in some cases, it has proven to be particularly difficult for two different states to categorize certain instruments. This can potentially lead to situations where State A treats a particular instrument as equity, where earnings generated by it are treated as dividends. State B in turn may treat the same instrument as liability, and therefore its profits as interest. Such arrangements can therefore lead into double taxation or zero taxation. Another mismatch that can potentially occur is the classification of an entity situated in another tax jurisdiction. The preamble of the ATAD recognizes the issues in relation to PEs (Council Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market, 2016).

Tax jurisdictions may face difficulties in relation to categorization of certain operation in either in its own or foreign jurisdiction. The point where a foreign representation in state B of a company situated in state A may be difficult, and has to do with what kind of operations the foreign representation or agency is

conducting, e.g. is the representation merely taking orders from clients and forwarding them to the parent located in state A or actually doing something to fulfill these orders. The tax treatment of PEs and subsidiaries can vary significantly and in some cases the differing classifications can lead to double deductions and tax payers might seek to benefit from these conflicts.

Corporations may take an advantage of these 'hybrid instruments or entities' to minimize taxation (Helminen, 2013, p. 315). The legislation on hybrid mismatches is necessary due to the inherent problem that lies within them. According to Navarra, Parada and Schwarz the Article applies as long as there is a different characterization to the same entity or instrument, and that the characterization causes either double deduction or a deduction/non-inclusion (Navarro, 2016, pp. 127-128). If there is a hybrid mismatch that results in double deduction, the deduction can only be given in the Member State where the payment has its source (Council Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market, 2016, p. Art. 9(1)).

The ATAD stipulates that in the first and the second paragraphs that "To the extent that a hybrid mismatch results in a double deduction, the deduction shall be given only in the Member State where such payment has its source", and that "To the extent that a hybrid mismatch results in a deduction without inclusion, the Member State of the payer shall deny the deduction of such payment." (Council Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market, 2016, p. Art. 9(1)(2)). Even in the existence of guidelines on hybrid mismatches on OECD BEPS Action 2, the Commission found the need to include these two paragraphs in the ATAD.

6 Conclusion

Corporate tax avoidance can definitely be seen as reason for loss of income for several States within the European Union. Due to the great variety of tax avoidance schemes it is very difficult to regulate and forbid these. If a State would wish to regulate tax avoidance and make it for example illegal it would require the State to enter into multilateral agreements with other States to be able to make them work.

Furthermore, when it comes to the context of the European Union and its competence to regulate in the field of tax avoidance and more precisely direct taxation one can clearly see the difficulty the EU faces. Since direct taxes in general belongs to the States competence as long as it complies with the EU laws and regulations, the EU has very limited possibilities to regulate.

In the authors opinion tax avoidance is a matter that falls under the corporate social responsibility for multinational enterprises and should not be regulated on an EU level since it is very difficult and costly. The author believes that corporate social responsibility is a matter of increasing importance among customers and the society and therefore it is in the great interest of corporations to respect this and follow the expectations by the society.

7 Bibliography

Avi-Yonah, R. S., 2004. *Corporations, Society and the State: A Defense of the Corporate Tax*. Virginia Law Review, 90(5).

Barnard, C., 2013. *The Substantive Law of the EU: The Four Freedoms.* 4th Edition ed. Oxford.

Blouin, L. N. H., 2014. *Thin Capitalization Rules and Multinational Firm Capital Structure.* European Commission.

Camille Allain, J. F. A.-G. M., 2016, *Facing tax fraud in the European Union - Challenges and perspectives.* Themis competition.

Cerioni, L., 2015. *The European Union and Direct Taxation: A Solution for a Difficult Relationship.* Routledge.

Chen, The Rebirth of CCCTB: Lessons from US Multistate Tax Compact, Kluwer International Tax Blog, June 30, 2015. Available at: http://kluwertaxblog.com/2015/06/30/the-rebirth-of-ccctb-lessons-from-us-multistate-tax-compact/ [Accessed 13.03.2017]

COM(2016) 683 final, *Proposal for a COUNCIL DIRECTIVE on a Common Consolidated Corporate Tax Base (CCCTB)*, European Commission.

COM (2016) 685 final *Proposal for a COUNCIL DIRECTIVE on a Common Corporate Tax Base,* European Commission.

COM(2015) 302 final Communication from the Commission to the European Parliament and the Council, A Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action, European Commission.

Council Directive (EU) 2016/1164. of 12 July 2016 *laying down rules against tax avoidance practices that directly affect the functioning of the internal market*

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.*

Council Directive (EU) 2014/107/EU of 9 December 2014 *amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation*.

Council Directive 2011/16/EU of 15 February 2011 *on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC.*

Council Directive 2003/49/EC *on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States*.

DG Competition Working paper on *State Aid and Tax Rulings*, 3 June 2016. Available at:

http://ec.europa.eu/competition/state_aid/legislation/working_paper_tax_rulings.pdf [Accessed 10.02.2017]

European Commission., 2001. *Green Paper. Promoting a European Framework for Corporate Social Responsibility*: Brussels, European Commission.

European Commission, 2011. *A Renewed EU Strategy 2011-14 for Corporate Social Responsibility,* Brussels, European Commission.

European Commission, 2013. *State aid: Ireland gave illegal tax benefits to Apple worth up to €13 billion,* Brussels, European Commission Press Release IP/16/2923

European Commission, 2016. *Commission proposes major corporate tax reform for the EU,* Strasbourg

European Commission, 2016. *Proposal for a Council Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market,* Brussels

European Commission, 2017. *Enhanced administrative cooperation in the field of (direct) taxation.* Available at: http://ec.europa.eu/taxation_customs/business/tax-cooperation-control/administrative-cooperation/enhanced-administrative-cooperation-field-direct-taxation_en. [Accessed 11.04.2017]

European Commission, Press release IP/16/3471, *Commission proposes major corporate tax reform for the EU*, Strasbourg, 25 October 2016

European Court of Justice, 2005. C-196/04, *Cadbury's Schweppes v. Commissioners of the Inland Revenue* .

European Court of Justice, 2003, C-167/01, *Kamer van Koophandel en Fabrieken voor Amsterdam v Inspire Art Ltd.*

European Court of Justice, 1999. C-212/97, *Centros v. Erhvervs- og Selskabsstyrelsen.*

European Court of Justice, 1988, C-81/87 *The Queen v H. M. Treasury and Commissioners of Inland Revenue, ex parte Daily Mail and General Trust plc.*

European Commission Press release IP/16/3471, *Commission proposes major corporate tax reform for the EU*, Strasbourg, 25 October 2016

European Court of Justice, 1986. *C-79/85 D. H. M. Segers v Bestuur van de Bedrijfsvereniging voor Bank- en Verze-keringswezen, Groothandel en Vrije Beroepen.*

Garbarino, C., 2016. Harmonization and Coordination of Corporate Taxes in the European Union. *EC Tax Review.*

Gravelle, J. G., 2010. *Tax Havens: International Tax Avoidance and Evasion,* s.l.: DIANE Publishing.

Heitzman, M. H. &. S., 2010. A review of tax research. *Journal of Accounting and Economics.*

Helminen, M., 2011. *EU Tax Law: Direct Taxation.* Amsterdam, IBFD.

Helminen, M., 2013. *Kansainvälinen tuloverotus.* Edita.

Jones, J. F. A., 2003. Conflicts of Qualification: Comment on Prof. Vogel's and Alexander Rust's Articles. *Bulletin for International Fiscal Documentation,* May.

Navarro, P. &. S., 2016. The Proposal for an EU Anti-Avoidance Directive: Some Preliminary Thoughts. *EC Tax Review,* 25(3).

OECD, 2015. *Model Tax Convention on Income and on Capital 2014.* Paris: OECD Publishing.

OECD, 2015. *Preventing the Granting of Treaty Benefits in Inappropriate Circumstances, Action 6 - 2015 Final Report.* Paris: OECD Publishing.

OECD, 2015. *Public Discussion Draft, BEPS Action 3: Strengthening CFC Rules,* s.l.: OECD.

OECD, 2012. *Thin Capitalization Legislation: A Background Paper for Country Tax Administrations,* s.l.: OECD Tax & Development.

OECD, 2010, OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2010, OECD Publishing, Paris.

OECD, 2010. *Convention on Mutual Administrative Assistance in Tax Matters.* Available online: http://www.oecd.org/ctp/exchange-of-tax-information/ENG-Amended-Convention.pdf [Accessed 01.02.2017].

Osbourne, D. A., 2011. Deterring Transfer Pricing Abuse: Changing Incentives as a Practical Alternative to Global Tax Regime. *Washington University Global Studies Law Review,* 10(4).

Os, v., 2016. The Interest Limitation under the Adopted Anti-Tax Avoidance Directive and Proportionality. *EC Tax Review,* Volume 25.

P. Craig, G. d. B., 2015. *EU Law, Text, Cases, and Materials.* 6th Edition ed. Oxford.

Panayi, C. H., 2010. Tax Treaties: Building Bridges between Law and Economics. In: *Rethinking Treaty Shopping: Lessons for the European Union.* Amsterdam: IBFD.

Panjay, C. H., 2013. *European Union Corporate Tax Law.* Cambridge University Press.

Panjay, C. H., 2015*. Is Aggressive Tax Planning Socially Irresponsible?. Intertax.*

Paternoster, D., 2016. *General Tax Policy,* European Parliament.

R. Palan, R. M. &. C. C., 2010. *Tax Havens: How Globalization Really Works.* New York: Cornell University Press.

Remeur, C., 2015. *Tax Policy in the EU: Issues and challenges.* s.l.:European Parliamentary Research Service.

Ryding, Ravenscroft, European Commission's CCCTB proposal 'will not fix the problem of transfer pricing and corporate tax dodging', European Network on Debt and Development, 25 Oct 2016 Available at: http://www.eurodad.org/Entries/view/1546657/2016/10/25/European-Commission-s-CCCTB-proposal-will-not-fix-the-problem-of-transfer-pricing-and-corporate-tax-dodging [Accessed 03.03.2017].

Sandler, D., 1998. *Tax Treaties and Controlled Foreign Company Legislation: Pushing the Boundaries.* 2nd Edition ed. Kluwer Law International.

Schippers, 2016. BEPS and Transfer Pricing but What about VAT and Customs?. *EC Tax Review ,* Volume 25.

Schwanke, A., 2016. UK expedites EU corporate tax race to the bottom. *International Tax Review,* 23 August.

Sikka, P., 2010. Smoke and mirrors: Corporate social responsibility and tax avoidance. *Accounting Forum,* Volume 34.

United Nations, 2011. *Informal Meeting on Practical Transfer Pricing Issues for Developing Countries.* Available at: http://www.un.org/esa/ffd/tax/2011_TP/TP_Chapter1_Introduction.pdf [Accessed 13.03.2017]

Wisselink, M., 1979. Concept of international tax avoidance. In: *International Tax Avoidance.* s.l.:Kluwer Law International.

Vonwil, M. &. W. R., 2009. The CSR myth: true beauty comes from within. In: J. K. &. R. Wreschniok, ed. *Reputation Capital: Building and Maintaining Trust in the 21st Century.* New York: Springer.

Zucman, G., 2014. Taxing across Borders: Tracking Personal Wealth and Corporate Profits. *The Journal of Economic Perspectives,* 28(4).