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LAW**

# **Uncovering corporate tax avoidance and investigating multinational corporation financial strategies and the social consequences**

**BACHELOR THESIS**

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**DECLARATION OF HONOUR:**

I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

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## **ABSTRACT**

This bachelor thesis's aim is to analyze and research the problem of corporate tax avoidance and its social consequences. The main objectives will be to first of all, address and explain the theory of corporate tax in general, which includes the strategies, tax theory, and an in-depth example of one of these strategies – tax havens. Furthermore, this bachelor's thesis will analyze case law with specific case examples of three companies – Nike, Engie, and Amazon in relation to the in-depth example of the tax haven tax avoidance strategy. Further on, the bachelor thesis will analyze what are the social consequences, economic consequences as well as the ethical measures of tax avoidance, combined together with a legal perspective.

This bachelor paper concludes that while there are a lot of legal measures taken into anti-tax avoidance procedures, these frameworks are often inadequate or ineffective.

## SUMMARY

There are countless methods of corporate tax avoidance strategies, mainly, the main ones being, for example, transfer pricing, tax havens, tax deduction and credits, offshore profit shifting, tax loss harvesting, and many more. This paper aims to discuss some of the largest corporate tax avoidance specific cases and the methods which the corporations indulge in to avoid tax which is still happening today, as well as discuss the problem it brings to the economy and what are the social consequences. Furthermore, the bachelor's thesis also goes over the theory of corporate tax avoidance in general which includes the avoidance measures for tax avoidance, the factors why corporations indulged in tax avoidance as well as the ethical part of the whole phenomenon, for example, why corporations even decide to engage in often illegal tax avoidance practices.

The research paper in total analyzes three case studies, Nike and the Netherlands v. the European Commission, Amazon and Luxembourg v. the European Commission, and Engie and Luxembourg v. the European Commission. The cases help us understand the practices performed by the corporations more in-depth as well as showcases an example where the European Commission does not have enough evidence to find the corporation guilty, as seen in the case of Amazon and Luxembourg v. the European Commission.

After concluding the research on the specific cases, the bachelor thesis continues to analyze more specifically the social consequences, which include income inequality, lost trust in the government, and the loss of government. The thesis also acknowledges the reasons why some corporations choose to avoid tax even in illegal ways and what is the point of view from the corporation's side, essentially, why some corporations choose to avoid tax in more unethical ways and why some corporations choose not to. Next, in the same chapter, the thesis researches avoidance measures for tax avoidance furthermore summarizing the measures, understanding the pros and cons of each measure, and suggesting a possible best avoidance measure theory.

The last chapter focuses more specifically on the social consequences and the general impact of corporate tax avoidance. The chapter starts by promoting the opinion of the research paper on why corporate tax avoidance is indeed such a large problem and why it is so difficult to often find a solution and find corporations guilty of tax avoidance. The study continues by analyzing what factors are used to suggest which nations are considered as tax avoidance nations and why some of these factors do not function properly, furthermore, suggesting different factors and methods that could be used to analyze which countries should be listed as prone to tax avoidance strategies, and which should not. The study also emphasizes how the problem of corporate tax avoidance is a problem that cannot be resolved by one nation at a time, but rather by several nations working together with the same concept and theory in mind, implementing nationwide provisions.

The bachelor thesis ends with the analysis of how shareholders and stakeholders impact the corporation regarding tax avoidance, and how often due to the pressure corporations are pressured into maximizing profits, which not only includes tax avoidance, as previously mentioned but also cheap labor which sacrifices basic human rights and ultimately the sacrifice of employee job security and necessities; this is then explained with real examples which have happened previously and which are still happening to this day.

The thesis concludes the study with a conclusion that summarizes the investigation of corporate tax avoidance as well as the ethical part of tax avoidance and also suggests a theory that could be fit for more successful tax avoidance countermeasures.

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# 1. INTRODUCTION

Corporate tax avoidance for many decades has already been a worldwide issue, however, during the last few years, the phenomenon has especially risen in attention, specifically regarding multinational corporations frequently indulging in complex financial strategies to minimize their tax amount and maximize their profits. This practice is not only legal but is often viewed as an essential part of maximizing shareholder and stakeholder value. However, the societal consequences of corporate tax avoidance are significant, including reduced government revenue, inequality, lost trust in the “system”, etc. This topic is especially important today in the author’s opinion as the tax avoidance numbers are getting larger and larger, and it is hard to imagine the numbers slowing down.

This bachelor thesis seeks to explore the true price of corporate tax avoidance by analyzing the financial strategies, the societal consequences, and corporate tax avoidance theory in general, as well as analyzing specifically three multinational corporations, Amazon, Engie, and Nike, since, in the author’s opinion, these are the best examples related to huge companies not paying tax; not only all of these companies have a 3-year income larger than 4 billion, but all of these companies also have a negative tax rate above negative 15%, resulting in huge tax rebates as well, different institutions such as the Institute on Taxation and Economic Policy have precise statistics about the tax amount which is paid, and the tax amount which had to be paid, in other words, the companies accounting information, these sources can be used to precisely analyze the topic. Potential difficulties which can be encountered are that the companies, for logical reasons, do not really advertise their methods of tax avoidance, however, the author can overcome this problem by performing analyses on the companies and researching secondary research. The methodology for this bachelor thesis involves a combination of literature review, data analysis, and case review. These sources will be selected based on their relevance to the problems the bachelor thesis analyzes and the quality of the data the sources provide. The data collected will be analyzed using both qualitative and quantitative methods, an example of quantitative analysis could be used for, for example, inequality levels and the specific amount of corporate tax avoided. Researching many different sources will not only help the author understand the general topic better, but it will also help compare sources to be sure, that what is written, is correct, by comparing work. The study will largely be based on primary sources such as textbooks, and secondary sources will be used when more specific topics are brought up.

This research paper is based on three main chapters, with the first chapter being about corporate tax theory in general with a specific example of a tax avoidance strategy, it goes in-depth regarding specific strategies, reasons why corporations choose to engage in tax avoidance, the small boundary of legal and illegal tax avoidance, different avoidance measures and the general ethical part of tax avoidance as well as describing the theory of a “reasonable” corporate tax amount and how different theories explain what specifically can a “reasonable” and “fair” amount be interpreted as. The second chapter is regarding specific cases with a summary of all of them combined, which describes how each case is different and what are the general problems of these cases. The first case is regarding *The European Commission v. Nike and the Netherlands*, Case T- 648/19, the second case s regarding *European Commission vs Luxembourg and Engie*, May 2021, EU General Court, Case No T-516/18 and T-525/18, and the third case ir regarding *European Commission v. Amazon and Luxembourg*, May 2021, State

Aid – European General Court, Case No T-816/17 and T-318/18. The author chose specifically these case as first of all, as previously mentioned, they are in general good candidates for showcasing tax avoidance strategies, and second of all, two of these corporations were fined and found guilty while one of them, Amazon, was not, the bachelor thesis continues to describe why Amazon was not fined and found guilty and how the reason is an important factor regarding anti-tax avoidance measures. The last chapter of the three chapters is regarding the corporate tax impact not only financially, but also with regard to social responsibility and ethics. It analyzes how shareholders and stakeholders can impact corporate tax avoidance, both in a positive way and in a negative way, furthermore, it also analyzes how employees can benefit in a positive or negative way and also looks into cheap labor strategies which are used by corporations which indirectly or directly also correlate with tax avoidance. The corporations which the Bachelor thesis took as an example are the same corporations that were previously analyzed in the second case law chapter.

Additionally, this bachelor thesis aims to explore the ethics, implications, and impact of corporate tax avoidance and large corporation's responsibilities to society. Through a combination of literature review, financial analysis, and case study research, this thesis will provide a comprehensive analysis of the financial strategies of Amazon, Engie, and Nike and the consequences of their and, in general, other multinational corporation tax avoidance practices. The findings of this bachelor thesis will help the reader to have a better understanding of the societal impact of corporate tax avoidance, as well as help to understand how the practice of tax avoidance by multinational corporations is done with specific examples included.

The legal research question for this study is if corporate tax avoidance really is an ongoing problem today and what countermeasures can be taken to avoid unethical or illegal tax avoidance.

## 2. THE CORPORATE TAX AVOIDANCE STRATEGIES AND THEORY

### a. Europe's hidden tax haven: Luxembourg

Leaked documents, called the LuxLeaks, in November 2014 show that companies such as Amazon, Nike, FedEx, and nearly 340 other international companies have been using Luxembourg as a hidden tax haven.<sup>1</sup> The main idea of LuxLeaks is that companies do profit shifting, essentially in simple words, shifting profits that the companies gain from other countries to Luxembourg, where tax rates are close to non-existent. The BIG 4 companies, such as PwC helped hundreds of corporate clients to come up with financial strategies such as loans from sister companies and other different strategies which can be used for said profit shifting.

An example of this could be regarding PepsiCo, which set up Luxembourg subsidiaries to arrange loans for the purchase of the controlling interest for a \$1.4 billion Russian juice company. The money traveled through the Luxembourg subsidiary following to travel to a Pepsi subsidiary in Bermuda, in this situation, Luxembourg was a tax reducing channel for the traveling money. Another example could be the example of Ikea, where the company created not only a franchise holding company in Luxembourg that owned trademarks but also a Luxembourg finance company and a Luxembourg holding company. The whole strategy of course goes way more in depth, with a lot more specifics, and even with the IKEA group also having subsidiaries in other low-tax jurisdictions such as Switzerland and Lichenstein. As a former tax official of the U.S. Treasury Department stated

A Luxembourg structure is a way of stripping income from whatever country it comes from,<sup>2</sup>

And, that Luxembourg

combines enormous flexibility to set up tax reduction schemes, along with binding tax rulings.... It's like a magical fairyland.<sup>3</sup>

An interesting statistic is that in the Luxembourg Amazon unit, which handles sales for the UK, Germany, Italy, Poland, Spain, Sweden, and the Netherlands, a corporate filing concluded in 2020 stated that even with Amazon having a record sales income of 44 billion euros, Amazon had not paid any corporate tax to the Grand Duchy due to having made a 1.2 billion loss, furthermore, the company has 2.7 billion euros worth of tax credits stored up to use against any future profits.<sup>4</sup> It can be seen how these huge tech giants shift their profits to a Luxembourg subsidiary, which has enormous losses, to pay basically zero tax, as seen in this situation, additionally, as the subsidiary has huge carried forward losses, Amazon is likely to continue doing on so for a long time, this is probably the reason why Amazon's European headquarters are specifically in Luxembourg – it set up its headquarters there in 2003 and

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<sup>1</sup> Par Jérémie Baruch , Maxime Ferrer , Maxime Vaudano et Anne Michel, “OpenLux : the secrets of Luxembourg, a tax haven at the heart of Europe”, Available on: [https://www.lemonde.fr/les-decodeurs/article/2021/02/08/openlux-the-secrets-of-luxembourg-a-tax-haven-at-the-heart-of-europe\\_6069140\\_4355770.html](https://www.lemonde.fr/les-decodeurs/article/2021/02/08/openlux-the-secrets-of-luxembourg-a-tax-haven-at-the-heart-of-europe_6069140_4355770.html) Accessed on 11.05.2023.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid*

<sup>4</sup> Ruper Naete, “Amazon had sales income of €44bn in Europe in 2020 but paid no corporation tax”, Available on: <https://www.theguardian.com/technology/2021/may/04/amazon-sales-income-europe-corporation-tax-luxembourg> Accessed on on 05.11.2023.



instantly set up a confidential tax agreement with the country's tax authorities. Allegedly, Bob Comfort, the head of Amazon's tax until 2011, has stated that Luxembourg's prime minister and a former president of the European Commission, Jean-Claude Juncker, has personally offered to help Amazon, as stated in this quote:

His message was simply: 'If you encounter problems which you don't seem to be able to resolve, please come back and tell me. I'll try to help.'<sup>5</sup>

Out of the six largest tech giants – Amazon, Facebook, Google, Netflix, Apple, and Microsoft, who have allegedly avoided 100 billion USD of global taxes, it is stated that Amazon is the largest offender, paying only 2.5 billion in total in taxes so far in the decade, within the time frame of the Article referenced.<sup>6</sup> However, Amazon disputes the report, stating that it is wrong.

According to a non-profit research and advocacy U.S Based group, 170 out of the 500 Fortune 500 companies have Luxembourg subsidiaries, which just helps state the contrast of the whole situation on how big it is.<sup>7</sup> While the standard tax rate in Luxembourg is 29%, it is not rare that these companies pay less than a 1% tax rate on their profits, for example, Barclays, even after 14 years, is still benefiting from the decision to set up subsidiaries in Luxembourg in 2009, rather than in the UK, where it is headquartered – this has led to Barclays earning billions of pounds nearly tax free.

It is stated that how by December 2019, more than \$ 5 trillion of portfolio investments have been poured into Luxembourg, which is more than in, for example, Germany, Japan, or the UK, and additionally, how among the 650,000 people who live in Luxembourg, there are 140,000 active companies.<sup>8</sup> Additionally, in 2018, Luxembourg had finally agreed to create a database that shows the ultimate beneficial owners (UBOs) of the companies created within Luxembourg, due to pressure from the European Commission. An interesting flaw that the database has is that it does not allow people to search for companies by the owner's name, but rather only by the company's name or registration number; and due to a lot of these companies being created in secrecy, it is really hard to find who owns what, additionally, the data itself is really hard to access and it is really challenging to track the true beneficial owners.

The European Union has failed even after many attempts to totally crack down the Luxembourg tax haven. There have been many attempts to create new policies that would fight tax evasion. As the EU Taxation Commissioner Algirdas Semeta has stated,

their failure was disappointing because, if approved, the legislation proposing an EU-wide automatic exchange of data on bank deposits would allow governments to identify and chase up tax evaders.<sup>9</sup>

As many banks outside Europe would draw deposits away from Luxembourg if the new policies would be initiated, it seems logical for Luxembourg to create new opposition reasons

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<sup>5</sup> *Ibid.*, p.8.

<sup>6</sup> *Ibid.*, p.8.

<sup>7</sup> The International Consortium of Investigative Journalists, "Leaked Luxembourg files expose global companies' secret deals to avoid tax", Available on: <https://www.cbc.ca/news/business/leaked-luxembourg-files-expose-global-companies-secret-deals-to-avoid-tax-1.2825627> Accessed on: 11.05.2023.

<sup>8</sup> OCCRP, "OpenLux", Available on: <https://www.occrp.org/en/openlux/> Accessed on 11.05.2023.

<sup>9</sup> The Associated Press, "Luxembourg kills EU tax haven crackdown", Available on: <https://www.cbc.ca/news/business/luxembourg-kills-eu-tax-haven-crackdown-1.2569871> Accessed on 11.05.2023.

regarding new policies. EU officials have stated that the Luxembourg tax schemes have cost Europe, during and before 2014, about 1 trillion euros per year.<sup>10</sup>

Nike also had set up a subsidiary in Luxembourg to reduce its tax bill. The subsidiary, called Nike European Operations Netherlands BV, was later used to transfer the company's intellectual property rights and other assets to a tax-exempt subsidiary in Bermuda, where Nike has no employees. This arrangement, which is commonly referred to as a "double Irish" and a "Dutch sandwich", allowed Nike to shift profits from high-tax countries to low-tax jurisdictions, thus reducing its overall tax bill, however, later in 2018, European Union ruled that this arrangement was illegal and ordered Nike to pay \$14.2 million in back taxes to the Dutch government. Nike appealed the decision, but the appeal was rejected by the European General Court in 2021. The author will more specifically discuss about this, as well as other examples, in Chapter 2 later on.

One specific source even states how Luxembourg is not only a tax haven for huge companies such as Nike, FedEx, Amazon, etc., but also for fraudsters, arms dealers, organized crime figures, oligarchs, and relatives of political figures from all around the world, meaning that in some cases, companies opened in Luxembourg are not only for legitimate or hardly legitimate reasons such as tax avoidance but also for the purpose of secrecy, using Luxembourg to hide, move, launder and do other illegitimate actions with the "invested" money.<sup>11</sup>

It should also be said, that Luxembourg is not the only country, which is presented as a tax haven. An analysis by Oxfam states that the list of tax-haven countries

continues to fail in effectively identifying the countries which use harmful tax practices and help the richest dodge their tax bills<sup>12</sup>

and that

five EU member states (Cyprus, Ireland, Luxembourg, Malta and the Netherlands) presented economic indicators typical of tax havens (e.g. high levels of Foreign Direct Investment, intellectual property payments, interests, dividends)<sup>13</sup>

Of course, an even broader perspective out of the EU will lead to even larger tax havens, such as the Cayman Islands and the British Virgin Islands, which allegedly are the most popular tax havens.<sup>14</sup> If we compare the CHTI value, which is a measure of how intensely the jurisdiction enables multinational corporations to abuse corporate tax, the value for Luxembourg, which is in sixth place in the Corporate Tax Haven Index list, is 1815, while the value for the Cayman Islands, which is in second place in the list, is 2653. Another interesting statistic showcased in the Corporate Tax Haven List is that Luxembourg is responsible for 4.1% of the world's corporate tax abuse risks. This is also called as the CTHI share. Another interesting figure is the Global Scale Weight, which is a measure of how much financial activity from multinational

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<sup>10</sup> *Ibid.*

<sup>11</sup> OCCRP, "OpenLux", Available on: <https://www.occrp.org/en/openlux/> Accessed on 11.05.2023.

<sup>12</sup> Jorge Liboreiro, "Why doesn't the EU consider Luxembourg a tax haven?", Available on: <https://www.euronews.com/my-europe/2021/02/17/why-doesn-t-the-eu-consider-luxembourg-a-tax-haven#:~:text=In%20its%20Corporate%20Tax%20Haven,included%20in%20the%20EU%27s%20blacklist> Accessed on 11.05.2023.

<sup>13</sup> *Ibid.*

<sup>14</sup> Corporate Tax Haven Index - 2021 Results, Available on: <https://cthi.taxjustice.net/cthi2021/country-list.pdf>. Accessed on 11.05.2023.

corporations the jurisdictions host, with Luxembourg having a score of 9%, it is the second largest score in the whole list, only being behind the Netherlands, which have a score of 11%.

The main difference between, for example, the Cayman Islands and Luxembourg's tax haven is that the Cayman Islands has a zero percent corporate tax rate, while Luxembourg favors profit shifting, which is a more complex system and also easier to hide. In the author's opinion, it could also be possible that Luxembourg is an even larger tax haven than the, for example, Cayman Islands – the privacy factor of Luxembourg might help hide the total actual cases of tax avoidance, thus the “score” in the Corporate Tax Haven Index list is lower.

Overall, Luxembourg is one of the many examples of tax havens, and there are many more, with each tax haven having its own specific systems which contribute to tax avoidance.

## **b. Corporate tax avoidance theory**

As the boundaries of illegal and legal tax avoidance are thin, it is often complicated to determine the legality of a company's strategies, thus, there is no precise distinction between legal tax avoidance and illegal tax evasion.<sup>15</sup> In general, there are countless methods of different corporate tax avoidance strategies, however, some of the most often used strategies which companies use to minimize liability would be transfer pricing, which involves setting the price for goods and services between affiliated entities in different countries to shift profits to lower tax jurisdictions; thin capitalization, which involves a company reducing its taxable income by financing operations through debt, instead of equity, as debt, is tax deductible.<sup>16</sup> Another popular method is tax havens, which is similar to the transfer pricing method, however, tax havens involve companies setting up subsidiaries in countries that have low or no corporate taxes and channeling profits or assets to these jurisdictions through many different complex financial strategies, the main difference is that transfer pricing manipulates the price of goods, services or intellectual property to shift profits, while tax havens simply create subsidiaries or holding companies in low or zero tax jurisdictions to which the companies shift their assets or profits, which the author will more specifically describe in point “b” later on. Intellectual property right holding companies is another method, which will also be described in the next chapter regarding the case of *The European Commission v. Nike and the Netherlands*, Case T- 648/19, this method involves companies transferring their intellectual property rights to subsidiaries in low tax jurisdictions and charges high royalties for their operating companies in order to profit shift and reduce the taxable income in their operating companies, which are located in higher tax jurisdictions.<sup>17</sup> Furthermore, another method, which also has some specific similarities with the previous methods is hybrid mismatch arrangements, which essentially means, that companies take advantage of tax differences between countries, for example, claiming a tax deduction in one country while treating it as tax free income in a different country.<sup>18</sup>

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<sup>15</sup> B. Brian Lee, Susas Minton, “Theories and Empirical Proxies for Corporate Tax Avoidance”, Available on: [http://digitalcommons.www.na-businesspress.com/JABE/LeeBB\\_Web17\\_3\\_.pdf](http://digitalcommons.www.na-businesspress.com/JABE/LeeBB_Web17_3_.pdf) Accessed on 11.04.2023.

<sup>16</sup> Columbia Law Review, “Thin Capitalization and Tax Avoidance.” 55, no. 7 (1955): 1054–66. Available on: <https://doi.org/10.2307/1119394> Accessed on 11.05.2023.

<sup>17</sup> Andrew Blair-Stanek, “Intellectual Property Law Solutions to Tax Avoidance”, Available on: <https://www.uclalawreview.org/pdf/62-1-1.pdf> Accessed on 11.04.2023.

<sup>18</sup> Hybrid mismatch rules, Available on: <https://www.ato.gov.au/Business/International-tax-for-business/In-detail/Hybrid-mismatch->

There are many factors that drive corporate tax avoidance, in general, it is that companies simply aim to achieve profit margins as high as possible, often balancing their strategies between illegal and no so legal methods. This can often be due to, for example, shareholder and stakeholder pressure, with corporations being under pressure to outperform other corporations, thus, they aim to maximize cost reduction, which also involves tax reduction, additionally, another factor is globalization, which means that different jurisdictions with the aim to achieve more financial investments from corporations decrease their corporate tax rates, which can also lead to a rat-race to lower and lower corporate tax rates, for example, in response to claims that higher corporate and personal tax rates discourage investment and enterprise and also fuel tax avoidance, successive UK governments have cut the rates of corporation and income taxes.<sup>19</sup> Another key driver for corporate taxes is the complex tax system, which means, that it is prone to a lot of different loopholes, with the fact, as previously mentioned, that it is often difficult to distinguish between legal and illegal methods.

There are many different tax avoidance measurement tools used, however, the two main types of measurement to measure tax avoidance are BTM (Book Tax Difference) and ETR (The effective tax rate), often, many other different tax measurement tools are used with the statistics of ETR and BTM.<sup>20</sup> The function of BTM is to find out the difference between book income and taxable income in a given period. The value of the comparison results will reflect whether there are tax avoidance efforts carried out by the company, essentially, tax reporting aggressiveness. The greater the result of the book tax difference reflects the company's tax avoidance.<sup>21</sup> ETR can be described with the formula of tax divided by pretax income, while BTM can be described with the formula of pretax income minus tax divided by 0.35, as 0.35 is often used as an estimate of taxable income, however, it must be mentioned, that due to the difference in accounting standards around countries, the calculations for ETR and BTM can differ. It is stated that this measure often suffers a scale problem, essentially, where the same size BTM may be relatively large for a small firm while being small for a large firm. In simple terms, the difference between BTM and ETR is that ETR is a measure of a company's actual tax liability, while BTM is a measure of the difference between book income and taxable income, as previously mentioned. ETR more precisely provides information about a company's financial tax burden, on the other hand, BTM provides information on the difference between financial accounting and tax accounting, for example, a positive BTM means that a company may be reporting more income on its financial statement than it is reporting to their tax returns, and, regarding ETR, an example could be that the company is paying a larger percentage of its taxable income in taxes, while a lower ETR means the opposite- a company is paying a smaller

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[rules/#:~:text=Hybrid%20mismatch%20arrangements%20exploit%20differences,2%20or%20more%20tax%20jurisdictions](#) Accessed on 11.04.2023.

<sup>19</sup> Corporate - Taxes on corporate income, Available on: <https://taxsummaries.pwc.com/united-kingdom/corporate/taxes-on-corporate-income/#:~:text=Finance%20Act%202022%20enacted%20measures,million%20from%201%20April%202023> Accessed on 11.05.2023.

<sup>20</sup> Francisco J. Delgado, Elena Fernández-Rodríguez, Roberto García-Fernández, Manuel Landajo & Antonio Martínez-Arias, "Tax avoidance and earnings management: a neural network approach for the largest European economies", Available on: [https://nsacoop.org/pdfs/TCA/summer2021/Article4\\_Summer2021.pdf](https://nsacoop.org/pdfs/TCA/summer2021/Article4_Summer2021.pdf) Accessed on 11.05.2023.

<sup>21</sup> *Ibid.*

percentage of its taxable income in taxes.<sup>22</sup> Furthermore, for example, in the UK, a general anti-tax rule (GAAR) provision has been implemented, which was introduced in 2013, it aims to understand what is a reasonable amount of taxes that should be paid, and what is not counted as a reasonable amount.<sup>23</sup> It applies to tax arrangements that are considered abusive, to understand if a tax arrangement is considered abusive or not, a test is applied which is called the “double reasonableness” test; a tax arrangement is considered abusive if first of all, it cannot be regarded as a reasonable course of action in relation to the relevant tax provisions, and second of all, the HMRC has different provisions set out to conclude the test, such as,

whether the means of achieving those results involves one or more contrived or abnormal steps; and whether the arrangements are intended to exploit any shortcomings in those provisions..<sup>24</sup>

Furthermore, if it is concluded that a tax arrangement is abusive, a penalty by the HMRC can be issued which can amount to up to 60% of the total value of the abused tax. In the author’s opinion, this method makes a lot of sense, as it takes into account the reasonable amount of taxes that should be paid, not just a strict, specific figure calculated, and applying this type of method to other jurisdictions would also seem smart, additionally, one of the problems the author mentioned with tax avoidance penalties is that usually, they are extremely small relative to the actual avoided tax amount, however, in this case, a 60% penalty seems large enough for corporations to think twice whether they want to indulge in illegal tax avoidance schemes.

At the end of the day, corporate tax evasion nevertheless poses a serious issue to both governments and taxpayers, even if there is a lot of effort invested into minimizing the problem. Tax avoidance will remain a continuous and complicated topic as long as corporations can discover methods to reduce their tax obligations, and judging by the author’s opinion, corporations always find a way to avoid tax due to the simple fact that they are so powerful; both politically and financially.

There have also been a lot of discussions regarding the ethical part of tax avoidance. From the author’s point of view, this discussion is pretty straightforward with a simple answer, that almost in every case where corporations indulge in tax avoidance, simply maximizing profits is the target. However, the discussion can go into more depth, for example, theories on how governments do not use the money paid by the corporations effectively and essentially use it in the wrong sectors, or even in some cases, the government allegedly, “steals” the money and pockets it themselves, especially in more corrupted countries; many corporations may even be avoiding corporate tax just in spite of the government. Furthermore, on one hand, tax avoidance is completely legal and is just strategized tax planning to pay taxes to a minimum, and essentially, not overpay them, which seems completely ethical, however, on the other hand, as the next chapter will discuss the specific cases which have happened, it seems as tax avoidance is abused tax planning concept by many corporations to not just strategically plan their taxes but to completely evade them which does not go hand-into-hand with the whole idea of tax planning.

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<sup>22</sup>JULIA KAGAN, “Effective Tax Rate: How It’s Calculated and How It Works”, Available on: <https://www.investopedia.com/terms/e/effectivetaxrate.asp#:~:text=What%20Is%20the%20Effective%20Tax,as%20stock%20dividends%2C%20are%20taxed>. Accessed on 11.05.2023.

<sup>23</sup> The UK’s General Anti-Abuse Rule (GAAR), Available on: <https://www.pinsentmasons.com/out-law/guides/the-uks-general-anti-abuse-rule> Accessed on 11.05.2023.

<sup>24</sup> *Ibid.*

However, other sources have a different way of looking at the ethics of tax avoidance, for example, this source states

The linkage between corporate tax avoidance and “corporate social responsibility” (CSR) has not yet been clearly drawn, but the moment has arrived to bridge the gap.<sup>25</sup>

With the idea that corporations can indulge in tax avoidance schemes, as long as it is socially responsible, additionally, for example, a consultancy firm “SustainAbility” explained that corporate taxes should be seen

not as a cost to be avoided, but as a legitimate payment from wealth created to the countries and communities that contributed to the wealth creation in the first place.<sup>26</sup>

Furthermore, another interesting case is that the public expects corporations to pay their fair share in corporate taxes, and as already understood, often, the fair share is not necessarily the legal amount payable, as already previously mentioned, corporations use different strategies to make the legal amount of taxes close to zero. In 2018, the HRMC, which is a department of the UK Government responsible for the collection of taxes, described the ethics of corporate tax as this

we want to make sure that the burden of tax does not fall unfairly on taxpayers who play by the rules and pay their fair share<sup>27</sup>

The problem with this statement is that the “fair share” is a subjective amount, as the statement does not give an explanation as to what can be regarded as “fair”. However, with the implementation of similar measures such as the GAAR, a reasonable corporate tax amount can be more justifiable.

### **3. CASE EXAMPLES OF NIKE, AMAZON, AND ENGIE**

#### **a. The European Commission v. Nike and the Netherlands, Case T- 648/19<sup>28</sup>**

The case was regarding an in-depth investigation brought up in 2019 by the European Commission regarding examinations

“whether tax rulings (unilateral APA’s) granted by the Netherlands had given Nike an unfair advantage over its competitors, in breach of EU State aid rules.”<sup>29</sup>

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<sup>25</sup> Scheffer, D. (2013). “The Ethical Imperative of Curbing Corporate Tax Avoidance.” 27(4), 361-369. Available on: doi:10.1017/S0892679413000324 Accessed on 11.05.2023.

<sup>26</sup> Business ethics briefing, “Tax Avoidance as an Ethical Issue for Business”, Available on: <https://www.ibe.org.uk/resource/tax-avoidance-as-an-ethical-issue-for-business.html> Accessed on 11.05.2023.

<sup>27</sup> Philippa Foster Back , “Avoiding tax may be legal, but can it ever be ethical?”, Available on: <https://www.theguardian.com/sustainable-business/avoiding-tax-legal-but-ever-ethical> Accessed on 11.05.2023.

<sup>28</sup>JUDGMENT OF THE GENERAL COURT (Second Chamber), Nike BV and Converse BV v. The European Commission, Available on:<https://curia.europa.eu/juris/document/document.jsf?jsessionid=3EF0D706A0C64E5895698D61401CB616?ext=&docid=244131&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=308983> Accessed on 11.05.2023.

<sup>29</sup> The European Commission vs. Nike and the Netherlands, July 2021, European Court of Justice Case No T-648/19, Available on: <https://tpcases.com/the-european-commission-vs-nike-and-the-netherlands-june-2021-european-court-of-justice-case-no-t-648-19/> Accessed on 11.05.2023.

Specifically, state aid was granted to Nike from the Dutch tax authority in 2006, 2010, and 2015.<sup>30</sup> The European Commission claimed that

[The royalty payments] appear to be higher than what independent companies negotiating on market terms would have agreed between themselves in accordance with the arm's-length principle

The investigation was about regarding two Nike companies – Nike European Operations BV and Converse Netherlands BV, both of these companies market and record sales of Nike and Converse products in Europe, the Middle East, and Africa. (EMEA region). It all started with the European Commission sending a request regarding information to the Kingdom of the Netherlands regarding its tax ruling practice on July 30<sup>th</sup>, 2013, with a new request by the Commission on 24<sup>th</sup> January 2014, regarding the advance pricing agreements concluded within the Nike group companies. The information was granted to the Commission on February 17<sup>th</sup>, 2014. Until 2018, this back-and-forth process continued between the European Commission sending requests for information, and the Kingdom of the Netherlands supplying the requested information.

On 20<sup>th</sup> November 2018

a bilateral meeting was held between the Commission and the Kingdom of the Netherlands in the context of the preliminary investigation as to whether the APAs complied with State aid law.<sup>31</sup>

Continuing on,

At the end of that preliminary investigation, the Commission reached the conclusion that the Kingdom of the Netherlands had granted State aid to two companies of the Nike group that was unlawful and incompatible with the internal market, contrary to Article 107 TFEU.<sup>32</sup>

After the preliminary investigation, the Commission concluded that the Kingdom of the Netherlands granted unlawful State aid to both of the Nike companies, contrary to Article 107 of the TFEU.

<sup>33</sup> Both of these Nike companies obtained intellectual property licenses related to the Nike and Converse products in the EMEA region in return for a tax deductible royalty payment. This was one of the tax avoidance methods previously explained by the author in chapter one. These intellectual property licenses were obtained by both Nike group companies, which “are currently Dutch entities that are “transparent” for tax purposes (i.e., not taxable in the Netherlands).”<sup>34</sup> The Dutch entities granted five tax rulings from 2006 to 2015, which issued the calculation method for the royalty payments which should be paid by Nike European Operations Netherlands and Converse Netherlands for the use of the intellectual property.

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<sup>30</sup> Josh White, “Nike loses bid to overturn EU state aid probe”, Available on: <https://www.internationaltaxreview.com/article/2a6a97rqjh5w57pbss4xs/nike-loses-bid-to-overturn-eu-state-aid-probe> Accessed on 11.05.2023.

<sup>31</sup>JUDGMENT OF THE GENERAL COURT (Second Chamber), Nike BV and Converse BV v. The European Commission, Available on: <https://curia.europa.eu/juris/document/document.jsf?jsessionid=3EF0D706A0C64E5895698D61401CB616?text=&docid=244131&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=308983> Accessed on 11.05.2023.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

Nike argued that it received illegal state aid and on the 26<sup>th</sup> of September on 2019, Nike brought a present action, stating that the Court should annul the contested decision and order the Commissions to pay the costs, and put forwards three pleas in law in support of their action, the first plea is divided into three parts, essentially, stating first of all, an incorrect assessment of the character of the alleged aid, second of all, stating that an incorrect assessment of the nature of an APA in Netherlands law, and last of all, stating that a breach of the principles of good administration and equal treatment was made.<sup>35</sup>

The second plea is divided into two parts, the first part being about the breach of the obligation to state reasons and the second part about an incorrect assessment of selectivity; the third plea was in three parts, the first part being the same as in the second plea, stating that a breach of an obligation to state reasons was made, second of all, a breach of the applicant's procedural rights was made and last of all that premature initiation of the formal investigation process was made.

The Commission answered that the first part of the second and third pleas must be rejected as being unfounded for many reasons, however, the main points essentially were that

Consequently, the Commission did not fail to fulfill its obligation to state reasons by failing to set out reasons as to whether or not an aid scheme exists in the present case.<sup>36</sup>

And that

Second, contrary to the applicants' assertion, the statement of reasons for the contested decision, in respect of the examination of the selectivity of the measures at issue, does not contain any internal inconsistency that would prevent a proper understanding of the reasons underlying that decision. Likewise, the Commission satisfied its obligation to state reasons with regard to assessing the comparability of the applicants' situation with the situations of other undertakings.<sup>37</sup>

Regarding the second part of the third plea, which alleged the breach of procedural rights, the Commission argued that

First, the argument put forward by the applicants in the present case is based on the erroneous premiss that the contested decision is vitiated by a failure to state reasons.<sup>38</sup>

And second, that

as beneficiaries of the measures at issue and thus as interested parties, the applicants are in a position to send their comments to the Commission during the formal investigation procedure.

Accordingly, they do have procedural rights and cannot claim that, in adopting the contested decision, the Commission breached them.<sup>39</sup>

Thus the second part of the third plea must also be rejected.

Regarding the first and second part of the first plea, the Commission rejected the plea as being unfounded for the same reason, plus some additional reasons, as the reasons for the first part of the second and third plea.

Regarding the second part of the third plea about the breach of procedural rights, the Commission argued that first of all, the argument put forward by the applicants in the present

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<sup>35</sup> *Ibid.*, p. 15.

<sup>36</sup> *Ibid.*, p. 15.

<sup>37</sup> *Ibid.*, p. 15.

<sup>38</sup> *Ibid.*, p. 15.

<sup>39</sup> *Ibid.*, p. 15.



case is based on the erroneous premise that the contested decision is vitiated by a failure to state reasons.<sup>40</sup>

And second of all,

as beneficiaries of the measures at issue and thus as interested parties, the applicants are in a position to send their comments to the Commission during the formal investigation procedure. Accordingly, they do have procedural rights and cannot claim that, in adopting the contested decision, the Commission breached them.<sup>41</sup>

Thus, the second part of the third plea is rejected.

The first and second parts of the first plea, the second part of the second plea, the third part of the third plea, and the third part of the first plea were also rejected for similar and different reasons, for example, regarding the third part of the first plea, the principle of good administration was not breached by the Commission as

In the present case, however, the Commission did not demonstrate partiality and a lack of diligence by not extending its preliminary examination to include the identification of a possible aid scheme. There is no rule under the Treaty or Regulation 2015/1589 that requires the Commission to determine as a priority whether an aid scheme exists when considering an individual measure. The object of its review could indeed, therefore, be limited to the measures at issue.<sup>42</sup>

In short, all of the pleas by Nike were rejected, thus in July 2021, the General Court dismissed the claims brought by Nike and ordered Nike European Operations BV and Converse Netherlands BV to pay the costs.<sup>43</sup>

It must be noted that, of course, Nike is not the only multinational company fighting cases with the EU Commission regarding corporate taxes, and the multinational company list is growing and growing. This example clearly indicates the problem of corporate tax avoidance with, in the author's opinion, a great example that is also relevant to the previously mentioned corporate tax avoidance strategy examples. Continuing on, there is fully a possibility that Nike will fight another day regarding this matter.

## **b. European Commission vs Luxembourg and Engie, May 2021, EU General Court, Case No T-516/18 and T-525/18**

In this case, Engie and Luxembourg vs. the EU general court, Engie was accused of an unfair tax advantage. It all started with the European Commission sending out a request for information regarding the tax practice of Engie Group, which included Engie SA, Engie Global LNG Holding Sarl, and Engie Invest International S on the 23<sup>rd</sup> March of 2015.<sup>44</sup> More specifically, the European Commission initiated the investigation regarding the tax rulings in the time frame from 2008 until 2014. Engie is a French electrical utility company, which operates in the fields of energy transition, electricity generation and distribution, natural gas,

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<sup>40</sup> *Ibid.*, p. 15.

<sup>41</sup> *Ibid.*, p. 15.

<sup>42</sup> *Ibid.*, p. 15.

<sup>43</sup> *Ibid.*, p. 15.

<sup>44</sup> JUDGMENT OF THE GENERAL COURT (Second Chamber, Extended Composition), Engie v. The Grand Duchy of Luxembourg, Available on: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=241187&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=874871> Accessed on 11.05.2023.

nuclear, renewable energy, and petroleum.<sup>45</sup> In 2018, it was found out by the European Commission that Engie group had a tax advantage that helped the company avoid almost all of its profits for about a decade.<sup>46</sup> The European Commission found out that Engie had tax rulings, which

endorsed an inconsistent tax treatment of the same structure leading to non-taxation at all levels. Engie LNG Supply and Engie Treasury Management each significantly reduce their taxable profits in Luxembourg by deducting expenses similar to interest payments for a loan. At the same time, Engie LNG Holding and C.E.F. avoid paying any tax because Luxembourg tax rules exempt income from equity investments from taxation.<sup>47</sup>

The European Commission concluded that Engie had been given a tax procedure advantage by Luxembourg and that Luxembourg has to recover about 120 million EUR in unpaid taxes.<sup>48</sup>

It is stated that

This decision confirms for the first time that the EC can determine the existence of a selective advantage for State aid purposes on the grounds of non-application of a local concept of abuse of law by the local authorities.<sup>49</sup>

While, as the author will mention in the next chapter, how the General Court often concludes that the European Commission does not have enough evidence for tax avoidance, in this case, as with the case previously mentioned on *The European Commission v. Nike and the Netherlands* case, the General Court approved the European Commissions approach of analyzing the intragroup financial structure.

The General Court concluded that the framework did, in fact, represent an advantage to Engie, because, as previously mentioned in the quote, the lenders were allowed to benefit from the provisions set by Luxembourg<sup>50</sup>, that Luxembourg set a domestic participation exemption on the amount that corresponds to deductible expenses incurred by the borrowers.<sup>51</sup> To completely summarize the whole scheme in one quote, the General Court considered, as did the European Commission, that

the holding companies were in the same factual and legal situation as Luxembourg taxpayers that cannot reasonably expect to benefit from the nonapplication of the abuse of law provisions in cases where the conditions for applying it (in the GC's interpretation) have been satisfied. Therefore, the holding companies benefited from a selective advantage.

Thus under Article 107 of the TFEU, which states that

Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall,

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<sup>45</sup> Available on: <https://www.engie.com>, Accessed on 11.05.2023.

<sup>46</sup> *European Commission vs Luxembourg and Engie*, May 2021, EU General Court, Case No T-516/18 and T-525/18, Available on: <https://tpcases.com/european-commission-vs-luxembourg-and-engie-may-2021-eu-general-court-case-no-t-516-18-and-t-525-18/> Accessed on 11.05.2023.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

<sup>49</sup> PWC, "EU General Court confirms EC's final decision in Engie State aid case", Available on: <https://www.pwc.com/us/en/services/tax/library/eugc-confirms-ecs-final-decision-in-engie-state-aid-case.html> Accessed on 11.05.2023.

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

in so far as it affects trade between Member States, be incompatible with the internal market.

The General Court found that State aid did indeed exist, and thus, as previously mentioned, Engie is guilty of tax avoidance.

### **c. European Commission v. Amazon and Luxembourg, May 2021, State Aid – European General Court, Case No T-816/17 and T-318/18**

While searching for cases regarding multinational corporations against the European Commission regarding tax avoidance, the author has found a large number of cases where the European Commission's decision was denied by the General court, for example, with the cases of T-760/15 Netherlands v Commission and T-636/16 Starbucks and Starbucks Manufacturing EMEA v Commission, where the judge of the General Court stated that

The Commission was unable to demonstrate the existence of an advantage in favor of Starbucks<sup>52</sup>

A similar situation also happened with Grand Duchy of Luxembourg and Fiat Chrysler Finance Europe v European Commission; Ireland and Others v European Commission and many other case examples, the main reasons for this could be that first of all, the investigations into tax avoidance regarding multinational organizations can be complex and time-consuming. The European Commission often has to collect and analyze large amounts of data from multiple jurisdictions, and it can take years to bring a case against a company, additionally, multinational companies use complex structures and accounting financial techniques to minimize their tax bills, which can make it difficult to prove that they are engaging in illegal tax avoidance, especially with, for example, transfer pricing, as the correct prices can often be difficult to assess properly, additionally, as it is proven that, for example, the internal schemes of Luxembourg are not advertised for obvious reasons, it can be even more difficult to analyze the financials of a company, especially since it is coupled together with internal secrecy.

An example of this is also the case T-816/17 and T-318/18 of the European Commission vs. Amazon and Luxembourg. In 2003, a reconstruction of Amazon's business was planned, which later on was fulfilled in 2006. This reconstruction created two new Amazon entities established in Luxembourg, prior to this, the business was managed only in the United States.<sup>53</sup> The companies in question are named Amazon Europe Holding Technologies SCS (LuxSCS), which is a Luxembourg company with partnerships with United States companies, and the second company is named Amazon EU Sarl (LuxOpCo), which also was registered in Luxembourg. Similarly, as the previously mentioned Nike example, LuxSCS concluded several agreements with the "mother" company, Amazon, which was based in the United States. The main agreements were that:

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<sup>52</sup> Al Jazeera Media Network, "Starbucks wins, Fiat loses in EU tax fights", Available on: <https://www.aljazeera.com/economy/2019/9/24/starbucks-wins-fiat-loses-in-eu-tax-fights> Accessed on 11.05.2023.

<sup>53</sup>T-816/17 - Luxembourg v Commission, Available on: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=241188&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=624577> Accessed on 11.05.2023.

licence and assignment agreements for pre-existing intellectual property (together, ‘the Buy-In Agreement’) with Amazon Technologies, Inc. (‘ATI’), an Amazon group entity established in the United States;<sup>54</sup>

and

a cost-sharing agreement (‘the CSA’) concluded in 2005 with ATI and A9.com, Inc. (‘A9’), an Amazon group entity established in the United States. Under the Buy-In Agreement and the CSA, LuxSCS obtained the right to exploit certain intellectual property rights and ‘derivative works’ thereof, which were owned and further developed by A9 and ATI. The intangible assets covered by the CSA consisted essentially of three categories of intellectual property, namely technology, customer data and trade marks. Under the CSA and the Buy-In Agreement, LuxSCS could also sub-license the intangible assets, in particular with a view to operating the EU websites. In return for those rights, LuxSCS was required to pay Buy-In payments and its annual share of the costs related to the CSA development programme.<sup>55</sup>

Second of all, LuxSCS entered into a license agreement with LuxOpCo, essentially, LuxCoOp obtained the right to use LuxSCS intangible assets in exchange for royalty payments. And last of the main agreements was that LuxSCS created an agreement with Amazon.co.uk Ltd, Amazon.fr SARL, and Amazon.de GmbH which was an agreement about licensing and assignment of intellectual property rights. Under this agreement, LuxSCS received certain trademarks and intellectual property rights for the EU websites.<sup>56</sup> In more simple terms, a tax ruling was created which allowed Amazon to transfer most of its profits from a taxable Amazon Group company in Luxembourg to a tax-exempt company, in return, this significantly reduced Amazon EU company’s taxable profits. To prepare for this restructuring, Amazon requested Luxembourg to calculate the royalty payments which LuxOpCo had to pay to LuxSCS. This tax ruling was applied to the period of 2006, which is when the restructuring happened, until 2014 when the European Amazon structure was modified again. Essentially, the relevant period, in this case, is the period from 2006 until 2014.<sup>57</sup>

The European Commission claims that Amazon was granted benefits by Luxembourg in the value of unpaid taxes of around EUR 250 million. The main arguments were that the tax ruling allowed Amazon to transfer most of its profits to a holding company in Luxembourg, which was a lower tax jurisdiction, furthermore, the European Commission also stated that the tax ruling was not in line with the arms-length principle and that the transfer pricing agreements between Luxembourg and Amazon did not reflect the actual prices.

However, both Luxembourg and Amazon challenged the decision of the European Commission court, and the judges of the Grand Court ruled that

None of the findings set out by the Commission in the contested decision are sufficient to demonstrate the existence of an advantage ... with the result that the contested decision must be annulled in its entirety<sup>58</sup>

More specifically, the General Court mentioned that

the settled case-law according to which, in examining tax measures in the light of the EU rules on State aid, the very existence of an advantage may be established only when

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<sup>54</sup> *Ibid.*, p. 19.

<sup>55</sup> *Ibid.*, p. 19.

<sup>56</sup> *Ibid.*, p. 19.

<sup>57</sup> *Ibid.*, p. 19.

<sup>58</sup> SIMON VAN DORPE, “Commission loses Amazon tax case at EU court”, Available on: <https://www.politico.eu/article/amazon-tax-benefits-eu-court-luxembourg-engie/> Accessed on 11.05.2023.

compared with ‘normal’ taxation, with the result that, in order to determine whether there is a tax advantage, the position of the recipient as a result of the application of the measure at issue must be compared with his or her position in the absence of the measure at issue and under the normal rules of taxation.<sup>59</sup>

Furthermore,

In addition, the General Court points out that, in examining the method of calculating an integrated company’s taxable income endorsed by a tax ruling, the Commission can find an advantage only if it demonstrates that the methodological errors which, in its view, affect the transfer pricing do not allow a reliable approximation of an arm’s length outcome to be reached, but rather lead to a reduction in the taxable profit of the company concerned compared with the tax burden resulting from the application of normal taxation rules.<sup>60</sup>

In more simple words and in short, the General Court found that the European Commission had not correctly interpreted the arms length principle, which requires companies that are in a group to be taxed as individual entities, basically, that the European Commission has not demonstrated that the tax ruling deviated from this principle, furthermore, the General Court also stated that due to the complex issues of transfer pricing, the European Commission has not provided sufficient evidence to prove that the transfer pricing agreement between Luxembourg and Amazon was not in order with the market price.

Not only this, but the General Court also replied with many other disagreements towards the European Commission, all of these disagreements lead the General Court to find that the European Commissions case was based on insufficient evidence thus it was not able to prove that Amazon did receive State aid. Essentially, while Engie and Nike were not that lucky, there are many other case examples where multinational corporations also appeal the decisions and often win the appeal in the Grand Court, this could be possibly due to the reasons mentioned before, and, strictly in the author’s opinion, often these multinational corporations do engage in tax avoidance, however, as it is so difficult to do comprehensive analysis on the tax-systems due to the reasons mentioned before combined with the often up-to-debate difference between illegal and legal tax avoidance, it is difficult to find sufficient evidence to demonstrate State aid.

Interestingly enough, the author also finds it uncanny that the punishments for the corporations relative to the tax bill the corporations avoided are almost non-existent, especially, for large corporations. From one viewpoint, it almost seems like there cannot be a solution for this tax avoidance problem and that whatever will be done, the corporations will either be unhinged from it or think of different other strategies, additionally, it must not be forgotten that lobbying very much also exists and also is a large problem with a difficult to perform solution, subsequently, it really correlates with tax avoidance. This problem will be discussed further in the next chapter, as it often brings an unfair advantage and a general problem in the economy.

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<sup>59</sup> European Commission vs. Amazon and Luxembourg, May 2021, State Aid – European General Court, Case No T-816/17 and T-318/18, Available on: <https://tpcases.com/european-commission-vs-amazon-and-luxembourg-may-2021-state-aid-european-general-court-case-no-t-816-17-and-t-318-18/> Accessed on 11.05.2023.

<sup>60</sup> *Ibid.*

## 4. THE IMPACT OF TAX EVASION

### d. The challenges that this brings to the overall economy, as well as the legal side problems related.

Even though, as previously mentioned, many multinational corporations win the case appeals and the General Court is not in favor of the European Commissions decision, many other opinions, including the author's opinion, believe that the companies are engaging in tax avoidance, however, it is just really difficult to prove it. One opinion, for example, Paul Monaghan's, the chief executive of the Fair Tax Foundation, said:

These figures are mind-blowing, even for Amazon. We are seeing exponentially accelerated market domination across the globe on the back of income that continues to be largely untaxed – allowing it to unfairly undercut local businesses that take a more responsible approach.

In general, the consequences of tax avoidance, although, not as bad as tax evasion, still contribute to a burden on the overall economy, due to simple logic, the less a company or corporation pays taxes to the government, the less public revenue is collected. According to an International Monetary Fund, tax havens cost governments between USD 500 billion and USD 600 billion a year.<sup>61</sup> Interestingly, the same source states that low-income economies contribute of up to USD 200 billion of the lost income, which obviously means that a large portion of the GDP is hit. The same source also states that the American Fortune 500 companies alone hold about USD 2.6 trillion in offshores in 2017, and a different source also states that nearly 73 percent of Fortune 500 companies have a subsidiary in countries that are considered tax havens<sup>62</sup> and that a small portion of that has returned following the domestic countries reforms in 2018.<sup>63</sup> It should also be remembered, that these statistics may also be optimistic, and the real numbers are larger due to financial secrecy and due to no generally accepted definition of a tax haven.<sup>64</sup>

As previously mentioned with the example of the UK, corporate taxes have also been impacted, as the corporate taxes have decreased from a global average of 49% in 1985, to 24% in 2018.<sup>65</sup> The main factors for this are that governments are reducing their corporate taxes as a way to attract foreign investment, encouraging businesses to invest in research and development, and globalization, which is competition around countries to attract investment, all of these factors have a connection with tax avoidance in one way or another, as tax evasion can play a role in reducing corporate tax rates as it can reduce the amount the government collects from corporate taxes, for example, when companies engage in tax avoidance strategies,

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<sup>61</sup> NICHOLAS SHAXSON, "Tackling tax havens", Available on: <https://www.imf.org/Publications/fandd/issues/2019/09/tackling-global-tax-havens-shaxon#:~:text=Tax%20havens%20collectively%20cost%20governments,not-so-legal%20means>. Accessed on 11.05.2023.

<sup>62</sup> Li Y, Al-Sulaiti K, Dongling W, Abbas J and Al-Sulaiti I (2022) "Tax Avoidance Culture and Employees' Behavior Affect Sustainable Business Performance: The Moderating Role of Corporate Social Responsibility. *Front. Environ.*" Available on: doi: 10.3389/fenvs.2022.964410 Accessed on 11.05.2023.

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

<sup>65</sup> Gabriel Zucman, "Taxing Multinational Corporations in the 21st Century", Available on: <https://econfp.org/policy-briefs/taxing-multinational-corporations-in-the-21st-century/#:~:text=Between%201985%20and%202018%2C%20the,in%20the%20years%20to%20come>. Accessed on 11.05.2023.

such as shifting profits to low-tax jurisdictions or exploiting tax loopholes, this can in return put pressure on governments to lower corporate tax rates to stay competitive and attract investment. If the government corporate tax rates are too high, companies may be more likely to engage in tax avoidance strategies and move towards other low tax rate jurisdictions which can lead to loss of tax revenue for the domestic government.

To combat this, the European Union has introduced a list of noncooperative jurisdictions for tax purposes, otherwise known as the blacklist, the list contains countries and territories that do not meet the EU's standards for tax transparency, fair taxation, and compliance with international tax rules.<sup>66</sup>The list is used by the European Union as a tool to encourage these countries to adopt tax reforms and cooperate with the EU on tax matters, right now, the countries included in the list are American Samoa, Anguilla, Barbados, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, US Virgin Islands, Vanuatu, and Seychelles. One thing that is similar to all of these countries is that they are not EU countries – meaning that judging by the list all countries have committed the necessary commitments to not be included in the list, this is due to the reason that while there are cases where individual EU countries have been found to be in breach of EU tax rules, these cases are addressed through other mechanisms, such as all of the previously mentioned examples – with case procedures.<sup>67</sup>However, as also previously mentioned, case procedures are, first of all, an extremely lengthy process, and second of all, a complex process which often fails to find allegedly “guilty” countries, thus, as the previously referenced source also states, there should be a change made for the blacklist list, allegedly, European legislators also agree with advocates that the weaknesses and flaws of the list should require changes,<sup>68</sup>it is stated that the list only covers 2% of the worldwide tax losses<sup>69</sup>, and a resolution, which 587 voters voted in favor 50 against, MEP’s propose to reform the process of blacklisting countries to make it more transparent, consistent and impartial, as this quote states:

Criteria should be added to ensure that more countries are considered a tax haven and to prevent countries from being removed from the blacklist too hastily, they say. EU member states should also be screened to see if they display any characteristics of a tax haven, and those falling foul should be regarded as tax havens too (PARA 9).<sup>70</sup>

However, recently, quite the opposite, the list has been getting worse, as some very known tax havens have been taken off the list, for example, Guernsey, the Bahamas, and the Cayman island, this already says something about the list, as some of the worlds largest tax havens have implemented enough measures to be de-listed from the blacklist, and are still counted as some of the largest tax havens. Additionally, in the author’s opinion, EU countries

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<sup>66</sup> EU list of non-cooperative jurisdictions for tax purposes, Available on: <https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/> Accessed on 11.05.2023.

<sup>67</sup> Jorge Liboreiro, “Why doesn't the EU consider Luxembourg a tax haven?”, Available on: <https://www.euronews.com/my-europe/2021/02/17/why-doesn-t-the-eu-consider-luxembourg-a-tax-haven#:~:text=In%20its%20Corporate%20Tax%20Haven,included%20in%20the%20EU%27s%20blacklist> Accessed on 11.05.2023.

<sup>68</sup> *Ibid.*

<sup>69</sup> John SCHRANZ, “EU tax haven blacklist is not catching the worst offenders”, Available on: <https://www.europarl.europa.eu/news/en/press-room/20210114IPR95631/eu-tax-haven-blacklist-is-not-catching-the-worst-offenders> Accessed on 11.05.2023.

<sup>70</sup> *Ibid.*

also should be added to the list, as they are responsible for 36% of global tax havens.<sup>71</sup> As this article states,<sup>72</sup>

Not only reduced government revenue, and lower corporate taxes, but different other negative social consequences related to tax avoidance exist, for example, income inequality and wealth inequality in general; ruining social trust between the government and the public; unfair competition towards companies that do not engage in tax avoidance and economic instability. It must be noted, that these negative consequences are not only triggered by corporate tax avoidance specifically, but by tax avoidance in general. Inequality is impacted due to the fact that when corporations engage in tax avoidance, the tax burden falls more heavily on individual taxpayers, it is stated that the poorest people are the ones who pay the price<sup>73</sup>, as by engaging in tax avoidance the multinational corporations deprive governments of resources that would otherwise be used to tackle poverty, build infrastructure, and so on.<sup>74</sup>

The social trust between the government and the public is ruined by tax avoidance for obvious reasons - not only does the public lose trust in the government, but when the public acknowledges how multinational corporations avoid taxes, they might ask themselves, why are they playing by the rules, if others are not, basically, in one way, with the multinational corporations avoiding tax it can create a sort of different mindset regarding tax avoidance for the general public - this corresponds with the problem of an unfair advantage, corporate tax evasion can give companies an unfair competitive advantage over other companies which do pay their taxes.

Due to this, it may be challenging for small and medium-sized enterprises to compete in the market. This can harm job growth and economic expansion and result in a concentration of wealth and power in the hands of big corporations. Additionally, this may contribute to a sense of helplessness and a lack of faith in the economy for the average citizen. Another consequence of tax avoidance is economic instability, since first of all, as previously mentioned, corporate tax evasion can result in a reduction in tax revenue, which can limit the government's capacity to spend on important public goods and services, furthermore, governments could not be able to make necessary investments in sectors like infrastructure, education, and healthcare, which could have a detrimental effect on economic growth and development. Second of all, if a government does not have a budget surplus and works on debt, it is unable to rescue the financial system when unprecedented events occur

In developed economies, like the US, UK and Germany, the government is often the last resort for economic survival during severe economic and/or financial crises. A recent example is the 2007-2008 global financial crisis.<sup>75</sup>

The same source developed four propositions, which can potentially help with the relationship between tax evasion and financial stability, and while tax evasion is not tax avoidance, in the author's opinion, these propositions also apply to tax avoidance. These four propositions, with

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<sup>71</sup> *Ibid.*

<sup>72</sup> Libeiro, *supra* note 67.

<sup>73</sup> OXFAM, "Inequality and poverty: the hidden costs of tax dodging", Available on: <https://www.oxfam.org/en/inequality-and-poverty-hidden-costs-tax-dodging> Accessed on 11.05.2023.

<sup>74</sup> Kovermann, Jost, and Patrick Velte. "The impact of corporate governance on corporate tax avoidance—A literature review." *Journal of International Accounting, Auditing and Taxation* 36 (2019): 100270. Accessed on 11.05.2023.

<sup>75</sup> Ozili, Peterson Kitakogelu, "Tax Evasion and Financial Instability", Available on: [https://mpra.ub.uni-muenchen.de/88661/1/MPRA\\_paper\\_88661.pdf](https://mpra.ub.uni-muenchen.de/88661/1/MPRA_paper_88661.pdf) Accessed on 11.05.2023.



short explanations, are that; 1) The absence of tax evasion can lead to greater financial stability, with the idea that the government will have enough money in a state where everyone pays their full tax, to be able to quickly react to threats that endanger the financial system.<sup>76</sup> 2) The absence of tax evasion can lead to greater financial instability, with the idea that a government cannot be trusted with a budget surplus as the government will spend more money on its public accounts, and not create savings, which in the end means that the government will inevitably have no money for emergency situations, and will have to rely on external borrowing.<sup>77</sup> 3) The presence of tax evasion can lead to greater financial stability, with the idea that

The government alone cannot bear the full responsibility for financial stability. Corporations and individuals also have some responsibility for financial stability. There are claims that evaded taxes are used by individuals and corporations to deal with their own financial difficulties when unfavourable events occur that threaten their own financial stability.<sup>78</sup>

Essentially, the government will not always be there for the company to help when unfavorable events occur, and that the company needs to take care of itself, even if it avoids tax evasion, or, tax avoidance. The tax evaders believe that since the government will probably not help the company directly when it is needed, if all tax money is paid, thus the company evades taxes to take care of itself, this also applies to corporations.<sup>79</sup>

4) The presence of tax evasion can lead to greater financial instability, with the idea that when taxes are evaded, the government will not be able to help companies or organizations when help is needed.<sup>80</sup> From these four propositions, it is concluded that in general, there are two perspectives to look at tax evasion, one perspective is from the government side, and one perspective is to look from the companies, individuals, or corporations side. Each side has its benefit or drawback related to paying or avoiding taxes, with one side believing that taxes should be paid so the government has enough funds to facilitate growth and safety to its country's companies, organizations, and individuals, while the other side believes that tax avoidance is a way of providing stability to themselves.

This explains the motivation from both perspectives as to why taxes should be paid or not, and what could be the potential problems that arise from avoiding taxes both from the government's side and the companies, organizations, or individuals' side. However, one further argument regarding this topic is that the propositions regarding the importance of tax avoidance for companies or organizations is related to the size of the company or organization, meaning that a company that is large in size, essentially, too big to fail, does not have the necessity to avoid taxes.

This perception of tax avoidance helps us understand how it is a complex problem, not a "yes or no" answer problem, for example, if suddenly there was a restriction for a company to create a company in a different jurisdiction, not only a lot of many other different problems would arise, but it is, in that case, a general breach of democracy.

However, there are some measures that could be implemented to help control the problem, one measure which would be advantageous to implement would be a global minimum

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<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*, p.24.

<sup>78</sup> *Ibid.*, p.24.

<sup>79</sup> *Ibid.*, p.24.

<sup>80</sup> *Ibid.*, p.24.

tax, to stop the rat race to the bottom regarding corporate tax rates, judging by this source<sup>81</sup>, it is stated how there is no actual evidence that low tax jurisdictions lead to more investment, however, the author disputes this as even if a company sets up a different company in a low tax jurisdiction just with the aim of avoiding tax, and not actually setting up business there, it still does grant economical gain to the low jurisdiction country, either from the low taxes the companies pay, the arrangements between the company and the low tax jurisdiction, or in general using, for example, audit services in the low tax jurisdiction, from which the audit services at the end pay a tax to the government, some more examples would be how

Switzerland became rich by attracting global black money, protected by strict bank secrecy. Other countries like Singapore, Ireland, Mauritius, and the Netherlands attracted massive investment though low taxes. Amazon colluded with the Luxembourg government to create financial rules allowing zero tax.<sup>82</sup>

Continuing with the global tax rate minimum project created by the OECD<sup>83</sup>, the idea is that the corporate tax rate should be set at 15% in order to, as previously mentioned, end the rat race towards lower and lower corporate tax rates. However, also this policy has its problems and it might not be the solution for the drive of tax competition. First of all, this policy is extremely difficult to ratify as imposing it on 135 countries for now has not seemed to work for obvious reasons, since some countries' huge part of the economy is based just due to low tax rates, furthermore, the 15% minimum tax will not only impact tax havens, but also countries which have implemented specific tax breaks for specific purposes, for example, in India, export industries, investment in backward areas or Special Economic Zones, green investments, R&D, accelerated depreciation, and sundry other legitimate incentives.<sup>84</sup> All of these companies which have received tax breaks for specific purposes in specific countries would probably be in trouble if the minimum global tax rate was implemented. The majority of nations will insist on keeping tax exclusions and exemptions in place, and lawyers will have the possibility to create schemes in order to create the exemptions and in return, the 15% minimum tax rate will not be as effective as incentivized. In general, the main reasons why this policy might not work are first of all, some countries would have to raise their tax rates, and as previously mentioned, this would drastically damage their financial position, second of all, a minimum global tax rate would necessitate coordination and agreement among many different nations. The minimum tax rate, the means of enforcing it, and the course of action for businesses that don't comply would all require international agreement. Small and medium-sized firms, in particular, may struggle with compliance because they lack the capacity to understand complex tax laws and regulations and their business might strictly rely on the tax rate, which, if would change, would possibly make the companies go bankrupt or not so successful due to, for example, low or non-

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<sup>81</sup> Joseph Stiglitz, "Corporate tax avoidance: it's no longer enough to take half measures", Available on: <https://www.theguardian.com/business/2019/oct/07/corporate-tax-avoidance-climate-crisis-inequality> Accessed on 11.05.2023.

<sup>82</sup> SA Aiyar, "Why G7's global minimum corporate tax won't work", Available on: <https://timesofindia.indiatimes.com/blogs/Swaminomics/why-g7s-global-minimum-corporate-tax-wont-work/> Accessed on 11.05.2023.

<sup>83</sup> OECD, "International tax reform: OECD releases technical guidance for implementation of the global minimum tax", Available on: <https://www.oecd.org/tax/beps/international-tax-reform-oecd-releases-technical-guidance-for-implementation-of-the-global-minimum-tax.htm#:~:text=02%2F02%2F2023%20%E2%80%93%20The,15%25%20effective%20minimum%20tax%20rate.> Accessed on 11.05.2023.

<sup>84</sup> Aiyar, *supra* note 82.

existent profit margins, additionally, companies may find it increasingly challenging to operate and compete in the global market as a result of rising compliance costs, additionally, companies may move out of global minimum tax rate zone to other jurisdictions which have not applied the policy.

Another idea to stop corporate tax avoidance, which already is implemented in some countries, is to tax on sales rather than on profits i.e., if you sell a product in one specific country, 10% of it is paid as tax. Whereas currently the profits go offshore and tax is "paid" in a tax haven. In this way, it makes sense that the companies won't cease operations so long as there's profit that's worth the effort of doing business there. However, as with all implementation ideas, it has its problems. This idea might not be the most effective idea as first of all, the most logical reason is that often the profit margins for products are extremely slim, and creating a corporate tax on sales rather than on profits might mean that the company is losing its money selling the product, there would be a lack of distinction between profitable and unprofitable companies. This in return could create a lot of economic problems and lower the incentives to create businesses as it would be harder to profit, the only solution companies could do is raise the prices of their product to increase the profit margin, this in return could massively decrease the companies sales, either way, leading to a company to possibly go bankrupt, furthermore, determining what counts as a sale and when the tax should be charged can make it difficult to implement a sales tax, it would be challenging for tax authorities to enforce the rules and for businesses to follow them due to their complexity.

Each country's government could theoretically introduce more anti tax avoidance measures to stop tax avoidance. Limiting the use of tax havens is one potential anti-avoidance approach. Governments can prohibit the use of tax havens by raising the tax rates on profits made there, placing limitations on the transfer of money there, or imposing fines on businesses that do so,

The are three key measures governments can take to tackle tax havens known as the "ABCs" of tax justice: automatic exchange of information, beneficial ownership registration and country by country reporting. The three measures are designed to detect and deter corporate tax abuse and private tax evasion.<sup>85</sup>

however, there also is a problem with this, since, as previously stated, this might impact businesses that are actually doing legitimate business with the low tax jurisdiction states, and this would in general breach a democratic business view, additionally, as already stated in the second chapter regarding the case of Luxembourg vs. Nike, often countries do not publicize the ultimate beneficial owners (UBO's).

Another option is to outlaw specific transactions that are frequently used to avoid paying taxes. For instance, some businesses utilize transfer pricing to divide earnings among subsidiaries in other nations. By enacting transfer pricing restrictions that ensure that earnings are given to the nation where the economic activity occurs, governments can outlaw or restrict this practice. Governments can lessen the chances for businesses to engage in tax avoidance by implementing many different measures as the previously mentioned ones, however, it is crucial

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<sup>85</sup> Tax Justice Network, "How can we stop tax havens?", Available on: <https://taxjustice.net/faq/how-can-we-stop-tax-havens/#:~:text=The%20are%20three%20key%20measures,abuse%20and%20private%20tax%20evasion.> Accessed on 11.05.2023.

to understand that no one action is likely to be sufficient on its own. The best strategy is probably a combination of approaches.

In the author's opinion, a more realistic way that would generally help tackle corporate tax avoidance would be first of all, to create larger punishments if a company is found guilty, and second of all, governments could increase resources for tax enforcement agencies to detect and punish tax evaders, for example, hiring more auditors and investigators. Combining this all with policies that would increase transparency in companies' tax agreements would be the "cherry on top", which might actually provide enough measures to create an actual impact on tax avoidance schemes, a similar approach is taken by the UK's general anti-tax rule (GAAR), which will be described more specifically.

The problem with corporate tax is that is much of a problem that a country can't tackle alone, there needs to be a multinational agreement, policy, or new requirements to stop it, and since, as previously discussed, each country has its own demands and specifics, it is really difficult to make a change which all countries are able to apply, as Janet Yellen said, of global corporate taxation:

It's a bit like climate change. No country can really tackle it alone.<sup>86</sup>

### **e. Implications of multinational corporation financial strategies for stakeholders, employees, and cheap labor.**

While it is true that multinational corporations have created thousands and thousands of job opportunities, it is also true that due to different financial strategies and different other ways to maximize profits also create different other implications regarding job opportunities in different jurisdictions. A simple example is job arbitration, it is known that a lot of multinational corporations have moved production to different countries which have cheap labor – this, in return, hurts the workers in the high-expense countries, leading to either lower wages in general or job losses. This matches perfectly with a long research paper "Do MNCs exploit workers?", which states, that

at the occupational level, there is strong evidence that offshoring by MNCs to low-income affiliates hurts workers performing routine tasks, but that offshoring to high-income locations benefits them.<sup>87</sup>

Continuing on, it is also in some specific cases true that multinational corporations exploit cheap labor countries even if the working conditions are very poor, not only, simply, it is unsafe for the workers, but it also contributes to inequality and poverty, the same report confirms the previously stated, stating that

In our analysis of reports by watchdogs and human rights organizations, we find well-documented evidence that multinationals do violate workers' rights, including preventing workers from exercising their right to unionize.<sup>88</sup>

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<sup>86</sup> Sheelah Kolhatkar, "Can We Stop Corporations from Hiding Their Profits Overseas?", Available on: <https://www.newyorker.com/business/currency/can-we-stop-corporations-from-hiding-their-profits-overseas> Accessed on 11.05.2023.

<sup>87</sup> Emma Aisbett, Ann E. Harrison, David I. Levine, Jason Scorse, Jed Silver, "Do MNCs exploit workers?", Available on: [https://www.brookings.edu/wp-content/uploads/2019/12/Aisbett-et-al\\_Brookings-draft-2019.11.26\\_Harrison.pdf](https://www.brookings.edu/wp-content/uploads/2019/12/Aisbett-et-al_Brookings-draft-2019.11.26_Harrison.pdf) Accessed on 11.05.2023.

<sup>88</sup> *Ibid.*

And similarly as previously stated, while some argue that the cheap labor countries already have poor working conditions, even before the multinational corporations base their product there, the author argues that the problem will get even worse and it will definitely not help with changing the conditions in the cheap labor countries, the same research also agrees with the author's opinion, stating that

Multinationals' size can give them disproportionate influence in politics, reducing democratic accountability.<sup>89</sup>

Overall, regarding cheap labor and multinational corporations, it is a “double edged sword”, in one way, there is a positive side, the corporations help provide job opportunities, facilitate different knowledge to the domestic workers, increase efficiency, and sometimes even help with efficient policies and help with reducing domestic cartel monopolies. While on the other side, this strategy can also be criticized due to all of the reasons previously mentioned before.

The reason why the author chose to write about cheap labor is not only the fact that it contributes to tax avoidance in one way or another, but it also correlates with the previously mentioned case examples. For example, Nike has been accused of using cheap labor in countries already since 1991, when Jeffrey Ballinger, a labor activist, published a report about Nike's cheap labor activities in Indonesia stating that not only Nike pays below minimum wages, but also uses child labor and extremely poor work conditions within the so-called “sweatshops”, which are defined as

a factory or workshop where employees work long hours for low money in conditions that are hazardous to health<sup>90</sup>

it is mentioned that the workers worked for 1.25\$ per day. Most of these “sweatshops” are located in developing countries due to the reason that the labor laws there are really poor or almost non-existent. A report concluded in 2018 by the Clean Clothes Campaign states that even now, Nike, as well as many other corporations, still pay below minimum wages in poverty countries and that usually, the companies only try to fix the problem if the media realizes that something is wrong, and even then, the companies often try to fix the opinion of the media, not the actual problem regarding human rights, living conditions, and job conditions.

All of this also relates to tax havens – often, the countries which have these poor job conditions and poor labor laws also have a low tax rate, meaning that from the corporation's perspective, it can “shoot two birds with one shot”, essentially, not only avoiding taxes but also indulging in cheap labor. Furthermore, due to the low tax rate, the corporation logically is paying a smaller tax to the government and in some cases, it can lead to governments having less money to spend on infrastructure projects, healthcare, and other public services like education, however, it should be also noted, that this is not a universal condition, and in some cases, like previously mentioned, countries prosper from their low tax rate jurisdiction, but in this example regarding more developing countries, usually the country does not prosper, but the complete opposite.

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<sup>89</sup> *Ibid.*

<sup>90</sup> StudySmarter, “Nike Sweatshop Scandal”, Available on: <https://www.studysmarter.co.uk/explanations/business-studies/business-case-studies/nike-sweatshop-scandal/#:~:text=and%20environmental%20aspects.-,Nike%20Sweatshop%20Scandal%20-%20Key%20takeaways,at%20Nike%27s%20factory%20in%20Indonesia>. Accessed on 11.05.2023.

Furthermore, while some reports, such as “Do MNCs exploit workers?”<sup>91</sup>, state that typically corporations pay larger salaries than small businesses, other reports state differently. For example, regarding Amazon, which also previously had the case example regarding tax avoidance; many reports state that the working conditions are poor and/or coercive

we find evidence of highly coercive labor controls, chiefly in the form of what we call techno-economic despotism (which applies algorithmic technology to a precariously employed workforce). Yet many workers also experience forms of labor control that rely not on coercion but on the generation of consent.<sup>92</sup>

Overall, put simply, in the author’s opinion, the same companies which are aggressive in tax avoidance in return will obviously be more aggressive in general cost cutting and profit maximization, even if it includes the working conditions of their employees and small wages, or as even in Nike’s alleged case, below minimum wages in developing countries.

However, it is not all bad regarding tax avoidance and employees, there are also some incentives corporations do which not only help with avoiding tax but in one way or another, usually indirectly, help their employees as well. Completely simply put, by theory, the more tax the corporation avoids, the larger budget it has, and in some cases this means it can also afford to often pay the employees more which creates an advantage over other companies, as the employees would prefer that specific company, as it pays more, for example, this theory by the author is also backed up by research done in China, which concluded, that

The results show that corporate tax avoidance can significantly improve the average pay level of all the staff, but the “inclusive” benefit on employee remuneration brought by tax avoidance is not evenly distributed.<sup>93</sup>

Of course, as previously mentioned, this usually is not the case, essentially, even if the companies do have a larger budget, to maximize their profits, it does not seek to pay their employees more, and actually just creates more inequality, this is also backed up by the same source which continues on to state that

More of the increased remunerations are allocated to the top management, further widening executives-ordinary employees pay gap. In addition, evidence from the cross-section analysis reveals that the current life cycle, the level of realized pay, and the short-term investment strategy in Chinese publicly listed companies can significantly affect the relationship between corporate tax avoidance and the internal pay gap.<sup>94</sup>

And that

Further analysis suggests that the remuneration-increase effect of corporate tax avoidance can contribute to improving employees' efficiency, but the uneven distribution of tax-saving benefits interferes with such improvement to some extent.<sup>95</sup>

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<sup>91</sup> Emma Aisbett, Ann E. Harrison, David I. Levine, Jason Scorse, Jed Silver, “Do MNCs exploit workers?”, Available on: [https://www.brookings.edu/wp-content/uploads/2019/12/Aisbett-et-al.\\_Brookings-draft-2019.11.26\\_Harrison.pdf](https://www.brookings.edu/wp-content/uploads/2019/12/Aisbett-et-al._Brookings-draft-2019.11.26_Harrison.pdf) Accessed on 11.05.2023.

<sup>92</sup> Vallas, S. P., Johnston, H., & Mommadova, Y. (2022). “Prime Suspect: Mechanisms of Labor Control at Amazon’s Warehouses. *Work and Occupations*”, 49(4), 421–456., Available on: <https://doi.org/10.1177/07308884221106922> Accessed on 11.05.2023

<sup>93</sup> Han, Xiaomei, Jie Wang, and Hanxiu Cheng. "The effect of corporate tax avoidance on salary distribution—Empirical evidence from publicly listed companies in China." *International Review of Financial Analysis* 78 (2021): 101917.

<sup>94</sup> *Ibid.*

<sup>95</sup> *Ibid.*

Some people might call that greed, and some people might call that business, overall, there is a real possibility that in some cases the employees also might receive increased wages due to the corporation's tax avoidance strategies.

Another way, in the author's opinion, inspired by this source<sup>96</sup>, how companies might help their employees due to tax avoidance, is simply by investing in their work conditions. Often organizations might find out in some cases, that improving the work conditions can improve the company's performance, and in some chances, due to having more resources from tax avoidance, it can more efficiently invest in the well-being of their employees, as stated also in this source

Employees are the backbone of organizational structures, and taming and caring for their behavior is critical to having a positive and growing impact on firms' sustainable business performance.<sup>97</sup>

Basically, the source finds that sustainable corporate social responsibility guarantees the common interest and expectations of the organization and its stakeholders, and it is linked to their financial performance and profitability, which, is linked to the well-being of the employees<sup>98</sup> and all of this together, in the author's opinion, is also linked with tax avoidance. Additionally, businesses that indulge in tax avoidance might have the ability to offer reduced pricing for their goods or services which may also benefit customers and boost demand for such goods or services. Increased sales and income for the business may result in ultimately helping workers through improved job security and perhaps as previously mentioned, greater wages, furthermore, similar to what was mentioned in the previous chapter, it also has been expressed that tax evasion may support economic development and growth, which ultimately benefits workers and their communities. Tax avoidance may aid in the economic growth of local communities by enabling firms to invest in their operations and generate jobs, this, in return, can result in more possibilities and a greater standard of life for employees.

And lastly, in the author's opinion, an even more theoretical example is that as it is known, corporations always like to increase their profits – tax avoidance can help incentivize the corporations to invent new mechanisms which replace the workforce; this can not only help cut costs due to not having to pay wages to employees, but it can also be a good tax write off.

Regarding stakeholders and corporations, stakeholders have a large impact on corporate tax avoidance as not only do they have the power to influence the corporation's decisions, but the corporations are always pressured by the stakeholders as tax avoidance can help maximize the profits the organization makes and also the exact opposite – to pay their fair share in taxes in order to keep the companies reputation safe. The same idea is backed up by this<sup>99</sup> source, which also states that

We show that corporate governance institutions not only have the potential to increase tax avoidance, making firms more profitable, but also to limit tax avoidance to a level where the arising risks do not outweigh the benefits.<sup>100</sup>

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<sup>96</sup>Li Y, Al-Sulaiti K, Dongling W, Abbas J and Al-Sulaiti I (2022) "Tax Avoidance Culture and Employees' Behavior Affect Sustainable Business Performance: The Moderating Role of Corporate Social Responsibility. *Front. Environ.*" Available on: doi: 10.3389/fenvs.2022.964410 Accessed on 11.05.2023.

<sup>97</sup> *Ibid.*, p. 30.

<sup>98</sup> *Ibid.*, p. 30.

<sup>99</sup> Kovermann, Jost, and Patrick Velte. "The impact of corporate governance on corporate tax avoidance—A literature review." *Journal of International Accounting, Auditing and Taxation* 36 (2019): 100270.

<sup>100</sup> *Ibid.*

For example, regarding stakeholders and the public pressure on paying a fair of taxes, a great example is the Starbucks situation which happened in 2012 in the UK.<sup>101</sup> After a Reuters report stated that Starbucks had paid corporate taxes only once in the 15 years it operated in the UK, a huge public outrage was created in which weeks of attacks against the company took place. It is stated that Starbucks had indulged in a lot of tax avoidance strategies such as transfer prices, royalty payments, interest expenses, etc.,<sup>102</sup> which were described in the previous chapters. The same source continued on to state that Starbucks was specifically targeted more than most other corporations, as they had always portrayed themselves in the media as being committed to social responsibility. Stakeholders such as investors, the public, and the government demanded that Starbucks pays its fair share in taxes. In response to this, Starbucks UK managing director, Kris Engskov, answered with the response that

We are making a commitment that we will propose to pay a significant amount of corporation tax during 2013 and 2014 regardless of whether our company is profitable during these years<sup>103</sup>

And that

In 2013 and 2014 Starbucks will not claim tax deductions for royalties or payments related to our inter-company charges,<sup>104</sup>

All of this means that Starbucks would contribute a total of 20 million to the corporate tax authorities, which allegedly by Erik Engskov's words is even more than is required under the British tax law.<sup>105</sup>

A similar situation also happened with Google in the UK, as they also indulged in tax avoidance, and a new tax provision was even created from that situation which is called the "Google Tax", which essentially deals with the practice of profits or royalties being diverted to other jurisdictions that have lower tax rates,<sup>106</sup> global corporations are now voluntarily paying off past due tax amounts and settling into agreements with tax authorities in response to the developments of the "Google Tax" in order to avoid being publicly embarrassed and to avoid the damage of the corporation's reputation.<sup>107</sup>

On the other hand, there are also cases where stakeholder pressure leads to companies avoiding tax due to pressure regarding profits or other stakeholder interests, and company directors sometimes state that it is their duty to maximize the value they provide for their stakeholders, and that includes minimizing tax expenses while remaining within the bounds of the law, and often even not in the bounds. In general, there are several reasons why some stakeholders might prioritize the corporation's safety or reputation for their own interests. The most logical interest usually is financial gains, an example of this could be that similarly as previously mentioned, tax avoidance can lead to lower product prices, which in return can generate more profit for the company as it can keep the same profit margins with the cheaper priced products, but with a larger demand from the customers. Another reason could be short-term thinking over long-term thinking by the stakeholders, or just general fear of competitors.

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<sup>101</sup> Campbell, Katherine, and Duane Helleloid. "Starbucks: Social responsibility and tax avoidance." *Journal of Accounting Education* 37 (2016): 38-60.

<sup>102</sup> *Ibid.*

<sup>103</sup> Christine Murray, "Starbucks bows to pressure on UK tax", Available on: <https://www.reuters.com/article/cbusiness-us-starbucks-idCABRE8B518J20121206> Accessed on 11.05.2023.

<sup>104</sup> *Ibid.*

<sup>105</sup> *Ibid.*

<sup>106</sup> SHOBHIT SETH, "Google Tax", Available on: <https://www.investopedia.com/terms/g/google-tax.asp> Accessed on 11.05.2023.

<sup>107</sup> *Ibid.*



In the author's opinion, a more reasonable way to look at this is by analyzing the difference between the mindset of the stakeholder and the mindset of the corporation itself. In the author's opinion, usually, the stakeholders and shareholders will prioritize financial gains possibly more than it is ethical and socially responsible to do so, not taking into account the long-term impact. All of this correlates with the previously mentioned cases of, for example, Nike, Amazon, etc., as these corporations are also put under large pressure by shareholders and stakeholders to keep their "top" spot and to not let the shareholders and stakeholders down with their earning, profits, etc.

It should also be noted, that stakeholders should not be confused with shareholders. Often, it is stated that shareholders have a more materialistic view of the companies they invest in as they are not directly involved with it, except for their money – what the author means by this, is that their reputation is not endangered and often shareholders are not concerned if the corporation they have invested in is engaging in border-line legal or even illegal tax practices, as long as the corporation is making money. This is also backed up by this source, which state that:

Shareholder approach is more shareholder-centric and materialistic, making it being universally conjectured as single-minded and promoting selfishness<sup>108</sup>

While on the contrary,

The stakeholder approach, au contraire, promotes a more generous and altruistic corporate attitude through delicate balancing acts by companies to preserve their symbiotic connections with the stakeholders<sup>109</sup>

This source explains the difference between shareholder and stakeholder interests even more specifically and deeply, using theories, such as the bounded self-interest theory.<sup>110</sup> The study emphasizes that there should be a balance found between shareholder and stakeholder interests using different theories, which in turn correlates with tax avoidance and the corporation's profitability. It is summarized as the following:

Ultimately, the application of new theories to analyze corporate tax avoidance will lead to potential source of constructive and universal findings. This will be of immense use for policy developments and efficient tax enforcement strategies especially for countries that are more dependent on their corporate income tax revenue.<sup>111</sup>

And that

This study therefore finds it compelling for future studies to analyze corporate tax avoidance by means of bounded self-interest theory, and how it may benefit the shareholders and stakeholders mutually.<sup>112</sup>

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<sup>108</sup> Submitter, GATR Journals and Mohanadas, Nirmala Devi and Salim, Abdullah Sallehuddin Abdullah and Ramasamy, Suganthi, "A Theoretical Review on Corporate Tax Avoidance: Shareholder Approach versus Stakeholder Approach" (December 11, 2019). J. Fin. Bank. Review 4 (3) 82–88 (2019), Available at SSRN: <https://ssrn.com/abstract=3511518> Accessed on 11.05.2023

<sup>109</sup> *Ibid.*

<sup>110</sup> UChicago.edu., "Behavioral economics, explained", Available on: <https://news.uchicago.edu/explainer/what-is-behavioral-economics#:~:text=Bounded%20self-interest%20is%20the,-interest%2C%20as%20is%20volunteering>. Accessed on 11.05.2023.

<sup>111</sup> Devi, Salim, Sallehuddin and Ramasamy, *supra* note 108.

<sup>112</sup> Devi, Salim, Sallehuddin and Ramasamy, *supra* note 108.

## 5. CONCLUSION

In conclusion, this bachelor thesis finds that aggressive tax avoidance by large companies indeed is an ongoing problem, a lot of corporations abuse the term tax planning, and just completely go into a different narrative which is tax avoidance, furthermore, in a lot of these occasions, the tax avoidance strategies carried out are hardly legal or illegal, which the case examples emphasized, moreover, it seems as the corporations do not receive large enough fees or punishments when they are guilty, which is likely due to the financial and political power they have, combined with the fact that lobbying exists, furthermore, the bachelor thesis finds out the main tax avoidance strategies and corporate tax theory, as well as a more precise explanation of the tax-haven tax avoidance strategy with the example of Luxembourg.

Additionally, the bachelor thesis finds that there are many multination corporations that have been found guilty of tax avoidance and many which have not, which also represents the problem of understanding what is a “reasonable” tax amount which should be paid, due to the fact that often, even small or non-existent tax for huge profitable corporations can be found as a legal practice, due to the loopholes and strategies these corporations indulge in. To counter this, the study suggests a method such as the UK’s general anti-tax rule (GAAR) which takes into account not only the specific calculated corporate tax figures but as well as the reasonable and “fair” amount which should be paid by the corporations, this paper suggests that in future research, it could be researched how this theory would work in multiple jurisdictions at the same time, not just in a single nation.

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