



OLD VERSUS NEW TAX HAVENS: THE IMPLICATIONS THEREOF SEEN TODAY

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.

(Signed)

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Abstract

The effects of illicit use of tax havens and tax arrangements on governments and the global economy has influenced international tax arena to be scrutinised and changed with three main problems addressing this need. Firstly, governments are losing and being robbed of their tax money by large corporations and wealthy individuals through means of illegal and aggressive tax optimisation. Secondly, as governments are reacting to the abuse, businesses are being investigated and this creates more expense such as seeking new ways to arrange their structures and operate their business. Thirdly, as tax changes are made in the international sphere, companies, individuals and governments will be influenced subsequently and thus one has to be aware and be ready to adapt to the upcoming novelties.

To analyse these problems, the thesis aims to cover a specific period which was the start for significant changes in the tax haven industry, thus influencing the international taxation. In order to answer a research question is proposed of whether the legal and business structure and the views on tax havens have changed after 2008 compared to today and what are the peculiarities thereof impacting today's businesses and tax haven jurisdictions.

Complementing with a hypothesis, proposing that the world's tax haven position due to global tax optimization and jurisdictional transparency issues has changed, especially with significances made within the period of 2008 until 2018, influenced by international leaders. Which in turn, changes previous functioning of companies and individuals regarding the usage of tax havens, with tax haven jurisdictions amending their principles and laws.

It is estimated that trillions are hidden in tax havens and lost from worldwide national tax budgets, creating inequality between the middle-class and lower-class citizens who pay proportionally more taxes than the wealthy. Major shifts have been made and currently controlled by the regulator in the EU, thus impacting all the member states and all those stemming from the advancements made by the international leader's countries.

The thesis is structured in a way for the reader to comprehend the building of the topic. Starting with analysing the definition of the term offshore tax haven, which does not have a one common definition, in order to lay down a fundament for the thesis and to resolve ambiguities. Additionally, addressing other means for businesses and investors to use tax havens than those for solely tax optimisation.

Continuing the research with legal analysis split into the international arena perspective studying legal and political measures, such as steps taken by the G20 and the OECD creating a reform within the international tax industry. On the other hand, the EU perspective made in a form of a timeline analysing new legal acts made and proposed within the effective taxation, tax transparency and better business environment spheres tackling the avoidance with third countries and within the internal market of the EU, supplemented with scholarly opinions, cases and examples. Concluding with case examinations to illustrate the analysis and consequences from the former chapters.

Consequently, the research has approved its hypothesis that the world's tax haven position has changed due to global tax optimization arrangements and jurisdictional transparency issues these changes were influenced by global organizations and large economy countries with

especially significant changes made starting with the period of 2008 until today. Additionally, business and individual functioning has changed with new laws, current tax arrangements are being scrutinised and tax haven jurisdictions are being categorized as cooperative and non-cooperative, thus implying for further tax changes within the national tax systems.

Table of Contents

Abstract	2
Thesis Introduction	5
Structure and Scope	6
Methodology	6
Part I. Scope and Operations	7
1. Definitions.....	7
a) Tax Haven vs Offshore Financial Centers	7
b) Tax Evading vs Tax Avoidance	9
2. Operating an Offshore Tax Haven	9
a) Joint Venture Vehicles.....	10
b) Raising Money on Financial Markets.....	10
c) Offshore Entities as Securitization Vehicles.....	11
d) Director and Shareholder Information.....	12
Part I Conclusion	13
Part II. Legally Influencing the Tax Haven Industry Internationally	14
1. Global Impact on Tax Havens.....	14
a) The Global Powers in Combating Tax Havens.....	14
b) The Progress of Combating Tax Havens Globally	15
2. USA: Shuttering Foreign Tax Shelters Only to Steal Their Business.....	21
3. The Offshore Leaks.....	24
Part II Conclusion	26
Part III. Significances within the European Union Regarding Tax and Offshore Tax Havens...	27
1. Europe’s Position	27
2. Europe’s Legislative Position	29
a) Effective Taxation	30
b) Tax Transparency.....	33
c) Better Business Environment	34
Part III Conclusion.....	35
Part IV. Case Examination	36
1. Transfer-Pricing & State Aided Companies.....	36
2. Tax Fraud Individuals	38
Part IV Conclusion	39
Thesis Conclusion	40
Indicative bibliography	42
Primary sources:.....	42
Secondary sources:.....	43

Thesis Introduction

European Commission's Vice-President for the Euro and Social Dialogue Valdis Dombrovskis stated on tackling tax avoidance in 2016:

“Today we are taking another step to strengthen confidence in the entire tax system, making it fairer and more efficient. People have to trust that the tax rules apply equally to all individuals and businesses. Companies must pay their fair share of taxes, where their actual economic activity is taking place. Europe can be a global leader in tackling tax avoidance.”¹

New investigations and steps have been taken towards disclosing the true nature behind the shadowed curtains. As in this case behind hidden funds in tax havens and structured tax arrangements through different countries, which is a common practice for the wealthy who hide the true beneficiary and their true value.

From the 2008 crisis and the disclosure of offshore leaks, the world's tax haven users are being investigated and these jurisdictions forced transparency, following with company tax arrangement disclosure with fines for their practices and individuals imprisoned. These changes were influenced by global powers such as the G20, OECD and strong steps taken by the EU since 2015 whom declare to strive their efforts towards balance and fairness regarding the wealth and taxation inequality.

The key advantage for companies to use offshore tax havens is that it creates tax advantage which means more revenue and lower competition with the true beneficiaries safeguarding their wealth. It must be noted that using a tax haven is legal, however once it is exploited through tax avoidance or tax evasion it becomes a concern for countries which are deprived from their taxable incomes. Thus, offshore banking is not illegal, however hiding money is. As estimated by Gabriel Zucman, around 10% of world's GDP is held in offshores which translates in around 9 trillion euros lost worldwide in taxes for governments.

The thesis will tackle these issues, cases and utmost importantly the progressive impacts and legal changes made after 2008 by international powers and by the European legislator, with analysis made in a form of a timeline supplementing with scholarly opinions and cases to illustrate the changes and arguments within the offshore industry and international taxation today. The business aspect of the thesis is to examine the impact and the changes which were made on companies using tax arrangements and the legal aspect analysing international recommendations, EU regulations and measures taken by the global powers to tackle the issue of tax avoidance worldwide.

The thesis will answer the research question of whether the legal and business structure and the views on tax havens have changed after 2008 compared to today and the peculiarities thereof impacting today's businesses and tax haven jurisdictions.

In addition, researching the hypothesis that the world's tax haven position due to global tax optimisation and jurisdictional transparency issues has changed, especially with significant changes made within the period of 2008 until 2018, influenced by international leaders. In

¹ Launch of the Anti-Tax Avoidance Package: Tackling Tax Avoidance. Available on : <https://www.pubaffairsbruxelles.eu/launch-of-the-anti-tax-avoidance-package-tackling-tax-avoidance-european-commission-daily-news/>. Accessed May 10, 2018

turn changing the previous functioning of businesses and individuals regarding the usage of tax havens, leading tax haven jurisdictions to amend their laws and principles.

Structure and Scope

To gain a comprehensive overview of the current international taxation and the offshore industry position, the thesis is framed in a form of a timeline between 2008 and 2018 in order to accomplish answering the research question. As well as to reduce the possible gaps within this period which are relevant to the thesis analysis.

Moreover, given the unique taxation systems and the asymmetric advancements between each country, the research will instead focus and study the international legal and business assessment and the regional EU's perspective on its tax system and the usage of tax havens. As, the international frameworks are the basis for national legislation subsequently.

The aspects covered will consist of the definition of tax haven, tax evasion and avoidance, along with ways of operating an offshore incorporation with means other than purely tax optimisation to show different sides to these practices. Following with the main analysis of the thesis concerning the international perspectives and influences on tax haven industry with discussion about the USA's position and the offshore leaks which were a significant finding causing the shift of the industry.

Enduring with studying the position and significances within the European Union regarding its taxation and the relationship with offshore tax havens, with changes covering the effective taxation, tax transparency and better business environment. Concluding with the final chapter of case examinations introducing the consequences in practice.

Thus, the study will begin with a discussion of the definition and operation scope, this will be followed by a legal and business analysis making the most of the thesis, including a context and a timeline of the international perspectives and their mechanisms in place. Concludingly, the thesis will be followed by relevant cases and finished with a conclusion and opinions further to be examined.

Methodology

The research and methodology primarily used for shaping the thesis is stemmed from the doctrinal research by gathering scholarly and legal practitioner writing and opinions for analysing and researching the law, international treaties, international measures and recommendations. As well as, the use of data from EU press release, recognised media researches, research work from international organisations and its analysis about the topic of the of offshore industry and its causation to international taxation.

Along with parts of interdisciplinary research as the thesis analyses legal measures and significances and business factors such the impact on companies and individuals and the situation in the business environment caused by the changes within the offshore tax haven industry and the changes in international tax law. As well as, the teleological research for examining the legal texts according to their purpose and sense for the legal context in order to show which laws have been changed, how they were changed and what are their impact on the businesses and legal environment.

Part I. Scope and Operations

1. Definitions

As with any legal regulation or contract, in order to grasp the essence of each article it is crucial to understand the meaning of the used terms within. Consequently, the subchapter Definition will lay a fundamental distinction and a meaning for understanding the term tax haven and offshores on the first subchapter and the difference of tax evasion and avoidance in the following subchapter. The following parts and chapters shall be based on the understanding of these concepts, thus before covering the vehicle of tax haven one has to understand what it means.

a) Tax Haven vs Offshore Financial Centers

Due to a common misunderstanding of the distinction and meanings, as well as not having one official and definitive definition of the term tax haven and an offshore tax haven a basal framework and fundamental understanding for the reader the term will be examined under this chapter, this is to ensure that the terms are understood and can be used for building the thesis and the research.

With international globalization of the world's financial development and a trend for further globalization, accompanied with a lack of international coordination and control of fiscal affairs, as sated by Mykola Orlov individuals and companies take advantage of these possible gaps and omit taxes with a so-called vehicle - tax haven. This is not a novel phenomenon, it is already used by incorporations for more than eighty years and making in turn states struggle by not gathering their full tax system levies, thus with time moving states are progressively fighting more against these types of vehicles.²

There is however no official and clearly used one definition yet there are variants from various sources and scholars trying to define it. Essentially, under a black's law dictionary definition of tax haven is a country with a negligible income tax which is other than the incorporators or beneficiaries' original country, which is offering financial services and has higher secrecy policies regarding the incorporations and fund safeguarding, which thus makes it very incentivized for foreign investors to move and keep their capital in such places.³

Furthermore, the definition expands by adding a secrecy element to it, where tax haven is also referred to as a secrecy jurisdiction which 'provides facilities that enable people or entities escape or undermine the laws, rules and regulations of other jurisdictions elsewhere, using secrecy as a prime tool.'⁴ Thus, protecting personal financial information in terms of the company's beneficiaries, their income sources and their income flows. Also, tax haven 'can be defined as any jurisdiction that has preferential rules for foreign investors.'⁵ This is done

² Mykola Orlov, 'The Concept of Tax Haven: A Legal Analysis' Volume 32 Intertax, Issue 2, (2004): p. 95

³ Offshore Haven Definition, available on: <https://thelawdictionary.org/offshore-haven/>. Accessed April 17, 2018.

⁴ Secrecy Jurisdiction definition, available on: <https://www.financialsecrecyindex.com/faq/what-is-a-secrecy-jurisdiction>. Accessed March 21, 2018.

⁵ Tax Haven Definition, available on: <https://www.theage.com.au/news/business/here-is-the-truth-about-tax-havens/2007/10/15/1192300685572.html>. Accessed March 21, 2018.

by modifying their tax laws for the purpose of being more attractive to foreign investment and consequently attracting it, interestingly their citizens have different tax plans.

U.S. Government Accountability Office has set out characteristics in semblance from organizations and institutional researchers to identify which jurisdiction can be qualified as a tax haven, as follows ‘no or nominal taxes; a lack of effective exchange of information with foreign tax authorities; and a lack of transparency in legislative, legal, or administrative provisions’ likewise also those jurisdictions which are referring to themselves as offshore financial centers or financial privacy jurisdictions.⁶

Lastly, the demolition in the EU is, as stated ‘The parliament backed a common international definition of what constitutes a tax haven, an offshore financial center, secrecy haven, non-cooperative tax jurisdiction and a high-risk country.’⁷ The meaning of a high-risk country is seen as a third country which has faulty institutional and legal frameworks with low standards for controlling money flows into their countries and thus establishes significant risks and threats to the financial system of the EU.⁸

On the other hand, offshore financial centers (OFC’s) are described by IMF as ‘a country or jurisdiction that provides financial services to nonresidents on a scale that is incommensurate with the size and the financing of its domestic economy.’⁹ With characteristics such as that the main orientation is towards nonresidents; they have minimal information disclosure and a law environment with poor supervisory requirements and; they have zero or low taxation schemes. Above all these jurisdictions or countries are very specialized in the supply of financial services exceeding the size of their economic needs.¹⁰

Notably, the characteristics and definitions between tax haven and OFC is very similar and their nature is virtually the same with an aim to gain more beneficial and confidential taxation scheme for their business conduct. However, noting that these are legal structures, unless they are hiding something illegally gained or made.

Thus, in the view of this thesis the term tax haven will be used in the following understanding. Describing a vehicle used by individuals or companies in a foreign or offshore jurisdiction or country, which has modified its laws to attract foreign investors, granting higher level of confidentiality and secrecy towards their banking transaction endeavors and contribute to other benefits (seen further in thesis). Essentially an aim to obtain benefits which otherwise in their jurisdictions could not be obtained, thus gaining business competitive advantage.

⁶ ‘International Taxation: Large U.S. Corporations and Federal Contractors with Subsidiaries in Jurisdictions Listed as Tax Havens or Financial Privacy Jurisdictions’, available on: <https://www.gao.gov/assets/290/284522.pdf>. Accessed March 21, 2018.

⁷ Tax Haven Definition, available on: <https://euobserver.com/economic/140279> and https://ec.europa.eu/taxation_customs/tax-common-eu-list_en. Accessed March 22, 2018.

⁸ EP and of the Council by identifying high-risk third countries with strategic deficiencies, available on: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2016.254.01.0001.01.ENG. Accessed March 22, 2018.

⁹ ‘Concept of Offshore Financial Centers: In Search of an Operational Definition’, available on: <http://www.imf.org/external/pubs/ft/wp/2007/wp0787.pdf>. Accessed March 22, 2018.

¹⁰ Ibid.

b) Tax Evading vs Tax Avoidance

Argued by Arthur J. Cockfield tax evasion with the use of tax havens is a situation when the taxpayer intentionally is not disclosing one's income or assets to his or her tax authority and thus gaining income without tax hidden, this a criminal offence.¹¹ Consequently, by violating laws and not paying taxes constitutes a criminal conduct.

In the EU tax evasion occurs when, firstly, the public budget of the member state is deprived of its money that companies or individuals gained from not paying taxes. Secondly, the practices of storing money offshore and potentially done so untaxed and unreported is a violation. Thirdly, by aggressive tax planning which are pushing the limits and definitions of the laws in the sense of interpreting normal tax planning into something which it is not and searching for loopholes. These practices limit the capacities of the member states to progressively implement their social and economic policies and in turn creating loses in the budget.¹²

On the other hand, argued by Jean Murray the term tax avoidance is a tax minimisation arrangement which is done legally within the tax codes of the countries or jurisdictions.¹³ Hence, as long as these tax arrangements are done within the system of law they are allowed, and it can be done in tax arrangements through a tax haven jurisdiction, however the line between pushing on its limits can be subtle. Individuals and companies equipped with the tools to do this use the opportunity and are not conducting illegal activities. However, from the schools of tax morality Zoe and John Prebble argues that these activities are undermining moral and fairness principles from the standpoint of political and economic arena, until the decency to everyday workers who pay their taxes with each hard-earned salary.¹⁴ Thus, the question of ethics and corporate responsibilities is to be raised and bringing about the subsequent research on operations made by using and offshore tax haven which are not solely focused on gaining tax benefits.

2. Operating an Offshore Tax Haven

As follows from the understanding of the definition, it is important to tackle and add to the above mentioned practical benefits and reasons to why individuals and companies choose to risk and go through the legal and financial expenses to incorporate in a tax haven. Assessed from research made by scholars and law practitioners such as James McConville and Michael J. Burns. This is very important to understand as one due to media is exposed only to the negative side of using a tax haven, as this is what brings ratings, such as tax evading and the means of hurting tax payers but there is another side to tax havens and the motives behind incorporating which will be examined in this chapter.

¹¹ Cockfield, Arthur J., 'Bid Data and Tax Haven Secrecy' Florida Tax Review, Vol. 18, Issue 8 (2016): p. 488

¹² Tax Fraud and Evasion, available on: https://ec.europa.eu/taxation_customs/fight-against-tax-fraud-tax-evasion/a-huge-problem_en. Accessed March 24, 2018.

¹³ Jean Murray, 'What Is the Difference Between Tax Avoidance and Tax Evasion?', available on: <https://www.thebalance.com/tax-avoidance-vs-evasion-397671>. Accessed March 24, 2018.

¹⁴ Z. Prebble, J. Prebble. 'The Morality of Tax', available on: http://heinonline.org/HOL/Page?handle=hein.journals/creigh43&div=29&g_sent=1&casa_token=ICup5iCy0iA AAAA:j351bohGTkrQwhtAhxa4DOsPSqPq1i_nCGgFAWgIEH3NuW6HZ7ZDU9WmGtkenAAcuHDKX27n dA&collection=journals. Accessed March 25, 2018.

a) Joint Venture Vehicles

In a business situation of more than one owner from more than one country or when many investors come together to fund a project, each have an incentive to be protected in case their rights are infringed. Therefore, to avoid ‘‘home court advantages’’ or other strict restriction owners and investors seek a neutral jurisdiction.

Such as, in the case proposed by Charles Jennings where there is an energy project from South Africa or a finance management project from Eastern Europe, investors would prefer to invest and manage from a neutral jurisdiction which is known to them. If there are four joint ventures’ in one’s jurisdiction, the three others might be disadvantaged and disagree to fund in this case it would be fair to seek an offshore tax haven which is completely neutral.¹⁵

Thus, as stated by Matthew Gilbert and Joanna Russell using an offshore tax haven to separate from the location of business place and adding a place of simplified tax regulations creates more comfortable conditions for joint ventures to conduct their business activities and not to worry about the rules of the jurisdiction which they are not familiar with, because using offshore tax havens are usual practice and hence they are all familiar with the specific jurisdiction laws.¹⁶

Furthermore, due to simplified nature of the offshore tax haven investors are willing to invest in the joint venture. For example, investors are reluctant to invest directly into the US companies due to class action litigations in the USA and this creates reluctance. Above all, typically, professionals and regulators in tax havens are very efficient and responsive to the needs of businesses and thus creating it very comfortable for investors to be aware of their venture investment.

As James McConvill concludes this would not only make it favourable for the initial investors to manage their investment from offshore tax haven, but this would also encourage other potential investors to be involved in case any additional funding is needed for the business.¹⁷

b) Raising Money on Financial Markets

Incorporating in an offshore tax haven can help in raising capital on leading financial markets, such as London and New York, this can create very favorable capital source for the business, however not all countries and jurisdictions are politically and economically stable which creates reluctant for market investors to invest, thus by incorporating in an offshore tax haven this issue is removed and investors can solely focus on the analysis of the business entity itself. Also, many investors are familiar with popular tax havens, because they are regularly

¹⁵ Charles Jennings, ‘‘A Healthy Economy Needs Offshore Financial Centres’’ available on: <http://www.forbes.com/2009/04/01/offshore-banking-caymans-g20-opinions-contributors-tax-havens.html>. Accessed March 27, 2018.

¹⁶ Matthew Gilbert ‘‘Cross border’’ Available on: [https://uk.practicallaw.thomsonreuters.com/8-624-3423?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/8-624-3423?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1). Accessed March 27, 2018.

¹⁷ James McConvill, ‘‘An Unstoppable Force Rather Than an Illegitimate Farce: Exploring the Role of Offshore Financial Centres Amid Renewed Criticism’’ *European Business Law Review*, vol. 25, issue 6 (2014): 881 - 882, pp.

used for debt and equity raising in these markets with these remarks made by James McConvill.¹⁸

Additionally, added by Phillip Inman tax havens are also regularly used to finance and to raise capital on the major stock exchange listings such as New York Stock Exchange, London Stock Exchange and its Alternative Stock Exchanges, as well as Singapore and Hong Kong Stock Exchanges. Thus, an offshore tax haven is allowed to be listed on major stock exchanges just as companies onshore.^{19,20}

When incorporating a popular strategy to use is one through special purpose vehicle (SPV), as noted by Erik Stafford where the company transfers assets to the SPV for management or to finance the company's goals without putting its capital at risk. SPV which is a subsidiary to the parent company is separate from the originator's balance sheet with an objective to help protect the main assets in case the company would face bankruptcy or as such financial pressures. This practice isolates the credit risk liabilities from the originator's balance sheet. Which is welcoming for the investors.²¹

It must also be added that offshore tax havens are a very important vehicle in relation to mutual funds. Because money is pooled in from many investors and then can be invested different ways, such as bonds, different money-market instruments, stocks, other securities, or even cash.²²

c) Offshore Entities as Securitization Vehicles

Securitization is a process of companies financial restructuring which occurs by pooling together various contractual debts such as credit debts, mortgages, debt obligations, repackaging them and selling them out as securities and in return receiving funds very fast which is lessening the liability impact on the company's balance sheet thus showing a favourable credit rating and investors in turn gain principal and interest cash flows from this investment. It cannot be forgotten that the income stream from selling these securities as they are based on a low tax jurisdiction are very beneficial for the company.

The issuer (investor) is designed to be "bankruptcy remote" because in case of financial problems or bankruptcy the companies (originators) assets are first hand paid off to the issuers and only then what is left distributed to the originators. As perceived by James McConvill the distribution process is conducted through an "arranger" which usually is an investment bank or an entity of such kind.²³

¹⁸ Ibid. 884, p.

¹⁹ Ibid.

²⁰ Phillip Inman "Nearly 400 LSE-listed companies based in tax havens linked to UK", available on: <https://www.theguardian.com/business/2016/may/12/london-stock-exchange-listed-companies-tax-havens-uk>. Accessed April 3, 2018.

²¹ Coval Joshua, Jakub Jurek, and Erik Stafford. "The Economics of Structured Finance." *Journal of Economic Perspectives*, 23 (1) 2009, pp. 5-6. available on: <https://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.23.1.3>. Accessed April 3, 2018.

²² US Securities & Exchange Commission's summary on mutual funds. <https://www.sec.gov/fast-answers/answersmutfundhtm.html>. Accessed April 6, 2018.

²³ James McConvill, above nr. 16, p. 885.

The way the separation operation works as described by Christopher Bickley is in order to move the assets from originator to the SPV and then typically depart the shares is through a trust established in the offshore jurisdiction. The form of the trust would commonly be either a purpose trust or a charitable trust. Purpose trust must provide definite beneficiaries or objects or charitable objects.²⁴ In the BVI, section 84 (2) of the Trustee Act (Chap. 303) provides that a person is valid for a trust for any purpose as long as “the purpose is specific, reasonable and possible” and “the purpose is not immoral, contrary to public policy or unlawful”.²⁵ As seen, these are quite wide prescription, due to which companies are very keen on using them.

d) Director and Shareholder Information

Tax havens have been pressured to implement automatic exchange of information rules and to publicly disclose the beneficiaries and directors of the companies but most of the tax havens have worked hard to ensure that they not only meet but also exceed the expectations of international standards in this area of AML and anti- money laundering terrorist financing code of practice²⁶, yet as recognised by James McConvill still ensuring the shareholder non-public confidentiality.²⁷

In order to register in the tax haven sufficient information must be given to the company register agent to take steps towards incorporation of the company. In order to ensure safeguard of their and international policies. Accordingly, most tax havens are party to OECD’s tax information exchange agreement (TIEA) where member of the agreement provide exchange of information on request relating to a civil tax investigation of a specific criminal investigation, this is to address harmful tax practices.²⁸

Thus, the degree of secrecy on behalf of the shareholders and director’s information does not mean that tax havens operate with criminals and keeping other jurisdictions in the dark. Instead they are sensitive to the client’s personal welfare and respecting wishes of them separating their personal and business affairs.

Lastly, in order to visualize the usage of tax haven with SPV in practice it would be as follows. Shareholders of a company A would either establish an offshore SPV or a trust called B in a tax haven or buy A through B for the means of financing and controlling the existing business A. Thus, allowing the shareholders to gain certain tax, foreign exchange, flexibility and safe guarding benefits. On the other hand, for the individuals it could be a significant way to protect assets such as in an emergency situation developed at home country, such as political or financial like the bank closure of Parex in Latvia and money stored abroad privately can be free from home government’s influence.

²⁴ Christopher Bickley, ‘‘Bermuda, British Virgin Islands and Cayman Islands Company Law’’ 4rd edition, Sweet & Maxwell, 2013. p. 386.

²⁵ BVI Trustee Act, 1961, Chapter 303. Available on: <http://gmjones.org/pdfs/grant-jones-trusts-arbitrator-specialist-bvi-trust-act-1961.pdf>. Accessed April 4, 2018.

²⁶ Available online at the BVI Financial Services Commission’s website here: <http://www.bvifsc.vg/en-us/guidance/policiesandguidelines.aspx>. Accessed April 4, 2018.

²⁷ James McConvill, above nr. 16, p. 886.

²⁸ Tax Information Exchange Agreements. <http://www.oecd.org/ctp/exchange-of-tax-information/taxinformationexchangeagreementstieas.htm>. Accessed April 4, 2018.

Part I Conclusion

As read above, this part is concerned with creating a legal, business and academic understanding framework from the opinions and acknowledgments made by James McConvill, Mykola Orlov, Christopher Bickley, Erik Stafford, Charles Jennings, Zoe and John Prebble and others. Firstly, in detail comprehending the meaning of offshore tax havens which are vehicles for more efficient business conduct and adding the meaning of tax evasion for the overall context for tax havens and that offshore should not mean criminal but rather international or overseas. Secondly, in order to continue the thesis, it was of utmost importance to describe other means of using offshore tax havens, besides that of media pushed reason for mainly tax evading and forgoing national tax schemes, showing that not all companies and individuals using offshore tax havens are in the black list and unethical.

Some of the benefits are the possibility to for businessman to work together in a more efficient joint venture, pooling investors and therefore raising capital for the company to work with, possibility of restructuring by securitization for safeguarding assets for the investors and doing so by the means of special purpose vehicle. Lastly, because the tax haven industry is competitive, and each tax haven wants the money flow through their jurisdiction, it creates cost diminishment and ease of use as professionals are available very fast and costs are kept as low as possible for incorporating and maintenance, due to the aforementioned motivation. In the following chapter, the research will examine the past (from 2008) and current positions and international changes of the offshore tax haven industry on an international perspective.

Part II. Legally Influencing the Tax Haven Industry Internationally

The concept of tax havens, probably in a different word and meaning, has been around since countries decided to finance their government through taxation. In the first recorded instance, even Ancient Rome was a master of tax free zones, as they established a tax-free port in the island of Delos and the Greek island state of Rhodes quickly lost their commercial power.²⁹ Contemporarily tax-competitions also prevails, however as internationalism and global powers are driving the world's economy, tax havens act as a vehicle working counter to powers' interests. In this part the research will analyse the global powers and their driving forces, interests and actions against the non-cooperative jurisdictions and the implications thereof.

1. Global Impact on Tax Havens

a) The Global Powers in Combating Tax Havens

G20 is an international conference consisting of finance ministers and central bank governors from twenty major economies, with an aim to address issues which reach beyond just one organization or economy. With a responsibility to promote international financial stability, international trade, economic growth and financial market regulation.³⁰ Additionally, Organisation for Economic Co-operation and Development (OECD), a United Nations body, also an organisation which is committed to stimulate economic progress internationally and world trade, coordinate international policies and seek to answer common economic problems. Also consisting of world leader countries. In 2008, October 22, OECD draw up a black list of tax havens, from a decision made by the G20, targeting and investing hidden and undeclared revenues and tax frauds.³¹ Both of these organisations played a crucial role in the shift of the tax haven industry today, further elaborated below.

Since the global financial crisis in 2008, G20 has stated that tax payers should never again pay for bailing out financial market participant, as it then happened. The G20 states have been focused on strengthening global financial system and on the improvement of supervision and regulation of the financial market participants, including those known under the shadow banking system (including tax havens) with an aim that none of the financial market participants remain unsupervised, thus tackling harmful tax competition between countries or jurisdiction and aggressive tax policies adopted by firms.³²

With Steven J. Klees arguing that tax justice is the solution with the financial problems in countries and the world. That due to these actions the main victims are the next generations as the funding for education is not enough and most states even now can increase these funding. As well as, there is an utmost need to tackle tax avoidance and contribute to more stringent ways of dealing with these issues and removing the possibility for prevalence of harmful tax

²⁹ "A Brief History of Tax Havens" available on: <https://www.offshore-protection.com/history-of-tax-havens>. Accessed April 12, 2018.

³⁰ Inter Press Service News Agency on G20 Sustainable Development. Available on: <http://www.ipsnews.net/2015/09/g20-finance-ministers-committed-to-sustainable-development/>. Accessed April 8, 2018.

³¹ About OECD. Available on: <http://www.oecd.org/about/>. Accessed April 8, 2018.

³² "The G20 Presidency 2017 at a Glance." Available on: https://www.g20germany.de/Webs/G20/EN/G20/Agenda/agenda_node.html. Accessed April 8, 2018.

arrangement incentives.³³ Additionally, as stated by Leonce Ndikumana tax havens facilitate illegal capital holding, transaction and creates a major issue for countries as revenue loss, thus as the wealthy do not pay taxes this creates further inequality.³⁴

On the other side of the spectrum there are also opposing views from scholar Daniel J. Mitchell arguing for the usage and importance of tax havens, that this would hinder tax competition between countries. Along with Ben Ferrett writing that otherwise government and firm interactions are very static and only in one location with decreases growth for globalism.³⁵ Thus, such as the US-based Centre for Freedom and Prosperity (CFP), established as a direct response to the OECD initiative to fully supervise tax havens, in the 1998 by the Heritage Fund. The organisation aims to support low taxation and tax competition, and supporting it as a manifestation of market liberalisation, also arguing that OECD is a group of high-taxation countries with strong economies shielding themselves from economic competition which other jurisdictions can offer.³⁶

It has been written by Ronen Palan CFP played a major role in 2001 for the Bush administration to pull of resources to support the OECD project for improving transparency of financial flows, and thus leaving it without a major progress until the need to focus on this issue after the financial crisis in 2008.³⁷ Today, however, OECD is the main international organization for setting worldwide standards for economic progress and taxation.

b) The Progress of Combating Tax Havens Globally

Following the above mentioned, in 2 April 2009 G20 London Summit an action plan was declared stating that the era of banking secrecy is over. This was done by creating an official document ‘‘Global Plan for Recovery and Reform’’ thus moving action towards non-cooperative jurisdiction, and in particular tax havens. This action plan was taken to restore confidence and trust in the global financial systems, expressing that there will be a built more globally consistent, stronger supervisory and regulatory framework for future financial sector.

It was agreed to, establish a new Financial Stability Board; collaborate with IMF to provide early macroeconomic warnings; reshape the regulatory systems; extend oversight to financial important institutions, instrument and markets; endorse social responsibility for all firms and implement compensation; improve quantity, quality and international consistency of capital in the banking system; take action against non-cooperative jurisdictions (against those jurisdiction listed as non-cooperative tax havens published by OECD); and improve global

³³ Maria Ron Balsera, Steven J. Klees & David Archer ‘‘ Financing education: why should tax justice be part of the solution?’’ Available on: <https://www.tandfonline.com/doi/abs/10.1080/03057925.2017.1394743>. Accessed April 8, 2018.

³⁴ L. Ndikumana ‘‘International Tax Cooperation and Implications of Globalization’’ Available on: https://books.google.lv/books?hl=en&lr=&id=adfnCQAAQBAJ&oi=fnd&pg=PA73&dq=Global+Plan+for+Recovery+and+reform+tax+havens&ots=DL_PxM1ueC&sig=w5VdEt6rD9DxkdbHbwZL4-ZzQrw&redir_esc=y#v=onepage&q=tax%20havens&f=false. Accessed April 8, 2018.

³⁵ Ben Ferrett, Andreas Hoefele, Ian Wooton ‘‘ Does Tax Competition Make Mobile Firms More Footloose?’’ Available on: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2795088. Accessed April 8, 2018.

³⁶ Daniel J. Mitchell, ‘‘Center for Freedom and Prosperity Foundation Strategic Memorandum’’. Available on: <http://freedomandprosperity.org/2009/publications/prospects-for-tax-competition-in-2009/>. Accessed April 8, 2018.

³⁷ Ronen Palan, Richard Murphy, Christian Chavagneux, ‘‘Tax Havens: How Globalization Really Works.’’ Cornell University Press, 2010, pp 217-218.

accounting standards.³⁸ As these goals stated officially next step is to analyze the advance of them in actual practice over the years.

After the 2009 summit it was agreed to redefine together with the OECD a blacklist for non-cooperative jurisdiction or tax havens (first blacklist was made in 2000), the list was dealt into 3 tiers based on the implementation progress of internationally agreed tax standards. White-list jurisdictions that has implemented the standards, Grey-list a jurisdiction committed but not yet implemented the standards and, a Black-list – jurisdictions which have not committed to implement these standards and no steps have been taken to cooperate with the OECD standards.³⁹

Rise of French-Swiss Treaty

In August 2009, as France is part of the G20 countries and Switzerland directly connected as being part of the EU and also a known as a tax haven in the EU⁴⁰, amended their French-Swiss tax treaty by agreeing to exchange all necessary information for tax enforcement upon request, this also included the major step towards transparency, exchange of Swiss bank information amending their banking secrecy law which was first codified in 1934.

Due to this, in 2010 a famous French case ‘‘Affaire Bettencourt’’ arose (the impact was already earlier in 2009 after tax treaty amendment) involving hiding and moving of the billionaires Ms. Bettencourt funds from France in Switzerland and illegal payments and schemes made with the French government. Tapes of conversations between Ms. Bettencourt and her financial wealth adviser were disclosed about transferring her funds worth around \$160 million from Switzerland, as it had become too risky to keep the money in Swiss Banks, she was advised to move her funds to a tax havens where exchange of information with France would not be committed, such as Hong Kong, Singapore or Uruguay. After the tapes were made public the funds were repatriated by France.⁴¹ She was alleged for tax evasion, money laundering and illegal donation to conservative politicians under French law all stemming from the knowledge found in the data from the offshores in Switzerland. However, the case is still ongoing as there was also legal disputes regarding Ms. Bettencourt fortune who died in 2017.⁴²

G20’s Legal Ties with Tax Havens and Its Significance

After the summit in 2009 G20 countries requested each tax haven to sign at least twelve information exchange treaties each, by threatening with economic sanctions and thus

³⁸ ‘‘Global Plan for Recovery and Reform’’, London Summit – Leaders’ Statement 2 April 2009. available on: <http://www.g20.utoronto.ca/2009/2009communiqué0402.html>. Accessed April 8, 2018.

³⁹ ‘‘What Is A White Listed Country?’’ available on: <https://www.pearse-trust.ie/blog/bid/91500/What-Is-A-White-Listed-Country>. Accessed April 13, 2018.

⁴⁰ ‘‘Switzerland Considered A Tax Haven’’ available on: <https://www.investopedia.com/ask/answers/060716/why-switzerland-considered-tax-haven.asp>. Accessed April 10, 2018.

⁴¹ ‘‘Affaire Bettencourt: ce que disent les enregistrements’’ case summary available on: http://www.lemonde.fr/politique/article/2010/06/29/affaire-bettencourt-les-enregistrements-qui-accusent_1380743_823448.html. Accessed April 10, 2018.

⁴² Bettencourt case. Available on: <https://www.reuters.com/article/us-france-bettencourt/french-police-hold-key-figures-in-bettencourt-case-idUSTRE66E1SJ20100715> & <https://www.vanityfair.com/news/2016/08/bettencourt-affair-war-over-frances-biggest-fortune>. Accessed April 30, 2018.

progressing the combating of tax evasion at a global level, and at the end of 2009 world's tax havens signed almost three hundred treaties with tax havens committing to the OECD tax transparency standards. French-Swiss tax treaty amendment played a major part in this advancement.⁴³

Based on the research done in Berkeley in 2013 by N. Johannesen and G. Zucman two main significances were made, first, that treaties have statistically significant but quite moderate impact on tax haven bank fund deposits such as the France-Swiss treaty mentioned above had caused approximately 11% decline in deposits held in Switzerland by France citizens. However, secondly, the G20 signed treaties with tax havens have not caused significant repatriations of funds by the states, instead these individuals and companies have relocated their funds and deposits between tax havens. It has been observed that the tax havens which have signed the above-mentioned tax treaties have lost deposits at the expense of this, however the aggregate data shows that in the period until 2012 the overall value of deposits in tax havens have remained overall the same.⁴⁴

On the other hand, many individuals have not moved their funds from the tax havens and still kept them there even after the transparency treaties signed with the tax havens. Some of the possible reasons interpreting to why the tax evaders have not moved their deposits from the tax havens which have signed the treaties are firstly, because in practice the treaties have not considerably increased the possibility of the individuals and they fund flow to be detected, namely because only rarely the treaties led to actual exchange of information and rarely seen such results as in the case "Affaire Bettencourt" noting that the repatriation was triggered due to the disclosure of the conversation, rather than the exchange of tax information. As noted above the tax information has to be requested by the countries which in turn creates difficulties due to research, scrutiny and time to gain the information effectively.

Secondly, as stated by Ana Maria H. de Alba evaders might have declared only part of their assets and funds to the tax authorities while keeping the rest offshore and thus minimizing the interest to investigate further their situation. Also, some have been passed by, due to using various legal arrangement and tax schemes which are considered legal. In this particular example the natural person or the beneficial owner is shielded by limited liabilities companies or offshore companies set in tax haven jurisdictions.⁴⁵

Therefore, under Financial Action Task Force (FATF) the definition of a beneficial owner is a natural person who ultimately owns or controls customers whose transactions are made and the ownership over person who exercise ultimate effective control over a legal person or a legal arrangement.⁴⁶ Thus, oftentimes corporations have layers of ownership and a very complicated structure which are created to protect the ultimate beneficiary. The effect is

⁴³ "OECD work on tax havens – a progress report Media briefing, Tuesday 19 January" available on: <http://www.oecd.org/ctp/harmful/aprogressreportonoecdworkontaxhavens.htm>. Accessed April 10, 2018.

⁴⁴ N. Johannesen and G. Zucman "The End of Bank Secrecy? An Evaluation of The G20 Tax Haven Crackdown" available on: <https://eml.berkeley.edu/~saez/course/johannesen-zucmanAEJ13.pdf>. Accessed April 10, 2018.

⁴⁵ Ana Maria H. de Alba "Ultimate Beneficial Ownership" Available on: <https://www.lexisnexis.com/risk/intl/en/resources/whitepaper/Ultimate-beneficial-ownership-aml-fatca.pdf>. pp. 2-3 Accessed April 18, 2018.

⁴⁶ FATF "Transparency and Beneficial Ownership" Available on: <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>. p. 8. Accessed April 18, 2018.

amplified if jurisdiction have secrecy laws which makes each layer even more difficult to be accessed.

FATF is a policy making body for upholding international financial system integrity and combating terrorist financing, money laundering and other related threats. FATF has developed a list of recommendations which are recognized as international standards for combating the fore mentioned threats and they are a coordinated response to help ensure a stable global financial system.⁴⁷ It has become a powerful international body by using peer pressure on ongoing basis providing in depth analysis of each countries system for preventing criminal abuse of financial system⁴⁸, as well as the threat of blacklisting jurisdictions, thus persuading 180 jurisdiction to sign up for their standards. Through their practices they create statistics and guidance for implementing their standard and recommendations.^{49 50}

Recommendations number 24 and 25 relate to the transparency and beneficial ownership of legal persons and arrangements and nr. 18 about internal controls and foreign branches and subsidiaries are important with regard to tax havens. Nr. 24 relating to the ownership of legal person prescribes that states must take accurate and timely measure to prevent misuse of legal person for money laundering and terrorist financing. Nr. 25 relating to the ownership of legal arrangement prescribes that countries should take measures by analyzing information on express trusts including the settlors, trustees and beneficiaries obtained by competent authorities. Lastly, nr 18 suggests that financial institution should implement programs against these threats including policies and procedures for sharing information for AML purpose.⁵¹

Further Development

Based on the official Swiss statistics and anomalies in the international investment data collection in 2013 by Gabriel Zucman shows that approximately 8% of global households' financial wealth is held in tax havens, which translates to around 10% of worlds GDP that is held offshore, which constitutes an immense amount of tax revenue loss for the states.⁵² Thus, due to the tax treaties much data has been reviled which marks firsts steps towards a global fund management transparency.

In 2016 many tax haven financial centers started to disclose bilateral information about the amounts of bank deposits that foreigners hold in their banks. Centers such as Luxembourg, Switzerland, Hong Kong and the Channel Islands disclosed this information to Bank of International Settlements (BIS) which collected and were authorized to disseminate this

⁴⁷ ‘‘About FATF’’ Available on: <http://www.fatf-gafi.org/about/>. Accessed April 20, 2018.

⁴⁸ ‘‘FATF Mutual Evaluations’’ Available on: [http://www.fatf-gafi.org/publications/mutualevaluations/?hf=10&b=0&s=desc\(fatf_releasedate\)](http://www.fatf-gafi.org/publications/mutualevaluations/?hf=10&b=0&s=desc(fatf_releasedate)). Accessed April 20, 2018.

⁴⁹ ‘‘How FATF can measure and promote an effective anti-money laundering system’’ Available on: <https://www.globalwitness.org/sites/default/files/library/How%20FATF%20can%20measure%20and%20promote%20an%20effective%20anti-money%20laundering%20system.pdf>. Accessed April 20, 2018.

⁵⁰ ‘‘European Parliament Public Hearing’’ Available on: http://www.europarl.europa.eu/cmsdata/109151/PANA_13_Oct_hearing_en.pdf. pp. 21 – 22. Accessed April 20, 2018.

⁵¹ ‘‘The FATF Recommendations’’ Available on: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf. pp 18, 22. Accessed April 20, 2018.

⁵² ‘‘Who Owns the Wealth in Tax Havens?’’ pp. 1-4, available on: <https://gabriel-zucman.eu/files/AJZ2017b.pdf>. Accessed April 10, 2018.

bilateral data to the media. Calculating that the top 0.1% richest households own about 80% of the offshore wealth thus potentially distorting the whole country's economy in the EU and Russia, as the majority of their wealth is held outside of the country and it is not being inflowed back into their countries economy. However, the USA wealthiest do not create as much of inequality relativity to EU and Russia as many funds are kept and used in the USA, however they still are highlighting an effect in a globalized world.⁵³

With regard to the legal framework Tax Information Exchange Agreements (TIEAs) are bilateral treaties signed within the period of 2000 until 2012 with the members of OECD as the representative countries who wish to receive the information about their citizens from the non-cooperative jurisdiction which have been committed to the OECD's principles, the treaties with one jurisdiction can be up to 12 depending on the interest from the countries. The treaties are in accordance with the Common Reporting Standard (CRS) or Country-By-Country Reports (peer review of how well the information exchange is happening) with the purpose of eventually activating the automatic exchange of information mechanism.⁵⁴

Comparing the bilateral treaties of Federal Republic of Germany with the British Virgin Islands (2010), the Kingdom of Sweden with the Bahamas (2010), and the United States of America and United Kingdom with the Cayman Islands (2001) for the exchange of information relating to tax matters. These bilateral treaties have the same conditions except they are made bilaterally rather than multilaterally, thus each state has to make one with a jurisdiction. Covering, under article 1, the scope for these agreements covers that the competent authorities (ministries, authorized representatives) shall provide the exchange of information which is relevant for the contracting parties domestic laws, determination, investigation and tax matters (various taxes cover in article 3).⁵⁵

Furthermore, exchange of information upon request under article 5 prescribes that the requested party shall provide the information upon request in writing about the matters relating to and covered in article 1. In case of specific request, the form of depositions of witnesses and authenticated copies of original records, to the extent allowed under their domestic laws. For the purpose of this agreement the information held by banks, other financial institutions and any persons, regarding beneficial ownership of companies, trusts, as well as identities, specific evidence on rescuable grounds shall be provided unless it is giving rise to disproportionate difficulties.⁵⁶

Under article 7 the competent party may decline the request where the requesting party has not pursued all the means available in their country, the request is not made in conformity with the agreement, where the disclosure of the information would be contrary to the public policy of the requested party or information relating to period more than six years prior to the considered period. Under article 8, all the information gained shall be treated confidentially

⁵³ Ibid.

⁵⁴ "Tax Information Exchange Agreements" Available on: <http://www.oecd.org/tax/exchange-of-tax-information/taxinformationexchangeagreementstieas.htm>. Accessed April 19, 2018.

⁵⁵ Federal Republic of Germany with the British Virgin Islands (2010) available on: <http://www.oecd.org/ctp/harmful/46197455.pdf>, the Kingdom of Sweden with the Bahamas (2010) available on: <http://www.oecd.org/countries/caymanislands/35514531.pdf>, and the United States of America and United Kingdom with the Cayman Islands (2001) available on: <http://www.oecd.org/sweden/44772037.pdf>. Accessed April 19, 2018.

⁵⁶ Ibid.

and protected, it only shall be disclosed to the relevant authorities or persons and may not be used for any other purpose than stated in article 1.⁵⁷

During the period from 2009 until today some decision, reports and actions from OECD have raised controversy over the laid financial action task plans from experts such as Jean-Pierre Lieb arguing that firstly unlike organizations such as United Nations or the European Commission, the OECD is not able to enforce or legislate laws, even though OECD is connected to these countries and organizations who can enforce obligations it is a slow and not always effective process and their recommendations or measures are seen as a soft law, which creates incentives for the tax evaders to continue using tax havens until it is a hard law. Another social critique is that as OECD is being funded by the tax-payers money, trends are seen that instead of conquering the tax payer abuse they are focused more on increasing taxes rather than creating equality in the overall abused global framework of tax paying.⁵⁸

Furthermore, in the latest OECD reports in 2017, every year progress is made in the effective implementation of information for tax purposes. The first automatic exchange of tax information undertaken by 50 jurisdictions was made in September 2017. It should be noted that as mentioned above before jurisdictions were sharing information only upon request which made the process not as effective as planned. The implementation levels were successful and showing considerable progress, however those jurisdictions with lower ratings were given an opportunity advance.⁵⁹

The changes were as follows improvement in access to accounting records, elimination of stick bank secrecy, more effective oversight and enforcement of obligations. Based on the OECD report the amount of progress was made due to the round of peer reviews, where jurisdictions review each other and are accounted. More jurisdictions are to be a signatory parties and further tax treaties and agreements are made and seen that this type of multilateral approach is a dominant force in the tax transparency landscape.⁶⁰

Since 2017, based in the information exchange report from OECD all jurisdictions that are signatory of the OECD Automatic Exchange of Information (AEOI) for the exchange of non-resident financial account information have implemented domestic legislative frameworks and 97% of data has been collected with respect to those non-residence persons. As well as the international legal framework for the early adopters should be activated with will create a global exchange of information not just bilateral for the members of the Multilateral Convention.^{61 62}

OECD set international standards with its Base Erosion and Profit Shifting (BEPS) Action steps by creating tax planning strategies and rules to tackle multinational companies which exploit mismatches between different countries tax rules and exploit these gaps by artificially

⁵⁷ Ibid.

⁵⁸ Jean-Pierre Lieb, International Tax Controversies, Available on: [www.ey.com/Publication/vwLUAssets/ey-global-tax-policy-and-controversy-briefing/\\$FILE/ey-global-tax-policy-and-controversy-briefing.pdf](http://www.ey.com/Publication/vwLUAssets/ey-global-tax-policy-and-controversy-briefing/$FILE/ey-global-tax-policy-and-controversy-briefing.pdf). pp. 48 - 51. Accessed April 10, 2018.

⁵⁹ Tax Transparency 2017 Report on progress. Available on: <http://www.oecd.org/tax/transparency/global-forum-annual-report-2017.pdf>. Accessed April 13, 2018.

⁶⁰ Ibid.

⁶¹ Automatic Exchange of Information Implementation Report 2017. Available on: <http://www.oecd.org/tax/transparency/automaticexchangeofinformation.htm>, pp 11 – 14. Accessed April 13, 2018.

⁶² Automatic Exchange of Information. Available on: <http://www.oecd.org/tax/transparency/reporting-on-the-implementation-of-the-AEOI-standard.pdf>. Accessed April 13, 2018.

shifting profits either through a loan or debt schemes or investment schemes to low or no-tax jurisdictions. This project was initiated by the G20 in 2012 to address international mismatches, digital product sales and delivery regarding to taxation rules, inter-group financial transactions referring to the profit shifting between a company's subsidiaries, transfer pricing which occurs when a company has more than one subsidiary and for risk management it is transferring assets, risks and makes transactions which have no actual economic value, anti-tax avoidance measures. These standards are fundamentals for international tax avoidance successful diminishment and the exchange of information, peer review and monitoring process basis.⁶³

In 2017 over 70 ministries, including jurisdiction from all the continents, have signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) which is a multilateral convention of the OECD developed through a negotiation involving more than 100 countries and jurisdictions offering concrete solutions for governments to close the gaps in international tax rules adopting and modifying results from the BEPS project into eliminating double taxation by creating bilateral tax treaties worldwide. As well as improving the dispute resolution mechanisms and setting agreed minimums standards against treaty abuse.^{64 65}

2. USA: Shuttering Foreign Tax Shelters Only to Steal Their Business

USA together with the G20 was working and trying to combat poverty, update infrastructure and lower tax rates for citizens worldwide by uncovering trillions of hidden taxes income funds and assets and relieving tax haven shielded beneficiaries. Today, ironically, from gathering information from analysis, reports, scholars and practitioners USA has moved from one of the top places to transfer funds to the top for foreigner investors to shield their funds and assets, thus USA states are becoming one of the world's favourite tax havens to do so.

As mentioned above the G20 laid out a Global Plan for Recovery and Reform, accordingly no longer tolerating the use of tax havens for illegal and unfair practices. Consequently, the USA passed a Foreign Account Tax Compliance Act (FATCA) in 2010, requiring all foreign (non-US) financial institutions to report and declare assets, identities, account balance, etc. of US tax payers and potential tax payer to the Internal Revenue Service (IRS).^{66 67}

In order for countries and jurisdiction to comply with the laid-out plans in FATCA, U.S. threatened for those who do not comply removing access to the U.S. financial systems and markets. Consequently, with this motivation more than 100 jurisdictions and countries have

⁶³ Base Erosion and Profit Shifting. Available on: <http://www.oecd.org/tax/beps/>. Accessed April 23, 2018.

⁶⁴ Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS. Available on: <http://www.oecd.org/tax/treaties/multilateral-instrument-BEPS-tax-treaty-information-brochure.pdf>. Accessed April 23, 2018.

⁶⁵ Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS. Available on: <http://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-beps.htm>. Accessed April 23, 2018.

⁶⁶ Art. 2 & 3 Available on: <https://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Agreement-UK-9-12-2012.pdf> Accessed April 12, 2018.

⁶⁷ FATCA. Available on: <https://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx>. Accessed April 12, 2018.

agreed to and are complying with its standards, including tax havens such as Cayman Islands and Bermuda.^{68 69}

The U.S. was expected to reciprocate and thus as they inquire data from foreign institutions in the same manner foreign institutions are willing to inquire information about their citizens hiding funds in the U.S. However, in 2016 the congress rejected this repeated request, stating that U.S. will not provide the same information its FATCA partners as they do about the U.S. financial institutions, because legislation in the U.S. does not yet allow it and further legislation in this regard is needed. Most global experts expect it to go nowhere. Adding that the U.S. is also gathering data not only about U.S. citizens shielding tax and company information in the U.S. but also about foreign individuals and companies incorporated in the U.S.⁷⁰

Following the release of FATCA OECD developed Common Reporting Standard (CRS) in response to the G20 request in 2014. This regulation would act similarly to the FATCA, only increasing transparency worldwide as the exchange of information would be automatic between its parties and on annual basis. With jurisdiction and countries undertaking these regulation of automatic exchange USA has not undertaken it nor it is in the status of doing so. Interestingly, even as they have failed to adopt the CRS, however they are still actively gathering information from foreign countries under FATCA. Thus, as stated by Jesse Drucker US is the world's favourite new tax haven.^{71 72 73}

Interestingly, in the U.S. Rothschild & Co. a global investment bank paid only \$11.5 million fine to the U.S. Department of Justice and thus avoided prosecution, however foreign banks, especially Swiss banks have paid over \$5 billion in fines from the U.S. in 2016 the law office "Andrew Penny" and managing director of Rothschild & Co. made a presentation to their inside community members about how the worlds wealthy elite (they) can avoid taxes and disclose their funds from their country and the USA, as well as stating that there is no better tax haven in the world right now as in the US.⁷⁴ Which is congruent to the above mentioned because the rest of the world cannot access the data about their citizens in the US which creates their funds untouchable.

Due to FATCA and OECD's CRS many U.S. and foreign wealthy are made to move their funds. Currently, the safest place to hide money is in the U.S., according to the presentation and offers of Rothschild by transferring funds into Nevada limited liability company, in turn

⁶⁸ Ibid.

⁶⁹ "The U.S. Is Becoming the World's New Tax Haven" available on: <https://www.bloomberg.com/view/articles/2017-12-28/the-u-s-is-becoming-the-world-s-new-tax-haven>. Accessed April 12, 2018.

⁷⁰ Department of the Treasury, press release, May 5, 2016. Accessed on: <https://www.treasury.gov/press-center/press-releases/Documents/Lew%20to%20Ryan%20on%20CDD.PDF>, p. 2. Accessed April 12, 2018.

⁷¹ Jesse Drucker "The World's Favorite New Tax Haven Is the United States" Available on : http://www.startaforexfund.com/images/The_World_s_Favorite_New_Tax_Haven_Is_the_United_States_-_Bloom.pdf. Accessed April 12, 2018.

⁷² "What is the CRS?" Available on: <http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/>. Accessed April 12, 2018.

⁷³ "AEOI: Status of Commitments" Available on: <http://www.oecd.org/tax/automatic-exchange/commitment-and-monitoring-process/AEOI-commitments.pdf>. Accessed April 12, 2018.

⁷⁴ "Tax Haven USA" Available on: <https://www.taxjustice.net/2016/02/02/tax-haven-usa-part-two-rothschilds-nearly-confirms-tax-justice-network-position/>. Accessed April 18, 2018.

making it owned by Nevada trust, it would not only shield these funds from the foreign authorities but also from the U.S. as well as generating no U.S. tax returns.⁷⁵

In addition, as researched by Rupert Neate many public faces and companies such as Donald Trump and Hillary Clinton, as well as Apple, Walmart, Coca-Cola and other biggest Fortune 500 U.S. companies have been using the so-called Delaware tax loophole address of 1209 North Orange Street in Delaware. An address registered to more than 285,000 entities used to avoid and evade tax within the US and abroad. Mainly to gain tax-free royalties on non-tangible assets such as dividends, intellectual property or public speeches as in case of Clintons. This is done by exploiting the state law by transferring all the profits earned to their subsidiary in Delaware, because Delaware does not have corporate income tax.^{76 77 78}

Interestingly, Apple also has a case against the European Commission for a fee of 13 billion euros for gaining illegal tax benefits from Ireland and using Ireland as a tax haven. As Apple has an office in Ireland where they pay taxes for their international profit. Thus, Apple were acting illegal under EU State aid rules, because Ireland allowed Apple to pay less tax than other businesses (from about 12.5% to 0.005%) under Article 108(2) TFEU and consequently EU State aid rules require that all funds gained from illegal State aid must be recovered by the member state in order to remove the distortion of competition created by this aid.^{79 80}

To illustrate the power of the FACTA on an international scope, a latest case of the Latvian bank ABLV can be taken as an example. As examined by Frances Coppola the Latvian bank did not comply with the regulations and requirements of the U.S. Treasury to comply with the requirement to exchange information about its USA clients under FACTA, including the information about connected offshore entities which are either connected or established in the US. Consequently, ABLV was promptly denied of the U.S. dollar funding and its financial market, which means that ABLV cannot effectively make transactions with the US dollar. This caused a chain reaction resulting in the banks disorderly collapse and the freeze of all payments out of the ABLV by the Latvian regulator and the ECB.⁸¹

Tax havens are not expected to disappear anytime soon, as the Swiss banks still hold reportedly around \$1.9 trillion dollars in assets, however the structure and rules have changed. Ironically, USA, the country that was the main driver in sanctioning Swiss banks, is becoming the head of the secrecy banking and has not delivered reciprocal transparency as

⁷⁵ ‘‘Switzerland is so Last Century’’ Available on: <http://www.pressreader.com/bahrain/bloomberg-businessweek-europe/20160201/281883002363890>. Accessed April 12, 2018.

⁷⁶ ‘‘ Trump and Clinton share Delaware tax 'loophole' address with 285,000 firms’’ available on: <https://www.theguardian.com/business/2016/apr/25/delaware-tax-loophole-1209-north-orange-trump-clinton>. Accessed April 13, 2018

⁷⁷ ‘‘ Delaware: An Onshore Tax Haven’’ Available on: <https://itep.org/delaware-an-onshore-tax-haven/#.VxqDu5MrLBI>. Accessed April 13, 2018

⁷⁸ ‘‘Delaware Loophole’’ Available on: http://www.pennlive.com/opinion/2016/05/this_year_lawmakers_need_to_cl.html. Accessed April 18, 2018.

⁷⁹ Case T-892/16. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62016TN0892>. Accessed April 15, 2018.

⁸⁰ Apple State Aid, European Commission Press Release. http://europa.eu/rapid/press-release_IP-17-3702_en.htm. Accessed April 15, 2018.

⁸¹ ‘‘ U.S. Treasury Killed A Latvian Bank’’ Available on: <https://www.forbes.com/sites/francescoppola/2018/02/28/why-the-u-s-treasury-killed-a-latvian-bank/#450a75057adc> & <https://www.wsj.com/articles/treasury-department-to-block-latvias-ablv-bank-from-u-s-markets-1518530531>. Accessed April 23, 2018.

demanded from other countries. Consequently, instead of using its power to shut down its and foreign tax havens they steal their business.⁸²

3. The Offshore Leaks

Offshore leaks are the reports and documents of disclosing offshore accounts of wealthy and powerful people and companies around the world which also indicated cases of disclosing international fraud. It is very important to add this chapter and cover its analysis because within the offshore industry this significant moment was an important worldwide discovery which made the most of the middle-class people hear or at least be aware of something called an offshore, as well as mainly impacted a more deliberate and stronger step taken against the abuse by tax havens domestically. This chapter's aim is to describe a major pushing force for the international community and to illustrate a few impacts domestically due to these leaks.

Offshore Leaks is the term describing the reports obtained by the International Consortium of Investigative Journalists (ICIJ) in April 2013 disclosing account details cash transferring, incorporation dates links between individuals and companies of more than 120,000 offshore companies and trusts, as well as 2,5 million files of secret data. These papers caused a stronger attention from the world leaders to investigate the wrongdoings. These leaks exposed politicians, ultra-rich, con men, arms deal and bribery all over the world. The leaks illustrate the tax haven financial secrecy of how the rich and well connected evade taxes and drive corruption and economic disorder worldwide. As said by UK's law scholar Arthur Cockfield "I've never seen anything like this. This secret world has finally been revealed."⁸³

The Panama Papers are leaked detailed documents from the Panamanian law firm Mossack Fonseca and corporate services by an anonymous source in 2013, as well records from other offshore law firms as Appleby and corporate registrations from jurisdictions such as Bahamans, Cook Islands, Malta, Swiss, Cyprus and others. The International Consortium of Investigative Journalists (ICIJ) provided figures and facts such as cash transfers, links between companies and individuals, incorporation dates and the fact that these records showed holdings from people and companies from more than 170 countries and territories.⁸⁴

There were the following impacts of offshore leaks. Firstly, it set off and stimulated a wave of policy changes, official national and international investigations and high-profile resignations around the world. Civil and criminal cases and inquiries were opened in the Germany, Israel, India, United States, Australia, United Kingdom and others. In the UK, their officials improved the company registry and required the companies to identify the owners of offshore

⁸² "Switzerland is so Last Century" Available on: <http://www.pressreader.com/bahrain/bloomberg-businessweek-europe/20160201/281883002363890>. Accessed April 12, 2018.

⁸³ "Secret Files Expose Offshore's Global Impact" Available on: <https://www.icij.org/investigations/offshore/secret-files-expose-offshores-global-impact/>. Accessed April 12, 2018.

⁸⁴ "Offshore Leaks Database" Available on: <https://www.icij.org/investigations/paradise-papers/data-ever-added-offshore-leaks-database/>. Accessed April 19, 2018.

accounts and swore their overseas territories to end corporate secrecy. Austria and Luxembourg announced plans to lift bank secrecy. In Belgium new domestic laws were passed requiring disclosing offshore holdings. Denmark and Canada made new plans on tracking down their citizens with offshore accounts.⁸⁵

Other countries such as Colombia re-enacted long stalled tax law efforts to tax offshore holdings and many companies and officials were raided such as in the scandal of the former president of South Korea Chun Doo-Hwan had offshore company and prosecutors are aggressively seeking the hidden assets for unpaid fines of \$149.3 million. An interconnection with this case was the imprisonment in 2017 of Samsung's head Lee Jae-Yong for five years, however he was free after several months for bribery, giving presents and gifts to the government to win over the support of the major party for Samsung. He was also convicted for hiding assets overseas, concealing criminal proceeds, and perjury in legal confessions.^{86 87}

Other cases involved information from registry in Malta where Ivan Simich a Slovenia's former director of national tax administration moved his assets from Slovenia to a company in Cyprus. Similarly, Zlatan Kudic also a Slovenian business man whose company owns approximately 24 million euro as a tax debt had also hidden these funds in Cyprus.⁸⁸ Another scandal happened in Sweden where Leif Ostling head of Scania a major commercial vehicle manufacturer had kept all his assets and earnings in Luxemburg also creating a subsidiary for moving their dividends, as well as being part of a major lobby from Toyota Consulting in Japan and consequently following a resignation due to the revelations.^{89 90}

On the other side of the spectrum cases concerning famous artists and stars have also been unveiled such as Bono the lead singer of U2 was a shareholder of a shopping centre in Lithuania which was a Malta based entity which transferred funds to Guernsey which is a jurisdiction which is not charging the corporate tax on profits, the company was fined 35 thousand euro fine.⁹¹ As well as the singer Shakira was found in the records of Paradise

⁸⁵ ‘‘Offshore Leaks (International)’’ Available on: <https://impact.gijn.org/case-studies/offshore-leaks-international/>. Accessed April 19, 2018.

⁸⁶ ‘‘Son of Former Korean President Obtained Secret Offshore Company’’ Available on: <https://www.icij.org/investigations/offshore/son-former-korean-president-obtained-secret-offshore-company-amid-familys-tax-evasion/>. Accessed April 19, 2018.

⁸⁷ ‘‘South Korea's Presidential Scandal’’ Available on: <http://www.bbc.com/news/world-asia-37971085>. Accessed April 20, 2018.

⁸⁸ ‘‘Paradise Documents’’ Available on: <http://www.delo.si/ozadja/rajski-dokumenti-za-ciper-klici-ivana-simica.html>. Accessed April 20, 2018.

⁸⁹ ‘‘Leif Östling's Offshore Assets’’ Available on: <https://www.svt.se/nyheter/inrikes/leif-ostlings-offshoretillgangar-sa-gick-det-till> & <https://www.svt.se/nyheter/granskning/ug/svenskt-naringslivs-ordforande-har-formogenhet-utomlands>. Accessed April 20, 2018.

⁹⁰ ‘‘Swedish Business Chairman Resigns Amid Paradise Papers Link’’ Available on: <https://www.icij.org/investigations/paradise-papers/swedish-business-chairman-leif-ostling-resigns-amid-paradise-papers-link/>. Accessed April 20, 2018.

⁹¹ ‘‘Meet The Stars In Paradise’’ Available on: <https://www.icij.org/blog/2017/11/6069/> & <https://www.theguardian.com/music/2018/jan/05/lithuanian-company-linked-to-bono-fined-after-paradise-papers-revelations>. Accessed April 20, 2018.

papers transferring over 30 million dollars of music rights in the island of Malta however being in full compliance with the laws.⁹²

However, as it is seen in part I as well as stated by the ICIJ, there are legitimate means of using offshore tax havens and it is not said that all the companies and person which are listed holding funds in these offshore jurisdiction leaks are illicit or conducting unfair conduct. However, “anonymous companies” whose owners such as terrorists, tax evaders, drug cartels and corrupt politicians do not want to keep their illegally acquired assets under their names and thus creates a company or a series of companies to operate their funds.⁹³

The scope of the affected and impacted companies and persons were all around the world by the offshore leaks. The collaborations between the investigators and journalists resulted in exposing the secret underground world of shadow funds which drew a very high notice and interest by the media and the ordinary people worldwide, thus making it a worldwide concern also for the EU. The effect was of leaking vast amounts of hidden information about the fiscal and tax scheme procedures happening behind the scenes. It can also be noted that the action steps and moves taken by global powers such as the G20 and OECD had an impact for exposing information by the investigative journalists in 2013 through the improvements of the information exchange policies.

Part II Conclusion

As any international rules that impact worldwide if they are followed then they consequently become an international standard which if not followed would result into a negative effect from the rest of the countries, possibly even as a form of sanctions. As the big economy countries are signatory countries which follow the rules laid out by the OECD, those rules become a standard and thus possess of legal significance. This part covered the main advancements and situations in the international sphere and the development of steps taken against tax havens and tax avoidance. With lasting effects to come this part also illustrates the effect of the investigative journalists on the offshore leaks and the position taken by the USA. The strategies and standards made by the OECD are making a subsequent mark within the EU and its position to address the topical issue of conquering tax avoidance between and in the member states covered in the following part.

⁹² “Shakira Transferred Its Musical Rights To Malta” https://www.elconfidencial.com/economia/paradise-papers/2017-11-07/papeles-paraiso-shakira-derechos-musicales-malta_1471224/. Accessed April 20, 2018.

⁹³ “Behind the Corporate Veil”

<http://www.oecd.org/daf/ca/behindthecorporateveilusingcorporatentitiesforillicitpurposes.htm> & <https://www.globalwitness.org/en/archive/anonymous-companies-frequently-asked-questions/>. Accessed April 20, 2018.

Part III. Significances within the European Union Regarding Tax and Offshore Tax Havens

The part II is aimed at discussing the legal implications by the global powers and their taken action when examining the offshore industry, its legal restructuring, caused changes, conditions and goals with regard to the tax havens and how they are viewed. Within the part II the above chapters were aimed at studying the tax haven situation from the worldwide perspective and its caused impact. This chapter will examine and continue to focus narrower into the region of European Union and discuss the impacts and consequences which were caused within and by the EU, as well as the implications caused and involved within the EU.

1. Europe's Position

Tax havens have existed for a long time, however they have become a prominent concern especially in the last years since 2008 worldwide, this can be attributed to the globalization of different country economies and the exposure of tax avoidance schemes. With taxation and its avoidance being in medias' headlines and tax leaks disclosing new shielded and shadowed identities a question of tax jurisdictions and tax schemes have developed into a great challenge within the EU. The major issue which the EU has with tax havens are regarding the possibility they are providing to both legal and natural persons for tax avoidance, especially adding that their secrecy policies allow investors to hide the ultimate beneficiary owner and the origin of the gained proceeds which can be illegally and criminally acquired which result in losses for the EU.⁹⁴

Similarly to the OECD, the EU in efforts to initiate good governance between the EU member states has also drawn up a list of tax havens categorizing them based on their cooperation with tax information exchange policy implementation progress and the EU had made major steps towards its goals to against tax evadors starting from the year 2015. In case of the EU a tax haven, offshore center, secrecy jurisdiction or a non-cooperative jurisdiction are interchangeable terms as they share commonalities which are fundamentally the same regarding the issue that the EU is addressing to tackle.⁹⁵

The common characteristic is comprising a mechanism which allows escaping taxation possible. Such jurisdictions with zero or low taxation policies, tax secrecy and fictitious residence is a combination of elements for hiding the ultimate beneficiary and in turn facilities the possibility for money laundering. As researched by Aziz Jaafar private and public companies using tax havens gain advantages and both should be focused on by the regulators, thus arguing that there is significant impact on the european single market.⁹⁶ Through tax havens, another issue is that by using global and complex tax schemes it creates apparent economic activity done by the company rather than an actual, real economic activity

⁹⁴ "Understanding The Rationale For Compiling 'Tax Haven' Lists" Available on: [http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/614633/EPRS_BRI\(2017\)614633_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/614633/EPRS_BRI(2017)614633_EN.pdf). Accessed April 20, 2018.

⁹⁵ Ibid.

⁹⁶ Aziz Jaafar "Tax Havens and Effective Tax Rates: An Analysis of Private versus Public European Firms" Available on: <https://www.sciencedirect.com/science/article/pii/S0020706315000837>. Accessed April 20, 2018

which is difficult to identify due to the anonymity provided which lacks the traceability of transactions. Thus, in order to tackle tax avoidance, these obstacles have to be removed.⁹⁷

Due to the economic globalization and digitalization, which simplifies creating links between the tax jurisdictions and the flow of money between those tax jurisdiction, and consequently through different bank accounts, this makes evading taxes even less restrictive and accessible today. The tax jurisdiction is considered a place with a defined authority and territory which creates its own tax regulations which are different from other territories within the country allowing individuals and companies manipulate tax laws.

As mentioned by Pierre Moscovici in comparison from the perspective of the EU and the rest of the countries tax competition is asymmetric by its nature, which results in tax competition between countries, as mentioned before, this competition is beneficial for low tax countries where tax havens are established. However, to the contrary of such countries, for high tax and large government countries such as the member states of the EU, it creates tax loss, which means loss of resources and thus reduced economic activity and unfairness, which consequently is lowering the overall growth of the EU.⁹⁸

In June 2015, an Action Plan for Fair and Effective Taxation in the EU was presented by the Commission creating immediate, medium and long-term measures to fundamentally reform corporate taxation within the EU. With the goal that all profits generated within the Single Market shall be effectively taxed in the country where the activity takes place. Addressing five key areas for action: 1. Re-launching the Common Consolidated Corporate Tax Base (CCCTB); 2. Ensuring fair taxation where profits are generated; 3. Creating a better business environment; 4. Increasing transparency; 5. Improving EU coordination.⁹⁹ As said by Valdis Dombrovskis ‘‘Today we have set out an ambitious yet realistic plan for fairer and more growth-friendly taxation in the EU.’’¹⁰⁰

The rationale behind establishing a black list of non-cooperative jurisdictions is to bring about regulatory compliance and pressure tax havens to apply international tax standards. Blacklisting is seen as a tool rather than a solution. The Commission presented in 2016 external strategy for effective taxation for anti-tax avoidance identifying those who play a particular role in tax evasion and avoidance. Assessing 213 countries under the criterion of Transparency, Fair Tax Competition and BEPS implementation (refers to tax avoidance strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations). The reason to why the EU MS were not assessed is because it only refers to the external relations of international tax with the EU.^{101 102}

⁹⁷ Ibid.

⁹⁸ ‘‘Speech by Commissioner Pierre Moscovici’’ Available on: http://europa.eu/rapid/press-release_SPEECH-17-1828_en.htm. Accessed April 20, 2018.

⁹⁹ ‘‘Communication from the Commission to the European Parliament and the Council’’ Available on: https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/fairer_corporate_taxation/com_2015_302_en.pdf. Accessed April 22, 2018.

¹⁰⁰ ‘‘Commission presents Action Plan for Fair and Efficient Corporate Taxation in the EU’’ Available on: http://europa.eu/rapid/press-release_IP-15-5188_en.htm. Accessed April 22, 2018.

¹⁰¹ ‘‘Communication from the Commission to the European Parliament and the Council on an External Strategy for Effective Taxation’’ Available on: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1454056581340&uri=COM:2016:24:FIN>. Accessed April 22, 2018.

¹⁰² ‘‘Questions and Answers on the EU list of non-cooperative tax jurisdictions’’ Available on: http://europa.eu/rapid/press-release_MEMO-17-5122_en.htm. Accessed April 22, 2018.

The latest updated list of non-cooperative tax jurisdiction was made on March 13 of 2018 with a list of jurisdiction which refuses to engage with the EU or to address good tax governance today are American Samoa, Bahamas, Guam, Namibia, Palau, Samoa, Saint Kitts and Nevis, Trinidad and Tobago, US Virgin Islands. With regard to sanctions, the jurisdictions listed are now negatively linked to the EU funding, thus European Fund for Sustainable Development (EFSD), the European Fund for Strategic Investment (EFSI) and the External Lending Mandate (ELM) are not allowed to be channeled, on the ground as seen under Article 22 of ESFD of excluded activities.¹⁰³ However, only direct investment will be allowed, such as funding projects. The list will be updated once a year following its monitoring results. Additionally, in the final Council Conclusion the EU has listed all the countries and their development status which are still considered to be under the non-cooperative jurisdictions for tax purposes regarding the EU.¹⁰⁴

However, a criticism made by Oxfam (International charitable organizations focusing on the alleviation of global poverty) who applied EU criteria screening 92 countries, including the EU, stated that based on the EU criterion its tax haven blacklist should include at least 35 countries and at least 4 EU countries would be blacklisted as well, if the EU would apply its own criteria to its member states, such as the Switzerland, Bermuda (owned by the UK), Ireland, Luxembourg, Netherlands and Malta.¹⁰⁵

Thus, as described by Aurore Chardonnet Europe's position is very serious however in a progressive development advancing against the tax havens and most importantly against their usage for avoiding taxes within and outside the EU as described in the following chapter. The Commission argues that these tax avoidances are very degrading in the long run, thus, because of the lost money in revenues of large EU companies due to tax avoidance the money is not going towards the better life of the EU, such as new schools, public services like trains and buses and interchangeably it created higher taxes to the EU families.¹⁰⁶

2. Europe's Legislative Position

Europe's ambition to create a simpler, fairer and more effective corporate taxation in the EU starts with a plan which was made in 2015 which can be effectively categorized under the Commission's Anti-Tax Avoidance Package. This is the Commissions agenda for the fair corporate taxation in the EU to prevent aggressive tax planning and upgrade tax transparency by creating concrete measures to do so. Thus, this chapter will analyse the timeline of the following three categories: effective taxations plan, tax transparency plan, and the better business environment. Covering the advances in the EU for tackling tax evasion from 2015 until 2018.

¹⁰³ Regulation (EU) 2017/1601 of the European Parliament and of the Council of 26 September 2017 establishing the European Fund for Sustainable Development (EFSD). Available on: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2017.249.01.0001.01.ENG. Article 22. Accessed April 22, 2018.

¹⁰⁴ "Council Conclusions" Available on: <http://www.consilium.europa.eu/media/31945/st15429en17.pdf>. Accessed April 22, 2018.

¹⁰⁵ "Effective EU tax haven blacklist must include at least 35 countries" Available on: <https://www.oxfam.org/en/pressroom/pressreleases/2017-11-27/effective-eu-tax-haven-blacklist-must-include-least-35-countries>. Accessed April 22, 2018.

¹⁰⁶ Ibid.

a) Effective Taxation

In 2015 the EU created an Action Plan for Fair and Effective Taxation setting out reforms to corporate tax framework within the EU to tackle the abuse of taxes, ensure sustainable revenue and support for a better business environment in the Single Market, addressing five key areas, as described above.¹⁰⁷ Furthermore, the Councils discussion to review Interest and Royalties Directive. As in 2011, the Commission adopted a proposal for a common system of taxation applicable for interest and royalties payments between companies thus to enlarge the scope of Directive 2003/49/EC addressing the problem that the cross-border interest and royalty payments are subject to heavier taxation than domestic transactions. However, in 2015 the Council of the EU rediscussed the anti-abuse clause which would apply as a "de minimis" rule preventing member states from granting the benefits of the directive to arrangements that are not "genuine", such as made to gain a tax advantage.¹⁰⁸

In addition, in June 2015 the Commission communicated its Action Plan discussing work to improve Transfer Pricing in the EU. thus, improving the transfer pricing (TP) framework in the EU to ensure the taxation of intra-group profits (commercial transactions between two companies of the same group simultaneously) is more fairly and linked to the place of activity and not to the place which is less tax rigorous.¹⁰⁹ Guidance and Monitoring of New Rules for Patent Boxes made in 2015, which is a special tax regime for intellectual property revenues which refers to the reduced tax rate on revenue coming from IP products. Special groups were asked to monitor the necessary legislative changes for patent box regimes and start to close the regimes to new entrants starting from the end of June 2016 and end all benefits for existing claimants by June 2021.¹¹⁰

In December the Councils Conclusion on Code of Conduct Reform was made Addressing that a better use of this code must be made in future such as the need to update the criteria and adjust the governance of the Code. In 2016 the code had a reform conclusion by the Council suggesting the working methods should be updated for even more efficiency and expresses its wish to facilitate and support the working group with its dedication.¹¹¹

The Anti-Tax Avoidance Directive (ATAD 1) Proposal made in January by Commission and in June of 2016 the Council already adopted the Directive (EU) 2016/1164 laying down rules against tax avoidance practices that directly affect the functioning of the internal market of the EU. Containing five legally-binding anti-abuse measures for aggressive tax planning and obliging that member states should apply these measures already from 1 January 2019.

¹⁰⁷ "Action Plan on Corporate Taxation" Available on:

https://ec.europa.eu/taxation_customs/business/company-tax/action-plan-corporate-taxation_en. Accessed April 24, 2018.

¹⁰⁸ "Councils discussion to review Interest and Royalties Directive" Available on:

<https://www.consilium.europa.eu/media/23408/background.pdf> & <http://www.europarl.europa.eu/legislative-train/theme-deeper-and-fairer-internal-market-with-a-strengthened-industrial-base-taxation/file-interest-and-royalty-payments-recast>. Accessed April 24, 2018.

¹⁰⁹ "EU Joint Transfer Pricing Forum" Available on:

https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/jtpf0052015programmeofwork.pdf. Accessed April 24, 2018.

¹¹⁰ Report of the Council of the European Union. Available on :

<http://data.consilium.europa.eu/doc/document/ST-10047-2017-INIT/en/pdf>. pp. 7-8. Accessed April 24, 2018.

¹¹¹ "Council Conclusions on the Code of Conduct on Business Taxation" Available on:

<http://www.consilium.europa.eu/en/press/press-releases/2016/03/08/ecofin-conclusions-code-conduct-business-taxation/>. Accessed April 24, 2018.

Creating, however, a minimum level of protection against corporate tax avoidance within the internal market, while ensuring a more stable and fairer environment for businesses.¹¹²

The Commission also created a commentary memorandum about its proposal, especially examining the Article 9 of the Directive which is targeting the hybrid-mismatch which is essentially differences arising from the legal characterisation of an entity or a financial instrument originating between a taxpayer in one Member State and an associated enterprise in another Member State as well as from a tax structured arrangement between the parties in the Member States. Thus, stating that the deduction shall be given only in the Member State where such payment has its source.¹¹³

Correspondingly, on May of 2017, the Council adopted an Anti-Tax Avoidance Directive 2 (ATAD 2) which is targeting the hybrid mismatches between the third countries and the EU. Both Directives are in force, however, the new Directive is amending the Article 9 of ATAD 1 which is extending the scope of the Article 9 to also the mismatches between EU member states and the third countries. As well as providing consistent rules with the OECD recommendations in the 2015 BEPS Report on Action 2 about Neutralise the Effects of Hybrid Mismatch Arrangements preventing double non-taxation practices by eliminating the tax benefits of mismatches and ending costly multiple deductions for a single expense rather than of multiple foreign tax credits. As researched by Fred van Horzen, ATAD 2 is an important milestone against aggressive tax arrangements and will impact the current situation of companies and raises a question of will the EU member states harmonize corporate tax systems.^{114 115 116}

Recommendation on Tax Treaties were made in January 2016 by the European Commission (EU) 2016/136 ‘‘on the implementation of measures against tax treaty abuse’’. Stressing that companies which benefit from the single market by generating profits should also pay tax on those profits in the member state where their activity took place and in the EU, respectively. Noting that, tax treaties do create opportunities for tax avoiders for reduced or non-taxation through treaty shopping or other abusive strategies and thus measures against treaty abuse must be taken. Stating that the general anti-avoidance rules must be based on the principal purpose test (PPT) provided by the OECD Model Tax Convention which suggest for a multilateral instruments a genuine economic activity or that granting economic benefit must be present (Action 6 BEPS report) and preventing the practice of avoiding the permanent establishment (PE) status artificially (Action 7 BEPS report).^{117 118}

¹¹² The Anti-Tax Avoidance Directive. Available on: https://ec.europa.eu/taxation_customs/business/company-tax/anti-tax-avoidance-package/anti-tax-avoidance-directive_en & http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.193.01.0001.01.ENG&toc=OJ:L:2016:193:TOC. Accessed April 24, 2018.

¹¹³ Explanatory Memorandum by the European Commission. Available on: https://ec.europa.eu/taxation_customs/sites/taxation/files/com_2016_687_en.pdf/. Accessed April 24, 2018.

¹¹⁴ ‘‘Anti-Tax Avoidance Directive 2’’ Available on: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2017.144.01.0001.01.ENG&toc=OJ:L:2017:144:TOC. Accessed April 24, 2018.

¹¹⁵ KPMG Meijburg & Co ‘‘EU Anti-Tax Avoidance Directive 2: hybrid mismatches with third countries’’ Available on: <https://meijburg.com/news/eu-anti-tax-avoidance-directive-2-hybrid-mismatches-with-third-countries>. Accessed April 24, 2018.

¹¹⁶ OECD/G20 Final Reports. Available on: <http://www.oecd.org/ctp/beps-explanatory-statement-2015.pdf>. Action 2. Accessed April 24, 2018.

¹¹⁷ Commission Recommendation (EU) 2016/136. Available on : <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016H0136> & <http://www.europarl.europa.eu/legislative-train/theme-deeper->

The External Strategy for Effective Taxation complimenting the anti-tax avoidance measures with an objective to secure taxation effectively regarding the third countries, thus leveling the playing field and creating the tax haven blacklist described above. The external strategy examines tax good governance standard implementation of the third countries through the bilateral agreements and state peer to peer practices. As well as, assessing the list of the third countries within the black and gray lists also analyzing its criteria for identifying these countries and thus reinforcing the link between EU funds and good tax governance standards.¹¹⁹

The Creation of the First Common EU list of Third Countries, as already touched upon, created in December of 2017 the first-ever list of non-cooperative tax jurisdictions was agreed upon. However, in 2018 January eight jurisdictions were removed as they complied with the international tax standards and following more commitments made by the rest of the jurisdictions, where in March 2018 the Council made the following amendment in the list assessing the implementation of exchange of information policies set out by the OECD and thus 3 jurisdictions removed, 3 added to EU list of non-cooperative jurisdictions. Bahrain, the Marshall Islands, and Saint Lucia were removed from the list and the Bahamas, Saint Kitts and Nevis and the US Virgin Islands were added based on the analysis monitored by the EU experts.¹²⁰

Following the work to improve transfer pricing made in 2015 a Proposal on Transfer Pricing in 2017 was made firstly in may renewing the mandate for the organization on transfer pricing and secondly the EU Joint Transfer Pricing Forum created a report providing the best practice strategies and issuing recommendations for increasing the objectivity and transparency for transfer pricing. As well as, including the OECD Transfer Pricing Guidelines (TPG) for identifying the commercial relations between the enterprises and the need to control transactions for the relevant conditions in the enterprise.¹²¹

In addition to the new rules of patent boxes set out in 2015, as in general benefits are given to the IP development products and thus encouraging the R&D expenditure and designed to result in innovation, the patent boxes are designed to provide tax relief at the later stage of innovation cycle when income is generated from the gains of the IP and thus targets the

and-fairer-internal-market-with-a-strengthened-industrial-base-taxation/file-recommendation-on-tax-treaties. Accessed April 24, 2018.

¹¹⁸ OECD/G20 Final Reports. Available on: <http://www.oecd.org/ctp/beps-explanatory-statement-2015.pdf>. Action 6 & 7. Accessed April 24, 2018.

¹¹⁹ Communication from the Commission on an External Strategy for Effective Taxation. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2016:24:FIN> & <http://www.europarl.europa.eu/legislative-train/theme-deeper-and-fairer-internal-market-with-a-strengthened-industrial-base-taxation/file-external-strategy-for-effective-taxation>

¹²⁰ Common EU list of Third Country Jurisdictions for Tax Purposes. Available on : https://ec.europa.eu/taxation_customs/tax-common-eu-list_en & <http://www.consilium.europa.eu/en/press/press-releases/2018/01/23/taxation-eight-jurisdictions-removed-from-eu-list/> & http://www.consilium.europa.eu/en/press/press-releases/2018/03/13/taxation-3-jurisdictions-removed-3-added-to-eu-list-of-non-cooperative-jurisdictions/?utm_source=dsms-auto&utm_medium=email&utm_campaign=Taxation%3a+3+jurisdictions+removed%2c+3+added+to+EU+list+of+non-cooperative+jurisdictions. Accessed April 24, 2018.

¹²¹ Joint Transfer Pricing Forum. Available on: https://ec.europa.eu/taxation_customs/sites/taxation/files/jtpf0072017encomps.pdf & <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A42006X0728%2801%29> & https://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en. Accessed April 24, 2018.

commercial activity and further development of the early product rather than further R&D. the process of development is still in process as The Lisbon Strategy is an economic development plan seeking to make the EU “the most competitive and dynamic knowledge-based economy in the world” and thus the EU is willing to make the IP innovation registration within the EU and not offshore.¹²²

b) Tax Transparency

The Proposal for Transparency on Tax Ruling in 2015 the Commission welcomes agreement made by member states on automatic exchange of information with the OECD on tax ruling BEPS Action 13 creating the Country-by-Country Reporting standards. All member states will be equipped with the information they need to protect their tax bases and assess the companies in its country creating a greater cooperation between member states. A remark made by Jean-Claude Juncker “It marks a leap forward in our efforts to advance on tax coordination and tax harmonisation.”¹²³ Following by taking the next steps for implementing a transparency regulation within the EU which are examined above and further. Latvia’s tax transparency laws are implemented within its system in likumi.lv as seen by the OECD country profile.¹²⁴

In 2016 the Commission focused its campaign on boosting tax transparency in order to counter tax avoidance and evasion, especially taking into account the media leaks of Panama Papers which were leaked in 2015. Due to the abuse of the tax schemes and aggressive planning by intermediaries as seen from the offshore leaks such as tax advisors, accountants, lawyers and banks have played a crucial role in facilitating wealthy individuals and big companies escape fair taxation within the EU.¹²⁵

Thus, in 2017 the European Commission published the Proposal for a Council Directive amending Directive 2011/16/EU about the mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements. Stating that “It is thus crucial that information which may escape from the scope of this Directive be captured” this is intended to capture gap-filling by the intermediaries “through placing an obligation on intermediaries to report on potentially aggressive tax planning arrangements.” Consequently, it imposes an obligation upon intermediaries to report any cross-border arrangement which have unclear benefits and are used to reduce taxes (also includes the taxpayers themselves also reporting). In the upcoming years, National laws will provide sanctions for non-compliance and the new reporting obligations would enter into force from 1 January 2019 as seen under Article 2 of the Proposal.^{126 127}

¹²² Lisbon European Council 23 and 24 March 2000 Presidency Conclusions. Available on: http://www.europarl.europa.eu/summits/lis1_en.htm. Accessed April 24, 2018.

¹²³ Tax transparency, European Commission Press Release. Available on: http://europa.eu/rapid/press-release_IP-15-5780_en.htm. Accessed April 25, 2018.

¹²⁴ Latvia Transfer Pricing Country Profile. Available on: <https://www.oecd.org/tax/transfer-pricing/transfer-pricing-country-profile-latvia.pdf>. Accessed April 25, 2018.

¹²⁵ Fair Taxation, European Commission Press Release. Available on: http://europa.eu/rapid/press-release_IP-16-2354_en.htm. Accessed April 25, 2018.

¹²⁶ Proposal for a Council Directive amending Directive 2011/16/EU. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017PC0335>. Accessed April 25, 2018.

¹²⁷ Tax Transparency for Intermediaries. Available on: https://ec.europa.eu/taxation_customs/sites/taxation/files/factsheet_intermediaries_proposal_06-2017.pdf &

The new EU rules on tax ruling come into effect in 2017 to ensure that Member States have all the information necessary for multinational companies in other EU countries. As of 2017 member states are obliged to automatically exchange information on all new cross-border tax rulings, thus as seen in Directive 2011/16/EU (mentioned above for the proposal to amend) Article 8 where the competent authorities of the EU member states shall exchange information automatically, communicating it to the other member states authority regarding information that is available from the period of 1 January of 2014 concerning residents in that other Member State, concerning the income and capital information.¹²⁸

c) Better Business Environment

Proposal on Dispute Resolution made in 2016 was crucial for reducing compliance costs and administrative burdens.¹²⁹ In 2017 the Council adopted Directive (EU) 2017/1852 for resolving disputes related to the interpretation of tax treaties, in particular, the double taxation disputes within in the EU regarding companies and persons. Issues occur when two or more countries claim the right to tax the same profits or income made by the company or a person which can happen due to different interpretations of bilateral tax treaties or mismatch of national rules in case of transfer pricing arrangements between companies subsidiaries or persons giving services in two or more countries.¹³⁰

For illustration purpose the change made by this treaty member states were not always able to enforce their judgment on resolving transfer pricing, now, however, there is an obligation to arrive at a resolution in all disputes stemming from the tax treaties which affect the businesses and citizens tax position. Now the tax payers have a recourse to the national court in case the mechanisms is not applied correctly. Before when procedures were taking unpredictable time, however not there is a clearly defined period of 18 months in which the arbitration phase has to take place. The scope has been extended to all tax disputes arising from tax treaties and other relevant international agreement. Mainly, before there was no requirement for transparency, now, however, there is an obligation to notify the tax payer and publish an abstract of the arbitration decisions.¹³¹

In 2016, a Proposal for re-launch of Common Consolidated Corporate Tax Base (CCCTB) was made by the European Commission. First proposed in March 2011 to create a single set of rules for calculating EU corporate tax rates within the single European Market was widely considered as a very radical initiative. However, re-visited in arguing the support growth, jobs

[http://www.ey.com/Publication/vwLUAssets/European_Commission_proposes_new_transparency_rules_for_intermediaries/\\$FILE/2017G_03934-171Gbl_European%20Commission%20proposes%20new%20transparency%20rules%20for%20intermediaries.pdf](http://www.ey.com/Publication/vwLUAssets/European_Commission_proposes_new_transparency_rules_for_intermediaries/$FILE/2017G_03934-171Gbl_European%20Commission%20proposes%20new%20transparency%20rules%20for%20intermediaries.pdf). Accessed April 25, 2018.

¹²⁸ Council Directive 2011/16/EU. Available on: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32011L0016>. Article 8. Accessed April 25, 2018.

¹²⁹ Proposal for a Council Directive on Double Taxation Dispute Resolution Mechanisms in the European Union. Available on : https://ec.europa.eu/taxation_customs/sites/taxation/files/com_2016_686_en.pdf & [http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI\(2017\)599273](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2017)599273). Accessed April 25, 2018.

¹³⁰ Council Directive (EU) 2017/1852. Available on: <http://eur-lex.europa.eu/eli/dir/2017/1852/oj>. Accessed April 25, 2018.

¹³¹ Resolution of double taxation disputes in the European Union. Available on: https://ec.europa.eu/taxation_customs/business/company-tax/resolution-double-taxation-disputes_en_en. Accessed April 25, 2018.

and investment in the EU and fixing the tax system, making it impossible to take profit from one EU member state and then hiding them in a tax haven, letting the enterprise make only one tax income statement in one country for all its other incorporated subsidiaries in other member states and currently the reports are processed in the EU for further implementation.¹³²

The Proposal consists of two legislative draft directives a proposal for a directive establishing a common corporate tax base (CCTB)¹³³ and proposal for a directive establishing a common consolidated corporate tax base (CCCTB).¹³⁴ As seen in both proposals fall within the internal market and are facilitating businesses with a single rulebook of corporate tax requirements. The aim is not to harmonise tax rates as this falls out of the scope, because it is a sovereign right of the member states to do so, however, the two draft directives are dealing with taxation to reduce administrative costs for businesses by creating requirements for all the 28 different corporate taxation systems.¹³⁵

Part III Conclusion

As seen in this part, Europe has come to a position where it does not want its member states to suffer from being cheated in tax money every year by big companies and high net-worth individuals which are able to avoid taxes through the help of professional intermediaries by creating tax arrangements which target the gaps within the law. With the steps taken by the OECD and the G20 countries emphasizing from the year 2008, the EU has made its major move to tackle tax avoidance from the year 2015.

As analysed it has been a very dynamic period for the EU by adopting new proposals and new treaties for the EU member states in order to facilitate their combat with tax avoiders through the creation of effective taxations laws and proposals, tax transparency initiatives, and the better business environment so that member states and its companies and citizens have a more sufficient way to calculates taxes without additional burdens and costs and potentially towards a single EU taxation system. However, discussion raised by Friedrich Heinemann is whether EU should be granted an autonomous tax source and as the findings show this could be attributed to the interest of each member state as a sovereign country however a single revenue system could contribute towards the whole EU taxation and thus can be limiting tax avoidance and decreasing inequality.¹³⁶

¹³² ‘‘CCCTB’’ Available on: https://ec.europa.eu/taxation_customs/business/company-tax/common-consolidated-corporate-tax-base-ccctb_en & <http://www.europarl.europa.eu/news/en/press-room/20180219IPR98113/new-eu-corporate-tax-plan-embracing-digital-presence-approved-in-committee> & https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2961278. Accessed April 24, 2018.

¹³³ Proposal for a Council Directive on a Common Corporate Tax Base COM/2016/0685 final - 2016/0337 (CNS). Available on : <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2016:0685:FIN>. Accessed April 25, 2018.

¹³⁴ Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) COM/2016/0683 final - 2016/0336 (CNS). Available on: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2016:0683:FIN>. Accessed April 25, 2018.

¹³⁵ Common Consolidated Corporate Tax Base. Available on: <http://www.consilium.europa.eu/en/policies/ccctb/>. Accessed April 25, 2018.

¹³⁶ Friedrich Heinemann, Philipp Mohl, Steffen Osterloh. ‘‘Who’s afraid of an EU tax and why? - revenue system preferences in the European Parliament’’ Available on: <https://link.springer.com/article/10.1007/s11558-008-9046-1>. Accessed April 25, 2018.

Part IV. Case Examination

This part will focus on illustrating the above-mentioned parts into practice by adding cases to those already mentioned within the parts, thus examining cases of well-known companies such as IKEA and McDonald's and individuals such as Leonel Messi and Marcelo Odebrecht whose reputation and lives were impacted by their use of special deals, tax arrangements and schemes, which eventually fired back. The purpose of these cases is to research the actual practical implication and consequences of using tax havens and tax schemes in order to evade or avoid taxes.

1. Transfer-Pricing & State Aided Companies

IKEA has created a tax scheme and a corporate structure designed for tax avoidance and profit shifting already since its founding family started giving out franchise rights in the 1980s. Reportedly, IKEA has been avoiding 84% of its 14.3 billion yearly royalty income tax through the use of tax havens channelled through such countries like Luxembourg and Netherlands to Liechtenstein. Within the context of European countries, it has been estimated that over a period of six years from 2009 to 2014 EU has lost 1 billion euros in tax revenues from IKEA's legal tax avoidance.

IKEA has been using the intracompany loan tax scheme basing on the Luxembourg tax laws and Belgian interest deduction. Notably, the EU Corporate Tax Package covered above does not fully address the tax avoidance scheme, while it has impacted the foreign offshore jurisdictions, tax competition between the member states has not been as impacted.¹³⁷ As researched by Li Liu from Oxford University large corporation are very elastic with shifting profits and do so each time laws change in one of the country they function, however with regards to transfer of mispricing in goods is not concentrated in tax havens as goods require larger quantities of trade flow and small jurisdictions may not have enough trade flow.¹³⁸ Thus, in case of IKEA they created the Inter IKEA and made a business model solely functioning on royalties.

IKEA was one of the multinational companies reviled in the 2014 Luxleak offshore leaks by the ICIJ disclosing all deals related to these companies in Luxembourg.¹³⁹ In the 1980s when IKEA's business model was transformed into a franchising model it became a company operating the franchise business called Inter IKEA which does not own any IKEA shops and

¹³⁷ Information on Tax Planning Strategies of IKEA. Available on : https://www.greens-efa.eu/legacy/fileadmin/dam/Documents/Letters/Greens-EFA_letter_to_Commissioners_Vestager_and_Moscovici-IKEA_report_01.pdf. Accessed April 25, 2018.

¹³⁸ Li Liu, Tim Schmidt-Eisenlohr, Dongxian Guo "International transfer pricing and tax avoidance: Evidence from linked trade-tax statistics in the UK" Available on: https://www.sbs.ox.ac.uk/sites/default/files/Business_Taxation/Docs/Publications/Working_Papers/Series_17/WP1715.pdf. Accessed May 11, 2018.

¹³⁹ Luxembourg Leaks. Available on : <https://www.icij.org/investigations/luxembourg-leaks/leaked-documents-expose-global-companies-secret-tax-deals-luxembourg/>. Accessed April 25, 2018.

in turn it receives a 3% fee of all shops worldwide turnover meaning the collected cash from its accounts receivable and inventory investments. Similarly, to Apple, the Commission's investigation led to stating that the tax benefits received by Inter IKEA were unique which are not available to other companies' subject to the same Netherland tax laws. Thus, Luxemburg is breaching the Article 107 of the TFEU ¹⁴⁰ by giving selected companies a better treatment which is considered a state aid.¹⁴¹

The corporate tax scheme IKEA was using through signing private deals with and approved by the Luxemburg government called Tax Rulings. The first scheme is called Internal Loans, this is done by creating an internal loan structure in Luxemburg done by lending money to itself overseas and taking it back with interest, thus the international subsidies are paid from revenues and then the money is shifted back to the tax friendly Luxemburg where the company is tax free and on top of that as the loan was given is comes back with an interest.¹⁴²

The second scheme is called Royalty Payments where a Luxemburg subsidiary takes control of the companies' brand name and then charges for its use from the international companies in again in the tax friendly Luxemburg. Third tax scheme used is Future Tax Offsets, thus turning loses into wins. Consequently, the decrease of the value of the company's investments can be used for tax offsets and thus paying less, such as in a case when the stock prices fall.¹⁴³

In addition, a similar case regarding transfer pricing arrangements were made by McDonald's which in 2009 restructured its business to also extract billions in royalty fees from its Europe's operations causing a 1-billion-euro loss was found also in the Luxleaks. They established a Luxembourg intellectual property holding company with a Swiss branch, which was done being able to lower its bills all over EU, as well as this was done right after when Luxemburg changed its policy for IP, thus being able to gain significant reduction of tax rates.

However, as OECD has been alerted and Luxembourg ministry of finance has presented a bill containing the abolishment of the Patent Box regime by 2021.¹⁴⁴ Likewise, they also moved their headquarters from London to Geneva which was reported as for tax purposes.¹⁴⁵ As noted by James G. S. Yang and Victor N. A. Metallo in both cases of IKEA and McDonald's

¹⁴⁰ Treaty on the Functioning of the European Union. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:12012E/TXT>. Article 107. Accessed April 26, 2018.

¹⁴¹ State aid IKEA, Eurpean Commission Press Release. Available on: http://europa.eu/rapid/press-release_IP-17-5343_en.htm. Accessed April 26, 2018.

¹⁴² IKEA Corporate Tax Avoidance: Available on: <https://www.greens-efa.eu/en/article/corporate-tax-avoidance-5963/>. Accessed April 25, 2018.

¹⁴³ Ibid.

¹⁴⁴ Abolition of Luxembourg IP Box Regime. Available on: <https://www.dlapiper.com/en/netherlands/insights/publications/2015/11/abolition-of-luxembourg-ip-box-regime/>. Accessed April 26, 2018.

¹⁴⁵ Unhappy Meal, €1 Billion in Tax Avoidance on the Menu at McDonald's. Available on: <http://www.notaxfraud.eu/sites/default/files/dw/FINAL%20REPORT.pdf>. Accessed April 26, 2018.

special tax treatment was made by the governments which are equivalent to illegal tax subsidies and thus both have pending cases in the European Court of Justice.¹⁴⁶

2. Tax Fraud Individuals

As David Seim suggests, after the 2008 crisis many academics and policymakers have risen against what has led to visible wealth inequality, also some to advocate redistribution by means of progressive wealth taxation within the system, but this however stimulates the wealthy who are being taxed more to find ways to safeguard their wealth.¹⁴⁷ Especially the rise of attention regarding these questions of wealth inequality were raised after the release of offshore leaks, as seen in the following cases.

For illustrating, after the release of the Panama Papers in 2015, the Brazilian authorities arrested the billionaire, former CEO Marcelo Odebrecht of Petrobras a Brazilian oil company in connection of bribery and corruption at the state-run oil company. He was arrested and reportedly accused on the knowledge of his company's bribery of around 230 million dollars to the politicians, stating that the police have all the documents showing a direct connection with contracts within the cartel. This investigation was the biggest political corruption and corporate scandal in Brazil putting the economy at risk.¹⁴⁸ Based on the latest report he was sentenced to 19 years in prison but after admitting to guilt and providing evidence to the authorities, as well as paying around 30 million in fines his sentence was reduced and under the deal, he is put under house arrest.¹⁴⁹

A football superstar player celebrity tax fraud case was convicted on Lionel Messi (and his father) who was found guilty of defrauding Spain of €4.1m between 2007 and 2009 by using tax havens in Uruguay and Belize and a series of shell companies in the UK and Switzerland to shield licensing income and royalties from tax authorities. He was found guilty by the Spanish supreme court in 2013 and had to stand trial in 2015, he and his father were fined 2 million each and 21-month prison time. However, currently he has vowed to appeal, and the matters are still proceeding.¹⁵⁰

¹⁴⁶ James G. S. Yang and Victor N. A. Metallo "The Emerging International Taxation Problems" Available on: <http://www.mdpi.com/2227-7072/6/1/6/htm>. Accessed May 10, 2018.

¹⁴⁷ David Seim "Behavioral Responses to Wealth Taxes: Evidence from Sweden" Available on: <https://pubs.aeaweb.org/doi/pdfplus/10.1257/pol.20150290>. Accessed May 10, 2018.

¹⁴⁸ Head of Petrobras Arrested. Available on: <https://www.nytimes.com/2015/06/20/business/international/brazil-arrests-head-of-odebrecht-in-petrobras-scandal.html>. Accessed April 26, 2018.

¹⁴⁹ Billionaire Odebrecht in Brazil scandal released to house arrest. Available on: <https://www.reuters.com/article/us-brazil-corruption-odebrecht/billionaire-odebrecht-in-brazil-scandal-released-to-house-arrest-idUSKBN1ED2GF>. Accessed April 26, 2018.

¹⁵⁰ Messi Prison Sentence. Available on: <https://www.forbes.com/sites/kellyphillips/2017/05/24/messi-prison-sentence-stands-after-supreme-court-rejects-tax-fraud-appeal/#7cf305e11dff> & <https://www.forbes.com/sites/kellyphillips/2013/06/20/court-date-set-for-messi-as-details-emerge-on-tax-evasion-charges/#1f3e4986a879> & <http://www.bbc.com/news/world-europe-40534761> & <http://www.businessinsider.com/lionel-messi-prison-sentence-tax-fraud-case-2017-5>. Accessed April 26, 2018.

Part IV Conclusion

As seen above from the analysis of the cases large conglomerate companies such as IKEA, Apple, McDonald's and others within the Luxleaks list using offshore tax havens through the creation of tax arrangements to manipulate the gaps within the laws of different countries have been avoiding taxes for years, as well as individuals seen in Panama List using tax havens to safeguard their wealth make up a tremendous amount of lost tax money for governments. However, as seen in the case of Luxembourg and Ireland these governments have made deals to facilitate such activities, one can argue that there is corruption behind it, and other can look also at the possible labour opportunities available for the citizens such as those given by Apple in Ireland, thus it can be regarded as a twofold situation.

Thesis Conclusion

The aim of the thesis was to answer the research question of whether the legal and business structure and the views on tax havens have changed after 2008 compared to today and what are the peculiarities thereof impacting today's businesses and tax haven jurisdictions through the proposed hypothesis and the analysis made within the thesis, accordingly the hypothesis has been held as correct as the legal and business structures have changed and the disclosure of the shadow economy has opened discussion for conquering the effects of tax havens.

Thus, the proposed hypothesis was that the world's tax haven position due to global tax optimization and jurisdictional transparency issues has been changed, especially with significant changes made within the period of 2008 until 2018, influenced by international leaders. In turn changing the previous functioning of companies and individuals regarding the usage of tax havens, leading tax haven jurisdictions to amend their laws and principles.

The hypothesis holds true based on the research conducted which disclosed the international steps taken by the OECD and G20, such as the transparency rules, implementation of OECD recommendation in practice, amendments and bilateral treaties made between the tax havens and G20 members and peer reviews. As well as, the comprehension of the huge amount of money being hidden in tax havens amounting to trillion euros causing countries to take notice and make action.

As companies have avoided full payments of taxes legally, such as IKEA and McDonald's the amounts are too large to be left without consequences within the EU and as directed by Zoe and John Prebble moral and fairness principles are especially important and must be taken into consideration as we are all in a social and global environment and these companies still face fees and liability issues within the EU, however this has been a move done by the EU and not by the member states, fines were not made by the U.S. who however made sanction upon tax havens instead, showing that the EU is stepping up as strict regulator addressing the wrongdoers.

Furthermore, the large industry of competitive tax jurisdictions caused by the international tax law asymmetry are letting purposely structured tax arrangements take advantage of these gaps. In addition, as seen in the Apple case, countries are willing to make deals for the good of their citizens to gain workplaces, however these actions are against the fair competition principle, as one company is given benefits with others are not. Especially, when deals and structures were disclosed by the offshore leaks, new investigations of companies using tax havens are pending every day worldwide as many are exploiting the system.

As states are being cheated it accumulates and becomes a worldwide financial problem as stated by Leonce Ndikumana tax havens do facilitate illegal transactions and holding non-taxed capital inequality further arises, thus measures had to be taken changing the way offshore tax haven jurisdictions have been functioning through new regulations, recommendations, peer reviews, creating countermeasures from tax scheme analysis, imposing an obligation on advisory intermediaries to report illegal activities therefore diminishing illegal transactions, fund safeguards, secrecy and creating transparency between the information held in tax haven jurisdictions.

However, Daniel J. Mitchell has a sound argument for the usage and importance of jurisdictional tax competition, stating that it is important in a democratic society to create

elasticity for businesses and other sources of income for jurisdictions which do not have other strong means of generating income such as natural resources. Moreover, income tax is not the main source for social services as there are various taxes. Thus, pondering on whether one would be able to use half of their income which is taken by tax authorities on their needs more effectively or on public issues which people see fit more efficiently is a controversial question which is not addressed by states.

In addition to above mentioned, Steven J. Klees research on the future of education also has to be addressed as today most education is public, but funds are not used efficiently enough as the level for schooling quality and environment are worsening, thus the next generations are potentially being harmed. He imposes the reason for worsening conditions is tax avoidance and ineffective usage of the nation's budget, however if people would earn twice as much they would be incentivised for their children to go to private schools rather than public schools.

When observing this global situation from an economic perspective of cause and effect, while it is true that there are individuals who use tax havens for illegal purpose, many others use it due to the too harsh national tax regimes. Thus, the costlier the regime is, more individuals and companies are incentivised to search for alternative means of structuring their business and financial wealth to keep more of what they earn. As well as other strict financial laws, as proposed by McConvill, Mykola Orlov, Christopher Bickley and others, encourage the use of tax havens for operations which are then possible to conduct more effectively.

Consequently, the research has approved the hypothesis that the world's tax haven position has changed due to global tax optimization arrangements. Jurisdictional transparency issues are sought out to be conquered by global organizations and large economy countries are forcing changes for transparency to limit tax avoidance structures. With especially significant changes made within the period of 2008 until 2018 in the international and EU sphere.

Business and individual functioning has changed as well as new laws are made and current tax arrangements are being scrutinised. Tax haven jurisdictions are being categorized as cooperative and non-cooperative and forced to amend their principles and laws of secrecy, miscommunication and potentially more. Along with new proposals and regulations stemming in the EU, which demonstrates exciting changes in the further upcoming years within the tax system of the member states and the single market.

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