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Tax avoidance and tax ethics in technological companies

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ABSTRACT

Tax avoidance is likely the most misconstrued word in the tax world. It is accepted that researchers and specialists infrequently utilize the term and use it related terms like "tax evasion" or "tax fraud". These words now mentioned are favored for the most part as a result of the setting in which they are utilized and the general absence of comprehension of the significance and ideas of tax avoidance.

However, as we have seen over the years, this term has appeared related to practices of big enterprises, most of them in the technological industry. Which thanks to the difficulties the authorities find out when taxing those enterprises and the practices itself, both take a toll on the countries tax administrations.

Nevertheless, apart from the mechanism the OCDE and the European Commission can implement, there is as well the role tax ethics is playing on those companies. Therefore, a further analysis on that matter is required.

Therefore, the main point of this research is to respond to an assumption that there is unfair competition within Europe and the need to eliminate it.

KEY WORDS

Tax Avoidance, Tax Evasion, Tax Law, Tax Ethics, Technological firms, OECD, BEPs, Pillar 1, Pillar 2, Digital Taxation, European Commission, Double Irish, Dutch Sandwich, Apple Case.

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ABBREVIATIONS AND ACRONYMS

BEPS – Base Erosion and Profit Shifting

CFC – Controlling Foreign Corporation

DST – Digital Service Tax

EC – European Community

EEA – European Economic Area

EU – European Union

G20 – Group of Twenty

GAFA – Google, Amazon, Facebook and Apple

GAO – Government Accountability Office and General Accounting Office

GDP – Gross Domestic Product

ICDS – Income Computation and Disclosure Standards

LDT – Levy on Digital Transactions

MNE – Multinational Enterprise

PE – Permanent Establishment

TPA – Tax Procedure Act

OECD – Organization for Economic Cooperation and Development

OFC – Offshore Financial Center

VAT – Value Added Tax

WEF – World Economic Forum

SUMMARY & OBJECTIVES

We all know that tax avoidance is a problem of great importance, since it affects not only the economy but also the social and political environment. As we keep seeing headlines in newspapers of more cases of tax avoidance, every time with greater and greater quantities of money being avoided. That is why, there is the need to study the extent to which tax avoidance continues to affect tax systems.

The main objectives of this paper are the demonstration of the importance of tax ethics, check whether tax avoidance is still in presence and what are the European measures established. In other words, what actions are taken by the tax authorities to curb the level of avoidance, as well as the knowledge citizens have about tax ethics and the effects that this has on the level of tax avoidance. Always based on the hypothesis of the need to eliminate unfair competition between European countries to prevent tax avoidance.

Reason why I have divided this paper into four different sections, first it is explained what the idea of tax avoidance is. It has been approached from various perspectives, as well as its difference with related but different terms, with which I considered appropriate to make a distinction. Moreover, in this first section I start to engage in the issue of tax avoidance related to technological companies and I establish the figures that those companies are avoiding and the cost it supposes to the countries. Once that is said, I present the measures that the OECD and the European Union are taking towards tax avoidance.

As this paper focus on technological companies I took the example of Apple as one of them and proceed with the explanation of what the company has been doing in relation to tax avoidance. Moreover, it is introduced two methods of tax avoidance, such as the Double Irish and the Dutch Sandwich.

The last section, but not least, is focused on tax ethics, on defining what it is and why it is important. In addition, a survey has been carried out on different taxpayers to understand and shape citizens' perception of tax avoidance, also relating it to tax ethics, which helped the reach of the conclusions.

Finally, some conclusions have been drawn on what has been learned, to synthesize and give the key ideas of the work.

INTRODUCTION

Over the past three decades, the world economy has been characterized by its increasing openness and "globalization." Since the 1980s, the world economy has been unprecedentedly open, and it is now enjoying the benefits and difficulties brought by the gradual integration of the world economy.

The phenomenon of globalization is complex in nature and is a product of a combination of factors, including improved communications, the development of communications technologies, and the intense globalization of trade and capital flows, thereby generating economic interaction between countries. Therefore, on the same line, countries should be integrated in reference to tax systems and tax management.

Taxation is equally old as important, as it started 5,000 years ago, and nowadays, seems impossible to imagine a country that can succeed without the contribution of the citizens and any other entity operating within the borders of that territory[1].

Originally, the tax management department was established to carry out business in the national environment. As said, we live in a globalized world where the obstacles have been blurred, the game board is no longer a specific area, but the entire world. All the states can exercise its sovereignty freely according to its own legislation.

Due to the opening of trade, individuals and companies began to establish and increased their activities on an international scale. This makes it difficult to determine the activities and bases to be taxed.

Bryon (2000) stated that global expansion of the business has already taken place. Companies avoid paying taxes, based on the assumption that globalization will provide them with a free market, therefore, turning to countries with lower tax rates, which results in countries that must compete under different financial and labor condition.

The figures handled through tax avoidance today are devastating. Its influence is so great that some people guarantee that all the Spanish deficit will disappear, if the money defrauded in Spain was returned. The action of evasion and avoidance cause a reaction in the country of origin and destroys the national budget, which is responsible for satisfying the needs of the people through public expenditure.

For Udo Bullmann[2], chairman of the Social Democratic Party Group, states that the measures taken in recent years to prevent EU tax avoidance have worked, but *"the problem still exists and there are huge problems."*

In order to solve these tax avoidance problems, it was proposed the implementation of an effective corporate tax of 18% in all EU countries to reduce the competition between countries.

[1] Cambridge Definition of Taxation. Retrieved from dictionary.cambridge.org

[2] He is a German politician and a member of the German European Parliament. He is a member of the German Social Democratic Party and a member of the European Socialist Party.

For Mr. Burman, this cannot be achieved without harmonizing the EU tax rate, "*if all countries jointly commit to no less than 18%*[3]*.*"

There is no doubt that the most advanced countries, especially the United States, members of the European Union, and associations such as the Organization for Economic Cooperation and Development (OECD), are the ones that set the tax standards and have the most supervision, coordination, management coordination and global influence. They are the ones who try to formulate international game rules that benefit the company, its tax authorities, and other economic and financial interests.

Obviously, there is a lack of a responsible multilateral organization in the field-tax. Expert Vito Tanzi[4] proposed to fill this gap. Similarly, the interim agreement and consensus within the G-7, which recently extended to the G-20, are also restricted. Not only have these proved to be increasingly insufficient in their territories and economic and social scope, but they have weakened their credibility with the development of "*emerging countries*".

Reason why the need to study in what measure, tax avoidance, affects countries. As globalization progresses, fiscal and taxation policies become more complex. More advanced countries have developed guidelines, and the partnership that constitutes the guidelines directly affects the management of global policies.

However, we have seen that the companies which engage more in tax avoidance are technological companies. Therefore, surges the need to know why specially those companies and their ethics behind engaging in such activities, even though it is having a detrimental effect on society at large. That is why in this paper, I intent to respond my hypothesis of the existence of unfair competition within Europe and the need to eliminate it.

1. Tax Avoidance

Tax avoidance is probably the most misunderstood and misused word in the tax field. As scholars, practitioners and authorities rarely use the term. To refer to this issue is more common to use, for example, *"tax fraud", "tax evasion"* or *"tax dodging".* These words are more used as the concept of tax avoidance lacks a general understanding.

Globally, tax avoidance is still a difficult problem because, although it affects both developing and developed countries, it affects those categories of countries in a different scale as we shall see further in this paper. The importance of mastering the consequences of so-called taxes leading organizations can prove avoidance through various studies. However, it is important to discuss the consequences of tax avoidance and its definition.

[3] 18% in reference to a homogenous EU corporate tax

[4] Ex-Director of the International Public Finance Institute

According to the Oxford dictionary, the definition of avoidance is *"not doing something; preventing something from existing or happening"*[5]. This definition is not far from what is accepted in tax law language as avoidance is understood as, a conduct that is carried out in order to avoid in whole or in part the tax burden of economic activities, carried out by taxable persons.

According to the Organization for Economic Cooperation and Development (OECD) which is one of the very well-known entities that tries to define tax avoidance, which firstly notes how difficult is to define such term as the arrangement can strictly abide by the law, it usually contradicts the legal intent it claims follow[6].

For example, it is commonly known that *"multinational firms can avoid taxes through structured transactions among different jurisdictions"* (e.g., Rego 2003). Also known as doing practices such as reallocating taxable income from high-tax jurisdictions to low-tax ones (Collins et al. 1998).

The effects of companies doing tax avoidance has an effect for the governments in high-tax jurisdictions as it reduces tax revenues and could lead to hinder economic growth of each country and other social consequences (e.g., GAO 2008; U.S. Senate 2006).

a. Historical framework

The birthplace of present-day techniques for tax avoidance is not to be found in the extraterritorial arrangement of the Caribbean islands, however in the political and financial prime in Geneva, when the Church dropped the prohibition on usury. Along these lines if the preparing for benefit, in the decrease of the British Empire by genuinely and militarily deserting its previous provinces.

One memorable case of tax avoidance still obvious today was the installment of so called "window tax". It was presented in England and Wales in 1696 with the point of forcing people to pay taxes, without the contention of presenting an income tax. The greater the house, the more windows it was probably going to have, and the more expense the inhabitants would pay. All things considered, the expense was disliked, on the grounds that it was seen by some as a "*tax on light*" and drove landowners to obstruct the windows to keep away from it. The assessment was canceled in 1851.
Another remarkable example throughout history of tax avoidance was the demolition of roofs in Scotland, so the habitats could avoid paying substantial property taxes.

During the nineteenth century, the European elites had gotten familiar with advancing themselves without making good on charges, however after the First World War, the states required the huge fortunes to meet the expenses of common and mechanical remaking.

[5] Oxford Definition of Avoidance. Retrieved from oxfordlearnersdictionaries.com
[6] Definitions can be obtained from the glossary provided by the OECD. The definition can be accessed on the link. Available under http://www.oecd.org/ctp/glossaryoftaxterms.htm

The League of Nations attempted to control expense sanctuaries, executing in 1920 an open approach against tax avoidance and evasion; gradually the states got mindful of the need and significance of tax systems, thus, during the 1930s, Franklin Roosevelt built up in the United States a duty pace of 90% for the rich.

Switzerland set up itself as the world focal point of monetary privacy, presenting for the first time the Banking Act of 1934, which set up the banking secrecy, with the aim of securing the fortunes of totalitarian systems, particularly those of rich Jews and Nazi pillaging.

The late 1980s and mid 1990s were described by the battle against dirty money. In April 1998, the Organization for Economic Cooperation and Development (OECD) announced that confidential jurisdictions were causing damage by dissolving the tax duties from nations, harming exchange, venture and social value of states.

b. Definition and differentiation of terms

As tax avoidance has been in presence in history for so many times, it could be possible to have a strong, solid definition with guidelines in order to differentiate it from similar terms. However, as imaginable, a term that large organizations have catalogued as difficult to define, has caused various entities engaged in tax development have different definitions of tax avoidance.

The Organization for Economic Cooperation and Development (OECD) is a very well-known entity that attempts to define tax avoidance considerations, explaining tax avoidance as an arrangement, usually used to describe the expected taxpayer 's affairs to reduce his taxable amount.

Another definition provided by scholars for tax avoidance can be as, the legal use of the tax system in a single territory for their own benefit, in order to reduce the amount of tax payable within the scope of the law.

Stuart P. Green[7] when giving a definition for this term he evades the direct definition because he recognizes the blurred line between tax avoidance and tax evasion. He pointed out that tax avoidance includes the use of legal means to reduce taxes owed.

Therefore, we can say that there are two legal concepts between tax avoidance and tax evasion; arbitrariness and discretion. The first one, arbitrariness, will lead to violations of the law. For example, lack of objective reasons to justify the transaction or registration accounting. On the other hand, discretion involves choice in all schemes, which fall under the burden of the law. Basically, tax avoidance is a valid action and tender, which objective is not to avoid taxes but to reduce them.

[7] Stuart P. Green work's aims to explore the basic moral content of criminal law. He pays special attention to the issue of conviction

In Australia, *Ralph Review of Business Taxation* states that *"Tax avoidance may be characterized as a miss-use or abuse of the law rather than a disregard for it. It is often driven by the exploitation of structural loopholes in the law to achieve tax outcomes that were not intended by the Parliament but also includes manipulation of the law and a focus on form and legal effect rather than substance."* Professor Koen Lenaerts[8] characterizes tax avoidance as a circumstance where an individual (or an organization) looks for, in consistence with the law, to limit the duties the person in question (or it) pays.

In the TPA (Section 3) it characterizes tax avoidance as an exchange, or a plan intended to maintain a strategic distance from obligation to pay charge under any assessment law. The definition is general, likely maybe because the tax authorities are abstaining from legitimizing tax avoidance, which is disapproved of by governments, or dig into the profound ethical dilemma of the issue.

Therefore, although there are different definitions for the same term, we may say that tax avoidance, does not breach the law, although it may misuse it.

Having the definition already well established, it is of great importance to know the difference between tax avoidance and tax evasion, since many times they are confused, although they are very different.

Tax avoidance, as stated previously, is commonly known as the legitimate abuse of the tax regime to further one's own potential benefit, while making a complete honesty of the material data to the tax authorities. For instance, tax avoidance practices can go from taking advantage of tax deductions to changing one's business structure through joining or building up a company offshore in a tax heaven.

However, tax evasion is the general term for endeavors by people, firms, trusts and different elements to skip the installment of taxes by illicit methods. Involves citizens intentionally distorting or covering the genuine condition of their activities to lessen their expense obligation and incorporates unscrupulous tax reporting, (for example, under declaring benefits or gains; or exaggerating reasonings).

Tax avoidance can be viewed as an unethical evasion of social obligations. This definition complements the words of Judge Oliver Wendell Holmes, a famous American judge, as he said that taxation is what we pay for a civilized society.

On the other hand, tax evasion is a recurred activity considered a crime present in almost all countries and regions, and they can be fined or even imprisoned if they are guilty.

Some tax evaders regard their tax evasion work as based on novel legal theory: these individuals and groups are sometimes called tax evaders. American tax protesters are an example of this method of tax evasion, which usually ends in the failure of those who make such claims.

[8] Professor Koen Lenaerts current President of the European Court of Justice, Professor of European Law at the Catholic University of Leuven

Notwithstanding, a glance at the above definition, in addition to numerous others uncover major significant topics in the meaning of tax avoidance. Tax avoidance defined by legality and morality and it being defined through its deliberate and legal intent.

i. Legality versus morality

The legality of tax evasion can be usually seen by tax planners and multinational companies. Eric Schmidt, Google Inc. Executive Chairman said once: *"What we are doing is legal. This debate confuses me, I 've been to the UK for a while because I don't think taxes are optional. I think you should pay the taxes required by law ... "*[9]

Eric Schmidt sentence shows the face of multinational companies. For multinational companies, the most important thing is complying with the law, it does not consider moral issues or lack of moral issues in tax planning. For many multinational companies working with tax practitioners provide advice and assistance in tax planning.

When stablishing tax issue their main obligations are the shareholders. They believe that value should be created for shareholders.

After global scandals such as Panama Papers came to light, the debate about tax ethics has continued popular. Unlike tax evasion, tax avoidance is legal by definition. However, it's different than being acceptable.

i. Deliberate versus legal intent

Because there is no violation of the law, tax avoidance is not strictly illegal, but is used through, sometimes artificial manipulation or capricious interpretation, which is allowed by ambiguous or empty laws.

Reason why, in some cases, the Parliament 's intentions are unclear. In some cases, the judge in Court, stated that they could not make a purposeful explanation because they could not identify the purpose of the company engaging in tax avoidance. However, in other cases, subsequent business development is impossible under the burden of the law.

Attempts to tax economic profits do not necessarily help, because tax laws usually provide other income besides accounting profit. In other cases, in the text of the law seems unlikely that the Parliament can undertake its application.

Therefore, tax avoidance can be defined as the arrangement taxpayers engage on in order to plan their tax affairs in a certain way, so they are legally exposing themselves in the smallest payable possible way.

[9] Google's Eric Schmidt: change British law and we'd pay more tax

c. Tax avoidance in technological companies

As mentioned, tax avoidance is a common "not illegal" practice, which a lot of companies engage on, especially technological ones. But, why "especially technological companies"?

Traditionally, companies pay taxes where they operate, in other words, in the countries where their economic activity happens. However, nowadays and according to the World Economic Forum, digital economy *"is already having a massive impact on society, and there is more to come"*[10]. That is why, companies can "transfer" their sources of profits (such as patents and other intellectual property rights) to countries with lower tax rates. This way, they can pay a lower price than companies that only do business in a single country like the United States, UK or Spain, among others.

All indications are that these companies move their revenue accounting records when convenient to avoid the tax burden of the states. Their business involves not only the transfer of production, but also the transfer of sales, thanks to the use of e-commerce. However, this reality goes beyond the control capabilities of countries with a fundamental geographic foundation, who know how to control goods and services that enter and leave across borders, but they are not able to control when those exchanges are done on the network.

That is the reason why, technological companies, as the main activities of these companies are based on the digital economy, such as use of data, online advertising or intellectual property, can benefit from practices like tax avoidance more easily. Therefore, making large technology companies pay taxes where they do business a difficult tax.

For instance, GAFA is short for Google, Amazon, Facebook and Apple. The big four. These companies are leading the global technology business and they share the same quality: ability to pay much less tax than ordinary companies or workers. Doing that with tax avoidance, as they are taking advantage of the abilities given to them by the tax law, always on the line of justice but without committing crimes. They pay as little as possible, especially corporate taxes.

They avoid taxes by transferring income and profits into tax havens or low-tax countries, and they also delay the taxes they really have to pay.

Mercedes Serraller, author of the book *"Why do you pay more taxes than Apple"*, the "big four" would be paying somewhere in the range of 15 and 20 points less in corporate tax than the average income tax, around 10 points less than the average of the remainder of the organizations in their corporate tax. In any case, there are scarcely any possibilities that cases, like the investigation of Google by the Tax Agency end up in court. This is on the grounds that this kind of organization doesn't commit an effectively quantifiable tax offense, yet rather the circumvention practice.

[10] Words of Victoria A. Espinel, President and CEO, BSA, The Software Alliance and co-chair of the Global Future Council on the Digital Economy and Society.

The main reason for doing this sort of investigations is to discover better approaches to regularize the organization's situation through administrative channels and make them pay more taxes according to their level of activity.

d. Tax avoidance in figures

As mentioned on the section above, technological companies are on the top of the pyramid for tax avoidance and the reason why. However, how much money are they really avoiding?

For the purpose of analyzing such figures, we would include two more companies into the game Netflix, and Microsoft. Therefore, being this group formed by Facebook, Apple, Amazon, Netflix, Google and Microsoft called the “Silicon Six”.

Fair Tax Mark conducted a report in December 2019, in which they stated that between 2010 and 2019 companies, taking advantage of avoidance strategies, ended up paying $155.3 billion less than what it would have been required by the tax rates applicable across all territories in which they operate. However, if you consider, cash paid and the funds reserved for future taxation, the figure is up to $100.2 billion.

The researches that conducted this report, took the tax provisions of each company (the amount reserved for tax payment by the company in its financial report) then they studied and compared them with the amount actually paid to the government (called cash tax).

The report pointed out that profits of those companies, are continued being transferred to tax havens, especially Bermuda, Ireland, Luxembourg and the Netherlands.

The researchers say that most of the *gap "almost certainly was caused outside the United States."* Over the past decade, foreign tax expenses have only accounted for 8.4% of the company's profitability overseas.

However, within these companies, there are differences on the quantities of money avoided:

- The report said that Amazon has paid $3.4 billion in income tax since 2010. Within ten years, the big e-commerce only paid in cash tax a 12,7%, despite corporate tax in the US being 35% during seven years in the analysed period.

- The report said that Facebook has the second largest tax gap. For the ten years analyzed, the cash tax paid only accounted for 10.2% of the company's profits, the lowest among the Silicon Six companies. Fair Tax Mark pointed out that its foreign taxes and fees are also the lowest of the six tax laws, 5% of foreign profits.

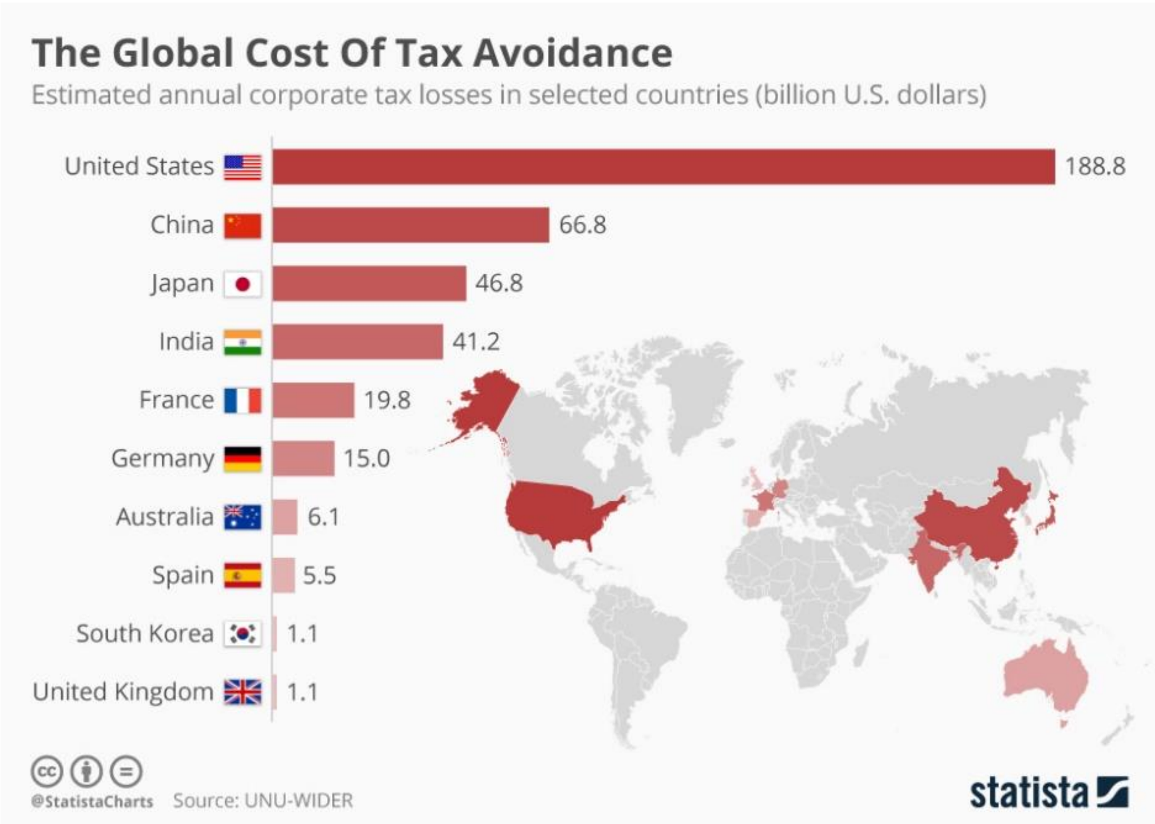
- Google was in third place, the report said that its taxes accounted for 15.8% of profits, while its foreign taxes and fees in the past decade was a 7.1%.

- This research shows that Netflix, ranked fourth, with a profit margin of 15.8%, while Apple, ranked fifth, with a tax rate of 17.1%.

- Research shows that Microsoft’s cash tax rate at the highest tax rate is 16.8%.

Therefore, roughly, all this money avoided by these companies, is money that the countries stop bringing in. Every year, the world economy loses millions of dollars in tax avoidance. That obviously, having an impact of the countries’ economies and tax systems.

Take a look at this graphic from Statista[11], in where it shows how many dollars have each country lost thanks to tax avoidance.



Graph 1 Global cost of tax avoidance
Source: Statista

Each year, the United States loses about $189 of corporate tax, which accounts for about 1.13% of its GDP. In absolute terms, China's second-largest annual loss is 66.8 billion U.S. dollars, and Japan also suffered severe losses, $47 billion U.S. dollars.

The International Monetary Fund reports that OECD countries lose about 2% to 3% of their total annual tax revenue, while low-income countries suffer much more.

[11] Statista is an online statistical portal in Germany that provides market research and opinion data.

According to the chart above, the total sum of tax avoidance in the countries showed from the chart is $392.2 billion.

In the US, for example, where on average is estimated that the health insurance premium for single coverage is around $6,400[12], with the money avoided on taxes by those corporations, could give universal health coverage to an 11,12%[13] of its population for 1 year[14].

In China, where on average constructing a hospital cost 150 million US dollars[15], the country could have built 445[16] new hospitals. Therefore, tax avoidance by big companies not only affect tax systems, but ultimately our lives.

Furthermore, as mentioned before, Oxfam and OECD said that taxes that were not collected thanks to tax avoidance harmed the public budget, especially in the poorest countries.

According to these institutions, taxes that are not passed through tax avoidance, and other mechanism of not paying the correspondent taxes, damage the public budget, which translates into reductions in basic public services, such as medical infrastructure or education.

OECD data stated that developing countries have lost tax havens three times as much as they received from developed countries. The head of the agency, José Ángel Gurría[17], recently said: "*If the tax on hidden assets of tax evaders is levied in the jurisdiction of their owners, billions of dollars can be used for development funds."*

Oxfam takes Africa as an example. Africa is the continent, where up to 30% of its financial assets are located in tax havens. The financial losses of the continent 's countries are estimated at US $14 billion per year. *"This amount will be sufficient to provide medical care for mothers and children, which can save the lives of 4 million children each year and enable the recruitment of sufficient teachers to enroll all African children."* according to the report.

The World Economic Forum presented the losses of some African countries due to tax avoidance, showed in the graph below.

[12] Congressional Budget Office (CBO), figures of 2016.

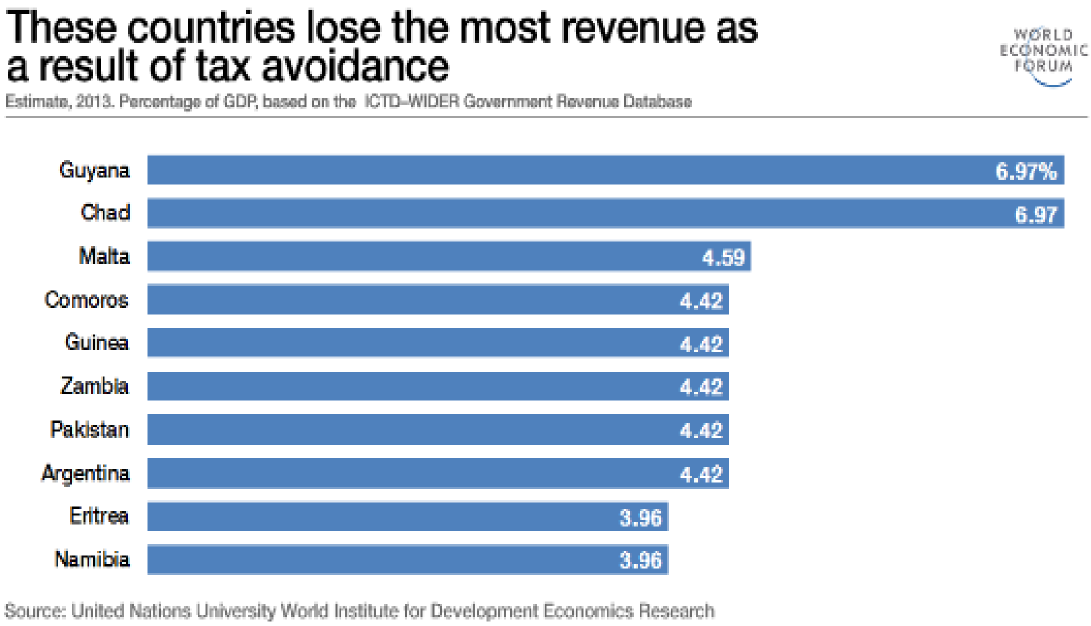
[13] This figure is calculated by dividing $188,8 billion (cost of tax avoidance) between $6,400 (helth insurance cost). Resulting in 29,500,000 US dollars and that figure between the population of the US. That computation resulting in 11,2%.

[14] Taking into consideration a US population of 328,2 million in 2019, according to the United States Census Bureau.

[15] According to Business Wire. Figures of 2019.

[16] This figure is calculated by dividing $66,8 billion between $150 million.

[17] Secretary-General of the OECD in 2006. He established the organization as a global economy including the Group of Seven, the Group of Twenty and the Asia-Pacific Economic Cooperation.



Graph 2 Countries loss to tax avoidance
Source: World Economic Forum[18]

This chart from the World Economic Forum, reassures what the last two mentioned organizations on what they stated, and is that poor countries are more affected by companies engaging in tax avoidance, for example, only Microsoft and Apple are on the same level of market capitalization with Turkey and South Africa economies.

2. Measures against tax avoidance

After the presentation of the figures tax avoidance is handling. The EU and the OECD took measures to battle against it. However, better coordination of international tax rules and more information sharing between countries make it more difficult for multinational companies to transfer profits artificially abroad to pay less taxes.

The acronym BEPS (Basic Erosion and Profit Transfer) gives a name of the main problems of circumvention at the international level and on which it has focused the attention and efforts the international community.

BEPS refers to the erosion of the tax base and the transfer of business profits of an entity between the different existing national tax systems, in search of one that offers a no or lower tax rates. The method of profit transfer and the erosion of the tax base is diverse and active planning schemes.

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[18] Graph from the WEF. This graph was made using information from the United Nations University World Institute for Development Economics Research.

As explained, multinational companies use gaps and mismatches in international tax rules to artificially transfer profits to low-tax jurisdictions or non-tax jurisdictions. Avoiding paying fair taxes.

Multinational companies are using tax rules, which are not well coordinated among countries and have not been updated for the global and digital economy.

a. Pillar 1 and Pillar 2 OCDE (BEPS 2015)

Given this situation, the goal of the G20 and OECD is to "restore" full confidence in the international tax system and ensure income jurisdictions where economic activities are conducted and create value[19]

In September 2013, it launched a comprehensive action plan entitled "BEPS Action Plan." An inclusive project that allows "all countries interested in working with OECD and G20 members set standards to address tax base erosion interest transfer and during the monitoring and review process implementation of the whole set of measures"[20]

Currently, there are more than 60 countries and tax systems that participate and work on an equal basis. Working in aspects such as, measures range from the adoption of new standards, revision of existing standards, including general methods and standards that facilitate the integration of national practices.[21]

The OECD has been working under the guidance of more than 130 jurisdictions participating in the inclusive framework to formulate proposals to reshape the international tax framework. This was done to reach a consensus on the adoption of BEPS 2.0 measures by jurisdictions within the inclusive framework globally. This work is done under two pillars, and they intend to pass them together.

It was on January 29th, 2019, that the OCDE brought to light the development of new fiscal principles adapted to the challenges and singularities the new digitized economy[22].

First pillar is made in order to set new principles that decide on the distribution of taxing power among states in the framework of a digitalized economy. In other words, it is focused on determining the residual profits of consumer-oriented and high-profit multinational companies, which will be redistributed to market jurisdictions where these multinational companies have enough economic ties.

It is going to affect the Nexus Tax, (the criteria for tax liability), and the profit allocation (those who order the allocation of benefits to each jurisdiction).

[19] OECD Information Note: The Inclusive Framework for the Implementation of BEPS Measures 2016, p.3
[20] Ibíd., p. 6
[21] Ibíd., p. 4
[22] Tax Challenges of the Digitalisation of the Economy as approved by the Inclusive Framework on BEPS on 23 January 2019, OECD 2019

That is done, so that the structural elements of the system (ICDs, the principle of full competition, and the concept of PE) could be modified in a way significant, transcending or surpassing some forms the globally adopted standards in the framework of the "BEPS consensus" (2015).

How the Pillar 1 will work is that, the estimate is limited to the amount A, which distributes a fixed share of the remaining profits to the market in which the company had profits.

It will be calculated and distributed to market jurisdictions as taxable profits. The amount A is not related to the length of the independent transaction. It will be calculated based on the income in the consolidated financial statements of the "within" multinational companies. Then, according to the formula, a fixed percentage of the amount A will be distributed to jurisdictions where the multinational company has an important connection with the economy. The results given assume that the profit threshold is 10% or 20%, and that the residual profit will be redistributed to market jurisdiction (excluding the commodities and financial sectors).

The results show that under the residual profit thresholds of 10% and 20%, global corporate tax revenue has increased slightly, and the gains will be between 0.1% and 0.7% relative to current levels.

Amount A

Scope:

- Business activity test
- Revenue threshold
- Domestic business/foreign revenue total

Tax Base:

- Financial Accounts and determine PBT.
- Use of segmentation and allocation of income and cost
- Accounting for lossess

Allocation:

- Profitability threshold
- Relocation percentage
- Allocation key

Elimination of double taxation

- Identify the paying entities
- Method to relieve double taxation
- Simplied admin. System

Graph 3 Pillar 1 (Amount A)
Source: self-made graph based on extracted data from the OECD[23]

Amount B

Fixed compensation for defining baseline distribution and marketing

Functions occurring in market jurisdiction.

Graph 4 Pillar 1 (Amount B)
Source: self-made graph based on extracted data from the OECD[24]

[23] Statement by the OECD/G20 Inclusive Framework on BEPS on the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy.
As approved by the OECD/G20 Inclusive Framework on BEPS on 29-30 January 2020.
[24] Statement by the OECD/G20 Inclusive Framework on BEPS on the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy.
As approved by the OECD/G20 Inclusive Framework on BEPS on 29-30 January 2020.

Amount C

The income under the Amount C covers any other profits within the scope of the domestic function.

Exceeded the baseline activity for compensation under item B. Another aspect of item C is, that it emphasizes the need to improve the dispute resolutions.

Graph 5 Pillar 1 (Amount C)
Source: self-made graph based on extracted data from the OECD[25]

Tax Certainty

Dispute prevention and resolution for Amount A.

Dispute prevention and resolution for Amount B and other disputes (Amount C)

Graph 6 Pillar 1 (Tax Certainty)
Source: self-made graph based on extracted data from the OECD[26]

However, Pillar 2, which can be called as well the "*GloBE*" proposal, it involves the development of a coordinated set of rules to deal with ongoing risks from structures that are considered to allow multinational corporations to transfer profits to jurisdictions that are not taxed or taxed in area with a very low tax burden.

The second pillar is going to organize measures with the finality of neutralization of minimization of the risk of base transfer and erosion of profits, belonging to certain structures from highly digitalized business, in other words, the aim of this pillar is to set a minimum tax rate used globally.

This pillar two, is formed by four components, which are:

- An income rule that if the income of the branch (located abroad) or other entity which may be in control, is taxed at an effective tax rate lower than the minimum tax rate, the income will be taxed[27].

[25] Statement by the OECD/G20 Inclusive Framework on BEPS on the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy.
As approved by the OECD/G20 Inclusive Framework on BEPS on 29-30 January 2020.
[26] Statement by the OECD/G20 Inclusive Framework on BEPS on the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy.
As approved by the OECD/G20 Inclusive Framework on BEPS on 29-30 January 2020.
[27] OCDE, BEPS 2015

- The arrears payment rule, which will be implemented by refusing payment to related parties or deducting source tax paid to related parties, provided that the payment is not subject to the minimum tax rate or above[28].

- A conversion rule will be introduced, which will allow the effective interest rate of profits in PE or real estate from the tax-free method to the credit method in the residence area to be lower than the minimum interest rate[29].

- A tax law stipulating that the tax law will supplement lower-tax payment rules by making payments withholding taxes or other taxes at the source and adjusting the eligibility of the treaty[30].

As mentioned before, it is estimated that the second pillar of the world's lowest tax rate will be implemented on corporate profits, which will bring more tax revenue than the first pillar. This analysis assumes that the minimum tax rate is 12.5% and is mixed at the jurisdiction (not global or entity) level.

Considering the income impact of Pillar 1 and changes in profit transfer behavior, it is expected that global corporate tax revenue will increase by approximately 3.6%. The minimum tax itself is estimated to account for half of the increase.

The OECD is currently working on implementing new rules, such as:

- Income inclusion rule: It will require the company's shareholders to consider if the income is not affected by the effective tax rate, the income proportionally allocated to the company taxes above the minimum tax rate.

- Switch-over rule: made to ensure that income inclusion rules apply to foreign branches that are exempt from tax under double tax treaties. It will only applicable to countries that promise to use tax exemption methods in their tax treaties.

- Undertaxed payments rule: operate by refusing deductions or making equivalent adjustments percentage of payments within group.

- Subject to tax rule: it could be applied with withholding taxes or other taxes at source and reject treaty benefits for certain income items payments are not subject to the minimum tax rate.

- Rule co-ordination, simplification, thresholds and compatibility with international obligations: it could work by prioritizing rule resolution, and how it will be applied.

[28] OCDE, BEPS 2015
[29] OCDE, BEPS 2015
[30] OCDE, BEPS 2015

It would also look in an international framework[31] to minimize the risk of double taxation, including simplification measures that can further reduce compliance costs.

All 5 rules will apply under a minimum rate.

b. Digital Taxation

As we have seen there is a problem with tax avoidance in technological companies and that's making a new entrance to a digital taxation.

In the broadest sense, the digital economy has changed the way society works.

Companies today have the ability to use digital tools to innovate production processes and sell goods. This also allows the companies to provide services to markets that were previously out of scope and bring significant benefits to consumers through more choices and cheaper prices.

Companies change the places where they earned their profits to pay less tax, as the OECD shows us in the following illustration. As a business initially located in New Zealand, it declares it has its activity in Singapore, therefore ends up paying no taxes in New Zealand.

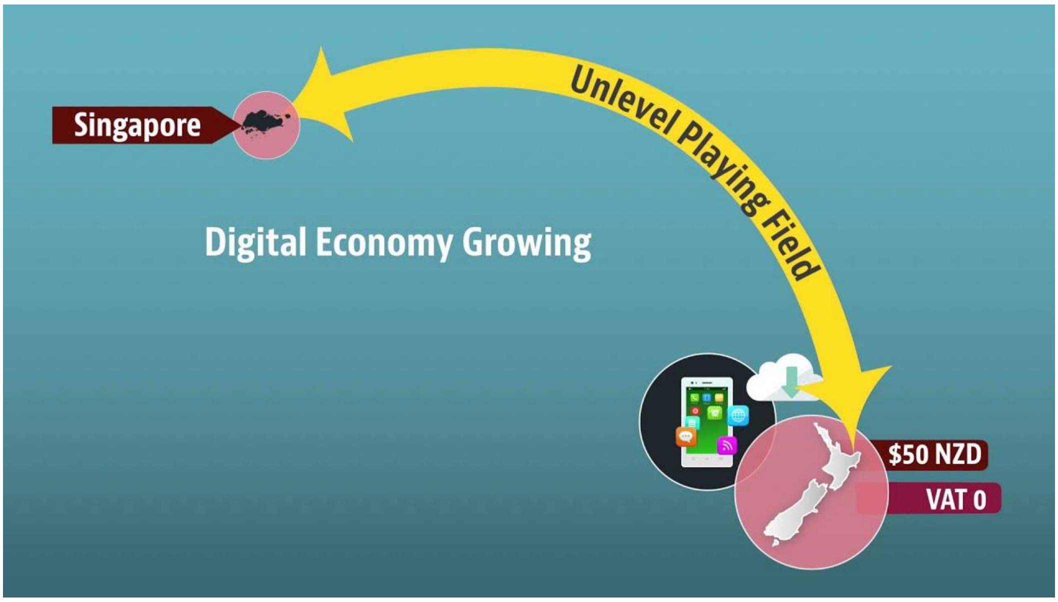


Illustration 1 How the digital economy works
Source: OECD

[31] Including EU / EEA laws.

With this illustration the OECD is showing us how the digital economy works. Addressing the tax challenges brought about by digitization is currently the top priority of the OECD/G20 inclusive framework and has been a key area of focus since the BEPS project was launched[32]. This work has provided several important outputs covering direct and indirect tax issues.

However, today, digitalization has promoted three important phenomena: no large-scale scale, dependence on intangible assets and data centrality-which poses a serious challenge to the foundation of the global tax system.

On the same line, new technologies also promote tax avoidance by transferring the profits of MNEs to jurisdictions with a very low tax burden, or even to jurisdictions to no tax burden at all.

"*Global tax patterns are lagging behind and outside the new digital realities*", adds Jorge Sarró, partner in charge of the Tax Department of Rousaud Costas Duran (RCD)[33].

However, taxation got some issues with digital business as:

- They have no physical presence in that country. However, they have users and customers.
- Generate value from the interaction with users and customers, with the data from users.

A digital tax would be implemented something like this (a further explanation is done on this paper), French law has approved to impose a 3% tax on companies with a global revenue equal or more of €750 million euros, and with €25 million in digital sales.

The idea is to narrow the taxation scope, and tax on the location of users of online services, instead of the location of the company's European headquarters.

Therefore, as tax rules assume a physical presence, sometimes the profits obtained by digital companies doing digital activities are not taxed in the country where users and consumers are located.

i. Definition and measures

Given the imbalances and disadvantages generated by the current system, all efforts are now focused on formulating measures to adapt to the new era of global regulation and tax the framework lays the foundation.

The European Commission proposes to impose a 3% turnover tax on online advertising services, online markets, and sales revenue from data collected by users. Companies with annual global revenues of 750 million Euros and total of EU revenues of 50 million euros, will be subject to tax.

[32] OECD.org BEPs action plan
[33] Law firm in Madrid and Barcelona

A Digital Service Tax (DST) was proposed as a temporary measure until the EU reformed its general corporate tax law for digital activities. However, the proposal was shelved in early 2019 because some EU states opposed to applying such taxes. In case the OECD is not able to form an international agreement on the taxation of the digital economy in 2020, it will restart DST, according to the European Commission.

The digital service taxes are structured as turnover taxes, which means that they tax total income instead of net income. This design will result in companies with lower profits earning higher marginal tax rates. Due to inefficiency, turnover tax has caused obstacles to economic growth, and is generally regarded as an unfair tax policy, so it is regarded as a bad tax policy.

Tax policies aimed at a single sector or activity may be unfair and have complex consequences. The digital economy is difficult to distinguish from other parts of the global economy. Taxation of income unrelated to the economic value creation of permanent establishments is in conflict with current international taxation principles.

ii. Where applicable

In the EU, there are different countries with different tax rates. The goal is to design a regulatory framework to limit the technology industry dominated by large US multinational companies with high turnover figures.

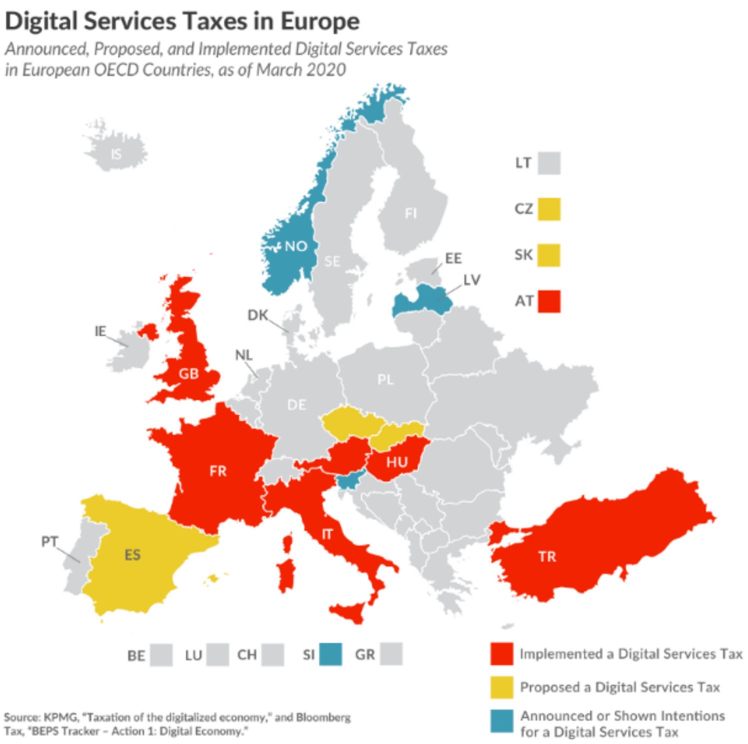


Illustration 2. How digital services are taxed in Europe
Source: Tax Foundation[34]

[34] Tax Foundation used OECD information to elaborate this illustration.

As the map above shows, the European countries that implemented or proposed a digital tax as of March 2020 are:

- Already implemented: Austria (5%), France (3%), Hungary (7.5%), Italy (3%), Turkey (7.5%) and the United Kingdom (2%).
- Proposed: Czech Republic (7%), Slovakia (-), Spain (3%).
- Showed intention: Latvia (-), Norway (-) and Slovenia (-).

For further detail, please go to ANNEX 1.

So, is remarkable that only 12 out of 27 countries[35] in the EU are in the process or there is already a Digital Tax. And the US has something to do with it.

For example, France implementing a digital tax rate of a 3%, if affects majority American companies (same thing happens in the majority of the other EU countries implementing a digital tax).

Now the US is appealing that countries applying such tax is a way of discriminating American companies, that's why the administration proposed tariffs on French products and other European products. France defends the idea that this conflict would not happen under the leadership of the Paris-based Organization for Economic Cooperation and Development, efforts to take global unified action. However, countries like Sweden, Denmark, Finland and Ireland refuse to cooperate and currently do not impose any digital tax as it would harm majority American companies. Therefore, giving the impression that there are other interests besides tax collection.

3. Real cases on the use of tax avoidance

a. Introduction

Being explained all the theoretical side of tax avoidance, it is interesting to analyze how companies actually avoid taxes.

Firstly, one thing has to be clear, the techniques used by companies engaging in tax avoidance are focused on location. Therefore, companies have a choice on where to stablish their headquarters, offices, subsidiaries, and they also can choose where to assign the profits and expenses they may earn.

Normally, companies wanting to minimize their burden of the tax, what they do is to transfer their profits to its subsidiaries, normally, they are strategically located in places with zero tax systems or with a very low tax, an example of that would be tax heavens.

[35] The number of EU countries is 27, as this paper was done in April 2020, and the UK left the EU in January 2020.

Companies when doing that, would still try to record their expenditures in high tax jurisdictions, because they provide a good tax cut rate.

They use a variety of different paths to artificially transfer funds, including the use of tax havens, manipulate prices and create new bases of the company, where there is almost no real economic value.

However, companies are not obliged to do all of these techniques, as mentioned earlier they do have a choice. That choice being:

- On one hand, taking advantage of loopholes in the tax law, offset the national tax system, and hiding transactions in confidential jurisdictions.
- On the other hand, understand its operation transparently and pay a considerable amount of tax to each country where they are operating. Being, the two options perfectly legal.

However, it is clear, which option technological companies have been choosing over and over the years.

According to The Target (2017) many multinationals have set up their headquarters in Ireland. In the last five years the presence of IBEX 35[36] subsidiaries in Ireland has multiplied by 10. If we take into account that all the companies that move to the country and that need labor, the result of the equation is an unemployment rate of 6% and an economic growth of 26.3%, eight times more than the growth of Spain, being appropriate to highlight that both countries were rescued almost at the same time.

Ireland is the key to these major technology tax policies. Countries that offer low interest rates and secret agreements. Apple has financial headquarters in Europe, as well as Google and Facebook, which only have "business delegations" in Spain. At the same time, Amazon has set up a tax office in Luxembourg.

Ireland is supported by the fact that it is geographically remote from the center of Europe and therefore from the bulk of the market, so companies will not move to Ireland unless it offers some advantage. The corporation tax in Ireland is 12.5%, to which must be added the agreements obtained by some companies to further reduce this rate.

Multinationals have great tax experts on their staff who seek legal loopholes to benefit as much as possible. They first select a country (Ireland, the Netherlands and Luxembourg are usually the chosen ones) in which to pay their taxes at a rate previously agreed with the government.

[36] Index of the Spanish stock market

b. The Apple Case

Apple's elaborate tax structure is so sophisticated that not even the European Union itself has the power to control its capital, so it uses irregularities based on unfair competition to combat the flight of these huge amounts of capital. This unfair competition is caused by being subject to a lower tax rate than the other companies with which it competes.

Apple faced one of the major fines related to tax issues, and that being that Apple was fined with 13 billion euros by the European Commission for carrying out certain tax practices in Ireland that are contrary to European Union law. Specifically, the company is accused of having paid only 0.7% tax in the European Union between 2015 and 2017. Moreover, in December 2015, Apple consented to pay another fine of 315 million euros in Italy for tax stunts to receipt in Ireland. The organization has declined to explain itself on its policy.

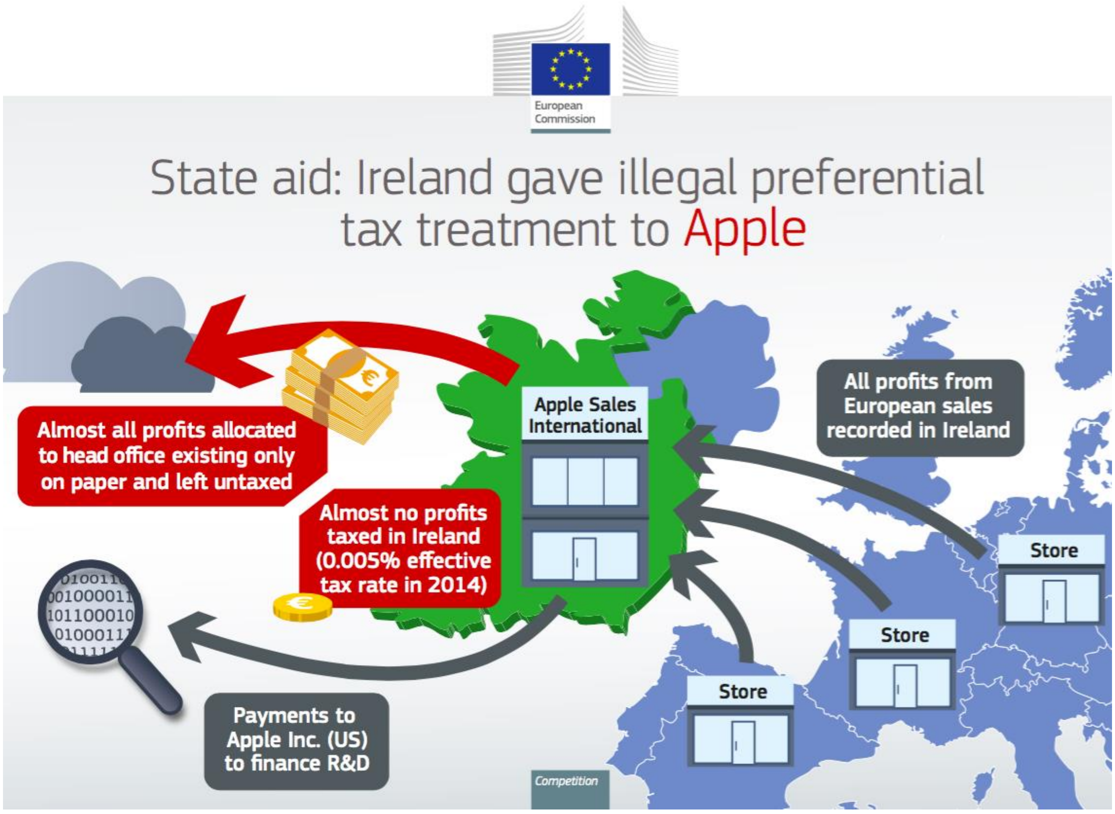


Illustration 3 Apple and the Double Irish
Source: European Commission

With this illustration the European Commission is providing us with the relationship the country of Ireland and Apple. The company recorded its sales from another European countries in Ireland, which were taxed with a 0,005% effective tax rate in 2014, then making payments to the finance department in Apple USA.

Apple Marketing Iberia (Spain) published its yearly reports shut in September 2015. In them they revealed that they had an investigation for VAT and Companies somewhere in the range of 2009 and 2012. In the European tax history, Ireland plays an important role. For instance, Dublin (which is where the European headquarters of the firm are located) even had an agreement with Apple, that it would pay just 2% of its benefits while the other foreign organizations would pay a 12.5%. Therefore, the company action in other European countries like Spain, France or Germany, regardless of creating benefits for them, would be dependent upon VAT, paying employee income tax and social security contributions, yet not to pay corporate tax in relation with their economic activity within the country.

According to EC. Brussels, Apple saved 13,000 million euros in taxes that now are required to be returned along with the corresponding interest.

According to Margrethe Vestager, EU Competition Commissioner and author of the fine to Apple: *"The amount imposed is based on an estimate of the taxes that have not been paid over the years. This competitive advantage has hurt the competition that had to fight in the same market against a company that with the money saved in taxes hit more designers and engineers and allowed to lower prices obtaining a margin on sales higher than the rest".*

The U.S. Senate also investigated Apple's accounts and concluded that they had created a tax web so complex that they managed not to pay taxes in any country. One of the senators claimed that Apple had found the Holy Grail of tax evasion. The founder of such genius was Steve Jobs, who saw how his feat was going to be copied much later by many multinationals.

i. Double Irish

Multinational companies have different methods on how to stablish in those European countries. In this paper, it will be explained two methods, the first one being the "double Irish".

Double Irish is a basic erosion and profit transfer ("BEPS") corporate taxation tool that has been used by most American multinational companies since the late 1980s to avoid corporate taxation on most non-US companies. By 2010, it had shielded $100 billion in tax revenue from foreign profits of American multinational companies every year. From 2004 to 2018, the scale of assets was 1 trillion US dollars.

Traditionally, it has also been used with the "Dutch Sandwich" tool. However, for most users, changes to the Irish tax law in 2010 exempted this requirement.

Although the United States has a ten-year understanding of the dual Irish plan, the European Union forced Ireland to close the plan in October 2014 and began closing it in January 2015. However, users of existing plans (Apple, Google, Facebook and Pfizer, between others) did not close it until January 2020. For the US this “Double Irish” method has caused US multinationals to avoid $1tn of cash, that it would have to be paid in the United States.

Therefore, for the companies acting with the “Double Irish”, they position their intellectual property in a company registered in Ireland, which is controlled by a tax haven (for example, in Bermuda).

Ireland considers the company to be a tax resident of Bermuda, while the country where the company is originally from, considers the company to be a tax resident of Ireland. As a result, when royalties payments are sent to companies, they will be tax-free-unless or until the money is eventually sent back to the parent company.

Therefore, the multinational creates 3 companies, one in a European country, one in Ireland and one in a tax haven. If a product is sold in the EU for 10 euros, the company says that Ireland bought it in the EU country for 9 euros, and then Ireland bought the same product from a tax haven for 8 euros. In Ireland they have treaty agreements with tax havens, so any transfer of capital between Ireland and a tax haven is correct.

Thanks to this arrangement, the company is taxed in the EU country at a high rate but only for the euro difference, which they finally compensate with staff, advertising and shop expenses. Even with a low rate, Ireland obtains an income for a product that has been sold in another country, while the tax haven takes 80% of the selling price without having managed any operation.

When asking to the companies engaging in such methods, the answer is the same, they are under the burden of the law and playing with the rules set by the governments.

It is claimed that practices like that should be over. In the case something like that ever happens, some experts believe that Ireland can prevent the use of the structure without too many adverse effects. Nevertheless, technology companies and pharmaceutical companies have made significant investments in Ireland, so the possibility of outflows is unlikely. Moreover, low-tax Ireland can easily compete under the planned new global tax law, which will require companies to collect taxes where they actually operate.

ii. Dutch Sandwich

The second method is called the "Dutch sandwich". This method is a corporate tax avoidance strategy that some American multinational companies use to divert profits from EU countries, offshore tax havens, and bypass several of the measures established to prevent the transfer of profits from European sources to tax havens. Like the "Double Irish", the Dutch sandwich is a classic BEPS foundation erosion and profit tool.

The structure is based on a taxation strategy in which most EU countries allow royalties to be paid to other EU countries without incurring withholding taxes. However, Dutch tax law allows royalties to be paid to various foreign tax havens (such as Bermuda) without incurring Dutch withholding tax. Therefore, the "Dutch Sandwich" is like a backdoor outside the EU corporate tax system and a non-taxable overseas location outside the EU.

The payment of these royalties requires the creation of intellectual property (IP) licensing schemes, so the "Dutch Sandwich" is limited to specific sectors that can generate large amounts of IP. This is most common in technology, pharmaceuticals, medical devices, and specific industries (patented).

So, the multinational that owns companies all over the world meets with the Dutch government to negotiate a tax rate with which to tax all the money it earns worldwide. The multinational saves millions in taxes while the Netherlands benefits from extra money that it would not get if it followed in the footsteps of its European neighbors.

The "Dutch Sandwich" has always been the key tool to make the Netherlands the world's largest OFC (offshore financial center) service provider, it almost equal to the sum of the four following countries.

These 5 global operators (Netherlands, UK, Ireland, Singapore and Switzerland) are not officially marked as "tax havens" by the EU and OECD, but have legal and "advanced" structured tools that can legally convert funds into The national tax haven of 24 tax, no need to pay OFC tax.

Ireland allows U.S. multinational companies with strong purchasing power to transfer gross profits earned in any EU country to Ireland with full tax exemption. The Netherlands then allowed the Irish money to go to tax havens.

It also existed a version, in which the double Irish and the Dutch sandwich were used combined, called Double Irish with a Dutch Sandwich. It consisted on a tax avoidance technique used by some large companies.

The plan included sending profits to a Dutch company through an Irish company, and then sending profits through a second Irish company headquartered in tax havens.

Therefore, to unravel the serious scheme would be as follows:

Illustration 4 Visual representation of a practical case using the Double Irish and Dutch Sandwich
Source: self-made illustration based on extracted data from the OECD website and from an article in the newspaper The Guardian.

Let's start with a US company that wants to sell its item in Europe, starting in the UK for example. Nevertheless, back in the US, the amount of taxes the company will pay would be up to a 35%.

Therefore, the next step for companies to pay less would be to set up an entity in Ireland. When the company starts selling its product in the UK, the income made falls under the Irish law, therefore the company ends up paying only a 12,5%[37].

Under Irish law, if the Irish entities are controlled by the managers and they are located in a foreign country, the profits made will be taxed in the jurisdiction where the managers are located[38]. Therefore, if the Irish entity you established has a controlling interest in the Cayman Islands, then you will need to pay taxes this jurisdiction. And because the actual tax rate in the Cayman Island is zero, the company do not need to pay any taxes.

However, according to the US law if there is a subsidiary in other country (Ireland in this case), and the manager is located in another place (Cayman Islands) the US is allowed to implement CFC rules[39] and obliged to company to pay taxes in the US.

[37] According to the Irish Laws
[38] Foreign Corporate Governance. 11.22
[39] 26 U.S. Code § 957.Controlled foreign corporations

Therefore, in order for the company to not be taxed with CFC rules in the US, it has to set up an Irish subsidiary "A", with controlling presence in Ireland, and paying a 12,5% of taxes (following the Irish Law), Afterwards, the company has to create another Irish entity "B", and this new entity with controlling presence in the Cayman Islands.

Applying this scheme, into practice, it would be when the subsidiary "A", makes profits of $50, it has to say that this was possible because it used intellectual property that belonged to "B". And here is where the Dutch part comes into play. Worthwhile mentioning, that the Irish and the Dutch have an arrangement in which they agree not to tax some payments between the two countries. Therefore, "A" will make a royalty payment to a subsidiary located in the Netherlands called "Z". After that, "Z" will do a royalty payment to "B". Both of these two transactions have a zero-tax rate.

That's why now, as "B" is controlled by the Cayman Island, the Irish law cannot tax the company. Furthermore, the US has considered "A" and "B" as Irish entities, not being allowed to tax CFC.

The legislation passed in Ireland in 2015 terminated the use of tax plans for new tax plans. Well-structured companies were able to benefit from this combined structured until 2020.

A real-life example of the usage of this combination would be when, according to reports, in 2017, Google transferred 19.9 billion euros (about 22 billion US dollars) through a Dutch company, and then transferred to an Irish company in Bermuda. The company does not pay taxes in Bermuda. In short, Google's subsidiary in the Netherlands is used to transfer revenue to the Irish subsidiary in Bermuda.

4. Tax Ethics

With all the information above, one may think, *wait how is this can be possibly legal?* Well, firstly is important to understand, what falls under the definition of ethics, which according to the Oxford dictionary is: *"moral principles that control or influence a person's behavior "*[40]. Therefore, tax ethics is not far from that line, as it the amount that, citizens must pay to meet the public service needs that the Governments cover in form in public service. The field of taxation and ethics coexisted long ago, but it was not until the beginning of the 20th century that tax ethics research began to solve economic problems through fiscal sociology[41].

In any case, the contribution to tax ethics should be understood as the response to why we pay taxes, and whether it is fair. This question has had different meaning within time.

[40] Oxford Definition of Ethics. Retrieved from oxfordlearnersdictionaries.com
[41] Schumpeter (1918: 147-192).

This pendulum change depends on the political, social and economic orientation of each culture, but especially, it depends on the morals of every society, which in the end made everyone understand the importance of financial obligations.

Although tax avoidance is legal, it can be regarded as aggressive when it involves the use of non-governmental or non-expected financial instruments and arrangements as a means of obtaining tax incentives. For example, the use of tax havens. As stated before, unlike tax evasion, avoiding taxes and violating the rules of the tax system are not illegal. It operates within the legal scope of the law, but perhaps not within the scope of the legal spirit.

Therefore, companies may comply with the law, but is this ethical?

a. Company vision (technological)

Then, if we have stablished the repercussion of technological companies not paying taxes, and what tax ethics are, why are technological companies still emerging in tax avoidance?

How can multinational companies avoid paying their due taxes when government spending cuts have a real impact on people's daily lives?

"Companies like Amazon and Facebook seem to have programmed tax evasion into both their organizational structure and their management ethics," stated Paul Monaghan[42], Chief Executive of Fair Tax Mark, according to a Spanish newspaper “El Mundo”.

It is curious that the issues of large-scale tax avoidance and the use of tax havens by multinational companies are obviously unfair and "immoral" (Stallman), but have not caused their moral disputes inside the company. The huge fines imposed by the European Union on these practices are just a tricky problem for the epithelial ties of global technology giants.

And the reason is that paying taxes when compared with planting trees or protecting the poor from labor exploitation, paying taxes is less visible. Regarding taxation, *"good deeds"* are much more complicated. Likewise, a large portion of the residents need more information on tax laws to comprehend the activities of specific organizations; on account of that, many individuals have a strange thought of what *"ethical tax behavior"* is.

For example, Apple donating part of the benefit form the sales of Product Red products to a COVID-19 fund, it is something visible and people will hold on to that and remember it. However, for the company to say that it pays the amount of taxes it should and where it should, the public cannot verify this statement, due to fiscal secrecy and the extent of the accounting documents that are published.

[42] Paul Monaghan was the co-founder of Fair Tax Mark, nowadays being its CEO.

b. Usefulness of tax ethics

For a company to provide real value, it must not only develop job creation and wealth, but also obey the law. The problem is that tax avoidance is a common practice that affects the welfare of the country, but it could be fixed through a correct ethics education.

Tax education is regarded as a set of values embodied in the performance of tax obligations, according to the European tax education guidelines. This is a matter of personal morality, respect for the law, civic responsibility and social solidarity of taxpayers.

It is important that citizens are aware that tax payment is a responsibility, however, the Spanish-based Financial Observatory has determined that the private sector only interprets this issue as a tax benefit for the country, and it does not provide them enough benefit.

Despite this mentality, the fact is that tax ethics is a collective issue, and taxation should be viewed from a solidarity perspective. This is a series of duties that bear common costs, such as maintaining cities and public institutions.

Of course, we must strive for a fair framework for taxpayers to make payments based on their income and effectively use the taxes collected. This is the best way for individuals and companies to have full confidence in the authorities and report them in a timely and timely manner. However, being honest, those who avoid taxes or deceive the tax authorities will benefit from the goods and services funded by others, that is to say, they cause a lack of national rights and interests and also affect the competitive conditions between companies.

Businessman and businesswoman must reflect on the consequences of unethical taxation. In addition to having a clear conscience, this is also a professional issue, because when you want to have a partner, finance, develop or even sell a business, you need to have a healthy accountability. Also, tax ethics can be useful so the companies can be seen as it complies with its social responsibility.

However, for a company advertising that it pays its correspondent taxes and that it does not use any tricks to avoid taxes, its relationship with the public can be harmed.

For example, transfer pricing has particularly great potential for controversy. Since the price of intra-group transactions is inherently favorable to one country, it may be well accepted in the other country where the price is not good for it. There is almost no safe way in this regard. A company can only avoid this situation by paying taxes in two countries (that is, accepting double taxation). However, neither economically nor morally, this is not the goal.

c. Ethical and/or social implication

Taxation is what makes a country alive and with public measures. However, as states throughout this paper, multinational companies follow such a structure which is design so that in each country they operate they can engage in tax avoidance.

Tax Justice Network believes that policy measures are needed in order to correct the distortions caused by globalization.

Enterprises should engage in corporate socially responsible (CSR) standards regarding taxation, including issuing all necessary accounting requirements, publishing information and avoid engaging in any activity such as tax avoidance, tax evasion, money laundering and any other practice, which harms the wellbeing of a country.

The payment of a considerable amount of tax in the country where the company operates is regarded as the company's social responsibility: to fund public services such as health care, education, and infrastructure. These are public services that the company benefits directly or indirectly. Some people refer to tax avoidance as unethical and unethical practices that undermine the integrity of the tax system.

Therefore, in order to analyze the social implications of the citizens in tax ethics, I have conducted a survey in Google Forms, in which I asked 10 questions, and a total of 189 people engaged in the survey. As the survey will be placed in Spain, and the potential people that could engage in the question spoke Spanish, I conducted the survey in Spanish.

For the purpose of this section of this paper, I will not be analyzing all the questions. However, the full set of answers of each question is fully detailed in Annex II.

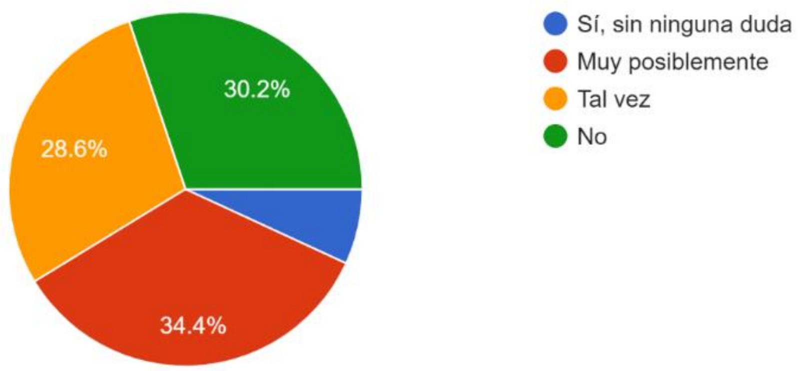
The sixth questions I asked: *For your information, Apple was fined 13 billion euros by the European Commission for carrying out certain tax practices in Ireland that are contrary to European Union law. Specifically, the company is accused of having paid only 0.7% tax in the European Union between 2015 and 2017*[43]*. With this information, would you buy a new Apple branded product?*

With the set of answers being:

- Yes, without a doubt (blue)
- Quite probably (red)
- Maybe (orange)
- No (green)

In which I got the following results.

[43] According to Cristian Reche, journalist of Economia Digital in 2013.



Graph 7 Answers to one question in the survey. For your information, Apple was fined 13 billion euros by the European Commission for carrying out certain tax practices in Ireland that are contrary to European Union law. Specifically, the company is accused of having paid only 0.7% tax in the European Union between 2015 and 2017[44]. With this information, would you buy a new Apple branded product? Source: own survey conducted for the purpose of this paper.

Only a 30,2% would not buy any other Apple's product, after knowing what Apple is doing in Ireland. Which means that 69,8% of the people engaged in this survey do not rule out buying more products from Apple.

What drew my attention to how the answer to the previous question would relate to people's age. To check if there is any difference between the answers of younger and more adult groups. Which led me to the following results.

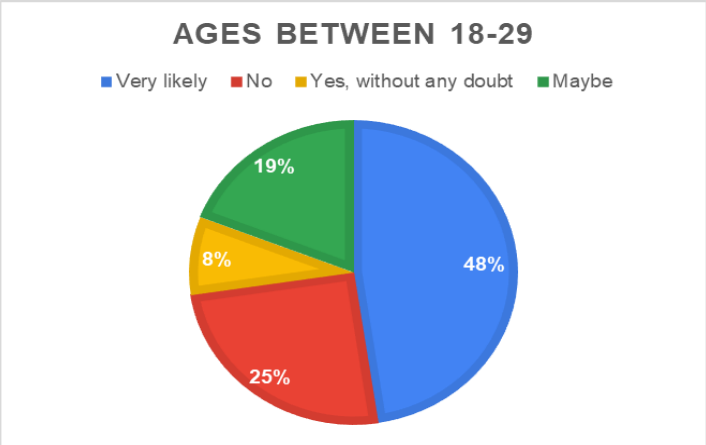
Therefore, I the second question asked in the survey, was the age group, which were:

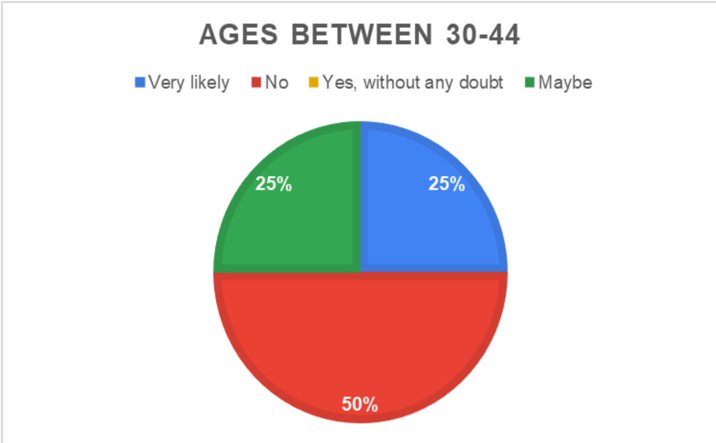
- Under 18
- Ages between 18 and 29
- Ages between 30 and 44
- Ages between 45 and 59
- More than 60

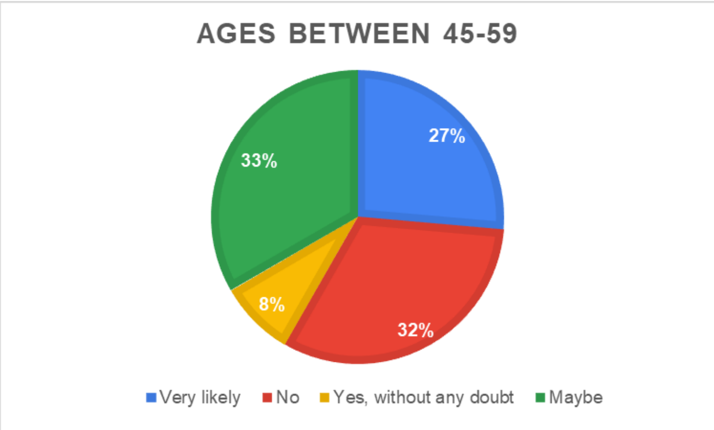
As I only got one answer form one person under 18, I did not include it in those graphs.

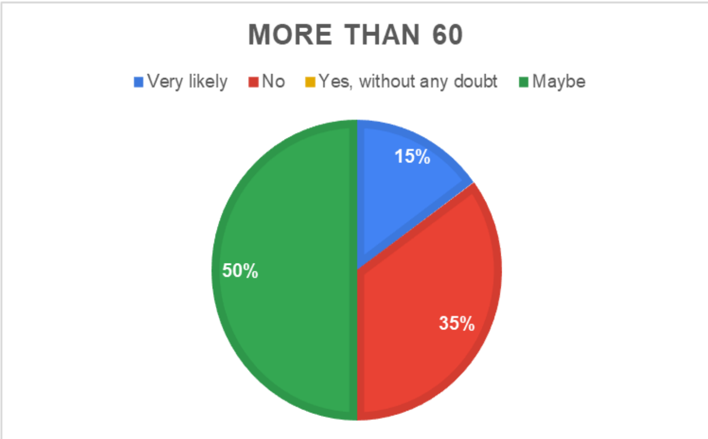
[44] According to Cristian Reche, journalist of Economia Digital in 2013.

Therefore, I got the following results.









Graph 8, 9, 10 and 11 Segmentation of the surveyed by ages in relation to the previous question.

Source: own survey conducted for the purpose of this paper.

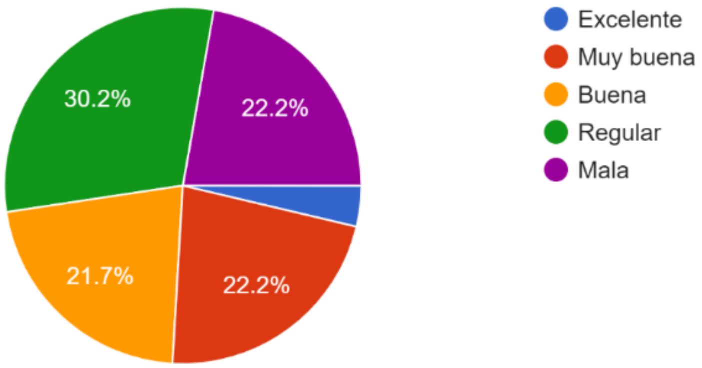
It is remarkable that a 48% of people between ages 18-29 is it very likely they will buy again another product from Apple and the more age the more change in their answer, as the majority of people between 30-44 and 45-59 they maybe or not buy other product from the brand.

Afterwards, the next questions I asked was: *With this information, would you buy a new Apple branded product?*

With the set of answers being:

- Excellent (blue)
- Very Good (red)
- Good (orange)
- Regular (green)
- Bad (purple)

In which I got the following results:



Graph 12 Answers to one question in the survey. With this information, would you buy a new Apple branded product?
Source: own survey conducted for the purpose of this paper.

In which a 22,2% consider that the image that they now have of the brand is “bad”, which means that a 77,8% have the image of the brand as “regular” “good” “very good” or “excellent”. Specifically, a 22,2% still have a brand image of Apple as “very good”.

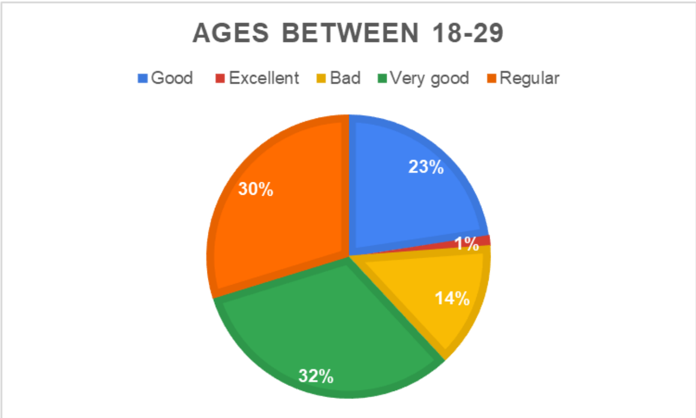
I went further in research in this question and analyzed the relationship between the ages of the participants and their answers to the previous question. I divided the set of surveyed the same way as the previous questions:

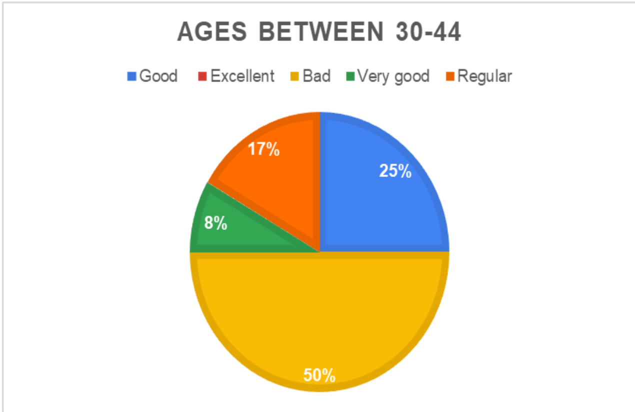
- Under 18
- Ages between 18-29
- Ages between 30-44
- Ages between 45 – 59
- Over 60

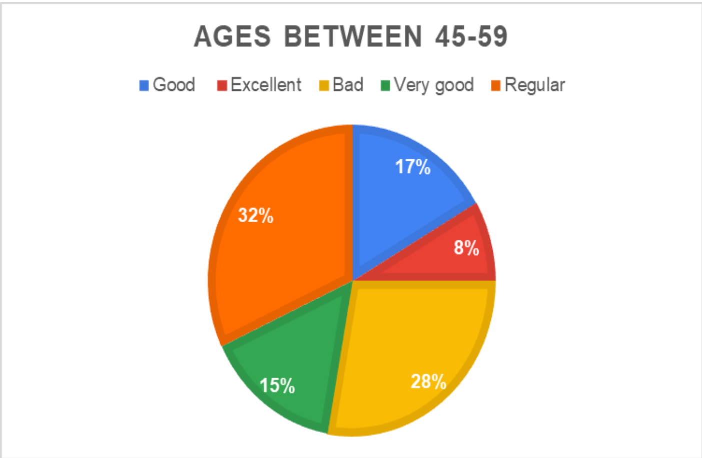
As I only got one answer form one person under 18, I did not include it in those graphs.

Therefore, as we observe in these two questions, population between 30 and 44 years old are a lot more conscious about the effects of tax avoidance in companies and bad behavior, having a repercussion of that in the company’s image and its intention to buy more products from it.

Take a look at the graphs below.







Graph 13, 14, 15 and 16 Segmentation of the surveyed by ages in relation to the previous question.
Source: own survey conducted for the purpose of this paper.

Moreover, we can say very slightly, that the implications of society are greater, the older the age, and that sectors of the population do not perceive the effects of companies evading taxes. This could indicate a lack of fiscal ethics and its effects, which would be acquired with age as these graphs show us. Although this issue of tax ethics in youth would be another field of study.

CONCLUSIONS

After all this previous explanation, it can be concluded that first of all, there is not a clear definition for each term referring to tax avoidance, tax evasion, etc., since many experts hide behind the fact that these are complex terms and therefore difficult issues to define and detail. The only clear difference between them was the legality or non-legality of each one. Therefore, there is a lack of clear guidelines from the agencies on how to differentiate between them and how to penalize these practices.

Under the same line of confusion of the term, there is a need for common rules for all European Union countries to avoid unfair practices, as they are present in Europe, and they have a detrimental effect on the society as a whole, with the effects previously explained in this paper. Answering my hypothesis presented in the introduction of this paper. In my opinion, one of the main challenges of the EU is to unify corporate taxes in member states to stop tax avoidance by large companies and at the same time help alleviate the inadequacy of the collection of the corporate tax by Member States. Since, in the course of this paper, differences in taxation systems among member countries have been exposed, being this difference what allows multinational companies to "transfer" their profits to low-tax jurisdictions, thereby damaging national interests. The EU needs to establish general rules to calculate the company's tax base, reduce active tax plans and ensure that corporate profits are taxed in countries that create value. This conclusion was also reached through the survey, as 93,1% of the surveyed answered affirmative when being asked, if the member countries of the European Union should agree on common rules for corporate taxation[45]. Population would adopt common rules for the application of taxes, in order to prevent countries from failing to pay the taxes they should.

Analyzing Apple's case study, I found a very difficult framework to analyze and a system so complex that even for experts it is difficult to categorize, as the U.S. Senate explained, stating that Apple has created a framework so complex that they have managed to pay a ridiculous amount of taxes in the world and in Europe thanks to countries like Ireland, helping the country pay only a 0,7% of their tax. Justifying the existence of unfair competition within Europe.

However, taking a look into the survey I conducted, 48.2% of respondents said that their brand image of Apple is excellent, good or very good, leaving 51.8% of respondents whose image is regular or bad.

Which led me to think that in today's society there is a lack of collective awareness of the impact that such companies do not have in their respective countries, and we, as consumers have the power of choice. Since Apple, even though it has paid a ridiculous percentage compared to what it should have paid and is harming the tax system of the countries in question, almost half of the respondents have a positive view of the company.

[45] Question number 10 of the survey conducted. It can be found in Annex II.

It could be that this is due to the company's good marketing work, which would be a different field of study, or simply a lack of knowledge from society of the enormous economic impact of companies like Apple from not paying taxes where they should.

Being worrying that, the surveyed between 18 and 29 years old, are the ones less familiar with problems such as tax avoidance and tax evasion, with the repercussions this has on society. Which could be related to one objective of this paper, which was the importance of tax ethics, which this term could be decisive in the behavior of citizens when buying products of certain brands that do not pay taxes where they should, ultimately affecting society. Could be due to a lack of education in tax ethics, which sadly, could be only learned through experience.

However, Europe does not play this game alone. When European countries imposed the "Digital Tax" to big corporations (majority American) like Apple and Facebook, between others, the US proposed to impose tariffs on the products from the countries taxing those companies, and said it was exploring whether to openly investigate the digital taxes proposed by other countries. As observed, this issue goes beyond EU borders even though the focus of the problem is Europe and is money created in Europe.

Those big companies could see their power diminished, if the population were properly educated in fiscal ethics, companies having good tax ethics and the collective knowledge of the importance of following correct fiscal actions.

Therefore, Europe may be that, no matter how many measures it implements, the big technology companies have so much power that countries are capable of disadvantaging others by imposing tariffs on their products, making the citizens the most affected, since foreign products will be more expensive. Actions taken only by the interests of some companies. Which makes you wonder who really has the power nowadays.

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ANEX I and II

Dissertation Project

Project done by:

Alba González Artés

Empresa Internacional

Table of contents of the annex

ANNEX 1. Digital Service Tax in the EU OECD

This ANNEX 1 is going to correspond with the section of *Measures against tax avoidance – Digital Taxation - where applicable.*

As for where applicable in this paper was shown a map and a little description of where this digital tax was applicable and in which rate in the European Union. Now, in ANNEX 1, I am going to emerge into a deeper explanation of the state of the proposal in each country.

DST in the EU OECD countries in March 2020.

EU Country	Tax Rate	Scope of the Tax	Domestic Revenue	Status
Austria	5%	Advertising	€25 million	IMPLEMENTED (Jan. 2020)
*Belgium	3%	User data transmision	€50 million	REJECTED (March 2019)
Czech Reoublic	7%	- Advertising - Use of digital interfaces - Users data provision	€4 million	PROPOSED (Implementation mid 2020)
France	3%	- Digital interfaces provision - Advertising - Data collected for adverts.	€25 million	IMPLEMENTED (no collecting of the DST until December 2020)
Hungary	7.5%	Advertising	-	IMPLEMENTED (now the tax rate is 0% until December 2022)
Italy	3%	- Digital advertising - Digital interface - User data transmission generated by a digital interface.	€5.5 million	IMPLEMENTED (Jan. 2020)
Latvia	-	-	-	INTENTIONS
Norway	-	-	-	INTENTIONS (apply it in 2021)
*Poland	-	-	-	REJECTED
Slovakia	-	-	-	PROPOSED
Slovenia	-	-	-	INTENTIONS (apply it in Sep. 2020)
Spain	3%	- Online advertising - Sale online adverts.	€3 million	PROPOSED (end of 2020)

		- Users data sale		
Turkey	7.5%	- Online service	€3.1 million	IMPLEMENTED (March 2020)
United Kingdom	2%	- Search engines - Social media - Digital marketplaces	€28 million	IMPLEMENTED (April 2020)

ANNEX 2. Data from the survey

Further analysis of the survey conducted, of which I analyzed some questions previously in this paper. In this survey participated a total of 189 surveyed.

As mentioned before, I conducted this survey in Spanish, however, you will find the translations into English of each question right below.

1. What's your gender?
   Female - 66,7%
   Male – 33, 3%
   Other – 0%

2. What's you rage range?
   Under 18 – 0,6%
   18-29 – 44,4%
   30-44 – 6,3%
   45-59 – 38,1%
   Over 60 – 10,6%

3. Have you purchased/owned any Apple branded products?
   Yes – 65,6%
   No – 34,4%

4. Would you buy a new Apple branded product?
   Yes, without a doubt – 28%
   Quite possibly – 25,4%
   Maybe – 24,9%
   No – 21,7%

5. What is your image of the Apple brand?
   Excellent – 20,1%
   Very good – 42,9%
   Good – 22,2%
   Regular – 12,2%
   Bad – 2,6%

6. For your information, Apple was fined 13 billion euros by the European Commission for carrying out certain tax practices in Ireland that are contrary to European Union law. Specifically, the company is accused of having paid only 0.7% tax in the European Union between 2015 and 2017. With this information, would you buy a new Apple branded product?
   Yes, without a doubt – 6,8%
   Quite possibly – 34,4%
   Maybe – 28,6%
   No – 30,2%

7. After knowing the information provided in the previous question, what image do you have of the Apple brand?
   Excellent – 3,7%
   Very good – 22,2%
   Good – 21,7%
   Regular – 30,2%
   Bad – 22,2%

8. Apple has entered into a confidential agreement with the Irish government to establish itself in Ireland on very favourable tax terms and to make sales from that location to the whole of the European Union. Do you think it is justifiable for Apple to have made this agreement?
   Yes – 20,6%
   No - 60,3%
   Maybe – 19%

9. Do you think it is justifiable for Ireland to levy taxes at the expense of the other EU Member States?
   Yes – 11,6%
   No – 81%
   Maybe – 7,4%

10. Do you think that the member countries of the European Union should agree on common rules for corporate taxation?
    Yes – 93,1%
    No – 6,9%