

Original Paper

Base Erosion and Profit Shifting

Exploration of Tax Differences and Tax Economics

Hsiu-li Wu^{1*} & Shang-Yung Yen²

¹ Tax Accounting Section, Feng Chia University Business School, Taichung, Taiwan

² Graduate Institute of Management of Technology, Feng Chia University, Taichung, Taiwan

* Hsiu-li Wu, Tax Accounting Section, Feng Chia University Business School, Taichung, Taiwan

Received: September 11, 2019 Accepted: September 23, 2019 Online Published: October 17, 2019

doi:10.22158/jbtp.v7n4p155

URL: <http://dx.doi.org/10.22158/jbtp.v7n4p155>

Abstract

Multinational companies transfer profits to countries with low tax rates via tax planning. In response to the request from G20 nations, the OECD launched a total of 15 BEPS (Base Erosion and Profit Shifting) actions, hoping to prompt the reform in tax systems in different countries. This paper conducts a case study in the examination of taxation differences created by multinational companies by leveraging various tax rates in different countries. Expert interviews are conducted to examine the adjustments and responses of tax planning and investment structures in the corporate world in the wake of the amendments to CFC and PEM tax codes, as well as the correlation between tax revenues and economies. Finally, this paper presents suggestions so that taxes and profits are operated in a fair and efficient environment. This will benefit economic developments and promote effective resources utilization.

Keywords

transfer pricing, intangible assets, controlled foreign companies, base erosion and profit shifting

1. Introduction

The pursuit of national interests and economic gains has resulted in differing tax rates and trade wars between countries. However, this has evolved into an unfair trade competition. All the governments and companies know well that this is not an even playing field, but they take their chances by testing the legal boundaries before any major punishments are imposed. This paper sets to explore the following issues: (1) the reason why governments and companies scramble for improper tax efficiency; (2) relevant laws and regulations on anti-tax avoidance. The legislation in place in Taiwan (i.e., the Act on the Use and Taxation on the Inward Remittance of Overseas Funds) is not enforced yet as the Cross-Strait Tax Agreement has not taken effect. Without any further disruptions, the Anti-Tax Avoidance Rules should bring in significant tax revenues for the Taiwan government. This begs the question whether an increase in tax revenues boosts the economy; (3) some companies have inked tax agreements before the OECD's implementation of the BEPS actions. It is a challenge to deal with tax disputes and conflicts according to the principle of legitimate expectation and the principle of non-retroactivity, so that the different opinions from three parties can be balanced and reconciled. Based on these three research objectives, this paper hopes to identify the maximum common grounds in order to provide advice to companies and governments in the fostering of a fair and harmonious tax

environment. This will contribute to the prosperity of the economies.

2. A Fair Taxation Environment

Adherence to tax laws are an obligation to all. Tax burdens should be fairly distributed because taxes come with an expense of property rights and involves the issue of fairness. Fair distributions should be hinged on the legitimacy (lawfulness) of tax items. Tax justice is a fundamental principle of constitutions and the core of tax laws. The principle of fairness in tax laws entails “horizontal equity” and “vertical equity”. Horizontal equity demands comparable taxes to be paid by individuals or corporates with the same incomes. In other words, those with equivalent economic affordability should assume the same tax burdens. Vertical equity imposes different tax burdens to those with different affordability. Put differently, rich people or highly profitable companies should pay more taxes. Those with lower incomes can pay less. The ability to pay principle dictates that different taxes are imposed to those with different paying abilities. Tax neutrality in tax laws refers to competitive neutrality and fair competition in tax burdens (Chen, 2016). Fair taxation is the core value of tax laws. This is the underpinning for the sustainability of companies, as well as the research objective and central concept in this paper.

(Note 1) The OECD believes that competitive neutrality aims to foster a fair environment for competition. It is necessary to revisit the existing laws and administrative regulations in the framework of competitive neutrality. For instance, it is a prerequisite to ensure state-owned enterprises or other companies subsidized by the government operate in an even playing field with other companies, as much as possible. Meanwhile, competitive neutrality demands a high level of information transparency. The purpose is to reduce government incentives so that different types of companies can operate in a fair market and business environment, with competitive neutrality introduced to the competition laws, other laws and regulations. Competitive neutrality is also extended into corporate governance codes to mitigate the competitive advantage supported by the government. According to the OECD, the incorporation of competitive neutrality will bring about reforms to state-owned enterprises and subsidized companies as never before. Regulators should also issue warnings to policymakers for any identified measures intended by governments to distort market competition by sponsoring one or multiple companies. How can competitive neutrality policies be put in place? The OECD says that it should be materialized in the competition laws in different countries. Competition laws can stay on top of any governmental or commercial behaviours detrimental to competition. If competitors are assessed with unfair taxes, this violates the principle of fairness and the concept of competitive neutrality. Tax neutrality demands no effects of tax levies on operating decisions and resource allocations for the economic activities by private sectors (consumers and producers). In public finance, tax neutrality requires no change in relative prices of goods or services as a result of tax assessments, in order to avoid the optimal allocation of resources and the distortion of the market economy. This is to avoid the loss of monetary value due to unhappy feelings of people for paying taxes higher than the monetary value of tax revenues. The loss due to unhappiness is known as deadweight loss, excess burden or welfare cost of taxes in public finance.

3. Tax Planning and Profitability Scale

Cross-border economic and trading activities are increasingly frequent as the world continues to move towards globalization. The ubiquitous nature of ecommerce and economic transactions cross borders involve more and more offshore investments, transactions, and import/export of labour. To avoid even more tax disputes in the era of globalization, governments around the world can no longer work in silo. It is necessary to come up with a legal and response mechanism and synchronize the legal orders on a global scale. Consistent implementation and application are key to the mitigation of tax conflicts in the international community. The question now is how to construct a uniform, fair and reasonable tax environment with harmonization of tax codes in different countries.

BEPS Action 3:

Investment incomes from Controlled Foreign Companies (CFC) should be consolidated into the taxable incomes of the parent company during the year. BEPS Action 7

BEPS Action 7:

The substance over form principle emphasizes the Place of Effective Management (PEM).

BEPS Action 6:

This prevents the abuse of tax agreements. The structuring and signing of tax agreements concerning double taxation, non-taxation in two statements and fair distribution of tax revenues by signing countries, the access to tax data from other countries, and assistance in tax collections require the tax agreement between two countries, signing of multinational agreements for taxation data or other tax sharing. It is also necessary to work with relevant domestic laws and regulations to ensure enforcement and compliance with the principle of international fairness and mutual benefit.

BEPS Actions 11 to 14:

Information transparency is achieved with Automatic Exchange of Information (AEOI) and other information sharing mechanisms, as well as Common Reporting Standard (CRS).

BEPS Actions 8 to 10:

The stipulations regarding transfer pricing of intangible assets define beneficiary owners.

BEPS Action 13: Transfer Pricing Documentation and Country-by-Country Reporting

This requires a three-layer structure of literature, i.e., global master files, country-by-country reporting and country-specific files.

The BEPS 15 Actions will influence tax planning and tax avoidance by multinational enterprises and steer towards a fair, reasonable and uniform taxation environment.

4. Tax Economics

The 15 BEPS Actions aims to avoid the abuse of taxation agreements by effectively combating harmful tax competition. This is achieved with the transfer pricing of intangible assets consistent with the capital value and transaction risks. According to the Finance Ministers and Central Bank Governors' Meeting for G20 countries in Fukuoka Japan in June 2019, the final report will be released in 2020. First, a tax policy should be established regarding the taxable payments by a company selling products/services in a jurisdiction but without any physical premise in that jurisdiction. If the company can identify a low-tax or offshore haven, the second policy will be applied. In this instance, all the governments in the world shall levy taxes based on the lowest tax rate in the world. Both the OECD with its BEPS 15 Actions and the G20 finance ministers with their tax policies strive for fair and just tax systems around the world. The governments adopting low tax rates wish to pursue their own economic prosperity. Of course, taxations and economies are closely integrated. This paper intends to

explore whether tax revenues and economic developments can grow at the same time by imposing higher corporate tax burdens on after the enactment of the Anti-Tax Avoidance Rules.

5. Case Study—Determination of Value of Intangible Assets

5.1 Case Study—Amazon.com Inc.

The U.S. online retailer heavyweight Amazon.com Inc. was ordered by the European Union on (Note 2) October 4, 2017 to repay €250 million (or NT\$9 billion or so) in back taxes on the following grounds:

- (1) Amazon.com Inc.'s holding company in Luxembourg was its European headquarters, charging patent fees from affiliated companies. However, the Luxembourg offices had no employees or offices. It was not an PEM, as it had no commercial activities;
- (2) The investigation from the European Union suggests that the patent fees collected by the holding company in Luxembourg did not comply with the principle of transfer pricing or at arm's length. In fact, these expenses were higher than the prevalent market prices;
- (3) The tax agreement reached between the Luxembourg government and Amazon.com Inc. in 2003 was improper tax subsidies, as the holding company in Luxembourg did not pay taxes for nearly 3/4 of its profits. The incentives provided by the Luxembourg government were hence not fair to other companies not enjoying the lower tax rates. This affects fair competition (Chang & Huang, 2017).

Amazon's spokesperson responded that Amazon holds the intellectual properties entitled to tax benefits in support the development of industries. These intellectual properties are owned by its holding company in Luxembourg. The Luxembourg government also indicated that the tax benefits granted to Amazon were totally legal at that time. Amazon had been paying taxes according to international laws and Luxembourg's tax codes, without any preferential treatments. Therefore, the Luxembourg disagreed with the decision by the European Union by emphasizing that its tax system was in compliance with all the laws and stipulations of the European Union. The Luxembourg government stood up for Amazon Inc. in the tax fight with the European Union. Luxembourg is a smaller economy and seeks to boost its economic development by attracting multinational enterprises to establish their European headquarters there by offering tax rates lower than in other member states of the European Union (Sing Tao Daily, 2017).

5.2 Opinions from the Author

The author expresses the following opinions regarding the European Union vs. Luxembourg and Amazon.

The first issue is the determination of value of intangible assets. Amazon's holding company in Luxembourg has the legal ownership of the intangible assets. Were the royalties it charged for the contribution of the intangible assets and the risks assumed for the ownership appropriate? The guiding principle of risk control stated in the BEPS Action 10 mentions that the provision of funding alone does not equate to the ownership of the value and return of the intangible assets. Without risk control or management capability, the offering of capital only deserves the return equivalent to risk-free rates. To validate whether the transaction of intangible assets between affiliated parties is at arm's length, the OECD conducts an analysis on the risks and rewards concerning the development of intangible assets, the enhancement, maintenance and protection of values, and the contribution of developed and utilized assets. If the owner of intangible assets in question is not involved in implementations or undertaking of relevant risks, it does not deserve the profits generated by the intangible assets. In other words, transfer pricing should be based on economic substances, as well as the functions and risks assumed by

participants. Contractual terms and legal ownerships are not the sole basis for the owner's entitlement to the returns on intangible assets. In this light, Amazon's holding company in Luxembourg should not participate in the gains from the intangible assets if it did not make contributions to the value of the intangible assets. The questions should be raised: were there economic functions and activities involved in the transaction of intangible assets owned by Amazon's holding company in Luxembourg? Or, was it just through legality or contractual terms with Amazon.com Inc. in the U.S.? Were the patent fees charged in line with the principle of transfer pricing and at arm's length? This was one of the reasons why the European Union demanded back tax payments.

The second issue is whether the transaction between Amazon.com Inc. and its holding company, European headquarters in Luxembourg makes unique and valuable contributions to both parties. Was it a model so highly integrated that the contributions from transaction parties were difficult to be valued? Was there joint undertaking of major economic risks or sole assumption of relevant risks that it was difficult to assign the distribution of calculated values from transaction profits?

The third issue is that the holding company in Luxembourg had no employees or offices. It performed no commercial activities. The companies with PEM onshore become foreign companies registered in low-tax jurisdictions. The incomes onshore and offshore should both consolidated into the parent and calculate corporate income taxes and personal income taxes accordingly.

Finally, the fourth issue is the tax agreement reached in 2003 by the Luxembourg government and Amazon's holding company in Luxembourg. On February 12, 2013, the OECD released the BEPS Actions in response to the request from G20 countries. Apparently, the tax agreement was signed in accordance with international laws and Luxembourg's tax codes then, long before the publication of the 15 OECD action plans. In law, the general principles are non-retroactivity and reasonable trust for the protection of people and companies in an honest and credible manner. As the tax agreement between Amazon and the Luxembourg government was inked before the enactment of the OECD action plans, administrative government agencies should adhere to the principle of trust and guarantee, without extending the interpretations and making exceptions applicable to facts or legal relations finished before the effectiveness of later laws and regulations. The maintenance of legal stability is the key determinant of judgement.

6. Optimal Taxations and Economics

To examine whether an increase in tax revenues after the implementation of anti-tax avoidance measures such as CFC and PEM can boost the economic growth, this paper interviewed with Professor Yuan-Hong Ho, Department of Public Finance, Feng Chia University, regarding the optimization of taxations. Professor Ho analysed the correlation between tax revenues and economic growth from the perspective of government budgets. He pointed out that an increase in tax revenues does not equate to economic recovery because higher tax revenues only result in higher government spending. To resolve budgetary deficits, the government should cut back on expenses, rather than seek to increase tax or other revenues. Take Taiwan for example, the government's deficits have been snowballing since 1989 (compared to 1995-1988). To make up the deficits, the government disposed assets, issued bonds and borrowed from banks. Professor Ho refers to his paper "Tax or Spend, What Causes What? Reconsidering Taiwan's Experience" published in the journal *International Journal of Business and Economics*. His analysis on the annual data from 1967 to 1999 suggests enlarging government deficits. The year 2000 saw the end of the 50-year ruling by the Kuomintang, as the people in Taiwan wished for an end to government deficits. At that time, the rising labour costs in Taiwan forced some

companies to invest in China. The handsome profits and success of these companies brought more capital into China. As a result, Taiwan sank into economic recessions. The new administration decided to step up spending to stimulate demand. It is hoped that this approach can revive Taiwan's economy soon by putting an end to the economic doldrums.

There are no right answers whether expansionary spending is sustainable and how economic developments can be realized. The key is the causal relationship between government incomes and spends in Taiwan as an island economy. Professor Yuan-Hong Ho argues in his empirical research "Tax or Spend, What Causes What?" that the government should reduce budgetary deficits by cutting back on spending. This is because an increase in government spending leads to more government spending. Low government spending funded with low tax revenues can reduce deficits. In contrast, higher government investment in infrastructure with higher tax revenues is often a recipe for political spoils, poor government efficiency and efficacy and ultimate economic stagnation. As previously mentioned, government deficits have been on a rapid increase since 1989 and the economy continues its worsening. The new administration decided to slash NT\$810 billion to stimulate the Taiwan economy and pull Taiwan out of the economic slumps. Can the increased spending resolve the economic predicament? Some people suggest the government should boost the economy by increasing tax revenues. However, our study shows that the continued expansion of tax revenues and government spending will not be entirely effective to revive the economy. This is because higher tax revenues only result in greater government spending. To resolve the prolonged deficit problem, the Taiwan government should turn its focus on expense reductions, rather than seek to increase tax or other revenues. Literature suggests that the public finance data in Taiwan during the research period supports the tax-spend hypothesis. In other words, tax revenues are the cause, and spending is the result. Therefore, the government should reduce taxes in order to scale back on spending (hence deficits).

An ideal tax environment is usually on the wish list of governments, corporates and people. Professor Ho indicates that costs, production costs, distributions, climates and tax rates in different regions are all important considerations for multinational enterprises. Tax expenses are only one of the factors. Professor Ho said that fair taxation is desirable for most people, but it seems impossible to make everybody happy. In the case of individual income taxes, high earners naturally pay more. Government spending, however, may not benefit. Tax revenues are used to benefit the public. The prioritization of the society and public interest means a small number of big taxpayers do not enjoy the benefits of government spending. Broadly speaking, this is also unfair. Tax fairness should be viewed for the public. It is fair as long as the tax system meets the principle of fairness generally accepted by the society. Professor Ho indicates that tax codes and tax reforms should pursue fairness, as well as economic growth, employment, efficiency and tax revenues. In Taiwan, tax incentives for industrial developments cover tax reductions for R&D expenses; sweat equity; deferral of tax payments by creators; tax payments based on the lower of the acquisition cost or selling price for bonuses issued to employees; pass-through taxations for venture capital firms based on limited partnerships; tax incentives to angel investors. Many people even criticize the Ministry of Finance for these unfair measures as tax incentives are offered to only some industries. On the surface this policy is not fair. However, tax incentives have paid off. They contributed to the achievement of industrial developments and economic growth. This also indirectly validate the correlation between tax incentives and economic recovery. In the era of globalization, competitors are peers overseas. If foreign governments grant tax incentives to an industry, Taiwan should follow up in order to compete fairly in that industry. Many governments (e.g., China and South Korea) use tax and other incentives to support strategic industries

in order to compete in the international market. Some companies receive generous incentives and subsidies from local governments. If the superficial fairness is desired and functional incentives are cancelled to put all industries in an even tax paying regime, some industries in Taiwan will face unfair competition from foreign peers who benefit from low tax rates and other incentives. This may result in an exodus of successful industries from Taiwan to other countries where incentives are on the table. Emerging industries may also find it difficult to compete with competitors from other countries and hence become unwilling to stay in Taiwan. All these will hinder the economic development in Taiwan. A well-known incentive to retain domestic talents and attract foreign talents is to reduce the highest rate of income taxes for locals and the income tax rate for foreigners. Brain drain is a more serious problem than industry exodus as a result of higher effective tax rates. In sum, seemingly unfair taxations are in fact a remedy for economic stagnation.

The Finance Ministers and Central Bank Governors' Meeting for G20 countries in Fukuoka Japan in June 2019 (Note 3), discussed how to prevent tax avoidance by global tech giants such as Google, Amazon, Facebook and Apple. The final communique proposes a dual-ladder policy: (1) taxation on multinational companies for local earnings in the countries of product/service sales, regardless of whether physical premises are set up in these countries; (2) the global minimum tax rates applicable to the earnings channelled to low-tax countries. The author asked Professor Ho whether different countries in the world would abide by the minimum tax rates set by the G20 finance ministers and central bank governors. He explained with the prisoner's dilemma, the best example for zero-sum games in the game theory (Note 4). It shows that the optimal decisions by individuals are not the optimal decisions for the group. In other words, rational decisions by individuals often result in collective irrationality. In a prisoner's dilemma, if prisoners collude and refuse to tell the truth, it will bring the best outcome for all. However, unable to communicate with each other, they seek their own interest by selling out others. Whilst betraying each other is a violation of the best interest for all, it is the decision for personal best interest. Whether countries around the world will conform to the global minimum tax rates can be examined in the context of the prisoner's dilemma. Governments and multinational enterprises pursue economic growth and their own interests amid fierce competition. If a government and a company come up with their own tax incentives or subsidy schemes without complying with the uniform minimum tax rates, other countries will follow suit. This will trigger a tax war. The price competition between players from two countries will damage national economies and company profitability, i.e., the outcome of mutual betrayals.

Thanks to information transparency in a globalized world, Professor Ho believes that global minimum tax rates can be a possibility if most countries abide and work together to combat those who do not.

Professor Ho explained the correlation between taxes and economies by using the tax-spend hypothesis. To resolve government deficits, the focus should be on cost reductions, not tax or other revenue increases. Taiwan has failed to stimulate its economy with budgetary hikes, as shown in research. Professor Ho argued that an increase in tax revenues (after the implementation of measures to crack down on tax avoidance) will not necessarily benefit the economy. An ideal tax environment is desirable. However, the seemingly unfair tax incentives or subsidies to boost growth in the era of slim margins do contribute to the economy. This then begs the question whether governments around the world will adhere to the global minimum tax rates. Conflicts of interest of all kinds are everywhere as companies want to make money and governments wish to boost economies. Professor Ho used the prisoner's dilemma to explain that individuals or groups prioritize their own interests in a two-party or multi-party game. In the short term it will not look easy to make all countries in the world to conform to the

minimum tax rates set up with good intentions. However, the majority may be able to force a small number of governments to comply in the long run.

7. International Anti-Tax Avoidance Measures & Suggestions

The Anti-Tax Avoidance Rules has been signed but not yet enactment. (Note 5) The Cross-Strait Tax Agreement and the Act on the Use and Taxation on the Inward Remittance of Overseas Funds have just taken effect.

In order to get a broader view of international control and measures for anti-tax avoidance, this paper interviewed Professor Gui-Duan Chen, Feng Chia University, who is also a CPA with En Wise CPAs & Co. Professor Chen pointed out that the frequently used anti-tax avoidance measures in the international community are (1) foreign exchange control; (2) substance over form principle of taxations. He suggests the assurance of capital transparency with CRS. Therefore, companies should enhance their international investment structure, international capital planning and cross-border tax risk management. Below is a summary of his comments.

7.1 Foreign Exchange Control

This is to prevent money laundering or tax avoidance by not allowing multinational companies to avoid taxes via tax havens. Banks may refuse to handle remittances or report to regulators for inspections in the case of any suspicious or improper capital flows. However, foreign exchange control may affect financial liberalization and internationalization. Professor Chen thinks it is necessary to take a cautious approach in its implementation.

7.2 Substance over Form Principle of Taxations

The Anti-Tax Avoidance Rules in Taiwan covers PEM and defines CFCs. It also stipulates that undistributed earnings shall be taxed in Taiwan. The Ministry of Finance indicates that the presence of CFCs and PEM, if identified by the National Taxation Bureau, shall be taxed on the basis of substance over form. Professor Chen explained in detail the principle of substance over form. It is essentially the governance of tax consequences by disregarding the form used to circumvent the taxes on substance. This is an issue that scholars in tax laws must examine, as well as one of the most important and complex problems in the practice of taxations. In fact, many tax disputes have arisen because of it. The doctrine of taxation by law holds that any matters associated with rights and obligations of the people are governed by law. The principle of clarity is also an important concept in taxations. Any questions on taxations or non-taxations shall be handled in favour of taxpayers in order to protect their property rights, providing that there are specific descriptions in tax laws. Also, the principle of fairness in tax dictates that tax levies should be based on affordability of taxpayers. This is also known as the ability to pay principle. The principle of substance over form must be operated in the framework of taxation by law, in order to avoid any abuse. The third paragraph and the fourth paragraph of Article 43 of the Income Tax Act on CFCs and PEM are meant to prevent the use of tax havens by multinationals not to engage in business operations but to avoid or defer taxes. Tax authorities can establish laws and regulations for tax assessments in accordance with the avoidance of tax law abuse in the continent law system and the business purpose tests in the common law system.

The third paragraph and the fourth paragraph of Article 43 of the Income Tax Act on CFC and PEM have passed the third reading in the Legislative Yuan. However, Act Governing Relations between People of the Taiwan Area and Mainland Area in the early days required outward investments to China via the third location. This is the reason why many Taiwanese companies have set up offshore entities of different types for different purposes. They have accumulated considerable offshore capital over

time and have been using the money for global investments and activities. As a result, it is a daunting challenge trying to tell the incomes from China and the incomes from other jurisdictions. The Income Tax Act's inclusion of incomes in China, Hong Kong, Macau and other regions into the Income Basic Tax Act's incorporation of incomes in Hong Kong, Macau and other regions have triggered by tax disputes and litigations as a result of repatriation of capital. To mitigate the impact of repatriation of capital on business operations due to implementation of the anti-tax avoidance measures by the Ministry of Finance, the Executive Yuan shall determine the enactment date of Article 126 of the Income Tax Act. The legislation of the regulations governing CFCs and PEM has completed and published, the implementation is not yet ready given the policy awareness campaigns currently ongoing. In the case of tax assessments on Taiwanese companies based on the principle of substance over form, Professor Chen pointed out the principle of legitimate expectation and the principle of non-retroactivity. There is a lot of grey area regarding the existing economic and tax affairs of offshore entities before the enactment of the legislation. It is necessary to review each case individually. Litigations particularly take efforts and time.

One of the reasons for the delay in enactment of the Anti-Tax Avoidance Rules is the outstanding issue concerning the taxation of repatriated capital from offshore. This is the reason for the legislation of the Act on the Use and Taxation on the Inward Remittance of Overseas Funds. According to the Act, filing is required for repatriated capital. Taxations will be on the amnesty basis. The capital can be divided into capital or incomes, with burden of proof imposed. The remittance of offshore capital back to Taiwan helps to boost domestic investments (except for real estates) and hence economic developments. Meanwhile, the income tax issues will be highly complex once the stipulations governing CFCs and PEM are in effect. This may trigger many tax litigations. As in the case study on Amazon, multinational enterprises leverage the tax rate differences between countries and channel earnings, legally, to the jurisdictions with low tax rates. This is the result of taxation rights exercised by individual governments. The European Commission posited that the taxation was unfair and argued that the levy of domestic taxes should comply with the international tax standards created by the UN and the OECD, without favouring any companies.

The European Union ordered back taxes, but Amazon stated that all the tax agreements were completely legal. This became a case of European Union vs. Amazon and Luxembourg government. Professor Chen indicated that international organizations can impose restrictions on member states but claim no sovereignty on tax issues for the companies operating in member states. The European Commission's demand for back taxes ignited the heated debate regarding the domestic tax sovereignty in the context of international bodies and international taxations. Professor Chen questioned whether international organizations have the right to impose taxes on corporates as this involves international trade and the rights over resources circulation.

7.3 After the Implementation of CRS, Companies Are Advised to Enhance Their International Investment Structures, International Capital Planning and Risk Management in International Taxations

Essentially CRS is the information sharing among financial institutions in different countries on the data of bank accounts owned by non-local taxpayers and the presentation of accounts information to tax authorities in the countries of residence for these non-locals. The purpose is to ensure reporting of overseas incomes by taxpayers and hence the transparency of taxations in different countries with effective evidence on tax avoidance. Taiwan has released its CRS regulations, scheduled to take effect in 2019. The first batch of information sharing with other countries or regions will be in 2020.

Professor Chen believes that by implementing CRS clauses, Taiwan will join the global bandwagon of anti-tax avoidance and work with tax authorities in other countries to enhance information transparency by implementing CRS clauses. This combined with the measures governing CFCs and PEM increases the risks associated with global tax audits on multinational companies who seek to retain profits with offshore entities and allocate profits not consistent with economic substance. In conclusion, Professor Chen suggests companies enhance their international investment structures, international capital planning and risk management in international taxations.

Meanwhile, Professor Chen highlighted the complex uncertainties in relation to the Act on the Use and Taxation on the Inward Remittance of Overseas Funds, and the anti-tax avoidance clause stipulated in the third paragraph and the fourth paragraph of Article 43 of the Income Tax Act on CFCs and PEM. These clauses have passed the third reading by the Legislative Yuan and yet to take effect. Companies are advised to plan for the utilization of offshore capital parked in offshore entities and implement risk management in overseas taxations. Professor Chen indicated that CRS clauses will be soon promulgated, and the OECD is promoting the BEPS 15 Actions. All the governments around the world are working together to combat tax avoidance by using tax havens. The income tax data will be soon shared under the CRS scheme so companies should sign tax agreements with different countries as soon as possible. The order for back taxes may also come with punitive measures and damage reputations.

8. Conclusion and Suggestions

This paper explains the speculative behaviour taken by companies to reduce effective tax rates by using the prisoner's dilemma in the science of psychology. Will the promulgation of the Anti-Tax Avoidance Rules increase tax revenues, and thus in turn, economic growth? The in-depth interviews indicate that higher income tax revenues do not have significant contribution to the economy. Rather, only by expanding the tax base and hiking consumption taxes will it be possible to promote economic developments. Governments are advised to cut back deficits in order to stabilize the economy. The Anti-Tax Avoidance Rules in Taiwan will soon take effect. The Ministry of Finance warned that taxes will be assessed in accordance with the principle of substance over form if the National Taxation Bureau gets hold of evidence concerning CFCs and PEM. Accountants and scholars indicate that according to taxation by law, any matters on rights and obligations of people shall be governed by law. The principle of clarity dictates that any issues shall be dealt in favour of taxpayers. The principle of substance over form must be operated in the framework of taxation by law, in order to avoid any abuse. In the case of European Union vs. Amazon and the Luxembourg government, the European Union maintains its stance on the principle of taxations and compliance of tax laws. The litigation is still ongoing.

This paper presents the following suggestions and research findings as a template for the improvement of tax environments and the policymaking for economic stimulus.

- i. Formulation of international tax standards
 - 1) Redefinition of international tax standards by adhering to laws, regulations and policies
 - 2) Establishment of global fairness initiatives to reconcile the differences in tax collections and tax determinations
 - 3) Setup of a global mechanism for minimum tax rates to impose taxes on items that erode the tax base. It is suggested that no deductions are allowed for the taxes paid by affiliated parties in the countries or territories that grant low tax rates or tax incentives under tax agreements.

ii. Legal aids on tax matters

- 1) Increase of international aids to countries with tax problems
- 2) Training of professionals in laws and taxes so that they can offer assistance on a pro bono basis
- 3) As the Anti-Tax Avoidance Rules will be implemented soon, assistance should be extended to corporates so that they can adjust investment structures, engage in appropriate tax planning and improve corporate governance.

iii. Establishment of a fair tax environment

- 1) Enhancement of cooperation among stakeholders and tax issues associated with tax agreements
- 2) Promotion of fair distributions on a global scale and international politics based on social ethics
- 3) Encouraging taxpayers to abide by the moral standards and minimum tax rates set by international bodies
- 4) Legal restrictions on political agents in the use of power and systems for personal gains.

iv. Economic stimulus measures

- 1) The enactment of the Anti-Tax Avoidance Rules will increase tax burdens on companies. Therefore, the government should expand the tax base and boost the economy with higher indirect taxes but lower direct taxes
- 2) Fostering of a good investment environment and adoption of appropriate tax incentives to encourage the repatriation of offshore capital and bring domestic companies to an even playing field with international peers
- 3) The government should reduce expenses and budgetary deficits by measuring incomes vs. outlays, in order to afford tax cuts to stabilize and boost the economy.

Whilst the anti-tax action plan has accomplished its task for this stage, not all the countries have implemented the CFCs and PEM measures, the Automatic Exchange of Information (AEOI) or the Common Reporting Standard. As the OECD is still discussing the determination of the prices and values of intangible assets with high risks, it is not possible to conduct an empirical analysis on whether the global economic movements contribute to fair taxations in terms of tax revenues and profit distributions. This is the research limitation of this paper. It is suggested that future studies explore in-depth the change of global tax revenues, national economic movements and taxation fairness once the anti-tax avoidance campaign has been implemented. Hopefully the global economy grows collectively in a fair tax environment toward world peace.

References

- After Apple, Amazon Faces Back Tax Ordered by European Union.* (2018). Retrieved February 12, 2018, from <https://finance.technews.tw>
- Chang, T. M., & Huang, W. R. (2017). Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm's Length Transfer Pricing and Amendment in Response to BEPS Actions 8 to 10. *Deloitte Monthly*. Retrieved April 1, 2018, from <https://www2.deloitte.com/tw/tc/pages/tax/articles/beps-update-201711.html>
- Chen, C. H. (2016). *Theory of the Integration of Tax Law Competitive Neutrality*. Retrieved June 22, 2019, from <https://wiki.mbalib.com/wiki>

G20 Finance Ministers Intend to Levy Digital Tax. (2019). Retrieved June 10, 2019, from <https://news.cnyes.com/news/id/4333845>

Opportunism. (2019). Retrieved March 5, 2019, from <https://zh.wikipedia.org/zh-tw/>

Prisoner's Dilemma. (2019). Retrieved July 31, 2019, from <https://zh.wikipedia.org/zh-tw/> Prisoner's Dilemma

Sing Tao Daily. (2017). *European Union Orders NT300 Million in Back Taxes from Amazon.* Retrieved February 1, 2018, from <https://www.singtaousa.com/finance/31713>

Notes

Note 1. https://wiki.mbalib.com/wiki/competitive_neutrality

Note 2. <http://finance.technews.tw/2017/10/05/amazon-with-shell-companies-to-avoid-tax-the-eu-tax-9-billion/> After Apple, Amazon Faces Back Tax Ordered NT\$ 9 billion by European Union

Note 3. <https://news.cnyes.com/news/id/4333845> G20 Finance Ministers Intend to Levy Digital Tax

Note 4. [https://zh.wikipedia.org/zh-tw/prisoner's dilemma](https://zh.wikipedia.org/zh-tw/prisoner's_dilemma)

Note 5. <https://zh.wikipedia.org/zh-tw/Opportunism>