

Fiscale planning en strategie

Planning 2019-2020

Vrijdag 8u30-11u15

Campus Tweekerken - 1.3 Fernand Rogiers

Lesweek	College	Datum	Topic (7 verschillende topics)
week 1	1	14.02.20	Inleiding Fiscale planning en strategie - I. Verleyen
week 2	2	21.02.20	Remuneratie van bestuurders en kaderleden - P. Derthoo
week 3	3	28.02.20	Remuneratie van bestuurders en kaderleden - P. Derthoo
week 4	4	06.03.20	Vermogensplanning incl. verwerven van vastgoed - M. Van Gils
week 5	5	13.03.20	Herstructureringen - S. Louwagie
week 6		20.03.20	Dies natalis
week 7	6	27.03.20	Douane en accijnzen incl. Brexit - F. De Temmerman
week 8	7	03.04.20	Douane en accijnzen incl. Brexit - F. De Temmerman
		10.04.20	Paasreces
		17.04.20	Paasreces
week 9	8	24.04.20	Fiscaliteit van non-profit verenigingen - B. Maurau
week 10		01.05.20	Dag van de Arbeid
week 11	9	08.05.20	TransferPricing en Effective tax rate in praktijk - M. Barbe (DOW international)
week 12	10	15.05.20	Fiscale consolidatie - I. Verleyen
Inhaal	-	22.05.20	Brugdag

FISCALE PLANNING EN STRATEGIE

Prof. Dr. Isabelle Verleyen

PRAKTISCH

- Ufora
- Werking
- Evaluatie:
 - Eerste zittijd: 50% NPE (opdrachten) en 50% PE (schriftelijk examen)
 - Tweede zittijd: 100% PE, schriftelijk examen

EVALUATIE - EERSTE ZITTIJD

- 50% NPE (10 punten)
 - Een aantal topics worden geëvalueerd aan de hand van een opdracht. Dit wordt meegedeeld bij de start van de topic. De leerstof van deze topics wordt niet meer bevraagd tijdens het schriftelijk examen.
- 50% PE (10 punten)
 - Schriftelijk examen m.b.t. de gezien leerstof van de topics waarvoor er geen opdracht werd gegeven tijdens de lessen

AN ACADEMIC VIEW ON CORPORATE TAX AND TAX PLANNING

AN ACADEMIC VIEW ON CORPORATE TAX AND CORPORATE TAXES PLANNING

Academic papers:

- Hillenbrand, C., Money, K.G., Brooks, C. & Tovstiga, N. (2019). Corporate tax: what do stakeholders expect? *Journal of Business Ethics*, 158(2), 403-426.
- Cooper, M. and Nguyen, Q.T.K. (2019). Understanding the interaction of motivation and opportunity for tax planning inside US multinationals: A qualitative study *Journal of World Business*, 54, 1-17.

2008

WHAT IS TAX PLANNING?

“Tax planning is defined as a **strategic approach** that firms undertake to **reduce their tax bills** by **implementing** a broad range of activities, mechanisms and methods whilst staying within the bounds of what is **legally acceptable.**” (Cooper and Nguyen, 2019)

WHAT IS TAX PLANNING?

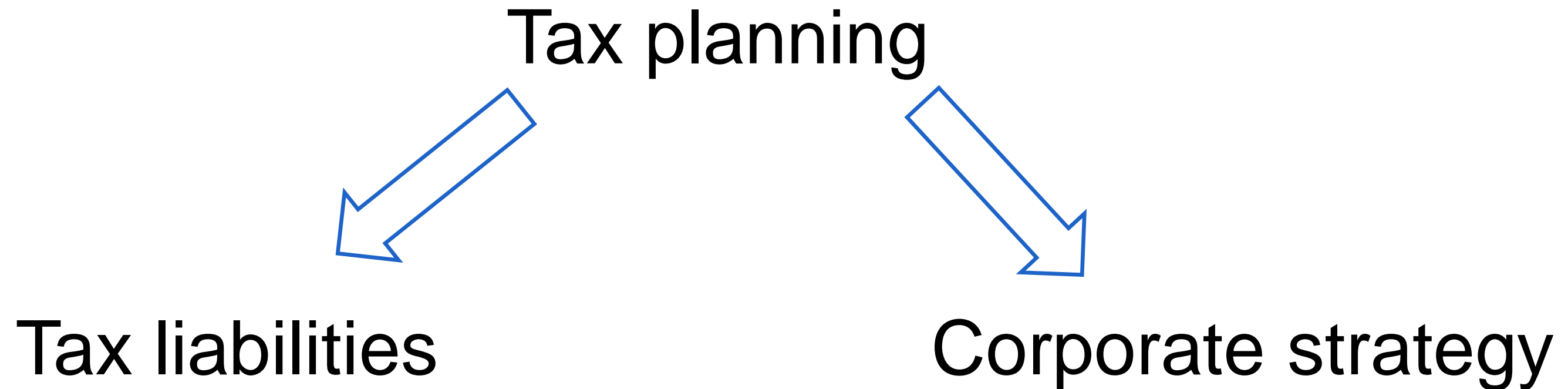
“tax planning” – “tax avoidance” – “profit shifting” – “income shifting”
=> used interchangeably in the academic literature

NOT the same as “tax evasion”



Tax evasion is illegal regardless of the outcome or motive underlying the activity. (Fisher, 2014)

WHAT IS TAX PLANNING?

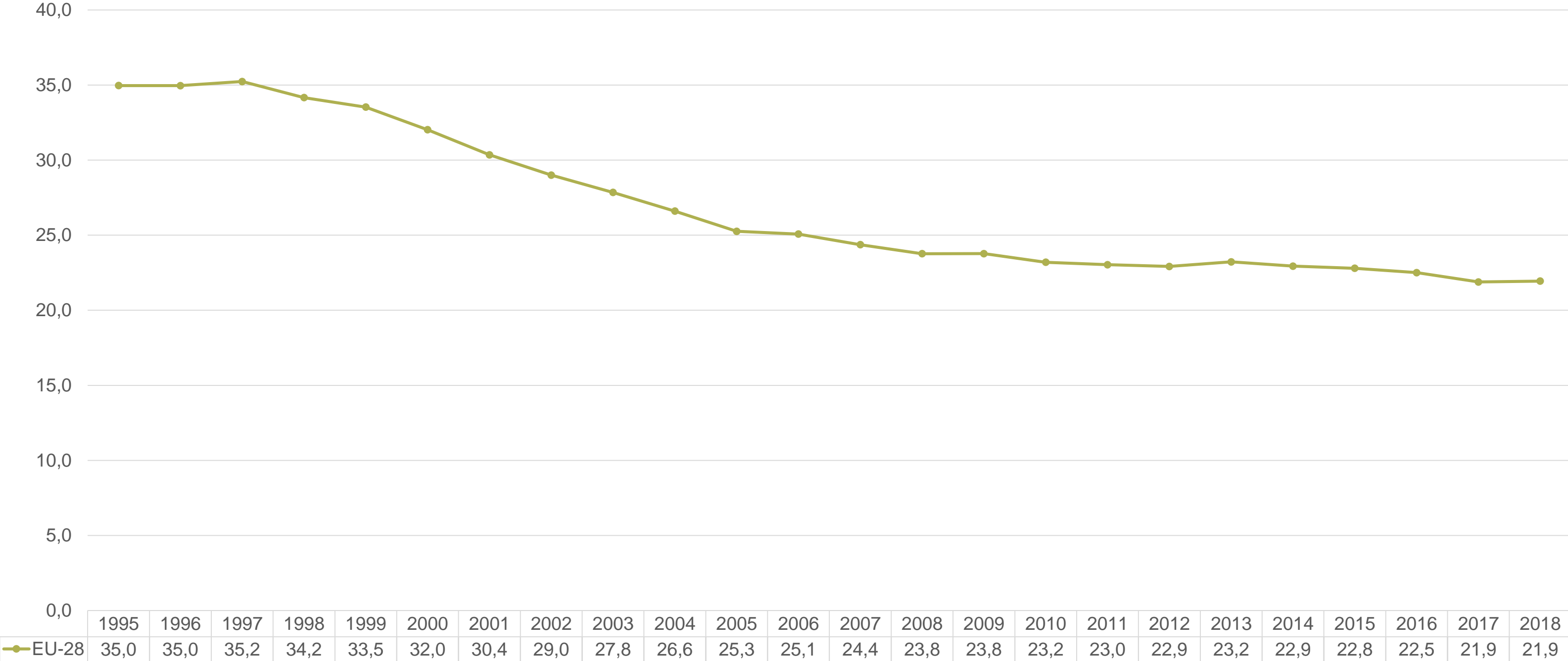


Influencing decisions on the **location** of foreign direct investments, the **amount** of capital invested, the locations where profits are recorded, the choice between retaining profits and holding cash at foreign subsidiaries versus profit repatriation.

WHAT IS TAX PLANNING?

“Profit shifting is defined as the allocation of income and expenses between related parties of the same legal entity with the focus to shift profits from higher tax jurisdictions to lower tax jurisdictions so as to reduce tax liability of the whole group.” (Cooper and Nguyen, 2019)

EU-28: AVERAGE STATUTORY TAX RATES (INCLUDING SURCHARGES)



MOTIVATION AND OPPORTUNITY FOR TAX PLANNING (COOPER AND NGUYEN, 2019)

“Why do some corporations avoid more tax than others?”

- 15 semi-structured interviews
- experienced tax executives (tax departments of MNEs or tax advisory firms)
- focus on US and UK

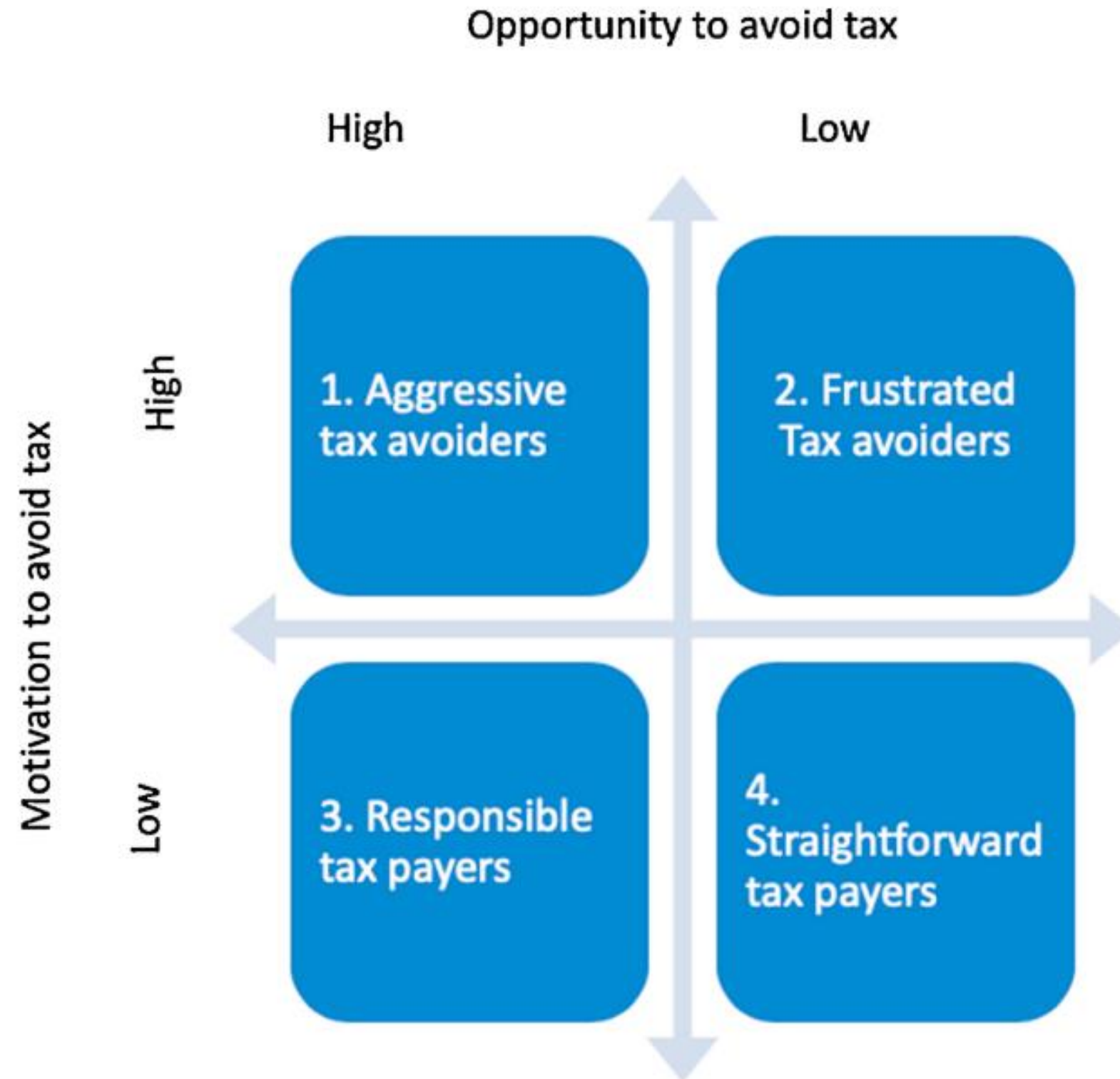


Fig. 1. A typology of motivation and opportunity in MNE tax planning.

MOTIVATION AND OPPORTUNITY FOR TAX PLANNING (COOPER AND NGUYEN, 2019)

Existing literature on factors affecting *motivation*

- Impact on reputation: **firm** level or **individual** level

Ex. Share prices are negatively impacted by revelations of tax avoiding activity (Hanlon & Slemrod, 2009)

Ex. CEO's contracts are more likely to terminate when firms pay higher taxes. (Chyz and Geaertner, 2018)

MOTIVATION AND OPPORTUNITY FOR TAX PLANNING (COOPER AND NGUYEN, 2019)

Literature on ***opportunities*** for tax planning (a.o. Azemar, 2010; Devereux & Griffith, 2003; Eden et al., 2005; Lipsey, 2007; Gordon and Lee, 2001)

- Location
- Transfer pricing
- Intangible assets, royalties and overheads
- Companies with digital delivery of services
- Internal debt and capital structure
- Losses carried forward

OPDRACHT

Hillenbrand, C., Money, K.G., Brooks, C. & Tovstiga, N. (2019). Corporate tax: what do stakeholders expect? *Journal of Business Ethics*, 158(2), 403-426.

- Welke leemte in de literatuur proberen de auteurs te dichten met dit onderzoek?
- “Arguably, all sides are losing out in the war of words over corporate taks currently being led by the media”. (p. 403) Wat wordt hiermee bedoeld?
- “The present article adopts a stakeholder approach and explores the views of stakeholders in an inductive manner inspired by a grounded theory view” (Hillenbrand et al., 2019, p. 405). Wat zou er bedoeld worden met “inductive manner” en de “grounded theory approach”? Leg uit.
- M.b.t. het thema van transparantie (thema 6) verwijst de business community naar “country-by-country reporting” (p. 415). Wat is het belang van CbC reporting in het kader van transparantie? Verduidelijk.
- Op basis van de resultaten uit de interviews geven de auteurs in Figuur 5 aan op welke manier bedrijven meer aansluiting kunnen vinden bij de verwachtingen van community groups. Geef bij het “waarom”, “wat” en “hoe” telkens een 2-tal voorbeelden hoe bedrijven dit concreet kunnen invullen.

COUNTRY BY COUNTRY REPORTING



FISCALE CONSOLIDATIE

The Common Consolidated Corporate Tax Base (CCCTB)

Fiscale planning en strategie / 8 maart 2020

Prof. dr. Isabelle Verleyen

OVERVIEW



1. The context
2. Developments of CCCTB
3. The CCCTB proposal
4. Impact and feasibility

THE CONTEXT OF CCCTB

Company tax obstacles in the EU (1)

- Double taxation resulting from incompatibilities between national tax systems
- High compliance costs due to the 27 different tax systems in the EU
- Increasing difficulties with transfer pricing rules
- Cross-border loss-offset for subsidiaries practically absent

THE CONTEXT OF CCCTB

Company tax obstacles in the EU (2)

- Deficiencies in existing EU legislation and its implementation in some Member States
 - Differences in effective tax burden affect investors' decision (location, type of investment, source of financing)
- ⇒ Less competitive EU companies + loss of EU welfare

THE CONTEXT OF CCCTB

Illustration of tax obstacle

The taxation of **foreign income**:

- Coexistence of 'residence' and 'source' principle
- Domestic and foreign direct investments can suffer different effective tax burdens
- Distortions with respect to location of investment



THE CONTEXT OF CCCTB

Tax avoiding practices by companies in the EU

- Due to gaps and mismatches in tax rules
= Base Erosion and Profit Shifting to low or no-tax locations
 - Techniques
 - ✓ Transfer pricing
 - ✓ Intercompany loans
 - ✓ Tax havens
 - ✓ Hybrid instruments
 - ✓ Rulings,...
- ⇒ governments lose substantial corporate tax revenues

THE CONTEXT OF CCCTB



THE CONTEXT OF CCCTB

Goals CCCTB

- ✓ Remove the underlying causes of tax obstacles

Commission Study (2001): “towards an internal market without tax obstacles”

- ✓ Promote sustainable growth and fairer taxation

Commission Action Plan (2015) for a Fair and Efficient Corporate Tax System

DEVELOPMENTS OF CCCTB

2011 - CCCTB proposal (EC, 2011)

- ✓ Withdrawn by the Council as MS disagree

2016 - Relaunch of CCCTB proposal (EC, 2016)

- ✓ “Two stage” approach
 1. CCTB: common corporate tax base
 2. CCCTB: consolidated tax base
- ✓ Special legislative procedure (Art. 115 TFEU)
Council (discussion) – EP (voting): 15th March 2018
EC – Council

THE CCCTB PROPOSAL

CCCTB- What is it? (CCCTB proposal, EC 2011, EC 2016)

- First stage - CCTB
 - (i) Each group member calculates its taxable profit according to the same set of rules
- Second stage - CCCTB
 - (ii) The individual tax bases are summed up to the consolidated tax base
 - (iii) The consolidated tax base is allocated to the different group members by the use of an apportionment formula
 - (iv) Each member state has the right to apply its own tax rate to the specific share of the overall tax base

THE CCCTB PROPOSAL

Some implementation issues

1. Scope (CCTB proposal)
2. Calculation of the tax base (CCTB proposal)
3. Consolidation (CCCTB proposal)
4. Apportionment of the common consolidated corporate tax base (CCCTB proposal)
5. Third-country relations (CCTB and CCCTB proposal)

THE CCCTB PROPOSAL

1. Scope (art. 2), EU companies

- a) Company form
- b) Corporate taxes
- c) Belong to group with consolidated revenues > € 750 000 **000**
- d) Parent or qualifying subsidiary (art. 3) and/or has PE in EU (art.5)

Mandatory - optional if (a) and (b) are met, but not c) or d)

Parent company and qualifying subsidiaries (art. 3)

- Qualifying subsidiary = voting rights > 50% + ownership rights > 75%

THE CCCTB PROPOSAL

2. Calculation of the tax base

- Individual tax base (art. 7) =
Revenues subject to tax less exempt revenues, deductible expenses and other deductible items
- Exempt revenues (art. 8) when certain conditions are met:
 - ✓ Subsidies
 - ✓ Proceeds of pooled assets
 - ✓ Proceeds of shares
 - ✓ Profit distributions
 - ✓ PE income

THE CCCTB PROPOSAL

2. Calculation of the tax base

- Deductible expenses (art. 9)
 - All expenses for business purposes
 - **NEW** *Extra* tax deduction for R&D costs when certain conditions are met:
 - R&D costs $\leq 20\,000\,000$
 - ✓ 50% deduction
 - ✓ If unlisted, start-up,... \Rightarrow 100% deduction
 - R&D costs $> 20\,000\,000$
 - ✓ 25% deduction

THE CCCTB PROPOSAL

2. Calculation of the tax base

- **NEW Allowance for growth and investment (art. 11)**
 - AGI equity base = equity – participation in associated companies
 - $\Delta AGI = AGI_t - AGI_0$ voor $t=1, \dots, 10$
after ten years, AGI_0 moved by one year
 - $\Delta AGI \times (\% \text{ 10-year euro bond} + 2\%) = \text{allowance for growth and investment}$
--> increase: deduction decrease: taxable income

THE CCCTB PROPOSAL

2. Calculation of the tax base

- Non-deductible items (art. 12)
 - profit distributions
 - corporate income tax
 - bribes
 - fines and penalties
 - gifts and donations
 -

THE CCCTB PROPOSAL

2. Calculation of the tax base

- **NEW Interest limitation rule (art. 13)**
 - Borrowing costs deductible up to the amount of received interest
 - Exceeding borrowing costs (group level):
 - deductible 30% EBITDA or
 - € 3 000 000
- carry forward

THE CCCTB PROPOSAL

2. Calculation of the tax base

- Individually depreciable assets (art. 33)
 - depreciation on individual and straight line basis
 - ✓ Commercial, office and other buildings: 40 years
 - ✓ Industrial buildings: 25 years
 - ✓ Long-life fixed tangible assets: 15 years
 - ✓ Medium-life fixed tangible assets: 8 years
 - ✓ Intangible fixed assets: period legal protection/right or 15 years
- Asset pool (art. 37)
 - Short term assets: one asset pool at 25% of the depreciation base

THE CCCTB PROPOSAL

2. Calculation of the tax base

- Loss relief and recapture (art. 42) *temporary rule*
 - Own losses can be deducted and carried forward (art. 41)
 - Additional losses can be deducted incurred by qualifying subsidiaries or PE in the EU
 - Add back any subsequent profits (recapture)

- **Other items:** provisions, valuation of stocks, pensions,...

THE CCCTB PROPOSAL

2. Calculation of the tax base, Roggeman et al. (2014). Impact of a CCTB on the effective tax burden in Belgium

- Changes in effective tax burden by adoption of CCTB and isolated impact of specific regulations, large company (fiscal year 2011)

		Tax burden	Impact
Belgian Tax System: all options		30,732,669	
CCTB: all options		35,556,551	15.70%
Base case Belgian Tax System		35,152,405	
CCTB: all options		35,556,551	1.15%
Impact CCTB Option	Depreciation	35,476,081	0.92%
	<i>Buildings</i>	35,202,137	0.14%
	<i>Machinery</i>	35,285,196	0.38%
	<i>Equipment</i>	35,283,964	0.37%

THE CCCTB PROPOSAL

3. Consolidation

Group (art. 6)

- Resident taxpayer +
 - (a) Its PEs (EU)
 - (b) PEs (EU) of qualifying subsidiaries in third country
 - (c) Qualifying subsidiaries and PEs (EU) of those subsidiaries
 - (d) Other resident taxpayers and their PEs (EU) that belong to a non-tax payer in a third country

THE CCCTB PROPOSAL

3. Consolidation

Consolidation (art. 7) and elimination of intra-group transactions (art. 9)

- Individual tax bases of group members added together; offset of losses and profits
- Consolidated tax base: negative: carry forward – positive: apportionment (cf.4)
- Any profits or losses on intra-group transactions are disregarded
- Consistent and adequate method for recording intra-group transactions

THE CCCTB PROPOSAL

4. Apportionment of the consolidated corporate tax base

- General rule (art. 28)

In determining the apportioned share of a group member A, the formula shall take the following form, giving equal weight to the factors of sales, labour and assets:

$$\text{Share A} = \left(\frac{1}{3} \frac{\text{Sales}^A}{\text{Sales}^{\text{Group}}} + \frac{1}{3} \left(\frac{1}{2} \frac{\text{Payroll}^A}{\text{Payroll}^{\text{Group}}} + \frac{1}{2} \frac{\text{No of employees}^A}{\text{No of employees}^{\text{Group}}} \right) + \frac{1}{3} \frac{\text{Assets}^A}{\text{Assets}^{\text{Group}}} \right) * \text{Con'd Tax Base}$$

THE CCCTB PROPOSAL

4. Apportionment of the consolidated corporate tax base

- Labour factor (art. 32, art. 33)

- ✓ ½ Payroll and ½ Number of employees
- ✓ Employee: national definition
- ✓ Employee: allocated to group member that remunerates
- ✓ Payroll: salaries, wages, bonuses, other compensation, pension, social security costs
- ✓ Payroll expenses that are deductible

THE CCCTB PROPOSAL

4. Apportionment of the consolidated corporate tax base

- Asset factor (art. 34, art. 35, art. 36)
 - ✓ Average value of all fixed tangible assets (owned, rented, leased)
 - ✓ Asset allocated to economic owner
 - ✓ Valuation
 - ✓ Non-depreciable fixed tangible assets: original cost
 - ✓ Individually depreciable: $(\text{tax value begin} + \text{tax value end})/2$
 - ✓ Pooled: $(\text{tax value begin} + \text{tax value end})/2$

THE CCCTB PROPOSAL

4. Apportionment of the consolidated corporate tax base

■ Sales factor (art. 37, art. 38)

- ✓ All sales of goods and supplies of services, after discounts, excluding VAT and other taxes/duties
- ✓ Sales by destination
 - Allocated to group member where dispatch or transport ends
- ✓ No where sales: to all group members in proportion to labour and asset

THE CCCTB PROPOSAL

4. Apportionment of the consolidated corporate tax base

- Roggeman et al. (2012). Empirical investigation into the design of an EU apportionment formula

Market less book value of equity (mlb) to proxy for 'unrecognized' intangible assets (listed companies)

R&D intensive companies (No. of obs. 118)					
	Factors	R ²	Incremental R ²	p-value incremental	p-value total model
1	(cos, tfa, sal)	0.4931			0.2631
2	(cos, tfa, sal) + ifa	0.5516	0.0585	0.1469	0.3502
1	(cos, tfa, sal, ifa)	0.5516			0.3502
2	(cos, tfa, sal, ifa) +mlb	0.8498	0.2982***	0.0050	0.0001
non R&D intensive companies (No. of obs. 141)					
1	(cos, tfa, sal)	0.4572			0.0000
2	(cos, tfa, sal) + ifa	0.4937	0.0365	0.1298	0.0000
1	(cos, tfa, sal, ifa)	0.4937			0.0000
2	(cos, tfa, sal, ifa) +mlb	0.5262	0.0325*	0.0967	0.0000

THE CCCTB PROPOSAL

5. Third country relations

- Interaction with ATAD Directive

Hybrid mismatches (art. 61, CCTB)

GAAR (art. 58, CCTB)

CFC rules (art. 59, CCTB)

Switch-over (art. 53, CCTB)

IMPACT AND FEASIBILITY

EC Impact Assessment (2016)

- Investment: +3,4% Employment: +0,6% Growth: +1,2%
- Compliance: -10% time and -2,5% costs

More (independent) academic research needed

Feasibility?

- Two-step approach
- Unanimous approval
- Enhanced cooperation?

BELGIAN LEGISLATION

Belgische fiscale consolidatie (“aftrek groepsbijdrage”)

Cf. cursus vennootschapsbelasting

- Beperkte fiscale consolidatie vanaf AJ 2020 (art. 205/5 WIB)
- Belgische verbonden vennootschappen
 - Moeder, dochter, zuster-vennootschappen, vaste inrichting
 - 90% participatie (5 jaar)
- Groepsbijdrageovereenkomst
 - Winstgevende vennootschap: aftrek groepsbijdrage + vergoeding belastingvoordeel (V.U)
 - Verlieslatende vennootschap: groepsbijdrage als belastbare winst + vergoeding belastingvoordeel (onbelast)

REFERENCES

Proposal for a Council Directive on a Common Corporate Tax Base:

https://ec.europa.eu/taxation_customs/sites/taxation/files/com_2016_685_en.pdf

Proposal for a Council Directive on a Common Consolidated Corporate Tax Base:

https://ec.europa.eu/taxation_customs/sites/taxation/files/com_2016_683_en.pdf