Some Aspects About Beps And the Status of the Developing Countries

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Abstract
The subject of international taxation and the integration of the economy has become even more complex. Also the issue of tax-motivated income shifting or base erosion and profit shifting (BEPS) has attracted increasing global attention in recent years. There is a need to analyze the implications for policy and how the governments of different countries must – or must not – cooperate. Also the international *status* of a large number of countries facing financial crisis, the decision of Britain to exit the European Union and the actions taken by international organisms to reform or control the tax issues in the international level demonstrate that this subject is quite current and important for academic research.The author aims to analyze in this research the current situation of the international tax competition and its relation to the BEPS discussion. Specifically, this work aims to compare the position of the so called developing countries in the international phenomenon and how the tax policies should be addressed. At the same, it will try to examine the current *status* in the European Union and in the World Trade Organization.

I. Introduction

There is a recognition that the countries simply may not decide to adopt any tax, financial or competition policy without considering the market and the international law, especially the international treaties regarding free trade[1]. Also it seems to be clear that the multinational organisms have been trying to combat the international tax competition[2] and the grant of subsidies in the international

[1] See Wolfgang Schön. *Taxation and State Aid Law in the European Comission. In:* CMLR, 1999, p. 911; Reuven S. Avi-Yonah. *Tax Competition, Tax Arbitrage, and the International Tax Regime. In:* Public Law and Legal Thoery Working Paper n. 73. Michigan: University of Michigan, 2007, pp. 8-11.

[2] See Alain Steichen. *Tax Competition in Europe or the Taming of Leviathan. In:* Tax Competition in Europe. Organizador: Wolfgang Schön. The Netherlands: International Bureau of Fiscal Documentation, 2003, pp. 44-45; More recently: See OECD. *Addressing Base Erosion and Profit Shifting*. Paris: OECD, 2013; A. J. Weichenrieder. *Profit Shifting in the EU: Evidence from Germany. In:* International Tax and Public Finance 16, pp. 281-297; H. Grubert. *Foreign Taxes and the Growing Share of US Multinational Company Income Abroad: Profits, Not Sales, Are Being Globalized. In:* National Tax Journal 65, p. 247; Dhammika Dharmapala. *What Do We Know About Base Erosion and Profit Shifting? A Review of the Empirical Literature*. Chicago: Coase-Sandor Institute for Law and Economics Working Paper n. 702, 2014, pp. 3-33; M. Gilleard. *Google Hauled Before UK PAC Again, But International Tax Framework Cited as Real Villain. In:* International Tax Review, 2013, available at: http://www.internationaltaxreview.com/Article/3208706. Acess in June 28th, 10:48; See also G-20

trade in order to: i) the abolishment of tax havens and favorable tax systems that impact on free competition; ii) the abandon of tax sparing credit rules in international treaties that foster double non-taxation; iii) the improvement of the neutrality on international taxation[3]; iv) to avoid the negative impacts of multinational tax planning over different jurisdictions[4].

A cycle of financial crisis and the international competition have been both affecting the integration of the economies and causing discussions around the method of regulation by the States. The principles and implementation of human rights are important when they serve to the "Social State" but the "market" is better when the global issues are noticed[5]. This is key – as noticed by Ziegler – for the current discussions around taxation and public finance. The need to increase equality in a complex market is a premise for any developed society as the unfair and inefficient taxation can cause irrevocable damages. Another issue is noticed in the subject of tax planning. Although it is a problem the abusive tax planning by multinationals (smart money), it is also a problem the abusive position of the States with no respect to the legality[6]. A clear and non-abusive methodology is needed to avoid inequality of taxation and to avoid market's failures[7]. Important authors have been noticing this complex issue as such as Fernando Zilveti[8]. Many multinational enterprises have been paying very little taxes to the countries they operate and because of the impact of this fiscal situation there is a major concern of international organizations as OECD[9]. So there is a need of analysis of proper

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communique: http://www.telegraph.co.uk/g20-summit/9343250/G20-Summit-communique-full-text.html. Access in 2019, June 28th, 11:37.

3 See Michael Devereux. *ETPF – Economic Theory of the Optimal Taxation of Multinational Profit.* Oxford: Oxford University Centre for Business Taxation – European Tax Policy Forum, 2016, p. 20.

4 See Christiana HJI Panayi. *Advanced Issues in International and European Tax Law.* Oxford: Hart, 2015, p. 162.

5 See Fernando Zilveti; André Elali. *Planejamento Tributário – Resistência ao Poder de Tributar, in: Planejamento Tributário*, Coordinators: Hugo Machado & Hugo Machado Segundo; ZIEGLER, Jean. *Das Imperium der Schande, der Kampf gegen Armut und Unterdrückung.* München: Random House, 2008, p. 303.

6 Cf. Rodrigo Numeriano Dubourcq Dantas. *Direito Tributário Sancionador. Culpabilidade e Segurança Jurídica*. São Paulo: Quartier Latin, 2018, p. 77.

7 See Fernando Zilveti; André Elali. *Planejamento Tributário – Resistência ao Poder de Tributar, in: Planejamento Tributário*, Coordinators: Hugo Machado & Hugo Machado Segundo; Franz Josef Haas. *Der Missbrauchstatbestand des § 42 AO – ein unkalkulierbares Risiko für die unternehmerische Gestaltungspraxis? In Festschrift für Arndt Raupach zum 70. Gegurtstag, Steuer-und Gesellschaftsrecht zwischen Unternehmerfreiheit und Gemeinwohl*. Org.: Paul Kirchhof, Karsten Schmidt, Wolfgang Schön e Klaus Vogel. Cologne: Dr. Otto Schmidt, 2006, (13/26) p. 13.

8 Cf. Fernando Zilveti. *A Evolução Histórica da Teoria da Tributação.* São Paulo: Saraiva, 2017, p. 23.

9 See Reuven Avi-Yonah. *Hanging Together: A Multilateral Approach to Taxing Multinationals.* Michigan: University of Michigan – Public Law and Legal Theory Research Paper Series – Paper n. 364, April 2015, p. 2; See Michael Devereux. *The OECD Harmful Tax Competition Initiative. In:* International Tax Competition – Globalization and Fiscal Sovereignty. London: Commonwealth Secretariat, 2002, p. 93.

policies for the countries. And there are different points of view between the developed and the developing countries[10].

The problem is that the agenda of those organisms may protect the developed countries and could not support the policies of some developing countries which need to use financial mechanisms to compensate the economic externalities of their systems[11]. The organisms, at the same time, protect the members and may or/and may not do it with the non-members. The policies thus need to be examined case by case and should not be general to all the players in the international level[12]. There is a need of adjustments between the different levels of developments of the countries which must be taken into consideration for the social and economic problems to be solved and not increased[13].

Another complementary aspect is that competition has been increasing over the last decades in every sense of the concept. Competition between companies, blocks, regulators and States is a consequence of the integration of the economy

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[10] "[...] in the OECD countries the corporate tax is a relatively unimportant source of revenue, that has generally not been true in developing countries, where if frequently amounts to over 25 percent of total revenues. Because developing countries find it very difficult to collect the individual income tax, taxing multinationals is crucial for them because otherwise they would have to rely entirely on the regressive Value Addedd Tax (VAT). From the perspective of a developing country the uncertaninty regarding the incidence of the corporate tax is less important because some of the likely bearers of the burden (providers of capital and consumers) are residents of other countries. Moreover, even if one presumes that the corporate tax falls on labor in the developing country, taxing the multinational may be a more efficient way of collecting revenues than attempting to tax individual workers. Finally, in the case of multinationals in developing countries a lot of the corporate profit may be rents for the exploitation of country-specific resources and that is an efficient tax for the country to impose. [...] Corporations are such important actors in any modern economy that the ability to regulate their behavior is crucial to achieving economic goals and the corporate tax has since its inception been seen as an important vehicle to regulate corporate behavior. The tax can provide disincentives for behavior the legislator deems to be undesirable behaviour (investments incentives, hiring incentives, clear energy inventives, etc.). A lot of the complexity of the corporate tax stems from these 'tax expenditures'." See Reuven Avi-Yonah. *Hanging Together: A Multilateral Approach to Taxing Multinationals.* Michigan: University of Michigan – Public Law and Legal Theory Research Paper Series – Paper n. 364, April 2015, p. 5.

[11] See André Elali. *Incentivos Fiscais Internacionais – Concorrencia Fiscal, Crise do Estado e Mobilidade do Capital*. Sao Paulo: Quartier Latin, 2010, p. 73; André Elali/Marcos Nóbrega. *Infrastructure and Investments in Brazil – Economic and Legal Aspects*. Natal: Anote, 2015, p. 128.

[12] See Gilberto Dupas. *Economia Global e Exclusão Social – Pobreza, Emprego, Estado e o Futuro do Capitalismo.* 3. ed. São Paulo: Paz e Terra, 2001, pp. 103-115.

[13] "La economía de mercado es un modo de regulación económica que sólo emerge y se desarolla en el seno de un sistema social y político determinado que es inseparable de la realización de la libertad y del Estado de Derecho. El Estado de Derecho es un instrumento necesario para la seguridad jurídica, sin la cual no puede funcionar el mercado. […] Seguridad jurídica, igualdad y libertad son principios sin los cuales un mercado competitivo no puede desarrollarse. Estos principios sirven a su vez de soporte a las instituciones que constituyen la base del mercado y de la economía: la propiedad privada, el contrato y la libertad de empresa." See Jaime Abella Santamaría. *La ordenación jurídica de la actividad económica.* Madrid: Dykinson, 2003, pp. 27-29.

and has been considered a key foundation of an interdependent system[14-15]. Pedro Guilherme Lindenberg Schoueri brings different alternatives for a possible conflict between the OECD initiatives and the international (trade and investment) law[16]. It is noticed by the author the distortions of the tax instruments used in the common markets. Competition is considered an instrument available for the States to promote development which is a process of concretization of rights[17]. It is also an important mechanism for the economic integration[18]. In terms of financing the governments, it is also a fact that the most efficient method is still the taxation[19] which is stable and offers a secure system for the society. There is, however, a current use of taxes and other financial measures for the governments to attract investments and companies[20]. This process, if not well managed, can damage the fiscal and financial systems becoming a true "race to the bottom" between the tax jurisdictions[21].

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[14] See John H. Jackson, William J. Davey e Alan O. Sykes Jr. *Legal Problems of International Economic Relations – Cases, Materials and Text.* 3. ed. St. Paul, Minnesota, 1995, pp. 1-7; See Herald Baum. *Globalizing Capital Markets and Possible Regulatory Responses. In: Legal Aspects of Globalization – Conflicts of Law, Internet, Capital Markets and Insolvency in a Global Economy*. Org.: Jürgen Basedow; Toshiyuki Kono. Hague: Kluwer Law International, 2000, pp. 80-81.

[15] See Calixto Salomão Filho. *Direito Concorrencial – as condutas*. São Paulo: Malheiros, 2003, pp. 55-ss.

[16] "The hypothesis of the present work posits that the BEPS Action 5 MNA violates trade and investment law in two different levels. First, should a preferential IP regime be considered non- harmful in connection with the BEPS Action 5 MNA, in certain circumstances it might still qualify as state aid under EU Law and/or actionable subsidy under WTO Law. Moreover, such regime might violate the non-discrimination obligations assumed under EU Law (fundamental freedoms), WTO Law, and IIAs (national treatment). Second, should a preferential regime be considered harmful in connection with the BEPS Action 5 MNA, then the defensive measures suggested by the OECD reports on Harmful Tax Practices and in connection with the EU list of non-cooperativejurisdictions might again violate the non-discrimination obligations assumed under EU Law (fundamental freedoms), WTO Law, and IIAs (most favored nation and national treatment obligations)." See Pedro Guilherme Lindenberg Schoueri. *Conflicts of international legal frameworks in the area of Harmful Tax Competition: the Modified Nexus Approach*. Viena: Institute for Austrian and International Tax Law/DIBT – Doctoral Program in International Business Taxation WU – Vienna University of Economics and Business, 2018, pp. 3-4.

[17] See Paula A. Forgioni. *Os Fundamentos do Antitruste*. 2. ed. São Paulo: RT, 2005, pp. 190-192.

[18] See Roland Weinrauch. *Competition Law in the WTO – The Rationale for a Framework Agreement*. Wien: BWV – Berliner Wissenschafts-Verlag, 2004, p. 17; Ricardo Thomazinho da Cunha. *Direito da Defesa da Concorrência – Mercosul e União Européia*.. São Paulo: Manole, 2003, p. 26.

[19] See José Joaqum Teixeira Ribeiro. *Lições de Finanças Públicas*. 5. ed. Coimbra: Coimbra Editora, 1997, p. 30; Luís Eduardo Schoueri. *Normas Tributárias Indutoras e Intervenção Econômica*. Rio de Janeiro: Forense, 2004, p. 1

[20] See Peggy B. Musgrave. *Taxation and American investment abroad: the interests of workers and investors. In: Tax Policy in the Global Economy – Selected Essays of Peggy B. Musgrave*. Northampton: USA, 2002, p. 115

[21] See Jason Cambell Sharman. *Havens in a Storm – The Struggle for Global Tax Regulation*. New York: Cornell University Press, 2006, pp. 149-161; Wolfgang Schön. *Tax Competition in Europe – General Report. In:* Tax Competition in Europe. The Netherlands: International Bureau of Fiscal Docu-

The grant of any financial aid[22] to corporations and investors is a very complex subject because: i) it has a hidden aspect which is the expenditure correspondent to the aid; ii) it must be granted only after a technical examination of the effects in different sides: on the financial public system, on the competition and on the other principles of the legal system (reduction of externalities, search of employment, protection of consumers, protection of the environment according, for example, to the majority of the West countries Constitutions); iii) it must be granted according to the international regulation in case the countries are members of organizations or have signed international treaties[23]. Subsidies, then, can be considered negative taxes and have effects on the public expenditures[24].

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mentation, 2003, pp. 3-ss.; Carlo Pinto. *Tax Competition and EU Law*. The Netherlands: Kluwer Law and Taxation Publishers, 2003, pp. 18-ss.; Ben. J. Kiekbeld. *Harmful Tax Competition in the European Union*. The Netherlands: Kluwer Tax / Foundation for European Fiscal Studies – Erasmus University Rotterdam, 2004, p. 37; Jorge Martin López. *Competencia Fiscal Perjudicial y Ayudas de Estado en la Unión Europea*. Valencia: Tirant lo Blanch, 2006, pp. 33-46.

[22] See Hanno E. Kube. *National Tax Law and the Transnational Control of State Aids.* San Domenico: European University Institute, 2001, p. 27.

[23] See Clarisse Fräs-Ehreld. *Grants and Incentive Programmes in the ten new EU-Member States*. Wien: Linde International, 2005, p. 28; G. Fernándes Farreres. *La subvención: concepto y régimen jurídico.* Madrid: Instituto de Estudos Fiscales, 1983, p. 39.

[24] "Subsidies as negative taxes - What of common proposition that subsidies can be thought of as negative taxes? There are some good reasons for taking this line. Taxes and subsidies may be substitutes in many cases for achieving particular ends; the budget balance is the same whether taxes are treated as positive revenue or negative expenditure, and whether subsidies are treated as positive expenditure or negative revenue. Many difficulties of definition are similar in the two categories: it is all too easy to omit taxes or subsidies which have to be imputed. And the formal apparatus of micro-analysis is the same: the distribution of both tax losses and subsidy benefits can be analysed in terms of the relative elasticities of demand and supply with, for instance, the loss (benefit) from a tax (subsidy) being larger the more elasticity of demand. Despite these resemblances, there are cogent reasons why in practice all such items cannot be lumped together. First, there is a difference in nature: taxes contain an element of compulsion lacking in subsidies; no one is legally forced to accept a subsidy in the same way as he is forced to pay a tax. Second, it is not very helpful to talk of a negative analogue of all taxes lumped together. But, once begins to distinguish between types of government revenues and look for the negative counterpart, difficulties arise. Subsidies might be said to be the counterpart of indirect taxes as conventionally defined; but this is not very helpful if the conventional definition of indirect taxes is itself unsatisfactory. And it is quite clear that many taxes simply do not have negative counterparts in practice: for example, one might have a negative income tax or a system of capital grants, but they would hardly correspond to a truly general tax on income or on capital. Similarly, to distinguish between government expenditure and to ask for their counterpart is soon to run into trouble; in most countries there is no comparison between the role played by the free provisions of goods and services on the expenditure side and any corresponding payment in kind on the revenue side. Thus the mirror-image analogy between taxes and subsidies looks rather tarnished when examined closely. […] So there seem to be a number of reasons why some attention to the concept of a subsidy is desirable. […] One of the most intractable areas is the distinction between some types of taxes and some types of subsidies. A closely related one is between subsidies paid in cash and those which need to be imputed. […] There is no reason why the word 'subsidy' must be attached to one category of government transaction rather than another. We are concerned solely to distinguish between the various types of such transactions; it is open to anyone to argue, if he wishes,

There is a very complex relation between the current global financial crisis, the economic integration[25], the international tax competition and the combat to "BEPS". Therefore, we will discuss the format of the current tax systems in most countries vis-à-vis the intense competition for international capital and for economic activities, affecting the tax base of national states and endangering their own sovereignty. We will try to evaluate the competition between countries as a result of globalization and as one of the causes of the crisis of several countries and also the disintegration of the EU with "Brexit"[26].

Thus, it is needed to analyze the possible impoverishment of modern states as a result of economic integration, with repercussions for the provision of public services and social security of citizens. However, as this process is still in its infancy, it carries no decisive weight in the face of the crisis that currently affects the world economy. Without doubt, the aggregative trend that was highly emphasized is likely to gather speed. Thus, it is noted that, due to the constant integration of economic relations, there is the natural strengthening of international bodies and policies, which affects the sovereignty of all states[27]. There is a clear relationship between the financial crisis that most of the countries are facing and the institutional competition for capital and economic activities, requiring that states adopt financial and tax incentives that may, if not properly controlled and planned, degrade public finances and undermine the level of public services provided to citizens. So, it is extremely common to see the use of the so-called "stimulative tax rules", which have a regulatory purpose, driving economic agents to desirable behaviors.

Although the most developed countries keep criticizing the use of subsidies and tax incentives, it has been proved that all the major countries of the WTO and OECD keep granting these measures. Even in the European Union it has become common the litigation between the members because of indirect State Aid or other mechanisms to help to develop certain areas or sectors of the market. Michael Devereux has presented some important conclusions about the sub-

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that the term 'subsidy' could be attached to any on of them. There is no monopoly of nomenclature." See A. R. Prest. *How Much of Subsidy? A Study of the economic concept and measurement of subsidies in the United Kingdom*. London: The Institute of Economic Affairs, 1974, pp. 16-19.

25 See Rafael Leal-Arcas. *International Trade and Investment Law – Multilateral, Regional and Bilateral Governance*. Cheltenham: Edward Elgar Publishing Ltd., 2010, 72.

26 It is important to mention that even before "Brexit", the academic researches on taxes demonstrate that in the European Union, "there are significant disparities which cause incoherence". See Ionna Mitroyanni. *Integration Approaches to Group Taxation in the European Internal Market*. (Doctoral Thesis). London: Queen Mary University – School of Law, 2007, p. 214.

27 "Europe does not currently seem determined to engage in pioneering action. Considering this, a failure to convince all Member States to adopt the group taxation scheme should be faced as a probable occurrence." See Ionna Mitroyanni. *Integration Approaches to Group Taxation in the European Internal Market*. (Doctoral Thesis). London: Queen Mary University – School of Law, 2007, p. 316.

ject years ago which keep coherent with today's *status* and withour research[28].

> The planned OECD timescale is significantly shorter in taking action against jurisdictions defined as 'tax havens' than it is against its own member countries which have 'preferential regimes'; The threats to those jurisdictions judged to be 'tax havens' seem more severe than those against 'preferential regimes' in OECD countries; The OECD has not suceeded in making a definition of 'harmful' as opposed to 'not harmful' tax competition; By analogy with economic markets, the OECD is akin to cartel of high prices firms seeking to undermine competition; There is no evidence that OECD countries are facing a reduction in corporation tax revenues as a result of tax competition – either 'harmful' or 'not harmful'; 'Tax havens could accept more transparency and exchange of information with the OECD to the extent that there is no illegality involved in the financial activity within their jurisdiction; The 'defensive measures' threatened by the OECD may be difficult to enforce; Jurisdictions which feel obliged to raise their tax rates may face a very significant outflow of capital and hence reduction in welfare.

In Brazil, the use of "tax rules as incentives" aimed at "reducing" the harmful effects of the global crisis and was adopted with incentives with a reduction in the taxation of economic activities considered a priority for the market and the economic system. With respect to this topic, it is worth highlighting the incentives for the auto industry and retail sector, which ultimately characterizes a strong state intervention in the economic order, stimulating consumption to maintain jobs and to strengthen the economic process a whole. The problems is that, after years of various tax incentives and subsidies, the country is facing one of its biggest public crisis as the expenditures of the federal government were not well managed and are now subject to urgent adjustments. It is clear that there was not a proper and technical methodology of control of the consequences and of the expenditures.

Clearly, the position of the countries is different if they do not integrate a common market as the European Union[29]. So the subject keeps becoming more and more complex. Some countries might need to grant tax incentives or other financial measures to solve social and economic problems until certain levels of

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[28] See Michael Devereaux. *The 'OECD Harmful Tax Competition' Iniciative*, p. 106.

[29] An important aspect is registered by Rafael Leal-Arcas in regard of the relation between Brazil and the EU: "What can the EU offer Brazil? The EU could grant tariff preferences in agriculture and other goods where Brazil is competitive, such as biofuels and ethanol as environmental goods. Brazil is by far the world's most important producer of fuels made from plants and it has the greatest potential worldwide for affordable biofuels." See Rafael Leal-Arcas. *International Trade and Investment Law – Multilateral, Regional and Bilateral Governance*. Cheltenham: Edward Elgar Publishing Ltd., 2010, p. 91. Although since 2010 there was a major change in the oil prices, the affirmation remains current, especially now after "Brexit" which effects are still not well known as they will depend on the negotiations between Britain and EU.

development[30]. By the opposite, in a large number of cases the use of State Aids/ State subisidies in general will impact on the financial balance of the states and/ or will disintegrate the neutrality of the free trade.

II. Problems of international tax competition and its effects on public finance, fairness and social and economic rights

The international tax competition is a phenomenon of great economic importance, with major implications for taxation given the ongoing integration of economies, which ends up being emphasized by numerous factors that affect the movement of capital, goods and services, production factors and technology factors[31]. That is, the key elements of this complex relationship between global economic integration and taxation are the competition, coordination and harmonization, because, in some cases, there will be unilateral practices of governments that will ultimately affect the economic activities outside of their territories, and, in other cases, there will be the establishment of common fiscal policies[32].

In recent decades, the economic globalization has produced a series of positive results, such as: (i) more efficient allocation of production factors; (ii) increased availability of goods in the market to consumers; (iii) reduction in capital costs; (iv) reduction in transport costs; and (v) greater exchange of information, knowledge and technology[33]. There has also been the inclusion of many poor countries in this new supranational market, as is the case of Latin American countries, which ended up increasing their competitiveness[34]. In this sense, Baum argues that the economic integration offers undeniable benefits for the development of nations[35].

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30 See Yonit Manor-Percival. *Bilateral Investment Treaties in a Harmonius World: China's Paradigm*. (Doctoral Thesis). London: Queen Mary University – School of Law, 2014, p. 121.

31 See Vito Tanzi. *Taxation in a Integrating World*. Washington: The Brookings Institution, 1995, pp. 6-7.

32 A critical view on Keynesian views is noticed by Hugo Radice and explains some of the reasons of the global crisis: "Most of the *theoretical* criticism has been aimed at Keynesian views about the behaviour of particular economic agents in a capitalist economy. The *practical* difficulties of Keynesianism, however, have equally arisen from the growing exposure of national economies to international economic forces beyond the control of individual governments. The growth of trade as proportional of national income, the internationalisation of industrial and banking capital, and the disorder in the world economy since the demise of the Bretton Woods system, have all undermined the efficacy of the conventional Keynesian policy tools." See Hugo Radice. *Global Capitalism – Selected Essays*. New York: Routledge, 2015, p. 71.

33 See Ben. J. Keikebeld. *Harmful Tax Competition in the European Union*. The Netherlands: Kluwer Tax / Foundation for European Fiscal Studies - Erasmus University Rotterdam, 2004, pp. 3-4.

34 See John H. Mutti. *Foreign Direct Investment and Tax Competition*. Washington: Institute for International Economics, 2003, p.5.

35 See Harald Baum. *Globalizing Capital Markets and Possible Regulatory Responses. In: Legal Aspects of Globalization - Conflicts of Law, Internet, Capital Markets and Insolvency in a Global Economy*. Org.: Jürgen Basedow; Toshiyuki Kono. Hague: Kluwer Law International, 2000, pp. 79-80.

However, as Radice declares, after examining the global crisis in 2008/2009, the integrated economy "meant that the 'contagion' of credit market failure spread across the world in 2007-2008 with unprecedented rapidity. It did not take long to realise that the collapse of the US sub-prime mortgage market was threatening banks not only in the USA, but all over the world, especially in continental Europe where the search of higher yields had been even more pressing than in Anglo-Saxon economies. […] The 'globalisation consensus' was shaken, if not shattered, and it seemed that national solutions needed to be sough, rather in the manner of Keynes in the early 1930s"[36]. As noticed, the economic integration process also produces numerous negative effects, especially the increased mobility of economic activities, which ultimately results in impacts that cannot be easily controlled and which internationalizes problems that before were only related to domestic issues[37]. This has led to the further impoverishment of many underdeveloped countries and has hindered the financial balance, which is a prerequisite for any developed economic system, because without such value, investments are unlikely to be made by economic agents.

Although the economic integration process presents itself as inevitable, it eventually produces harmful effects that must be overcome. In this context, it is important to adopt public policies that are in accordance with constitutional provisions and international agreements. Also the measures need to respect the public finance and fiscal accountability. Due to the mobility of economic activities, doubt is cast on the taxation of some economic bases, such as capital. In other words, the mobility of capital and economic activities in general ends up pressuring countries to reduce their taxes and/or to grant economic and financial advantages and this phenomenon is changing every day[38]. This affects the governments' budgets and the fiscal policies as remedies[39].

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[36] See Hugo Radice. *Global Capitalism – Selected Essays*, p. 183.

[37] See José María Martínez Selva. *Los Paraísos Fiscales – Uso de las Jurisdicciones de Baja Tributación*. Madrid: Difusa, 2005, pp. 24-25.

[38] The "Brexit" is a proof of the complexity of the subject as there will be a large range of changes in the disputes between Britain and the UE and this will clearly affect the operations between corporations. "Currency volatility and market uncertainty typically put the brakes on deal activity and the day's events are rippling across major global indices. [...]There are other more mundane, but still economically significant areas that will be affected by the Brexit, most notably cross border taxation. The tax implications of a UK exit from the EU depend on what other agreements the UK is able to hammer out post exit. In general terms, not being in the EU would remove the UK's powers to impact EU level tax matters and a Brexit would not leave a footprint on the UK's extensive double tax treaty network. The UK would, therefore, still benefit from, and be compelled by, the double tax treaties already in force. The most significant consequence of the Brexit will be in relation to indirect taxes, most notably VAT (Value Added Tax), a European tax. Currently the UK's VAT legislation must be directly in line with the EU; this tax coordination with other EU Member States facilitates European trade. However, in the world of a Brexit, UK VAT would no longer be governed by EU law and the UK could make possibly far reaching changes to the VAT system. It would be open to the UK to change how VAT is charged in the UK, or even to

That is where one will find the practice of international tax competition, which, for the specialized doctrine, is referred to as the reduction in the tax burden and/or the granting of direct aid to promote the economy of a country, with an increase in the competitiveness of domestic businesses, and/or to attract international investments[40]. However, it should be noted that the "tax competition" expression had been used in the U.S. doctrine for decades to define the tax dispute between the states of that federation, calling attention to possible competitive distortions and imbalances in regional fiscal policies and attracting severe criticism[41]. At the international level, the debate over tax competition has intensified as a result of economic integration policies, as in the case of the European Union, and the perspectives of globalization and consequent internationalization of markets. Also there might be a change because of recent "Brexit"[42]. The UK has reduced the corporate tax and France and Germany have started to complain. The WTO has also mentioned that the tax cut is a proof of international tax competition from the UK[43]. And the basis of this phenomenon is the search for lower tax costs on the part of international economic subjects, explained by the idea that tax is one of the burdens of the economic activity and by the interest in wealth maximization[44].

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replace it with an altogether different tax." http://www.forbes.com/sites/mattporzio/2016/06/24/uk-brexit-will-significantly-impact-global-ma/#467c4dc12ec8.

39 See Hassan Bougrine. *Fiscal Policy and the Current Crisis: are Budget Deficits a Cause, a Consequence or a Remedy? In:* The Economics of Public Spending. Cheltenham: Edward Elgar Publishing, 2000, p. 25.

40 About the influence of incentives on decision-makers, see Rebecca Brown. *The Ethics of Using Financial Incentives to Encourage Healthy Behaviour.* (Doctoral Thesis). London: Queen Mary University – School of Law, 2013, pp. 103-158.

41 See David Bronori. *State Tax Policy – A Political Perspective.* Washington: The Urban Institute Press, 2001, p. 31.

42 It is under discussion at the time of this report that the UK will reduce the corporate tax up to 15% in order to be more competitive in the international level. Although this level of taxation could never be considered a harmful tax practice, it demonstrates that the countries need to "play" this competition in order to avoid more economic and social problems with the capital flow for other markets. The tax cut was mentioned even before "Brexit" (see http://www.independent.co.uk/news/uk/politics/budget-2015-corporation-tax-just-got-the-lowest-rate-in-the-10375238.html. Access in July 12, 10:37 am. But now it might be even more. According to the Government, the corporate tax rate will be reduced every year by 2020. The WTO Chief, Pascal Lamy, has declared, in response to UK's tax cut, recently that: "The UK is already activating one of the weapons in this negotiation, which is the tax dumping, tax competition. I can understand why he [Mr. Osborne] does that, because obviously investors are flowing out from the UK, and he wants to provide them with some sort of premium that would make them think twice before they leave the United Kingdom." See http://www.bbc.co.uk/news/business-36699642. Acess in July 12, 10:57 a.m.

43 See *Financial Times*, London, July 12, 2016, p. 2. Many studies in the UK have suggested to "move the taxation of international profit to a destination basis." See Michael Devereaux. *Economic Theory of the Optimal Taxation of Multinational Profit*, p. 20.

44 See Erich Kirchler.*The Economic Psychology of Tax Behaviour.* New York: Cambridge University Press, 2007, p. 197.

As mentioned before, "Brexit" has been changing the *status* regarding the use of tax and financial measures between EU and the UK (and also protective measures) as there will be not any control on State Aid depending on the decisions regarding the ongoing process. Also there are many changes in the international taxation regarding operations in Britain and the EU. The EU-Members have started to complain about the UK's tax policy in regards of competition years ago. The conflicts are ongoing between the Governments as noticed recently and it might continue until the negotiations finish between the UK and the EU leaders[45]. Also "Brexit" forces Ireland to deal with the EU-Members in a different way, as the country remains in the bloc and can become the "leader of the union's north Atlantic wing"[46].

In other words, companies, especially multinationals, are taking advantage of this international dispute to increase their production and ensure greater participation in global markets, even negotiating, through international bodies, guarantees for their investments, which have been increasingly free and sovereign. Here, it is worth mentioning the example of tax havens, which, in face of their natural economic hardship, eventually adopt measures to attract investments and capital, being severely criticized by developed countries. And the use of such "tax-favored jurisdictions," previously restricted to large investments, has grown steadily due to the liberalization of capital movement. And now, it is estimated that: (i) about 3 to 3.5% of all the global wealth is in tax havens; (ii) between one third and half of all international financial transactions move through the so-called offshore economy, since all the major financial institutions are present in an offshore world. Moreover, tax havens are defined as places where there is not too much inspection and where the information of account holders is kept secret, and this ends up boosting the demand from agents that have a large amount of financial capital for the implementation of tax plans or for the actual tax evasion. It is important to remember that, among the measures adopted by tax havens, the most famous one is the non-taxation of the residents' income, and it is extremely easy to obtain residence in such territories.

In this respect, it is worth highlighting the accurate lesson of Reuven S. Avi-Yonah, when he said that there has been tremendous growth in the practice of international tax competition for capital and international investment - foreign direct investment - since 1980, now representing the possibility of multinationals

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[45] "France's finance minister has warned that the UK's plan to cut corporate taxes could hit Britain's negotiations with the EU following the country's vote to leave the bloc. […] France and Germany are both concerned that the UK will be tempted to establish itself as a low-tax offshore jurisdiction on the EU's outskirts in response to the Leave vote. Britain's corporate taxes are already lower than the two continental countries. While France's socialist government has vowed to cut the corporate tax rate from 33 per cent to 28 per cent, Germany applies a 30 per cent rate. The average rate is 23 per cent." *Financial Times*, London, 12 July 2016, International, p. 2.

[46] See Vincent Boland. *Global Insight*. *In: Financial Times*, London, 12 July 2016, p. 2.

avoiding paying tax on their incomes[47], as shown in the example of Intel Corporation, which establishes different stages of its activities in various countries, taking advantage of tax systems that are more attractive from the viewpoint of final cost. It is also a fact that the international tax community is "dominated by a high-level debate on topics such as tax avoidance, aggressive tax planning, corporate social responsibility, tax governance, transparency and exchange of information"[48]. In this moment, all these subjects are related to international tax competition and BEPS as the increase of globalization has increased the possibility for erosion of the domestic tax base. Also the economic crisis over a large number of countries has exacerbated the heavy burdens[49].

However, it is important to emphasize that it is not only the granting of tax incentives that draws attention in this competition between countries. The granting of direct subventions (labeled as grants), which is a common practice, for example, in the U.S., also affects the corporate and institutional competition, being severely criticized by several experts, who even suggest the possible bankruptcy of the U.S. State[50].

In all cases, tax competition is observed by a logical explanation: in both countries where there is the exercise of economic activities, with establishments, including the production and the actual circulation of industrial products, when the same practical case is considered, the states are concerned, because if they levy taxes, they may be replaced by others[51]. This demonstrates the mobility of economic activities, which started to analyze countries on the basis of numbers. The fact is that the maintenance of the tax advantages ends up being one of the reasons for the granting of additional incentives, with an allusion, in the doctrine, to the "race to the bottom." Thus, tax competition ultimately denotes international pressures exerted on a national government during the establishment of its tax policy. The expression is linked to the pressure to reduce the level of taxation based on other countries, since individuals and corporations see taxes as elements that determine their profits.

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47 See Reuven S. Avi-Yonah. *Tax Competition, tax arbitrage, and the future of the international tax regime. In:* International Tax as International Law. New York: Cambridge University Press, 2007, p. 184.

48 See Christiana HJI Panayi. *Advanced Issues in International and European Tax Law.* Oxford: Hart, 2015, p. 4.

49 See Amir Pichhadze. *Exposing Unaddressed Issues in the OECD's BEPS Project: What About the Roles and Implications of Contract Interpretation Law and Private International Law in the Transfer Pricing Arm's Length Comparability Analysis?* (2015) - *In:* 7 World Tax Journal, p. 106. See Reuven Avi-Yonah; Kimberly Clausing. *Business Profits (Article 7 OECD Model Convention). In:* Problems Arising from the Allocation of Taxing Rights in Tax Treaty Law and Possible Alternatives. The Netherlands: Kluwer Law International, 2008, p. 9.

50 See Daniel N. Shaviro. *Taxes, Spending, and the U. S. Government's March Toward Bankruptcy.* New York: Cambridge University Press, 2007, p. 3.

51 See Heleno Taveira Torres. *Tendências da tributação dos lucros e do investimento. In:* Revista Internacional de Direito Tributário n. 4. Belo Horizonte: Del Rey, 2005, p. 33.

For a long time, international tax competition was seen as beneficial, based on the model developed by Charles Tibeout, in 1956. After the thesis of Tibeout, there was widespread criticism, most of which was based on the following grounds: (i) the possible need to respect the redistributive role of taxes; (ii) the evident crisis that would result from the granting of unrestricted incentives, with the consequent increase in public spending, with allusions being made to "sub-taxation," since, as pointed out by Nabais, the states, "in an attempt to attract foreign investment, are led to levels of expenses and taxes that are below what is desirable, particularly for the maintenance of a social state, even if it is a lean one"; (iii) the model would completely disregard the different mobility of production factors, moving the "taxes on capital to labor and, within labor, the taxes on the income of qualified labor (and consequently more nomadic) to the taxes on less qualified labor (and consequently more sedentary)"[52]. It should be noted that Tibeout, considered the father of studies on tax competition between states in the U.S., was criticized for not extending his thesis (the efficiency in the allocation of public and private resources) to firms and for not properly addressing the issues from an international viewpoint, referring only to individuals and efficiency issues in the purely domestic environment of the dispute between units of the U.S. Federation.

Among the main critics of Tibeout's ideas, it is worth highlighting Peggy Musgrave, from the University of California, and Richard Musgrave, from Harvard University, for whom the model examined "breaks down when public goods are financed through general, rather than benefit taxation, and coordinating measures will be needed to protect diversity of preferences for social goods, while securing fiscal neutrality with respect to location of work, investment, residency and consumption"[53].

According to the scholars in question, initially one can say that tax competition results, in some situations, in economic efficiency and accountability of governments with respect to public expenditure. However, in a more accurate analysis and taking into account the mobility of economic factors, including capital, investment, consumption and labor, this reality changes, thus creating a series of distortions, especially for the budgets of countries, including: (i) the migration of resources and capital to areas with advantageous tax treatments, distorting the regional allocation of resources and influencing private decisions; (ii) this migration, especially of capital, will eventually allow owners that reside in the country with higher taxation to act as free riders, enjoying a high level of public services without contributing to the respective costs; (iii) economic agents will eventually

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[52] See José Casalta Nabais. *A Soberania Fiscal no Actual Quadro de Internacionalização, Integração e Globalização Econômicas*. *In:* Estudos de Direito Fiscal: Por um Estado Fiscal Suportável. Coimbra: Almedina, 2005, p. 203.

[53] See Peggy B. Musgrave; Richard A. Musgrave. *Fiscal Coordination and Competition in an International Setting*, p. 81.

change their choices vis-à-vis costs, tariffs and tax incentives granted by individual countries; and (iv) in the absence of coordination, there will be a decrease in the supply and/or quality of public services, distorting the relationship between residents and the state.

Also according to the thesis of the American authors cited, tax competition does not have the power to ensure the harmony of public finances vis-à-vis international issues, whether with respect to efficiency, or with respect to the notion of equity (justice). Therefore, it is impossible to apply the theoretical model of Adam Smith to the competition between governments. In another study dedicated to a comparison between the positive and negative effects of tax competition, Peggy B. Musgrave said that the issue has been debated in the U.S. since 1986, with the development of economic theories that ultimately demonstrated that Tiebout's thesis was unsustainable, when international aspects are examined[54]. Thus, according to the majority doctrine, international tax competition is a harmful phenomenon when there are no criteria of legitimacy and economic efficiency (reduction in regional inequalities, development of poor areas, for example), since it ends up placing a large burden on states that give incentives, besides manipulating the economic process. As explained by John Douglas Wilson, "tax competition may force changes in the way tax burdens are allocated within jurisdiction and the amount and nature of public goods provided there"[55].

So, a large portion of the doctrine is critical of this dispute between countries, referred to by many as a non-cooperative game, which ultimately manipulates business decisions and distorts the economic process by creating inefficiencies in the long term. Thus, international tax competition policies involve instituting policies of competition between different tax jurisdictions through tax incentives and concessions, to attract businesses and individuals, with the possibility of such policies being characterized as detrimental to international integration and competition in the free market, with an allusion, in this case, to harmful tax competition. So, it is observed that tax competition ends up being understood, by a large portion of the doctrine and governments, as a phenomenon that is contrary to market competition, since it distorts the allocation of financial resources and is detrimental to the countries' tax systems. For this reason, today much of the literature ends up differentiating between tax competition and tax harmonization, which is the process of adaptation of national tax systems, to bring them into line with the common economic directions.

One conclusion seems to be obvious: as a result of tax competition, tax systems have become increasingly similar, in order to be competitive in attracting

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[54] See Peggy B. Musgrave. *Merits and Demerits of Fiscal Competition. In:* Tax Policy in the Global Economy, p. 338.

[55] See John Douglas Wilson. *Theories of Tax Competition. In: Foundations of International Income Taxation.*Editor: Michael J. Graetz. New York: Foundation Press, 2003, p. 519.

economic activities. As a consequence, there is the possible tax degradation of a large portion of countries that grant incentives in search of international investments, since the most evident consequence of this process is the impoverishment of such states, except for some countries that rely on investment. In a different way, the issue may end up leading countries to a conflict that has no end and no winners, because the only consequence will be the increasing migration of taxation from capital to labor, as it has occurred in the European Union, where there have been successive increases in the last twenty years, in addition to a drop in the level of public services. So, as a result, tax competition acts as a game in which firms manipulate the jurisdictions against each other, choosing, at the end, the best offer to carry out their economic activities. In this sense, it is worth highlighting the fundamental lesson of Reuven Avi-Yonah, for whom the result of international tax competition will eventually be dramatic. According to Avi-Yonah, the dispute between countries started with two historic movements: (i) suspension of withholding tax on gains on investments made by non-residents, as occurred in the U.S. in 1984, with its tax reform; (ii) tax benefits were established by developing countries, and some of them even created tax havens[56]. The first fact is linked to three different aspects of the U.S. economy: (i) the tax reform adopted by the government of Ronald Reagan, in the movement to reduce the size of the government, with a reduction in the tax burden to attract investments, mainly from Japan; (ii) the tax treaty between the U.S. and Japan levied a withholding tax of 10% (ten percent) on gains on investments, while treaties with other countries did not levy any taxes; (iii) the U.S. terminated the treaty with the Netherlands to avoid paying tax on interest, solving both the government's problem and the multinationals' problem, also encouraging foreign investment in the country and facilitating access to funding without tax cost[57].

This practice of the U.S. government eventually led to this dispute that is nowadays labeled as tax competition, inaugurating the so-called "race to the bottom," because soon after these U.S. measures, virtually all developed countries adopted the same practice. Germany, for example, between 1988 and 1991 ended up being harmed by the taxation of gains on capital investments, incurring huge losses with the migration of funds to Luxembourg. As a consequence, Germany was forced to adopt a mechanism to solve the problem, keeping said taxes, but not on its residents, and allowing investors in Luxembourg to receive the same treatment as German residents. The fact is that the reduction of taxes, directly or indirectly, leads to what the doctrine calls financial flows or capital flows, with tax systems being considered a structural data of the global market, although its in-

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[56] See Reuven S. Avi-Yonah. *Globalization, Tax Competition, and the Fiscal Crises of the Welfare State*, p. 532.

[57] See Leonard Schneidman. *U. S. Taxation of Foreign Portfolio Investors*.Boulder, USA, 2006, pp. 1-13.

fluence on economic activities is limited. This tax dispute, which, in a comparison to the market's operation, involves the reduction in the "prices" that represent taxes and tax systems of countries, eventually benefits taxpayers, by reducing their obligations in countries with high taxation and good structure of public services, enabling tax planning and the adoption of evasive measures.

Therefore, the issue ends up involving the so-called international tax planning, since major investors almost always create tax arrangements to reduce their tax burden, to the detriment of tax revenues of the countries in which they reside. Take, for example, an investor from a country that, through a company located in a tax haven, transfers his resources to the U.S. Even if there is treaty between the U.S. and his or her country of residence, it will be impossible, without the help of the tax haven, with the issuance of financial information, to identify the operation and levy taxes. In this line of thought, studies have shown that, in the 1980s alone, Latin American countries transferred to developed countries between $15 and $60 billion a year, about $300 billion of which entered as investment in the U.S. only. Developed countries, such as Germany and Japan, also ended up being involved in this capital mobility by virtue the measures aimed at granting preferential regimes, with the operation of resources in other countries and without taxation in their residences.

The second point, in turn, is related to the actual international economic integration, with the evolution of technology and communication, facilitating the exchanges between countries and the formation of a new market, aspects of globalization. The international tax competition is so evident that, in 1998 alone, when the OECD report on harmful tax competition was published, there were at least 103 countries using preferential tax regimes or advantages to attract investment. As a result, there has been an effective migration of tax bases, with an overall decrease in taxes on income and on capital, in view of the so-called mobility. And, at the opposite end of the scale, an extremely worrying fact has been the increase in the levy on less volatile bases, such as wages and consumption. And the problem arises with this change in tax bases, because the taxation eventually leads to economic and social problems. After all, as emphasized by Avi-Yonah, high taxes on labor discourage work; high payroll taxes discourage job creation and contribute to unemployment; and high taxes on consumption of goods and services drive consumption overseas[58]. Avi-Yonah also argues that, since countries cannot tax the income of capital in light of this international movement, their only recourse is to cut social security nets and their public services, thereby creating a dilemma about globalization itself[59].

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[58] See Reuven S. Avi-Yonah. *Globalization, Tax Competition, and the Fiscal Crises of the Welfare State*, p. 534.

[59] See Reuven S. Avi-Yonah. *Globalization, Tax Competition, and the Fiscal Crises of the Welfare State*, p. 534.

Thus, the so-called tax degradation involves the reduction in governmental tax revenues, which ultimately restricts the capacity to fund public policies[60], leading governments, due to the need for resources, to increase taxes on less volatile economic bases, especially, in this case, on the income of workers and on consumption, as previously seen. Andreas Haufler[61] presents three externalities resulting from the use of competition between the countries: (i) the tax base externality; (ii) the tax exporting externality; and (iii) the terms of trade externality. The first hypothesis has to do with the effects of the reduction and/or increase in the taxes of a country on its neighbors, which can lead to positive externalities for some economic players. The so-called tax exporting externality, in turn, occurs when foreigners derive benefits, in their countries of residence, from non-coordinated fiscal policies. Also according to Haufler, these non-coordinated fiscal policies lead to capital fluctuations and, with the reduction in taxes on profits, for example, negative externalities may be caused for neighboring countries, with the volatility of the tax base. With respect to the terms of trade externality, the taxation of certain activities can be used as a mechanism to influence prices in the international market, such as the prices of commodities, in favor of some countries and at the expense of foreign economic agents. And as Haufler warns, "countries can impose domestic taxes on capital in order to influence the world rate of return, i.e., the inter-temporal terms of trade"[62].

All the situations described and exemplified by Haufler are understood, by the legal-economic doctrine, as failures of the so-called market mechanisms, because they ultimately distort the proper allocation of resources and change the tax policy of countries involved in the process of market integration. Every day, the literature, politicians and economists reiterate their concern over the constant migration of tax bases, because the states, in need of resources, have to maintain their revenues by levying taxes, more and more often, on less mobile bases, such as labor, wages, property and consumption[63].

Therefore, it becomes evident that international tax competition is one of the causes of the crisis that lots of countries are facing nowadays, because it prevents, in fact, the adoption of better criteria for inspection and taxation of interstate operations. If the capital moves more and more in a tax-free way, states are faced with the need to attract capital and, in order to maintain their financial struc-

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60 See Andrew L. Yarrow. *Forgive Us Our Debits: The Intergenerational Dangers of Fiscal Irresponsabilty.* Michigan: Library of Congress Data, 2008, p. 69.

61 See Andreas Haufler. *Taxation in a Global Economy*. Cambridge, UK: Cambridge University Press, 2001, p. 33.

62 See Andreas Haufler. *Taxation in a Global Economy*. Cambridge, UK: Cambridge University Press, 2001, p. 33.

63 See Andreas Haufler. *Taxation in a Global Economy*. Cambridge, UK: Cambridge University Press, 2001, p. 33.

tures (after all, they are fiscal states), they have to tax other bases, such as wages and consumption, generating tax regressiveness and economic and social inequality, as a more pragmatic consequence.

The competition between companies increases by virtue of differences in the economic and fiscal structures of countries. And, if on the one hand, companies in developed countries benefit from globalization, on the other, they end up preferring to invest in countries with lower costs. Thus, the effects of globalization are highly asymmetrical.The most immediate consequence of the competition between countries is the shift in the tax bases in many of these countries. That is, there has been more and more tax on less mobile bases, such as consumption, property and labor and, on the other hand, there has been less and less tax on capital and international investment. In the end, the ones that benefit are the large international taxpayers, who, without thinking twice, transfer their resources to the most favorable tax environment, creating an economic and financial imbalance for countries that need to provide public services and ensure the basic rights of their citizens.

Every day, countries around the world have to find ways to keep their tax revenues, the financial surplus and the share in the global market of their economic agents. On one hand, there has been an increase in the international economic movement headed by transnational corporations. On the other hand, there has been a considerable increase in social exclusion, since the impoverishment of states leads to a reduction in wealth distribution policies, making it difficult to solve scarcity problems (that is why there is the allusion to social exclusion).

This process of increasing internationalization of companies and financial capital has forced states, including the most developed ones, to make tax reforms and to reduce public spending, in order to keep their territories attractive and competitive, by alleviating the taxation on investments. However, if these changes are poorly planned, they can lead to what experts call a fiscal degradation, with serious crises, as what happened in Russia, for example, and now in Brazil, with the impoverishment of countries and the progressiveness of taxation, which affects the economy and generates huge social distortions.

Based on everything that has been seen, it seems that, in addition to other equally important aspects (method of international regulation, control mechanisms, lack of liquidity, etc.), it is essential to correlate the global financial crisis with international tax competition. A consequence of globalization itself, the competition between countries to attract capital and investments eventually imposed obvious limitations on the sovereignty of countries, increasingly pushing supervision and taxation away from financial transactions, leading states, for the sake of survival, to levy higher taxes on less volatile economic bases, such as production, wages and domestic consumption. This ends up worsening the fiscal degradation of less developed countries, which, in an increasingly economically integrated world, become trapped in a real race to the bottom.

This means that national states are and will increasingly be hostages to the global economic system, preventing them from providing, in the intended manner, public services and ensuring the welfare of their citizens. The lack of control over international financial businesses and the reduced regulation on international tax competition are also indisputable causes of the crisis, which, serving as the basis for changes at a global level, must lead to the imposition of greater control over capital mobility. Otherwise, it will be increasingly difficult for states to provide public services to ordinary people, with the "search for social rights" being driven away from material reality.

The granting of tax incentives and direct subsidies, instead of something harmful to countries, ends up being one of the only ways to keep them in the path of world investments. Eliminating tax incentives and/or subsidies means harming economic environments for competitors, because, in practice, all developed and developing countries grant state incentives to the market (despite the ranting against such incentives). If there is no effective global control, either by a body to be created or by the WTO itself, countries concerned with the growth of their economies should continue granting such incentives, otherwise, these countries may be left out of the global economic process. However, such governmental incentives must not be granted without legitimacy criteria, such as equality (i.e., non-discrimination, in a more practical sense) vis-à-vis the free competition. This is probably the major problem in this subject. In order to help the economy and the society, the countries shouldn't grant incentives or subsidies without a technical study of the expenditures, the post-benefits, the impacts on the competition and on the international relations.

III. Base erosion and profit shifting

The recent researches on international taxation – subject which is also considered an "esoteric world"[64] – show that there is an unprecedented attention[65] being paid to the issue of base erosion and profit shifting[66]. OECD's agenda and actions against this phenomenon aim to facilitate multilateral cooperation among governments[67]. The multinationals tax planning schemes have been subject to a

[64] See Dhammika Dharmapala. *What Do We Know About Base Erosion and Profit Shifting? A Review of the Empirical Literature*, pp. 3-27.

[65] See Yariv Brauner. *What the BEPS? In:* Florida Tax Review, Volume 16, Number 2, 2014, p. 55.

[66] See Wolfgang Schön, Hugh J. Ault, Stephen E. Shay. *Base Erosion and Profit Shifting: A Roadmap for Reform. In:* Bulletin for International Taxation. The Netherlands: IBFD, 2014, p. 275.

[67] See Arthur Cockfield. *BEPS and Global Digital Taxation. In: Tax Notes International*, September 15, 2014, p. 933. Defends the author that "The OECD must begin a more focused discussion on the ways that Internet technologies could help enforce tax laws to inhibit aggressive international tax planning while ensuring that any new regime protects important interests such as taxpayer privacy."

general criticism[68]. Pedro Schoueri has noticed the conflicts and inconsistences between the trade and investment law and the practices by the international organisms[69]:

> "Throughout the analysis, the most challenging aspects related to the relevance of tax discrimination for the trade and investment framework, as well and the possible justifications that each framework is ready to accept.
> Regarding the relevance of tax discrimination, the findings of the present analysis are rather similar to those discussed in Part II: while the issue is well established with regard to EU law, the contradictory case law on the TRIPS Agreement does not allow a firm assessment and the IIAs contain significant taxation carve-outs. The discussion under the GATS will depend on the lists of specific commitments and possible horizontal limitations, and the GATT provisions, while covering tax advantages, are considerably limited by the scope of the Agreement to trade in goods.
> In this regard, the limitation of scope of the agreements seem to largely exempt concerns with CFC defensive measures. First, trade and investment agreements do not cover discrimination against a country's own nationals, which is the case with CFC legislation. From an EU standpoint, these measures are covered by the freedoms of establishment, which does not offer protection to third country scenarios (though at an intra-EU level the conflict remains possible).
> Therefore, withholding tax and non-deductibility defensive measures are those with the highest potential for conflict with the trade and investment framework. In this respect, the variety of taxation carve-outs mentioned above makes a firm assessment on the existence of such conflicts dependent on a case-by-case analysis – but the possibility of conflict is established, at least where the extent of those carve-outs is limited.
> Besides, given the visibility of the discriminatory elements of withholding tax and non- deductibility defensive measures, the matter of justifications gained particular relevance. This exercise highlighted important parallels and inconsistencies between the frameworks.
> First, in the EU context, much of the discussion focuses on the unwritten rule of reason, which includes a proportionality test. On the other hand, the GATT and GATS rely on the written justifications of articles 20(d) GATT and 14(c) and (d) GATS, which also include a proportionality test. While the coverage of the GATT and GATS proved to be much more restricted, the arguments used in the justification stage were parallel to those used at EU level: the prevention of abuse and measures securing compliance with laws and regulations are not to be used dis-

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[68] See Charles Duhigg; David Kocieniewski. *How Apple Sidesteps Billions in Taxes. New York Times,* April 28, 2012, available at http://nytimes.com/2012/04/29/business/apples-tax-strategy-aims-at-low-tax-states-and-nations.html?r=0.

[69] Pedro Guilherme Lindenberg Schoueri. *Conflicts of international legal frameworks in the area of Harmful Tax Competition: the Modified Nexus Approach*. Viena: Institute for Austrian and International Tax Law/DIBT – Doctoral Program in International Business Taxation WU – Vienna University of Economics and Business, 2018, pp. 187-188.

> proportionally, offering shelter to measures that in effect restrict the respective free movement rights. [...] At EU level, for instance, the teeth of the state aid provisions is arguably used to enforce the CoC criteria. In principle, it is possible to conceive a similar complementary relation between the FHTP and the ASCM (or even PTAs with broader subsidy rules). In this sense, it is possible to conceive the relationship between the hard and soft frameworks in constructive rather than destructive terms. […]
>
> Finally, as a byproduct, the present analysis also indicated important inconsistencies within the trade and investment law framework."

It sounds quite clear the affirmation of Pedro Schoueri who has appointed that "the coordination efforts between the frameworks are weak, to say the least, so that conflicts are more likely to arise. […] It is possible and even likely that similar conflicts of frameworks occur in other areas of international tax law, e.g. involving other BEPS Actions or involving other international agreements"[70].

Actually, the BEPS action plan is based on the premise that "BEPS is a global problem which requires global solutions" and its main purpose is to provide the countries "the tools they need to ensure that profits are taxed where economic activities generating the profits are performed and where value is created, while at the same time give business greater certainity by reducing disputes over the application of international tax rules, and standardising requirements"[71]. It is important to analyze what the OECD is doing in regards of BEPS[72]. Also it is

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[70] Pedro Guilherme Lindenberg Schoueri. *Conflicts of international legal frameworks in the area of Harmful Tax Competition: the Modified Nexus Approach*. Viena: Institute for Austrian and International Tax Law/DIBT – Doctoral Program in International Business Taxation WU – Vienna University of Economics and Business, 2018, p. 217, p. 220.

[71] Available at http://www.oecd.org/tax/beps-about.htm.

[72] "So what can the OECD do? It can provide a fórum in which those issues can be discussed, common interests can be identified, and political compromises aimed at establishing a compatible set of practices can be established. In many situations, the countries are in a kind of prisoner's dilemma: They recognize that all are better of if they can cooperate in certain areas but there has to be some way to define those areas and also to prevent defections. Here the OECD has the potential to play a key role. Take the case of patent boxes, reducing the rate of tax on intagible income to attract headquarters companies to the domestic jurisdiction or to prevent domestic activities from leaving. […] The expansion of the OECD membership and the inclusion of nonmember countries in the discussions of these issues increase the potential scope for constructive dialogue while enhancing, not sacrificing, the OECD's hard-won legitimacy as an objective arbiter of international issues. It may be possible to agree on what can be agreed on and also to agree on the differences. This can provide the basis for working out in a logical, coherent, and uniform manner the implications of those principles in concrete situations and help to ensure that the basic principles can be consistenlty applied. Not everything is politics, but not everything is logical deduction from agreed starting points and purely conceptual reasoning (*Begriffsjurisprudence*) either. Rather, what is needed is a complex mix of policy decisions and then the logical working out of those principles in concrete situations. […] The BEPS political discourse shows that something is in motion, but do not underestimate the inertia effect resulting from the existing domestic tax rules and treaties." See Hugh J. Ault. *Some Reflections on the OECD and the Sources of International Tax Principles. In:* Tax Notes International, Vol. 70, N. 12, June 17, 2013, p. 10.

needed to examine the current model of regulation of the international tax competition based on the actions of the OECD. As registered by Christiana Panayi, "the OECD has spent a considerable amount of time dealing with the phenomenon of harmful tax competition in the late 90s"[73], as the OECD project on harmful tax competition was launched in 1996 with reports in 1998, 2000, 2001, 2002, 2006 and 2007[74].

The main concern of the OECD is that the harmful tax competition has a major impact on the free trade and development of countries. However, as mentioned before, the members still grant tax incentives and financial aids to different sectors of the economy and corporations which are not, in same cases, coherent to the OECD's rhetoric. Also it is important to notice that most of the subjects included in the BEPS action plan are related to corporations' tax planning or abuses, as such as the decision between debt or equity finance (with tax base possible erosions)[75], triangular structures[76] and the use of beneficial systems[77] (that could or could not be abusive).

Business restructurings are also a subject related to the BEPS action plan as there are lots os examples that the main purpose could be tax plannings or tax avoidances. It has been a common practice in many countries the aplication of legal measures by the countries – which authorities are reluctant to give up the share of profits they used to tax before any restructuring – to counter the so-called "abusive structures", "without even having specific legislation available"[78]. This is actually the same situation in Brazil because the methodology used by the tax authorities is to verify the "business purpose" and if there is not one, the legal

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[73] See Christiana HJI Panayi. *Advanced Issues in International and European Tax Law*, p. 6.

[74] See OECD Reports. Available at http://www.oecd.org/tax/.

[75] See René Offermanns; Boyke Baldewsing. *Anti-Base-Erosion Measures for Intra-Group Debt Financing. In:* International Tax Structures in the BEPS Era: An Analysis of Anti-Abusive Measures. The Netherlands: IBFD Tax Research Series – Volume 2, 2015, p. 103.

[76] See René Offermanns; Boyke Baldewsing. *Anti-Base-Erosion Measures for Intra-Group Debt Financing. In:* International Tax Structures in the BEPS Era: An Analysis of Anti-Abusive Measures. The Netherlands: IBFD Tax Research Series – Volume 2, 2015, p. 116. For some authors, some of the anti-abusive measures are similar to measures included in the US treaties. "This clause is based on the assumption that the tax payer is seeking to obtain treaty benefits by setting up a company in a treaty country and shifting the income to a PE located in a country which does not have a treaty with the source state." See Alexander Rust; Viktoria Wöhrer. *Anti-Abuse Clauses for Permanent Establishments Situated in Third Countries. In:* Base Erosion and Profit Shifting (BEPS) – The Proposals to Revise the OECD Model Convention. Editor: Michael Lang. Wien: Linde, 2016, p. 109, p. 130, p. 131.

[77] See René Offermanns; Boyke Baldewsing. *Anti-Base-Erosion Measures for Intra-Group Debt Financing. In:* International Tax Structures in the BEPS Era: An Analysis of Anti-Abusive Measures. The Netherlands: IBFD Tax Research Series – Volume 2, 2015, p. 120.

[78] See Madalina Court; Laura Ambagtsheer-Pakarinen. *Business Restructurings: The Toolkit for Tackling Abusive International Tax Structures. In:* International Tax Structures in the BEPS Era: An Analysis of Anti-Abusive Measures. The Netherlands: IBFD Tax Research Series – Volume 2, 2015, p. 217.

structure will probably be considered abusive[79].

The problem is there is not a definitive concept of what is and what is not abusive in tax avoidance. In the EU, this is a very complex issue as it involves the freedoms inside the Community (freedom of movement). In tax law, it is said that "three connecting factors are generally used to allocate (and to prevent avoidance of) a state's jurisdiction to tax: nationality, residence and origin of income"[80].

The academic researches, although in a very short-time after the BEPS action plan was launched, demonstrate that some of the recommendations are relevant. One important fact is that the prevention of "double non-taxation" is possible which limits the base erosion and profit shifting[81]. One of the methods mentioned is to adopt "a broad and clearly delineated definition of intangibles"[82]. Another possible abuse is the State's abuse over the grant of subsidies without technical exam and control (rent seeking). Financial subsidies could even be considered "evaded taxes" and a cause of tax avoidance[83]. The reports prepared by the OECD have not been able to stop the international tax competition or the grant of direct or indirect subsidies.

At the same time, the OECD reports and agenda against "harmful tax competition" has not suceeded as it has not been able to control the tax incentives or the direct subsidies. Also it has not suceeded because there is a incoherent position against "tax havens" when the OECD members countries keep granting

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[79] "The tools to be used by tax authorities are not clear cut, and in some cases can be used abusively, thereby leaving taxpayers unprotected. It could be seen that the BEPS initiatie is working on some actions that are relevant for business restructurings. However, as some recommendations are minimal and may not lead to the outcome of better protecting, in essence, the taxing rights of the source country, more work is expected to better safeguar the tax base of source countries. As tax authorities are very focused on applying all the tools available to them, it is advisable that more work to be targeted also at providing more certainty to taxpayers. This aspect should be at the top of the agenda, considering also that countries are playing in a very competitive field and are attempting to develop tax regimes for foreign companies to attract investment or are attempting to safeguard legal certainty." See Madalina Court; Laura Ambagtsheer-Pakarinen. *Business Restructurings: The Toolkit for Tackling Abusive International Tax Structures. In:* International Tax Structures in the BEPS Era: An Analysis of Anti-Abusive Measures. The Netherlands: IBFD Tax Research Series – Volume 2, 2015, p. 217.

[80] See Dennis Weber. *Tax Avoidance and the EC Treaty Freedoms. A Study of the Limitations under European Law to the Prevention of Tax Avoidance.* The Netherlands: Kluwer Law International, 2005, p. 255. The author defends that "Tax anti-avoidance measures may be justified by 'the need to safeguard the cohesion of a tax system'." *Idem, ibidem,* p. 260.

[81] See Ruxandra Vlasceanu. *Intellectual Property Structuring in the Context of the OECD BEPS Action Plan. In:* International Tax Structures in the BEPS Era: An Analysis of Anti-Abusive Measures. The Netherlands: IBFD Tax Research Series – Volume 2, 2015, p. 233.

[82] See Ruxandra Vlasceanu. *Intellectual Property Structuring in the Context of the OECD BEPS Action Plan. In:* International Tax Structures in the BEPS Era: An Analysis of Anti-Abusive Measures. The Netherlands: IBFD Tax Research Series – Volume 2, 2015, p. 233.

[83] See Filip Palda. *Tax Evasion and Firm Survival in Competitive Markets.* Cheltenham: Edward Elgar, 2001, p. 55.

"preferential tax regimes". Another problem is the aggressive tax planning of multinationals which improves the tax competition. This subject, that is not new, could now be considered a shifting of harmful tax competition[84]. However, we do believe that the tax competition and the agressive tax planning are very well connected. The tax competition should be not considered only between tax havens. A tax and financial competition between countries can occur without tax havens as demonstrated. At the same time, when multinationals use different tax jurisdictions to avoid taxes, they are using "legal set ups" – that could be considered abusive or immoral - according to the countries in which they are based or they operate[85]. Starbucks, for example, has not paid income tax in the UK since 2009[86]. Amazon has faced with similar situations after transfering the ownership of the company from the UK to Luxemburg[87]. Google, at another side, has generated US$ 18 billion revenue from the UK between 2006 and 2011 "and could only pay the equivalent of just US$ 16 million of UK corporation taxes in the same period"[88], what is repeatedly seen in other multinationals and financial institutions (as Apple[89] and HSBC[90]) operating in the global market. This situation has called attention of the OECD which, at the request of the G-20 Finance Ministers, in 2012, launched the action plan called "BEPS" to combat international tax competition which is considered to erode the domestic tax base and to shift the profiting. This exactly the agenda against examples as Apple's and others. The report from the OECD was released on 12 February 2013. The BEPS action plan was launched in July 2013 which outlined 15 actions across a range of tax areas including "digital economy, transfer pricing, coherence of corporate income taxation and transparency. [...] The 15 actions were scheduled to be delivered in three phases: September 2014, September 2015 and December 2015. In general, it seems that the BEPS Action Plan is aimed at integrating or reviving several related on-going OECD projects"[91]. UK, Germany and France have contributed to the

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84 See Christiana HJI Panayi. *Advanced Issues in International and European Tax Law*, p. 11.

85 See Christiana HJI Panayi. *Advanced Issues in International and European Tax Law*, p. 11.

86 See Christiana HJI Panayi. *Advanced Issues in International and European Tax Law*, p. 13.

87 See Christiana HJI Panayi. *Advanced Issues in International and European Tax Law*, p. 13.

88 See Christiana HJI Panayi. *Advanced Issues in International and European Tax Law*, p. 14.

89 See www.aph.gov.au/Parliamentary_Business/Committes/Senate/Economics/Corporate_Tax_Avoidance. "Apple was questioned at the US Senate for the company's complex tax practices that reportedly led it to successful shelter US$ 44 billion from taxation anywhere in the world. This was the result of a variety of offshore structures, arrangements and transactions to shift billions of dollars in profits away from the United States and into Ireland, where Apple has negotiated a special corporate tax rate of less than two percent." See Christiana HJI Panayi. *Advanced Issues in International and European Tax Law*, p. 19; Also See Antony Ting. *Tax: Apple's International Tax Structure and the Double Non-Taxation Issue*. *In:* British Tax Review 40-71, 2014.

90 See Stephanie Johnston. *Group Challenges UK Tax Authority on HSBC Tax Scandal*. 2015 WTD 85-5, 2015.

91 See Christiana HJI Panayi. *Advanced Issues in International and European Tax Law*, p. 49.

OECD with millions of Euros to show commitment and it shows that the concern with the phenomenon is much higher with the developed countries which can be damaged regarding the shifting of the tax bases.

The action plan[92] appears to be more concerned with reforms in some categories: i) tax base allocation and the application of the source/residence doctrines to some modern-day transactions; ii) anti-abuse tackling base erosion and preventing double non-taxation; iii) procedural reforms to analyse aggressive tax planning arrangements[93]. The issue now is to know: is there anything new in BEPS action plan? Is BEPS compatible with international tax law? The BEPS action plan aims to avoid negative externalities to the countries because of international operations. But is the same policy of the developed countries applicable to the developing countries? Although the OECD has consulted over 80 developing countries and published some specific topics, "it has been argued that cooperation is not necessarily good and its consequences are not always desirable. International taxation has thus far been based on cooperation that serves OECD countries rather than all countries"[94]. It is mentioned that this is a "cartelistic cooperation"[95]. However, there is a very logic point in Panaiy's conclusion in this field[96]:

> Whilst this may be to the benefit of OECD countries, it may not necessarily serve other countries such as the BRICs (ie Brazil, Russia, India, China and South Africa). Although these countries have a unique position of power in today's global economy and this position grants them increasing influence and great potential, neverthless, for the time being, BRICs countries may face many limitations in transforming the international tax landscape. It might be best if these and other developing countries embrace the BEPS project and participate in the consultations, to try and ensure as far as possible that their concerns are taken into account.

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92 The actions mentioned in the report are the following: 1. Addressing the Tax Challenges of the Digital Econony; 2. Neutralise the Effects of Hybrid Mismatch Arrangements; 3. Strengthen CFC Rules; 4. Limit Base Erosion via Interest Payment and Other Financial Payments; 5. Counter Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance; 6. Prevent Treaty Abuse; 7. Prevent the Artificial Avoidance of Permanent Establishment Status; 8, 9 and 10. Transfer Pricing (Intangibles, Risks and Capital and High-Risk Transactions); 11. Establish Methodologies to Collect and Analyse Data on BEPS and the Actions to Address it; 12. Disclosure of Aggressive Tax Planning; 13. Transfer Pricing Documentation; 14. Making Dispute Resolution Mechanisms more Effective; 15. Developing a Multilateral Instrument to Modify Bilateral Tax Treaties. As it can be noticed, the actions are all involved to the concern of tax revenues and the avoidance of abusive measures by multilateral companies which are the entities able to use the more complex tax structures.

93 See Christiana HJI Panayi. *Advanced Issues in International and European Tax Law*, p. 51.

94 See Christiana HJI Panayi. *Advanced Issues in International and European Tax Law*, p. 160.

95 See Tsilly Dagan. *'BRICS': Theoretical Framework and the Potential of Cooperation. In:* BRICS and the Emergence of International Tax Coordination. IBFD, 2015.

96 See Christiana HJI Panayi. *Advanced Issues in International and European Tax Law*, p. 160-161.

So it is much better if the developing countries are consulted before any actions start to be taken which will affect their policies and economies. But this does not mean that BEPS plan might be in their interest or not.

However, the negative implications of this phenomenon is not only for the developing countries. As many studies have mentioned, developed coutries are facing serious problems because of the tax competition and the agressive tax planning from multinationals. UK and US are both examples of the damages of this process[97].

It can be said also that the tax situation in the European Union can be considered one of the causes of the "Brexit"[98]. It is clear that the public spending[99] is a matter of all countries and that the major problems in the economy nowadays do have a relation with the budget and wrong tax and finance policies[100]. It is said that "it is virtual certainty that the global financial system would experience further global finances crises, with all their tremendous economic costs for millions of people across the globe. It might seem implausible that the status quo in global financial governance could persist over the longer term in the face of repeated crises. But it seemed just as unlikely at the height of 2008 financial crisis that so little would change in global financial governance as a result of that momentous upheaval. In the end, the existing order proved much more durable than many expected. If that massive shock to the system did not generate major transformative change, what will?"[101] Several interpretation issues remain unclear. The OECD should clarify. Also "Several policy issues exist pertaining to the US enforcement and interpretation of its own limitation on benefits rule"[102].

Developing countries must have a different agenda in reference of tax incentives as they can not be compared to the developed countries in terms of equal competition. The grant of any measure, however, needs to be subject to proper control, transparency and accountability. The use of different methods can be a

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97 See Lee A Sheppard. *Debunking the Overseas Cash Meme. In:* Tax Notes International 700, 2015.

98 A lot of attention might be addressed to "Brexit" as it will change the integration and the tax policies between the trade in Europe within Britain. It may be considered a unprecedent change in the European Union with effects on all the aspects of the EU. About the history and integration of European countries, see Kenneth A. Armstrong. *Regulation the free movement of goods. In:* New Legal Dynamics of European Union. Edited by Jo Shaw; Gillian More. Oxford: Oxford University Press, 1995, p. 170.

99 See Daniel Shaviro. *Taxes, Spending, and the U. S. Government's March Toward Bankruptcy.* New York: Cambridge University Press, 2007, p. 27.

100 See James M. Buchanan. *The Limits of Taxation. In:* Taxation – An International Perspective. Vancouver: Fraser Institute, 1984, p. 54; Jessica de Wolff. *The Political Economy of Fiscal Decisions – The Strategic Role of Public Debt.* Heidelberg; New York: Physica-Verl., 1998, p. 89.

101 See Eric Helleiner. *The Status Quo Crisis*. Oxford: Oxford University Press, 2014, 178.

102 See Romero J. S. Tavares. *The "Active Trade or Business" Exception of the Limitation on Benefits Clause. In:* Base Erosion and Profit Shifting (BEPS) – The Proposals to Revise the OECD Model Convention, p. 159.

model to avoid inneficient public expenditures and more market's failures. Finally, the adoption of abusive control against tax planning is not a correct answer[103]. The adoption of anti-abusive general clauses has revealed to be unfair and inneficient. The concept of the legal mechanisms need to be as more objective and technical as possible to avoid distortions and failures which can damage the economies and the tax systems.

It is also important to agree with recent researches that conclude that there are important conflicts between trade and investment law involving BEPS which remain subject to further researches and to the development of the methodology of control of an "international tax regime"[104].

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[103] See Fernando Zilveti; André Elali, *Planejamento Tributário,* p, 22. In the mentioned article, the authors bring attention to the crisis of the policies against tax planning: Franz Josef Haas. *Der Missbrauchstatbestand des § 42 AO – ein unkalkulierbares Risiko für die unternehmerische Gestaltungspraxis? In Festschrift für Arndt Raupach zum 70. Gegurtstag, Steuer-und Gesellschaftsrecht zwischen Unternehmerfreiheit und Gemeinwohl*. Org.: Paul Kirchhof, Karsten Schmidt, Wolfgang Schön e Klaus Vogel. Cologne: Dr. Otto Schmidt, 2006, (13/26) p. 26.

[104] See Pedro Guilherme Lindenberg Schoueri. *Conflicts of international legal frameworks in the area of Harmful Tax Competition: the Modified Nexus Approach*. Viena: Institute for Austrian and International Tax Law/ DIBT – Doctoral Program in International Business Taxation WU – Vienna University of Economics and Business, 2018, p. 220.

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