ACADEMIC PUBLICATIONS (EXCERPTS)

- **Kleinbard, E.D., Through a Latte Darkly: Starbucks' Stateless Income Planning, Tax Notes, June 2013, USC Gould School of Law, p. 1515 and following;**

- The remedy begins with transparency: genuine transparency, in which tax authorities and policymakers have a clear and complete picture of the global tax planning structures of multinational firms, and the implications of those structures for generating stateless income. National governments should recognize their common interest and require their tax and securities agencies to promulgate rules providing a uniform world-wide disclosure matrix for actual tax burdens by jurisdiction.

- The OECD made some proposals in its 2011 report, Tackling Aggressive Tax Planning through Improved Transparency and Disclosure, but much of the OECD's earlier work on transparency was aimed at tax shelter promoter disclosure or secret financial accounts. As the OECD's current Base Erosion and Profit Shifting report stresses, it is now time to emphasize transparency with regard to the effective tax rates of multinational enterprises.

- Factual developments and quantitative analysis confirm the magnitude of the problem. Two years ago the stockpile of U.S. firms' "permanently reinvested earnings" (earnings of foreign subsidiaries for which a U.S. tax cost has not been provided on the parent company's U.S. GAAP financial statements) stood at a little over $1 trillion; now that stockpile hovers at just about $2 trillion. In a recent paper, Harry Grubert and Rosanne Altshuler, working with firm-by-firm IRS data for 2006, calculated the effective foreign tax rates of profitable foreign subsidiaries of U.S. firms whose foreign operations in the aggregate had net positive earnings. 54 percent of all income earned by such subsidiaries was taxed at effective foreign tax rates of 15 percent or less. Only 24 percent of all such income was taxed at rates of 30 percent or greater. And perhaps more remarkably, almost 37 percent of the total income earned by such firms was taxed at rates lower than 5 percent.

- It is not appropriate to expect source country tax authorities to have a detailed knowledge of the tax laws and financial accounting rules of many other jurisdictions, in order simply to evaluate the probative value of a taxpayer's claim that its intragroup dealings necessarily are at arm's-length by virtue of alleged symmetries in tax treatment for expense and income across the group's affiliates.

- Source country tax authorities in particular have a legitimate interest in a complete and transparent presentation of a multinational company's global tax planning relevant to that company's source country base source erosion strategies. Without such an understanding, a source country's authorities are not able to evaluate, for example, claims made by a multinational firm that there is a natural tax tension between deductions claimed in that jurisdiction and income inclusions elsewhere. That claim cannot be assessed without considering the totality of a multinational group's tax planning surrounding the income side of the equation.

- Tax avoidance is often carried out via transactions where relevant market prices do not exist (for example, royalty payments, sales of trademarks, logos, algorithms). Indeed it is increasingly difficult to assess the correct value of international intra-group transactions, in particular those involving intangibles, since such transactions cannot be reproduced between third parties. The OECD noted that multinational corporations transfer investments and intellectual property to various jurisdictions for tax purposes. For example, a company may have a physical presence and business activities in Canada, investments in an affiliate in Europe and intellectual property owned by another affiliate located in Barbados.

- Payments between affiliates for goods and services, such as intellectual property, can be used to shift profits to jurisdictions with low or no taxes. These practices was used in particular groups

involving Luxembourg based parent companies since intragroup incomes resulting from IP rights from subsidiaries were exempted by 80% from the taxable income. Likewise, Starbucks used the so-called "Amsterdam structure" by which UK company was paying royalties for various IP rights to a Dutch based company within the Starbucks' corporate ownership structures.

- For example, in the Starbucks case an intragroup charge was identified as eroding Starbucks UK's tax base in favour of its U.S. parent company. Starbucks UK's annual report revealed that the company "is funded by, and meets its day to day working capital requirements through a loan from the ultimate parent company."

- Starbucks vigorously rejected any suggestion that it had underpaid its U.K. tax obligations, however, less than two months after the original Reuters article ("How Starbucks Avoids UK Taxes", Reuters, Tom Bergin, 15 October 2012) Starbucks "caved in to public pressure and pledged to pay £10m in UK corporate tax in each of the next two years even if it makes a loss following calls to boycott the coffee chain over its 'immoral' tax practices.

- **Zucman, G., Taxing across Borders: Tracking Personal Wealth and Corporate Profits, Journal of Economic Perspectives, Volume 28, No. 4, Fall 2014**

- For enforcing an efficient and fair corporate income tax, the world financial registry only needs to include equities. A world financial registry would make it possible for tax authorities to check that taxpayers duly report their assets and income, independently of what information offshore bankers are willing to provide. One common response to proposals for a world financial registry is that it would threaten individual privacy. But countries have public property records for land and real estate and there seems to be little misuse. Anybody, for example, can connect to http://a836-acris.nyc.gov/ and find out who owns real estate on Park Avenue (although one sometimes stumbles upon faceless corporate titles) or if a particular person owns anything in Brooklyn. Of course, these records about real estate only capture part of people's wealth, but when the records were created, centuries ago (for example, in 1791 in France), land accounted for the bulk of private wealth, so they indeed recorded most of peoples' fortunes. In addition, not all countries have the same attitudes toward transparency, and such attitudes change over time.

- As tax havens rose as a share of foreign profits (to 55 percent today) and foreign profits rose as a share of total US corporate profits (to about one-third), the share of tax havens in total US corporate profits reached 18 percent (that is, 55 percent of one-third) in 2013. That is a tenfold increase since the 1980s.

- In sum, out of the 10 points decline in the effective tax rate between 1998 and 2013, 2 to 4 points can be attributed to changes in the US tax base and the Great Recession, leaving two-thirds or more of the decline to increased tax avoidance in low-tax countries. The cost of tax avoidance by US firms is borne by both the US government and the governments of other countries. Much of Google's profits shifted to Bermuda are made in Europe; absent tax havens, Google would pay more taxes in France and Germany. On the other hand, some US corporations also use tax havens to avoid taxes on their US-source income. With national accounts data, it is hard to know which government loses most.

- Quantifying the government revenue losses caused by profit-shifting to lower-tax jurisdictions is fraught with difficulties. […] Google US had an incentive to charge less than the then current market value of its technologies, but we do not know if it was able to do so or if the arm's length rules were strictly enforced—the purchase price is not public information.

- In principle, intragroup transactions should be conducted at the market price of the goods and services traded, as if the subsidiaries were unrelated. In practice, arm's length pricing faces severe limitations. First, for a number of multinational companies, where the profits derive in part from synergies of being present across the globe, the very notion of arm's length pricing is

conceptually flawed as there is no clear-cut way to attribute a portion of its income to any particular subsidiary.

- Tax authorities cannot possibly check that all intragroup transactions are correctly priced. With billions of intragroup transactions every year, tax authorities cannot conceivably check that they are all correctly priced.
- A popular method to shift profits offshore is the use of intragroup loans, whereby subsidiaries in low-tax countries grant loans to subsidiaries in high-tax countries.
- The choice of thousands of bilateral treaties over a multilateral agreement has created a web of inconsistent rules. Multinationals firms can exploit these inconsistencies to avoid taxes by carefully choosing the location of their affiliates—what is known as “treaty shopping".
- While progress has undoubtedly been achieved over the last few years in curbing tax avoidance and evasion, much more could be done to illuminate the dark sides of international capital mobility. The stakes go beyond tax enforcement, as the ability to move large sums of money without leaving a footprint also facilitates money laundering, bribery, and the financing of terrorism.

• **Centre for Applied Economy of the Charles University in Prague (zINDEX) Profitability of firms with paper bearer shares in public procurement (published on 15 May and 30 August 2011**)

- Shareholding structure of the tenderer is a highly relevant factor in determining the cost effectiveness and transparency of public contracts.
- Profitability of companies with non-transparent shareholding structure in public contracts is 20 to 73% higher than the profitability of equivalent entities participating in public contracts with a transparent shareholding structure.

• **Centre for Applied Economy of the Charles University in Prague (zINDEX) Revealing corporate structures of public contractors (October 2013)**

- The study discovered that Czech companies which concluded public contracts in the Czech Republic between 2009 and 2012 in the total value of CZK 117 billion (EUR 4,25 billion) had in 10% an opaque corporate structure with anonymous ultimate beneficial owner and in 42% the corporate structure extended outside the Czech Republic to countries where the remaining part of the corporate structure or the ultimate beneficial owner was not possible to find.

• **Corruption: Not only a fiscal problem and its solutions in Collection of texts of a working group for the fight against corruption, Czech National Economic Government Council, (2011)**

- Companies that are owned by the bearer shares do not have a clear ownership structure, which allows procurement companies directly related to the ones who decide on the contract.
- Public contracts should be attributed only those companies that have a clear corporate ownership structure traceable to individuals.