A legitimate tax plan that minimizes a multinational technology company's taxes

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Abstract- The existence of different tax regimes and corporate rates of income tax between countries has given rise to international tax arbitrage and transfer pricing1 schemes. The objective of these schemes has been to minimize income tax expense and tax liabilities of Multinational[2] Corporations (MNCs). This paper considers the activities undertaken by these MNCs and the issues presented by these activities. A high-level tax plan is outlined for the fictional; Multinational Technology Company called The Multinational Technology Company to consider in its quest to minimize the company's consolidated effective income tax expense.

Index Terms- Legitimate tax plan, Corporation Tax, Income tax expense, Multinational company's taxes

1. Introduction

Large, modern Multinational Corporations (MNCs) typically operate through a complex hierarchy of various legal entities that carry on business through operating, holding and financing companies in order to achieve their shareholders' profit maximization objectives (Smistad, 2011). For example, Hewlett-Packard Corporation (HP), a large multinational information technology company, markets its products and services globally and is subject to income tax in approximately eighty foreign countries (Hewlett-Packard Corporation, 2010). Corporations are continually in search of ways to decrease their operating costs and improve their operating and net income (Smistad, 2011). One way of improving firm consolidated net income is by reducing income taxes. As Paul Sweeney (2010) points out, U.S. companies generally view taxes as a cost of business and not so much as a payment for infrastructure, public services and good government.

Two approaches to reducing corporate income taxes involve international tax arbitrage (Genschel & Schwarz, 2011) and transfer pricing (Borkowski, 2010). A tax arbitrage opportunity presents itself when a MNC operates in two or more countries that have different tax laws. The tax arbitrage occurs when the MNC is in compliance with the tax laws in all jurisdictions it operates in but is liable for lower consolidated income tax than would have been the case if the MNC had been subject to the tax laws of only one jurisdiction (Rosenzweig, 2007). Transfer pricing schemes enable MNCs to shift income from a high-tax country to a low-tax country, by manipulating[3] the amounts charged between company divisions, subsidiaries or parent companies for goods or services transferred within the consolidated entity (Azemar, 2007).

However, creating a tax plan is a very complicated process as incompatibilities between tax laws and the specifics that tax laws relate to; create administrative inefficiencies, give rise to unethicality and result in incomprehensibilities as well as unnecessary expense (Prebble, 1997. The situation is more pronounced where tax plans relating multinational business profits are concerned; due to the complexities of tax jurisdictions, the separation of income and capital for tax purposes, and transfer pricing issues (Prebble, 1997). There are also drawbacks to international tax governance as generally, countries tend to seek 'self-preservation' in all domestic tax systems as well as in the bilateral and multilateral agreements made between countries (Rixen, 2009). This is because, while governments prefer to avoid double taxation[4] situations, they also do not wish to lose taxable revenue (Rixen, 2009). Consequently,

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[1] A transfer price is the price that one company division pays or receives for goods or services received or supplied to another company division (Smullen, 2001, p. 3). This does not require the use of a tax haven and usually the profits are taken in the country with lower taxes (Warpole, 2001).
[2] A Multinational Corporation is an organisation that has a presence in global locations (Ajami & Goddard, 2006, p. 6).
[3] Transfer price manipulations occur when a transfer price is significantly lower that market value for the purposes of tax avoidance (Smullen, 2001).
[4]When a company's tax profits are subject to tax from the country in which it is situated and tax from its source country; due to an overlap of jurisdiction (Rixen, 2009).

tax arbitration and harmful tax competition tend to find their way into the international multilevel governance tax system (Rixen, 2009). An example of the negative impact of harmful tax competition is that; Germany has had its financial services migrated to

London, its holding companies moved to the Netherlands, its savings migrated to Luxemburg and to make things even worse; Germany's manufacturing was relocated to competitive low-tax Ireland (Edwards & Mitchell, 2008, p.135, as cited in Obiri, 2011).

Consequently, Multinational Corporations are influenced by tax rates of foreign source income, when determining where to locate their headquarters for the reasons mentioned above (Barrios et al. 2008). This is generally not the case with technology companies as the use of Information and Communication Technology (ICT) has increased rapidly in both personal and business areas, and resulted in the creation of digital markets, internal organizational decentralisation[5] and more collaboration of business activities (Schafer et al, 2002). Also, due to the nature of Intangible Assets and the fact that they tend to 'drive' all types of businesses; they are recognized in tax systems and taxed accordingly (Warpole, 2001). In addition, governments encourage Research and Development as this usually results in a valuable taxable asset (Warpole, 2001). However, Technology companies are making good legal use of the national tax system differences by relocating Intellectual Property (IP) - an Intangible Asset, to tax havens; away from the nation where it was created (Warpole, 2001; Wiederhold, 2011).

This paper therefore seeks to establish a legitimate tax plan for an imaginary company called The Multinational Technology Company, which will minimize its tax obligations; while taking ethics and Corporate Social Responsibility into account. The rest of the paper is outlined as follows: 1.1: A Look at the Past; 1.2 Recent Developments; 1.3: Corporate Social Responsibility[6]; 2. Discussion; 3: Analysis; 4: Conclusion; and 5: Recommendations.

1.1 A Look At The Past

Barrios et al., (2008) used panel data to analyze the structure of multinational firms in 33 European countries over the 1999-2003 period. The regression result shows that a one percentage point increase in the host country tax rate is estimated to reduce the probability of location by 0.274 percent. According to the Guardian, the European Union (EU) lost some GBP £191 billion in tax revenue between 2005 and 2007; due to transfer price manipulations carried out by Multinational Corporations that took advantage of their presence in non-EU and developing countries (Lawrence, 2009, para 2; as cited in Obiri, 2011). For example, at GBP 0.18pence; forty million fridge freezers were imported from China to the EU between 2005 and 2007 while in the US, expensive electronic resistors were imported from Malaysia at less at USD 1 cent each (Lawrence, 2009, para 1, as cited in Obiri, 2011). Consequently at least GBP £581.4 Billion escaped tax in the EU and the US between 2005 and 2007, due to transfer price manipulations (Lawrence, 2009, para 2, as cited in Obiri 2011). However on a global scale, holding companies or Multinational Corporations are beginning to relocate their headquarters to Ireland due to its corporate taxation attractiveness compared with other countries (Connell et al, 2008); as illustrated in Appendix 1. Azemar (2010) found the tax regime existing in the home country of a MNC significantly affects the amount of capital the MNC invests in foreign jurisdictions. This conclusion was based on the analysis of 5 years of Internal Revenue Service data for the years 1992, 1994, 1996, 1998 and 2000, which included financial information on 7,500 large foreign corporations more than fifty percent owned by U.S. MNCs. The sample firms had U.S. assets spread across fifty-seven countries. Azemar (2001) found a strong inverse relationship between the volume of U.S. capital invested in foreign countries and the tax rate in the foreign country. The lower the foreign, or host country's rate of tax, the more foreign investment by U.S. MNC in that foreign country and vice versa. In fact, "a one percentage point increase in host country taxes engendered a decrease of 1.43% in the amount of U.S. capital invested in the country" (p. 15).

1.2 Recent Development

Several recent papers in economics and accounting have focused on the tax-favored nature of investments in internally developed intangible assets[7] (De Waegenaere, Sansing & Wielhouwer, 2010). Fullerton and Lyon (1988) argue that effective tax rate measures that exclude the taxation of intangible capital are misleading.

In Britain, some £1.8 billion in tax revenue eludes the government because the wealthiest companies with 32,216 subsidiaries between them in the country make use of tax havens abroad ("FTSE 100 Companies among Britain's…" 2011, para 1, as cited in Obiri, 2011). However, the British government has responded with a GBP £840 Million tax break for Multinational Corporations that use tax havens ("FTSE 100 Companies among Britain's…", 2011, para 4, as cited in Obiri, 2011). Companies such as the global Internet giant Google incorporated in the US in 1988 (Allen, 2011, p. 503) and the UK's advertising conglomerate WPP are examples of large Multinational Corporations with European headquarters situated in Ireland ("If Google is in Ireland for tax reasons…", 2011, para 1 as cited in Obiri, 2011,).

[5] A decentralized organisation is one that has fewer levels of hierarchical controls and consequently less bureaucracy (Robbins 2009, p. 484).
[6] Running a business without a negative impact on society (Waller et al, 2011)
[7] The International Accounting Standards (IASB) defines an Intangible Asset as a non-physical asset, which is nonfinancial and can be identified (Kocak, 2008).

According to Bloomberg, the global Internet giant channels its income from Intellectual Property[8] registered in Bermuda; via Ireland ("If Google is in Ireland for tax reasons", 2011, para 8). As such, Google Ireland Limited's 2009 gross profit of Euro € 5.5 Billion was subjected to an "administrative expense" of Euro € 5.467 Billion paid to its Bermuda headquarters for the right to operate, which

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reduced its operating profit to a measly Euro € 45 Million ("If Google is in Ireland for tax reasons….." 2011, para 6). However, Google's tax practices are legal and "above board" as according to a company spokesperson, the global internet giant simply uses national tax differences to its advantage in the global tax system ("If Google is in Ireland for tax reasons…..", 2011, para 17, as cited in Obiri, 2011,).

1.3 Corporate Social Responsibility (CSR)

Earlier empirical study stated that stakeholder importance drives organisations to practice Corporate Social Responsibility (Bergstrom et al, 2011), However, this was challenged by a more recent study that found that corporate representatives formed networks to defend and promote their organization's meaning of CSR (Bergstrom et al; 2011, Obiri, 2011). Additionally, the representatives signed up and rallied together a system of actors and made them loyal their company's definition of CSR (Bergstrom et al, 2011).

Consequently, companies that did not practice CSR were accepted as being Socially Responsible (Bergstrom et al, 2011). An example of this is a Swedish Technology company that was accepted as being Socially Responsible even after it had terminated more than 10,000 employees (Bergstrom et al, 2011). On the other hand, some companies do not practice CSR because it is seen to increase production costs (Gongmin, 2011). Therefore, without government interaction, profit motivated companies will not practice CSR (Warpole, 2001; Gongmin, 2011). In general though, Multinational Corporations have 'tentacles' that reach a lot further than the 'tentacles' of governments. As such, it is necessary for such organisations to ensure that their actions, albeit legal, do not negatively impact the world we live in. For example, when technology companies sell their Intellectual Property to a 'tax haven' resident Controlled Foreign Holding Company (CFHC), the result is serious economic impairment (Wiederhold, 2011). This is because, both developed and emerging economies lose out on revenue and the governments of countries such as Ireland, as mentioned in the above Google discussion do not receive sufficient funding for significant public infrastructure (Wiederhold, 2011). Governments need adequate funds to inter alia; construct roads, provide health services and suitable education for tomorrow's world leaders (Wiederhold, 2011). Additionally, according to information obtained at a G-20 meeting; developing countries lose USD$ 125 Billion every year in tax revenue because Multinational Corporations use tax havens (Wiederhold, 2011).

2. DISCUSSION - A LEGITIMATE TAX PLAN FOR THE MULTINATIONAL TECHNOLOGY COMPANY

Intellectual Capital[9] fuels the Information Technology (IT) business, which significantly contributes to the world's Gross domestic Product (GDP) (Kavida et al, 2010, as cited in Obiri, 20110). As such, technology companies tend to protect their Intellectual Capital with patents to prevent competitors or individuals from copying them (Wiederhold, 2011). The patented[10] Intellectual Capital is known as Intellectual Property (IP) (Wiederhold, 2011). Also, the technology behind the intellectual Capital of a technology company is usually software and in order realize maximum profits from the Intellectual Property, Multinational Corporations have to 'offshore' it to a tax haven (Wiederhold, 2011).

2.1 Assumptions

This paper assumes that:

1. The Multinational Technology Company is a large Multinational Corporation that was incorporated in the UK in the year 2000.
2. The company has a presence in the US and has global customers.
3. The company has a patented Intellectual Property (IP); created and registered in the UK that generates an annual turnover of £10 billion and profit before tax of £4 billion.
4. The company paid 24% tax at the end of the financial year which ended in April 2012 and this left a net profit of £2.96 billion. (Appendix 2 shows that UK Corporation tax has been reduced from 24% in 2012 to 23% in 2013 and an even lower 21% and 20% scheduled for 2014 and 2015 respectively. However, although, this will slightly reduce the technology company's tax, there are still some legitimate methods mentioned above that can significantly reduce its tax obligations further).
5. The company has £11.8 billion Long Term Debts and Total Liabilities and Equity £113.5 billion for the financial year ending April 2012 (see Appendix 3).

[8] Intellectual Property is a package of rights that safeguards the use of concepts, designs or philosophies –technical designs or software in Technology companies-, which has moneymaking value (Gowers et al, 2006).
[9] Intellectual Capital is the knowledge that an organisation's employees bring to it to increase its worth (Basile, 2009, p.1). This knowledge is used to develop inter alia; valuable software technology companies (Kavida et al, 2010).
[10] A patent is a legal document that gives the recipient –or patentee-, exclusive rights (American Bar Association, 2010).

2.2 The Tax Plan

Using the Google tax reduction model with some modifications; consistent with Obiri (2011), this paper suggests that:

1. The company must consider both its shareholders and the environment.

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2. The company's IP ownership should be relocated to Bermuda[11] or a zero tax country as a CFHC.
3. Furthermore, the company must also relocate its UK headquarters to Ireland; in order to take advantage of the 12.5% basic tax rate. However, the cost of using the IP i.e. the amount charged by its Bermuda CFHC must be half of its Profits before Tax.
4. Finally, the company must move its treasury functions[12] from UK to Ireland.

2.3 Justification of the Chosen Tax Minimization Plan

Prior to the tax plan above, the company was subject to the UK Corporation Tax Rate of 24% in 2012. The company paid corporation tax of £960 million (24% x £4 billion) and was left with a net profit after tax of £3.04 billion. However, under the current tax plan, the company would charge and pay £2 billion which is half of its Profit before Tax (£4 billion) as cost of using the IP; thus the amount charged by its Bermuda Controlled Foreign Holding Company (CFHC), and this £2 billion would attract a zero tax in Bermuda. The remaining £2 billion Profit before Tax would be subjected to 20% tax rate; thus total corporation tax rate in Ireland. The company would therefore pay total corporation tax of £400 million (20% x £2 billion)

The chosen tax plan will minimize the company's tax by £560 million (thus the difference between the £960 million paid in the UK and the £400 million that would have been paid in Ireland). This method provides the resident country with tax revenue of £400 Million, which is 10% of the company's Profit before Tax. This is consistent with Wiederhold (2011) assertion that Governments need adequate funds to inter alia; construct roads, provide health services and suitable education for tomorrow's world leaders. The tax payment to the resident country would also make the company socially responsible (Bergstrom et al, 2011). The company would therefore be left with £3.6 billion (£4 billion - £400 million) Profit after Tax. This is a fair amount and also provides the company's shareholder's with a reasonable return on their investment[13].

Furthermore, the low corporate tax rate in Ireland should not be ignored even though there are risks of exit taxes on inversion (Voget, 2009). Even if management decides not to carry out the inversion at the present time, the company should consider moving its treasury operations to Ireland. One of the key responsibilities of the treasury function is to advance loans from one affiliate[14] to another based on capital requirements (Stewart, 2008). Currently, the company's long-term liabilities are 10 percent of the company's total Liabilities and Equity (see Appendix 3). The industry average for companies in the telecommunications industry is 34% (BizMiner, 2010). Compared with its competitors, the company is underleveraged. With its treasury function located in Ireland, the company can take on additional debt there, allocate it to affiliates located in high-tax countries such USA, Japan, France etc. to reduce those entities taxable income and pay a low rate of tax in Ireland on the interest revenue.

3. ANALYSIS - A LEGITIMATE TAX PLAN FOR THE MULTINATIONAL TECHNOLOGY COMPANY

It is imperative for a business to make a profit and when there is a lot of money invested in the business; it must be as profitable as possible to provide a reasonable return on investment and an adequate contribution to the global economy (Obiri, 2011). However, it is as equally important for a business to be aware of its business environment and ensure that, its activities do not negatively impact it (Obiri, 2011). According to Carroll (1991), a significant expert in CSR; it is necessary for companies to firstly; always seek the highest level of profitability in order to be economically responsible (Waller et al, 2011). Also, the organisation must be compliant with all legal rules and regulations; in every community where it has an active business presence (Waller et al, 2011). However, a Socially Responsible company must venture outside the legal or regulatory framework to ensure that its activities, address the concerns of society as a whole (Waller et al, 2011). Additionally, in order to be ethically responsible, the Socially Responsible Company must be ready to align its activities with new values and concerns in society (Waller et al, 2011).

3.1 The Objective

The objective of the chosen tax minimization plan was to ensure there is adequate profitability for shareholders as well as ethical and Socially Responsible organizational practices (Obiri, 2011).

[11] Bermuda does not charge any taxes at all and it only costs companies a small annual registration fee to operate out of the country (Feetham, 2010)

[12] One of the key responsibilities of the treasury function is to advance loans from one affiliate to another based on capital requirements (Stewart, 2008).

[13] Return on investment is a performance measure used to evaluate the efficiency of an investment or to compare the efficiency of a number of different investments

[14] Two companies are affiliated when one owns less than a majority of the voting stock of the other, or when both are subsidiaries of a third.

3.2 The Assumptions

The assumptions in the previous section have been made based on the basic functioning of a Multinational Corporation Technology company, for the purposes of creating a legitimate tax plan (Obiri, 2011). It is a supposition on the current situation assumed to be

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true in the absence of positive proof, necessary to enable the writer in the process of planning to complete an estimate of the situation and make a decision on the course of action.

3.3 The Tax Plan

Shareholders[15] are just as important as the other company stakeholders because they benefit if the business is economically profitable (Stewart, 2002a). Also, while consumers determine whether the business will make a sale or not; this relies heavily upon the knowledge, capabilities and motivation of its employees, in terms of being able to attract and secure business for the company (Stewart, 2002b).

In response to these concerns, The Multinational Technology Company's Directors of International Taxation have developed the high-level plan to minimize the company's consolidated[16] tax expense on a go forward basis. The Director's plan is simply to minimize the company's consolidated income tax expense. It is not a scheme to evade income taxes by illegal means, but a plan for the company to minimize its taxes through legal means.

3.4 Justification of the Chosen Tax Minimization Plan

Investors are influenced by an organization's level of participation in CSR, and while they react negatively to too much or too little participation (Obiri, 2011). An average amount of participation attracts a positive response from investors (Moabin et al, 2011). Also as investors tend to react after the CSR event; publicizing the fact that a Multinational Corporation pays 10% of its operating profit to its resident country, even with the use of a tax haven, will put it in a positive light where investors are concerned (Moabin et al, 2011). Therefore, a tax plan that ensures that a Multinational Corporation reduces its tax obligations[17] while considering the environment can increase the business.

Bartelsman and Beetsma (2003) determined that a home country income tax increase results in 65% of each incremental dollar of additional home-based income tax revenue from the increase, is lost to the home country through the shifting of income from the domestic high-tax country to the low-tax foreign country. They point out this can be done by moving existing and future debt financing[18] to the high-corporate tax country in order to increase domestic company interest expense and decrease their income subject to the high tax rate. This leads to a preference for debt over equity financing and the increase in financial risk that comes from increased debt and fixed interest payments. Dividends[19] are distributed out of retained earnings and are not a deduction in arriving at income subject to tax. The debt financing to the affiliate in the high-tax country is made by an affiliate in a low-tax country so the interest revenue in the foreign country will be taxed at the low-rate.

4. CONCLUSION

It is necessary for a business to be profitable and in the case of a Multinational Technology company; the temptation to use a tax haven to 'hide' profits is extremely high (Obiri, 2011). However, in all fairness; tax havens such as Bermuda do not possess all the resources such as high-tech infrastructure and the right level of technical know-how- which a technology company such as Google or Apple requires to run its company successfully (Wiederhold, 2011; Obiri2011). As such, as most of the work that generates the business revenue is carried out in countries that are not tax havens; it is only fair that the Multinational Corporations 'give back' to either their relevant source or resident country. This will fund the governments in those countries and provide much needed infrastructure for smaller businesses and the 'talent pool' (Obiri, 2011).

5. RECOMMENDATION

This paper therefore recommends that, The Multinational Technology Company, 'go beyond the confines of legal and regulatory systems' (Waller et al, 2011); to make appropriate tax contributions to their relevant source or resident country (Wiederhold, 2011). This is because, adequate funding is needed for the governments that provide the infrastructure that 'drives' Multinational Technology companies (Wiederhold, 2011). However, for this tax plan to achieve its objective; it will take more than the socially responsible contribution of the company.

[15] Persons, groups or organizations that have interest or concern in an organization.
[16] Individual company tax expenses combined into one large tax expense
[17] The amount of tax the business or organisation owes
[18] The act of a business raising operating capital or other capital by borrowing (Obiri, 2011)
[19] A distribution of a portion of a company's earnings, decided by the board of directors, to a class of its shareholders

The Multinational Technology Company should consider acting promptly on plans to reduce the company's consolidated income tax expense and liability. The company should do so by:

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a. Incorporating a company in Ireland,
b. Moving the company's treasury operations to Ireland,
c. Moving the company's R&D and intellectual property assets to Ireland,
d. Put in place transfer pricing arrangements to move taxable income to Ireland (low-tax country) and tax-deductible expenses to high-tax jurisdictions,
e. Investigate other financing opportunities that support the reduction of consolidated income tax expense.
f. Prior to finalizing any of these plans it is critical that company's external auditors be consulted and be in agreement with these plans or modify them as necessary. This is critical both for audit reasons as well as acknowledgement of their expertise in dealing with issues regarding international taxation and financial reporting. As noted by Stewart (2008) in analyzing financial strategies pursued by management of treasury firms located in Ireland, all firms were audited by one of the large audit firms. The large international audit firms have specialists who deal with global taxation issues.

Appendix

Appendix 1 – Corporate Tax Rates (%)

Ireland	**12.50**
Singapore	17.00
Russia	20.00
Switzerland	*21.00
China	25.00
Netherlands	25.00
UK	26.00
Luxembourg	28.80
Germany	**30.20
France	34.40
India	33.90
Belgium	33.90
Brazil	34.00
USA	*39.21
Japan	***40.69

Source: PricewaterhouseCoopers, 2011

* Regional corporation tax rates on top of federal/national corporation tax rates vary. We have therefore used a blended rate for these countries.

** Berlin rate used for illustrative purposes. Corporation tax rate varies depending on location.
*** Tokyo Metropolitan Area rate used for illustrative purposes. Corporation tax rate varies depending on location. Please note that the 2011 tax reform proposals for Japan include a 5% corporation tax reduction which is not reflected above.

Appendix 2 : UK Corporation Tax Rates

Rates for financial years starting on 1 April

Rate	2011	2012	2013	2014
Small profits rate*	20%*	20%*	20%*	
Small profits rate can be claimed by qualifying companies with profits at a rate not exceeding	£300,000	£300,000	£300,000	
Marginal Relief Lower Limit	£300,000	£300,000	£300,000	
Marginal Relief Upper Limit	£1,500,000	£1,500,000	£1,500,000	
Standard fraction	3/200	1/100	3/400	
Main rate of Corporation Tax*	26%*	24%*	23%*	21%*
Special rate for unit trusts and open-ended investment companies	20%	20%	20%*	

Main rate of Corporation Tax

The main rate of Corporation Tax applies when profits (including ring fence profits) are at a rate exceeding £1,500,000, or where there is no claim to another rate, or where another rate does not apply. In addition to the rates set out in the above table, the main rate of Corporation Tax for 2015 is set at 20 per cent. The small profits rate will be unified with the main rate, so from 1 April 2015 there will be only one Corporation Tax rate for non-ring fence profits - set at 20 per cent.

Source: HM Revenue & Customs (2011)

Appendix 3. The Multinational Technology Company's Balance Sheet as at April 4, 2012.

	In billion £
Current Assets	48.1
PP&E	14.1
Goodwill & Intangibles	28.6
Other Assets	22.7
Total Assets	**113.5**
Current Liabilities	40.6
Long Term Debts	11.8
Other Liabilities	27.9
Equity	33.2
Total Liabilities & Equity	**113.5**

Source: Assumed.

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