Transfer Pricing in the Post-BEPS Era: the BEPS Package, as a Tool in Helping Tax Authorities Prevent Aggressive Tax Optimization in a Specific Sector. Case Study: the IT Industry in Romania

Mihai LUPU
The Bucharest University of Economic Studies, Bucharest
mihai.lupu@cig.ase.ro

Abstract. *The debate regarding the willingness of enterprises to use transfer pricing for tax optimization is one with significant history (the first OECD report on transfer pricing dates from 1979). In the last fifteen years, this topic gained great traction as globalization became a key word in all economic undertakings. In 2013 the OECD/G20 officially launched the BEPS project, aimed at identifying and closing any loopholes present in the taxation system used by companies to optimize their tax burden. The work was finalized in 2015 by issuing the BEPS Package. However, the fight against base erosion and profit shifting did not end, as the OECD/G20 periodically monitors how the measures are implemented. Considering the importance of the IT sector in Romania, it is significant to investigate if the BEPS Package is an efficient tool in helping Romanian tax authorities prevent aggressive tax optimization in this industry. To provide a tentative answer, a statistical analysis was performed, aimed at comparing the profitability of related and non-related Romanian IT companies. Although the BEPS Package is not the only factor influencing the behavior of taxpayers, the work of OECD/G20 is one of the main forces shaping the Romanian taxation environment. Following the analysis, no significant differences were identified between the profitability of related and non-related companies, leading to the conclusion that local taxpayers are not inclined to engage in aggressive tax optimization, which is also a consequence of the way in which the legislation was drafted, influenced by the BEPS Package.*

Keywords: transfer pricing, BEPS, base erosion and profit shifting, OECD/G20, Romanian IT industry, tax optimization, international taxation.

Introduction

Transfer pricing is currently one of the most important topics in international taxation, and it refers to the way in which prices are established in transactions undertaken between companies part of the same group, referred to more scholastically as “related parties” or “associated enterprises" (in OECD, 2022a, p. 13). Given the fact that transactions undertaken within a group are not generally influenced directly by market forces, the possibility arises to compute the prices in a way serving different other objectives, such as: tax optimization (by redirecting profits from a company operating in a jurisdiction with a higher profit tax rate to another operating in a jurisdiction with a lower profit tax rate), cash-flow optimization (considering that intra-group transactions generate also payments through which financial resources can be redirected), improving the overall image of a specific company within the group as reflected in its annual reports (considering that the value of transfer prices influence not only the level of taxable revenues or deductible expenses but also the value of tangible / intangible assets, stocks, receivables, etc.).

Considering the above, in the aftermath of the global financial crisis of 2008, the need for implementing specific mechanisms and legislation for preventing any aggressive practices by groups of companies, arose. The discussion was spearheaded at an international level by the

DOI: 10.2478/picbe-2024-0012

Organization for Economic Cooperation and Development (or OECD), which in the last two decades was preoccupied in developing and continuously improving a specific framework in the area of transfer pricing, to be used by both tax administrations and taxpayers. The efforts of the OECD were accompanied by the ones of other international organizations such as the European Union (or "EU") through its different bodies such as the European Commission or the European Union Joint Transfer Pricing Forum, G20 or the United Nations (or „UN").

The biggest project in this respect was the BEPS initiative (BEPS being the acronym for "base erosion and profit shifting") launched by the OECD/G20 in 2013, aimed at identifying and closing any loopholes present in the taxation system that are used by companies to optimize their tax burden. According to the statistics available on the OECD website, at the time of launching the project, BEPS practices cost countries over 100 billion USD in lost revenues annually (between 4-10% of the global corporate income tax revenue). One important aspect to be noted regarding the logic and motivation of this project is that it's aim is to improve the efficiency of the international tax system as well as local tax systems through a set of unitary and coordinated practices and to steady eliminate all aggressive, although not illegal, tax planning practices used by groups of companies. As such, the question of morality (in addition to lawfulness) in dealing with taxes generally and transfer pricing specifically was brought forward, in line also with the ideas stated by the former president of the United States of America, Mr. Barack Obama and which can be summarized in the phrase "I don't care if it's legal, it's wrong" (Obama, 2014).

The current article includes a presentation of what base erosion and profit shifting refers to as well as a presentation of the OECD/G20 BEPS Package and its influence on the Romanian transfer pricing legislation. Moreover, considering that one of the main issues to be addressed by the measures in the package refers to the reduction / elimination of aggressive tax optimization by using transfer pricing mechanisms, a statistical analysis was performed tailored for Romanian companies operating in the TI industry. This sector was selected considering its importance and high local growth rate registered during the last decade, as well as the fact that it comprises a vast number of both independent companies as well as companies which are part of groups. The purpose of the analysis was to identify if the profitability of companies which are part of groups is similar to the one of independent companies, thus showing that the arm's length standard is generally observed, and transfer pricing rules and regulations are followed by local taxpayers. The analysis took into consideration the period FY 2018 – FY 2022.

The main sources of information used in the article were the available data and documents prepared by the OECD on BEPS, published on its website, other studies prepared by consultancy companies, as well as the TPSoft database.

As such, the questions to be answered are: (i) what BEPS refers to and how was this addressed by the OECD through the BEPS Package, (ii) how the BEPS Package influenced the Romanian legislation, with a specific focus on the transfer pricing area, as well as (iii) is the BEPS Package an efficient tool in helping local tax authorities prevent aggressive tax optimization in the IT industry by using transfer pricing.

Literature review

What is BEPS?

According to the OECD, base erosion and profit shifting refers to the tax planning strategies used by taxpayers, aimed at exploiting existing inconsistencies in tax rules with the aim of avoiding paying taxes on certain profits or shifting such profits towards more favorable jurisdictions, where profit taxes are low (OECD, 2024a).

The result of such strategies is an artificial allocation of profits between companies and jurisdiction, based only on tax optimization objectives, with no direct link to the way in which economic activities are undertaken and how added value is generated within the group. As such, BEPS practices can prove harmful not only to state budgets but also to the competitive environment in a specific market, as companies engaged in BEPS practices can generate for themselves a potential unfair competitive advantage by comparison to companies not engaged in such practices. Leaving the question of morality aside, the key to a healthy growth for each jurisdiction is to encourage and create favorable conditions for value-added economic activities to take place. In their article, Fatica & Gregori (2020, p. 548) state that "the responsiveness of multinationals to tax rates is an important parameter for policymakers to understand as they consider future tax policy actions".

Base erosion and profit shifting should not be understood strictly by reference to nominal profit tax rates, but also by reference to effective tax rates (or ETRs). As such, it may be the case that companies operating in jurisdictions with high nominal profit tax rate are subject to low effective profit tax rates due for example to tax incentives or other favorable local provisions. The size of corporate tax avoidance it hard to estimate in practice, considering the lack of transparency – i.e. partly because multinational enterprises do not report the use of specific tax planning schemes and tools (Álvarez-Martínez et al., 2022).

A recent study published by the OECD in relation to effective tax rates of multinational enterprises shows that low tax profit is common and of the average annual net profits of USD 5,929 billion in the four-year sample taken into consideration, 12.7% (USD 753 billion) are taxed at ETRs below 5% and a further 23.4% (USD 1,390 billion) are taxed at ETRs between 5% and 15% (Hugger et al., 2023). This leads to a total percentage of profits of 36.1% taxed below the threshold of 15% minimum rate aimed to be paid by multinational enterprises (with consolidated financial statements revenues of over EUR 750 million) as part of the Pillar Two Global Anti-Base Erosion Model proposed by the OECD Inclusive Framework on BEPS (or "inclusive Framework"), aimed at providing a coordinated system of taxation intended to ensure large multinational groups of companies pay a minimum level of tax on the profit arising in each of the jurisdictions in which they operate (OECD, 2021).

BEPS is a complex topic and the work initially prepared by the OECD/G20 (i.e. the BEPS Package issues in 2015) as well as all subsequent developments are of significant importance and continuously shape the global economic environment and the way in which companies do business. In Ernst & Young's 2023 Tax Risk and Controversy Survey, Pillar Two was pinpointed as a major source of potential risks for multinational enterprises (Ernst & Young, 2023a), incentives being one of the key concerns for future controversy and litigation (Ernst & Young, 2023b).

The OECD BEPS Package and transfer pricing

The OECD/G20 BEPS Package represents the result of approximately two years of debate and feedback taking place between specialists, governments / tax administrations, companies and other stakeholders from the business environment in over 60 countries.

According to the "Mission and impact" statement of the BEPS dedicated section on the OECD website, the BEPS Package comprises 15 Actions offering benefits for both tax administration and taxpayers. As such, on the one hand, the actions offer governments the domestic and international instruments needed to tackle tax avoidance and ensure that profits are taxed where economic activities generating the profits are performed and where value is created. And on the other hand, they also offer companies greater certainty by reducing disputes over the application of international tax rules and standardizing compliance requirements (OECD, 2024b). In addition, Ignat, I. and Tache, M. (2023) showed in their study that there is a direct correlation between the strictness of the transfer pricing system implemented in a country and the progress of that specific jurisdiction in terms of achieving its sustainable development goals.

The following table includes a list of Actions included in the BEPS Package published by the OECD/G20 as well as the summary of main issues tackled:

Table 1. The list of Actions included in the OECD/G20 BEPS Package published in 2015

Action number	Action Title	Main issues tackled
Action 1	Addressing the Tax Challenges of the Digital Economy	Dealing with the large range of tax challenges arising from the digitalization of the economy.
Action 2	Neutralizing the Effects of Hybrid Mismatch Arrangements	Preventing hybrid mismatch arrangements from being used for BEPS while minimizing impact of cross-border trade and investments.
Action 3	Designing Effective Controlled Foreign Company Rules	Reducing the incentive of taxpayers to shift income from a market country into foreign subsidiaries in a low-tax jurisdiction.
Action 4	Limiting Base Erosion Involving Interest Deductions and Other Financial Payments	Establishing rules that link an entity's net interest deductions to its level of economic activity within a jurisdiction.
Action 5	Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance	Countering harmful tax practices with a focus on improving transparency.
Action 6	Preventing the Granting of Treaty Benefits in Inappropriate Circumstances	Developing model tax treaty provisions and recommendations to prevent treaty abuse.
Action 7	Preventing the Artificial Avoidance of Permanent Establishment Status	Preventing artificial avoidance of permanent establishment status in tax treaties through commissionaire structures and more.
Actions 8 – 10	Aligning Transfer Pricing Outcomes with Value Creation	Guidance for applying the arm's length principle to ensure that transfer pricing outcomes are better aligned with value creation of the MNE group. The following topics were included: .
Action 11	Measuring and Monitoring BEPS	Collecting and analyzing data on the economic and fiscal effects of the tax avoidance behaviors and on the impact of measures proposed under the BEPS Project.
Action 12	Mandatory Disclosure Rules	Requiring taxpayers and advisors to disclose aggressive tax planning arrangements to tax authorities.
Action 13	Transfer Pricing Documentation and Country-by-Country Reporting	Improving tax transparency with country-by-country reporting.
Action 14	Making Dispute Resolution Mechanisms More Effective	Making dispute resolution between jurisdictions more timely, effective and efficient.
Action 15	Developing a Multilateral Instrument to Modify Bilateral Tax Treaties	Implementing the tax treaty-related BEPS recommendations to address vulnerabilities in existing tax treaties.

Source: Authors' own processing of the information published by the OECD on its website (https://www.oecd.org/tax/beps/beps-actions/).
The description of the main issues tackled was used as provided on the website.

In addition to the four Actions (i.e. Actions 8 – 10 and 13) which are easily identifiable by name as they directly target transfer pricing and the application of the arm's length principle in different intra-group contexts as well as the documentation requirements, all other Actions include components that to some degree refer to the way in which multinational / national groups of companies conduct business and decide and implement their tax strategies, as well as the approaches and mechanism that can be implemented by the local tax authorities in order to mitigate / eliminate tax avoidance or optimization practices.

Beer et al. (2020) mentions transfer pricing as one of the most representative areas of regulations used to mitigate tax avoidance by multinational companies, additionally stating that the efforts in this respect have received considerable attention in light of the OECD/G20 initiative on BEPS.

The fight against base erosion and profit shifting did not end however with the publication of the Package as the OECD/G20 has established an Inclusive Framework which periodically monitors the way in which the measures comprised in the Actions are implemented, in order to identify problems arising in practice and come up with solutions and improvements. In the Progress report for the period September 2021 – September 2022, the sixth annual progress report of the Inclusive Framework, it is mentioned that since the adoption of the BEPS Package, there has been a global recognition that the international tax system, which relies on rules developed a century ago, needs fundamental reforms in order to establish coherence, realign substance with taxation rights, and increase transparency (in OECD, 2022b, p. 2). In the following Progress report for the period September 2022 – September 2023, it is stated that the Inclusive Framework continues its work at a strong pace, with the objective of reforming international tax rules, to make them more coherent and more transparent (in OECD, 2023, p.2).

Influences of the BEPS Package on the Romanian transfer pricing legislation

Although Romania is not yet an OECD member (although significant efforts have been made in this respect and the country is currently a candidate), its transfer pricing legislation follows the principles established at the level of the OECD. As such, Law no. 227/2015 regarding the Fiscal Code as well as Order 442/2016 regarding the amount of transactions, the deadlines for preparation, the content and conditions for requesting the transfer price file and the transfer price adjustment/estimation procedure or "Order 442/2016"), specifically mention that, in analyzing the compliance with the arm's length principle of the transfer prices applied in transactions between related parties, the provisions of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (or the "OECD TP Guidelines") including all subsequent amendments / modifications and additions, should be taken into consideration.

As regards the OECD TP Guidelines, since the publication of the BEPS Package in 2015, the document received two updates in 2017 and 2022. The 2017 edition incorporates significant revisions needed to reflect the principles agreed in Actions 8-10 and Action 13 (regarding for example intangibles, cost contribution arrangements or intra-group services). The 2022 edition includes the revised guidance on the application of the profit split method, additional guidance on the analysis of hard-to-value intangibles, as well as a whole new chapter on transfer pricing aspects of financial transactions (the report in this respect was finalized by the OECD in 2020).

Moreover, Order 442/2016 is an upgrade of a preexisting order – i.e. Order 222/2008 regarding the content of the transfer pricing documentation file, made to incorporate the latest measures and information requirements introduced by the BEPS Package. Additional information requested by Order 442/2016 by comparison to Order 222/2008 include for example a description

DOI: 10.2478/picbe-2024-0012, pp. 142-153, ISSN 2558-9652 |
Proceedings of the 18th International Conference on Business Excellence 2024

of the transfer pricing policy in relation to financial arrangements, a description of any business restructurings that took place within the group or of the research and development activities undertaken. As it can be seen, these are in accordance with the emphasis placed by the BEPS Package on financial transactions and intangibles.

Moreover, Romania is a member of the EU and in this capacity needs to comply with all the initiatives implemented through Council Directives. Since the publication of the BEPS Package the main initiatives included Council Directive (EU) 2016/881 regarding country-by-country reporting and the subsequent Council Directive (EU) 2021/2101 regarding public country-by-country reporting (both direct consequences of Action 13), Council Directive (EU) 2016/1164 (also known as ATAD 1) supplemented by Council Directive (EU) 2017/952 (also known as ATAD 2) tackling issues such as the limitation of interest expenses, hybrid mismatch arrangements, issues related to controlled foreign companies (both direct consequences of Actions 2, 3 and 4), Council Directive (EU) 2017/1852 regarding the dispute resolutions applicable in the EU, including the mutual agreement procedure (a direct consequence of Action 14), Council Directive (EU) 2018/822 (also known as DAC6) regarding the need to report aggressive tax arrangements (a direct consequence of Action 12), Council Directive (EU) 2021/514 (also known as DAC7) regarding the income earned by sellers on digital platforms and Council Directive (EU) 2022/2523 on ensuring a global minimum level of taxation for multinational groups (both direct consequences of Action 1). All these were transposed in the Romanian legislation.

In addition, Romania was part of the effort of implementing the Multilateral Instrument (or "MLI") (a direct consequence of Action 15) which was approved by the local competent authorities and is currently in place, adjusting the text of 55 previously signed double tax treaties with different jurisdictions as to comply with the recommendations of the BEPS Package.

A study from 2017 by Ignat, I. and Feleaga, L. (2017) places Romania in a middle category as regards the strictness and complexity of the local transfer pricing regulations, i.e. 2 on a scale from 1 to 4 (most European countries were included in categories 2 and 3). However, as previously presented, significant additions to the Romanian transfer pricing legislation, aimed at strengthening it, were performed in the period 2017 – 2023 as a result of the OECD/G20 BEPS Package. Moreover, Marques M. and Pinho C. (2016) state the importance of the fact that a country's transfer pricing strictness should be measured not only through the introduction of rules but also through the enforcement mechanisms put in place.

Were the measures included in the BEPS Package efficient in Romania?

What was written so far on profit shifting and tax enforcement reflects that specific transfer pricing rules are more effective in inhibiting the profit shifting behavior of companies (Rathke et al., 2021).

Based on a study from 2017 (right after one of the major changes in the Romanian transfer pricing legislation – the introduction or Order 442/2016) prepared by Neacsu, I. and Feleaga, N. (2017), it was concluded that the perception of the vast majority of Romanian specialists (i.e. 73%) was that the new regulations, compared to the old ones, will determine local taxpayers to pay increased attention to the transfer pricing subject, although no specific analysis to validate this perception was subsequently performed.

As such, although the OECD/G20 BEPS Package includes measures with a significant influence on the Romanian transfer pricing legislation (which was adjusted accordingly), the question that needs to be answered is if these measures were an efficient tool in helping Romanian tax authorities prevent aggressive tax optimization by using transfer pricing. Considering that performing a global analysis for the entire business sector in Romania is a very lucrative undertaking, the current paper aims at looking at a specific industry which is significant locally (i.e. the IT industry) and providing a specific answer from its perspective, as a first step for a possible future more extensive analysis.

Methodology

In order to investigate if the measures included in the BEPS Package and transposed in the Romanian legislation contributed in a positive manner to the awareness of local taxpayers operating in a specific industry regarding the importance of transfer pricing, the need to comply with the arm's length principle and give up any aggressive tax optimization practices, a statistical analysis was performed by going through the following steps: (i) selecting an industry relevant in Romania, which can offer a reasonable number of observations (i.e. both companies which are and companies which are not related – in accordance with the definition of related parties included in the Romanian Fiscal Code), (ii) identifying a reliable source of information for financial data, selecting a reliable timeframe for the analysis and selecting an appropriate profit level indicator to be used in the analysis, (iii) computing the statistical intervals for both sets of companies, and (iv) comparing the results and drawing conclusions (considering that the main indication that tax optimization using transfer prices takes place is that the profitability of companies part of a group is significantly lower than the profitability of independent companies engaged in similar activities).

Results and discussions

Selecting an industry relevant in Romania, which can offer a reasonable number of observations

During the last 10 years, the Romanian IT sector can be considered as one of the main contributors to the local growth. Based on statistical data provided by The Employers' Association of the Software and Services Industry (or "ANIS"), in 2022, out of the 4.8% increase of the GDP, 1.3% was due to the contribution of the IT industry. Moreover, the growth rate of the industry in 2020 was approximately 15% - 17%, three times the national growth average (Economedia, 2023).

Considering its importance in Romania as well as the large number of companies activating in this sector, the IT industry was selected for performing the analysis.

The companies operating on the following CAEN codes were included in the analysis: 6201 – Computer programming activities, 6202 – Computer consultancy activities, 6203 – Computer facilities management activities, and 6209 – Other information technology and computer service activities.

Two separate samples, containing companies which are and are not part of a group, were derived for each CAEN code as well as for the entire group of codes. The two samples were needed to perform a comparison, considering that the main indication that tax optimization using transfer prices takes place is that the profitability of companies part of a group is significantly lower than the profitability of independent companies engaged in similar activities.

Identifying a reliable source of information for financial data, selecting a reliable timeframe for the analysis and selecting an appropriate profit level indicator to be used in the analysis

The TPSoft database was selected as the source for obtaining the financial information needed for computing the profitability of local companies operating in the IT industry. This is a commercially available database, accessible online (www.tpsoft.ro) and including information regarding the first 100.000 companies in Romania in terms of net turnover. The version of the database used for the analysis is v2023_05, containing information for the period FY 2008 – FY 2022.

The time frame selected for performing the analysis was FY 2018 – FY 2022, considering that the OECD/G20 BEPS Package was published in 2015 and a period of 3 years was considered reasonable for the changes and measures included in it to be transposed in the local legislation and practice of the tax authorities as to be able to produce effects on the behavior of local taxpayers.

The profit level indicator used for evaluating the profitability of local companies operating in the IT sector was the full-cost mark-up (or "FCMU"), determined using the formula: FCMU = Operating result / Total operating Expenses*100. A cost-based profit level indicator was selected as it reflects accurately the results of a service provider, considering that the costs are a relevant indicator of the value of the functions performed, assets used and risks assumed by the tested party, as per the recommendations of the OECD TP Guidelines (OECD, 2022a, p. 123).

Computing the statistical intervals for both sets of companies

The next step in the analysis consisted in computing the statistical intervals for the relevant sets of companies. In this respect, two different samples of companies were used for each CAEN code as well as for all codes: the first sample included companies which were considered related (in accordance with the definition of related parties as included in the Romanian Fiscal Code) and the second sample included companies which were independent (not related). As such, a total of 10 samples of companies were obtained.

For each sample we computed an interquartile range based on the profit level indicators (i.e. the FCMUs) of the companies in the sample, considering that this is considered to be the arm's length range from the perspective of the Romanian transfer pricing legislation (as per the provisions of Order 442/2016). The results are summarized in the following tables:

Table 2. The interquartile ranges for Romanian companies operating in the IT industry for the period FY 2018 – FY 2022, CAEN 6201

	Sample of related companies FY 2018 – FY 2022	**Sample of independent companies FY 2018 – FY 2022**
Minimum	-100.00%	-10.42%
Lower quartile	**6.97%**	**4.26%**
Median	**16.34%**	**10.02%**
Upper quartile	**42.10%**	**28.19%**
Maximum	8375.90%	303.79%
Number of observations	1,096	22

Source: Authors' own processing.

Table 3. The interquartile ranges for Romanian companies operating in the IT industry for the period FY 2018 – FY 2022, CAEN 6202

	Sample of related companies FY 2018 – FY 2022	**Sample of independent companies FY 2018 – FY 2022**
Minimum	-100.00%	0.11%
Lower quartile	**5.93%**	**7.11%**
Median	**12.26%**	**16.48%**
Upper quartile	**29.32%**	**25.59%**
Maximum	3653.39%	182.33%
Number of observations	347	18

Source: Authors' own processing.

Table 4. The interquartile ranges for Romanian companies operating in the IT industry for the period FY 2018 – FY 2022, CAEN 6203

	Sample of related companies FY 2018 – FY 2022	Sample of independent companies FY 2018 – FY 2022
Minimum	-84.72%	n.a.
Lower quartile	**11.37%**	**n.a.**
Median	**22.24%**	**n.a.**
Upper quartile	**34.97%**	**n.a.**
Maximum	371.18%	n.a.
Number of observations	35	n.a.

Source: Authors' own processing.

Table 5. The interquartile ranges for Romanian companies operating in the IT industry for the period FY 2018 – FY 2022, CAEN 6209

	Sample of related companies FY 2018 – FY 2022	Sample of independent companies FY 2018 – FY 2022
Minimum	-39.62%	-77.87%
Lower quartile	**6.50%**	**0.65%**
Median	**12.91%**	**1.38%**
Upper quartile	**29.79%**	**8.25%**
Maximum	2367.81%	23.17%
Number of observations	162	5

Source: Authors' own processing.

Table 6. The interquartile ranges for Romanian companies operating in the IT industry for the period FY 2018 – FY 2022, CAENs 6201, 6202, 6203 and 6209

	Sample of related companies FY 2018 – FY 2022	Sample of independent companies FY 2018 – FY 2022
Minimum	-100.00%	-77.87%
Lower quartile	**6.78%**	**4.56%**
Median	**14.85%**	**11.45%**
Upper quartile	**37.94%**	**27.03%**
Maximum	8375.90%	303.79%
Number of observations	1,640	45

Source: Authors' own processing.

Comparing the results and drawing conclusions

As previously stated, the main indication that tax optimization using transfer prices takes place is that the profitability of companies part of a group is significantly lower than the profitability of independent companies engaged in similar activities. However, as a result of the analysis performed, it was determined that the profitability achieved by related Romanian companies operating in the IT industry resembles the one obtained by the independent companies in the market. As a limitation, the analysis was inconclusive for the companies operating under the CAEN code 6203, because no independent comparables could be identified in the database and as such a comparison could not be performed.

For companies operating under the CAEN codes 6201, 6202, 6209 as well as for the sample of all CAEN codes (6201, 6202, 6203 and 6209), the similarity can be observed in terms of all main parameters of the inter-quartile range (i.e. lower quartile, median and upper quartile), meaning that local related parties usually obtained during the period FY 2018 – FY 2022 profitability rates comparable to the ones achieved by independent companies.

Although differences can be observed between the interquartile ranges for related and independent companies, it should be noted that it is usually considered that tax optimization practices through using transfer pricing are applied if the profitability of related companies is below the one achieved by independent companies, which is not generally the case (only for companies operating under CAEN code 6202 the lower quartile and the median computed for the sample of independent companies is higher, although the upper quartile is lower, by comparison to the sample of related companies).

The statistical analysis performed shows that Romanian related companies operating in the IT industry do not engage in tax optimization practices, aimed at generating a lower profitability at a local level (by comparison to independent companies on the market). This indicates the reluctance in engaging in BEPS activities and by analogy the relative efficiency of the measures included in the OECD/G20 BEPS Package and transposed in the Romanian legislation.

Conclusion

The status of transfer pricing as one of the hottest topics in international taxation can be viewed as a consequence of the fact that transactions undertaken within a group are not generally influenced by market forces, and thus, the possibility arises to compute their prices as to serve different objectives, including tax optimization through base erosion and profit shifting.

Base erosion and profit shifting refers to the tax planning strategies used by taxpayers, aimed at exploiting existing inconsistencies in tax rules with the aim of avoiding paying taxes on certain profits or shifting such profits towards more favorable jurisdictions, giving rise to an artificial allocation of profits between companies and jurisdiction, based only on tax optimization objectives, with no direct link to the way in which economic activities are undertaken and how added value is generated within the group.

In the aftermath of the global financial crisis of 2008, the need for implementing specific mechanisms and legislation for preventing any aggressive practices by groups of companies, arose. The discussion was spearheaded at an international level by the OECD, but its efforts were also accompanied by the ones of other international organizations such as the EU, G20 or the UN.

The biggest project in this respect was the BEPS initiative launched by the OECD/G20 in 2013, aimed at identifying and closing any loopholes present in the taxation system that are used by companies to optimize their tax burden. The first main result of the initiative is the BEPS Package, comprising of 15 Actions aimed at offering benefits for both tax administration (in the form of instruments needed to tackle tax avoidance and ensure that profits are taxed where economic activities generating the profits are performed and where value is created) and taxpayers (by offering them greater certainty by reducing disputes over the application of international tax rules and standardizing compliance requirements).

Although Romania is not yet an OECD member, its transfer pricing legislation follows the principles established at the level of the OECD. Moreover, Romania is a member of the EU and in this capacity needs to comply with all the initiatives implemented through Council Directives. As such, the mechanisms and principles included in the BEPS Package were transposed gradually in the local legislation.

The positive effects of implementing the BEPS Package locally (in terms of increasing the awareness of local taxpayers operating in the IT sector regarding the importance of transfer pricing, the need to comply with the arm's length principle and give up any aggressive tax optimization practices) are currently being seen, as the results of the statistical analysis performed show that the profitability achieved by related Romanian companies operating in the IT industry resembles the one obtained by the independent companies in the market, meaning that they do not engage in tax optimization.

Although it's safe to assume that the influence of the BEPS Package on the local legislation is not the only factor contributing to a specific behavior or the financial performance of taxpayers, it most definitely can be considered that the work of OECD/G20 is one of the main forces shaping the Romanian taxation environment. As such, the results of the current research can be further extended by performing a similar analysis for other / all important business sectors in Romania and/or supplemented by additional studies aimed at identifying other main factors contributing to the behavior of local companies.

References

OECD (2024a). Extract from BEPS Frequently Asked Questions – What is BEPS? Retrieved from: https://www.oecd.org/tax/beps/faq/.

OECD (2024b). Extract from BEPS Mission and Impact – What are doing to solve it? Retrieved from: https://www.oecd.org/tax/beps/about/#mission-impact.

OECD (2024c). OECD BEPS Actions. Retrieved from: https://www.oecd.org/tax/beps/beps-actions/.

Hugger, F., A. González Cabral and P. O'Reilly (2023). *Effective tax rates of MNEs: New evidence on global low-taxed profit*. OECD Taxation Working Papers, No. 67, OECD Publishing, Paris, https://doi.org/10.1787/4a494083-en.

Ignat, I. and Tache, M. (2023). Transfer Pricing System of EU Countries: An Analysis in the Context of SDGS. *Transylvanian Review of Administrative Sciences*, 70E, 45-66.

Ernst & Young (2023a). *Why a 15% financial statement tax rate may not avoid global minimum tax.* Retrieved from https://www.ey.com/en_gl/tax/why-a-15-percent-financial-statement-tax-rate-may-not-avoid-global-minimum-tax#:~:text=BEPS%202.0%20introduces%20a%2015,incurring%20a%20top%2Dup%20tax.

Ernst & Young (2023b). *Why tax governance is key in an era of more tax risk and controversy*. Retrieved from https://www.ey.com/en_gl/tax/why-tax-governance-is-key-in-an-era-of-more-tax-risk-and-controversy.

OECD (2023). *OECD/G20 Inclusive Framework on BEPS Progress report September 2022 – September 2023*. Retrieved from https://www.oecd.org/tax/beps/oecd-g20-inclusive-framework-on-beps-progress-report-september-2022-september-2023.pdf.

Economedia (2023). *Analysis. The It market, "engine" of the Romanian economy, but still after other countries in the region. How do we stack up in terms of the specialists mass, number of companies, innovation and salaries?* Retrieved from: https://economedia.ro/analiza-piata-it-motor-in-economia-romaneasca-dar-inca-in-urma-altor-state-din-regiune-cum-stam-in-ceea-ce-priveste-baza-de-specialisti-numar-de-companii-inovatie-si-salarii.html.

OECD (2022a). *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022*. OECD Publishing, https://doi.org/10.1787/0e655865-en.

OECD (2022b). *OECD/G20 Inclusive Framework on BEPS Progress report September 2021 – September 2022*. Retrieved from https://www.oecd.org/tax/beps/oecd-g20-inclusive-framework-on-beps-progress-report-september-2021-september-2022.pdf.

Álvarez-Martínez, M.T., Barrios, S., d'Andria, D., Gesualdo, M., Nicodeme, G. and Pycroft, J. (2022). How large is the corporate tax base erosion and profit shifting? A general equilibrium approach. *Economic Systems Research*, 34, 167-198.

OECD (2021). *Tax Challenges Arising from Digitalization of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS*. OECD / G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, https://doi.org/ 10.1787/782bac33-en.

Rathke, A.A.T., Rezende, A.J. and Watrin, C. (2021). The impact of countries' transfer pricing rules on profit shifting. *Journal of applied accounting research*, 22(1), 22 – 49.

Fatica, S. and Gregori, W.D. (2020). How much profit shifting do European banks do? *Economic Modelling*, 90, 536-551.

Beer, S., de Mooij, R. and Liu, L. (2018). International corporate tax avoidance: a review of the channels, magnitudes, and blind spots. *Journal of Economic Surveys*, 34(3), 660-688.

Ignat, I. and Feleaga, L. (2017). A European map regarding the strictness of the transfer pricing regulations. *Journal of Accounting and Management Information Systems*, 16(4), 534-559.

Neacsu, I. and Feleaga, L. (2017). Evolutions and tendencies regarding the Romanian transfer pricing legislation: is there a need for change? *Audit Financiar*, XV 1(145)/2017, 65-82.

Marques, M. and Pinho, C. (2016). Is transfer pricing strictness deterring profit shifting within multinationals? Empirical evidence from Europe. *Accounting and Business Research*, 46(7), 703-730.

Obama II, B.H. (2014). Extracts from the speech by President Barack Obama on the outcome of the European Council meeting on the Multiannual Financial Framework of 7-8 February 2013. Retrieved from https://www.bbc.com/news/business-28477890.