

Seminário de Direito Tributário  
do Conselho Administrativo  
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# Transfer Pricing in a Changing Global Landscape

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# Taxation in the Spotlight

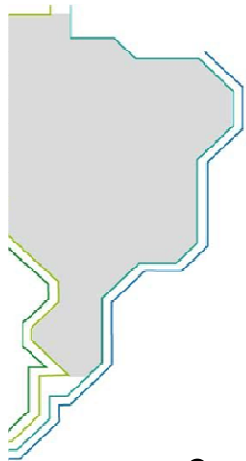
Increased attention of mainstream media on corporate tax affairs

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**U.S. Companies Dodge \$60 Billion In Taxes With Global Odyssey**  
By Jesse Drucker - May 13, 2010 9:00 PM GMT+0200

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**A third of UK's 700 biggest businesses pay no corporation tax**  
By GWYNETH REE  
Last updated at 08:00  
Comments (0)  
Nearly a third of the businesses paid no corporation tax in 2005-2006 financial year, a new survey has revealed.  
A further 30 per cent of the businesses paid no tax.  
And of the tax paid two-thirds came from the banking, insurance and estate sectors while the alcohol, food and drink sectors paid million pounds.

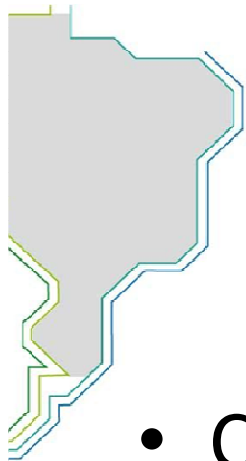
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**Amazon: £7bn sales, no UK corporation tax**  
Online retailer's British operation owned by company in Luxembourg which receives all payments for books, DVDs and other goods  
Ian Griffiths  
guardian.co.uk, Wednesday 4 April 2012 21:16 BST

**The New York Times | International Herald Tribune** GLOBAL EDITION  
**Economy**  
BUT NOBODY PAYS THAT  
**U.S. Business Has High Tax Rates but Pays Less**  
By DAVID KOCENIEWSKI  
Published: May 2, 2011  
The United States may soon wind up with a distinction that makes business leaders cringe — the highest corporate tax rate in the world.  
Topping out at 35 percent, America's official corporate income tax rate trails that of only Japan, at 39.5 percent, which has said it plans to lower its  
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**The New York Times | International Herald Tribune** GLOBAL EDITION  
**Economy**  
BUT NOBODY PAYS THAT  
**G.E.'s Strategies Let It Avoid Taxes Altogether**  
By DAVID KOCENIEWSKI  
Published: March 24, 2011  
**General Electric**, the nation's largest corporation, had a very good year in 2010.  
Enlarge This Image  
The company reported worldwide profits of \$14.2 billion, and said \$5.1 billion of the total came from its operations in the United States.  
Its American tax bill? None. In fact, G.E. claimed a tax benefit of \$3.2



# Focus on International Taxation

- Governments looking to counter profit-shifting – EU, G8, G20 agendas
  - Civil society raising profile of MNE tax planning and avoidance
  - NGOs stressing impact on developing countries
- .... transfer pricing one of a number of issues

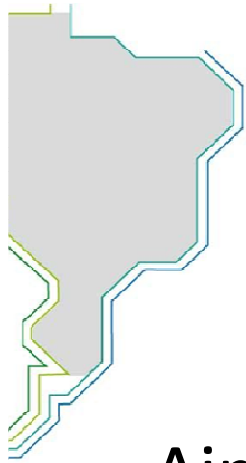


# Focus on transfer pricing

- Component of OECD's "Base Erosion and Profit Shifting" initiative
- Pressures from emerging economies
- Major issue for multinational enterprises
- Developing country issues - Pillar of "Task Force on Tax and Development"
- UN Manual on the practical application of the arm's length principle

# OECD Approach to Transfer Pricing 1995 Guidelines

- Internationally agreed approach to minimise double taxation and double non-taxation
- Based on arm's length principle, found in OECD and UN Model Conventions, and country domestic legislation
- Centrality of “Comparability”
- Specified transfer pricing methods
- Applicable to all forms of related party transactions in all industries



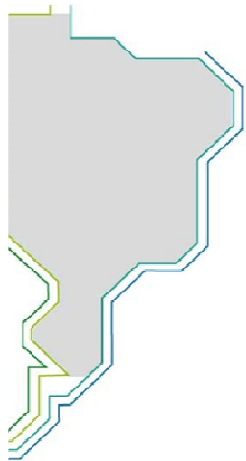
# Country Transfer Pricing Rules

Aim to:

- Protect country tax-base
- Reinforce investment climate, by providing predictability of treatment and avoid double taxation

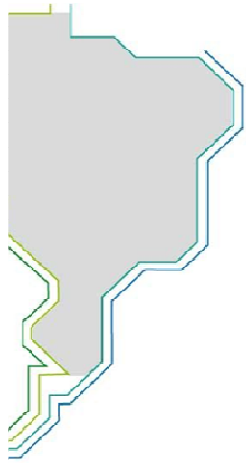
Normally:

- Require MNEs to use arm's length terms
- And, where they do not, provide government with powers to make profit adjustments



# Why Arm's Length Principle?

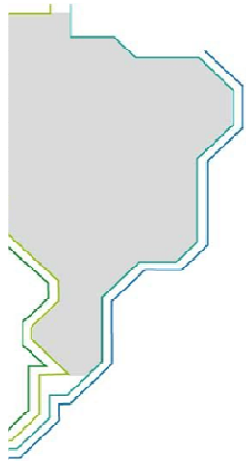
- Basis of international consensus
- Neutrality – aims to replicate the conditions of the market
- Non-discrimination between MNEs and non-MNEs



# Pressures on the Arm's Length Principle

- Planning/avoidance aspects – marketed schemes
- Perceived complexity
- Country capacity issues
- Lack of data on comparables
- Emerging country challenges
- E-commerce





# OECD Initiative - Technical

- BEPS
- Simplification – including safe harbours
- Work on intangibles – stress on substance
- Initiatives to increase availability of comparables data
- Creating a more transparent environment
- Documentation

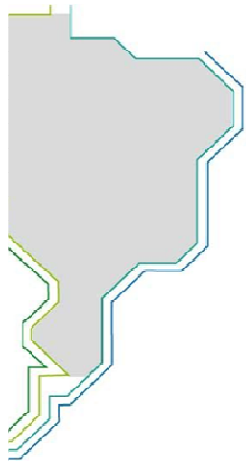
# BEPS: Developing a Global Action Plan

Comprehensive

## **ACTION PLAN on BEPS**

to be developed by June 2013

- to provide countries with instruments, domestic and international, aiming at better aligning rights to tax with real economic activity
- based on in-depth analysis of the identified pressure areas with a view to provide concrete solutions to realign international standards with the current global business environment
- requiring “out of the box” thinking as well as ambition and pragmatism to overcome implementation difficulties

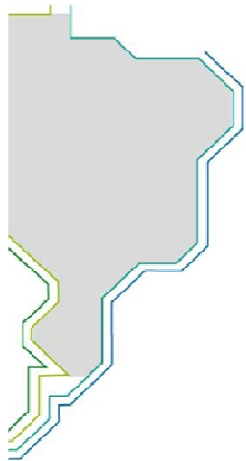


# OECD Initiatives - Dialogue

- Tax and Development Programme
- Global Relations programme
- Global Forum on Transfer Pricing
- Tax Inspectors Without Borders

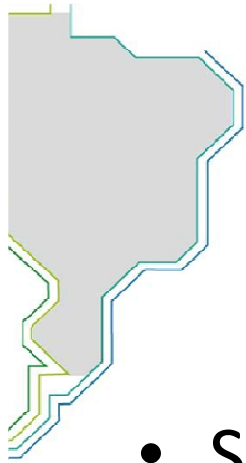
# Arm's length principle – where next?

- No realistic alternative in the current environment
- But needs flexibility in changing climate



# Other approaches?

- Unitary approach – Global Formulary Apportionment
- Fixed margin approach



# Directions..

- Substance
- Focus on countering avoidance
- Increased transparency
- Balance between anti-avoidance measures and pure application of the arm's length principle
- Simplification measures
- Holistic approach
- Addressing comparables
- Challenges of the digital economy