
The digital economic chain – ICT in the loop of the OECD regulations

Ramona LUPOI JURUBIȚĂ,
Bucharest University of Economic Studies,
E-mail: rjurubita@kpmg.com

Abstract

Taxation is today at the top of the agenda of international organizations, a reflection of governments' intent to gather as many taxes as possible into their jurisdictions. There is an assumption that base erosion and profit shifting exists, carried out in some cases as a result of aggressive tax planning or, in other cases, as a result of the lack of coherence of the tax systems of various jurisdictions. There is an estimation that countries worldwide lose taxable income equivalent to between 4% and 10% of global revenues from corporate income tax. The Romanian ICT business is generating significant profits.

This paper intends to analyze the information technology sector, in which businesses are rapidly growing, in line with technology for all sectors of activity and in line with the EU's strategy for promoting and supporting innovation.

The objective of this paper is to analyze how the ICT sector may be affected by the new approach of allocating profits to various jurisdictions and how R&D activities may also need to be reanalyzed, in terms of fees charged between multinationals.

Romania can be proud of its ICT professionals and the business generating profits in the sector. The author has also analyzed how other countries may benefit from profits from international transactions carried out in the sector and how Romania can continue to support it.

Keywords: OECD, BEPS, ICT, R&D, transfer pricing, substance, value added, know-how, innovation, taxable profits

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Introduction

Today's economic reality shows an increased number of complex products, on the borderline between products and services, an important component consisting of knowledge, experience and know-how. More and more products and services involve digital content, or are subject to digital transmission.

From a commercial point of view, globalization presents an opportunity for multinationals, as more and more emerging markets are penetrated, and thus, technology and innovation spread worldwide. From a taxation point of view, the multitude of international transactions give rise to the question as to whether each state receives the correct level of taxable profits as a result of commerce carried out worldwide (Corlaci and Tiron Tudor, 2013; Feleagă and Neacșu, 2016).

After two years of work, 15 papers have been issued by the OECD and G20 countries addressing Base Erosion and Profit Shifting (BEPS). The underlying driver is each state's desire to ensure that a fair amount of corporate tax is paid in that country as a result of various international transactions.

The purpose of this paper is to analyze how the ICT sector may be impacted by the new approach of allocating profits to various jurisdictions and how the R&D activities may also need to be reanalyzed when it comes to fees charged between multinational companies.

The method upon which the global analysis will be based is, in fact, the splitting of profits among companies, based on the economic value they are deemed to create across the economic chain. The previously used methodology for assessing services is cost plus mark-up, according to which a mark-up is added to all the direct and indirect costs which are attributable to a certain activity, for a certain profit center.

On a greater level of detail, the objective of this paper is to analyze and assess the magnitude of the taxable profits registered in the ICT sector of Romania, and the impact which the new regulations launched by OECD through the issuing of the BEPS Actions may have upon the level of profits in this sector. Specifically, the importance of the Romanian ICT sector is determined via the taxable profits the industry gets, as a contributor to the state budget. The analysis focuses on Romania

and on several European countries. As ICT is essentially an innovative sector, the author extended the analysis of the Romanian ICT sector to include R&D activities. The interferences of the new OECD regulations regarding the transfer pricing approach with the ICT and R&D sectors are analyzed by performing two case studies. The results of the research made via the two case studies reveals how the European countries will seek to increase the level of the taxable corporate income declared by the ICT and R&D companies registered in that specific tax jurisdiction.

The research methodology used in this paper includes two steps:

- 1) The first step consists of a literature review of international and Romanian publications on transfer pricing. The author analyzed how the attributable profits in a certain jurisdiction, for taxation purposes, are going to be realized, based on the key concept of transfer pricing encountered in the relevant publications. The new allocation of profits between companies is most likely to follow a rationale similar to the profit split method as it is defined in the Romanian Fiscal Code.
- 2) The second step consists of a case study analysis performed in the ICT and R&D sectors, in order to anticipate the changes which may be seen in the future with respect to the allocation of profits from the sectors, between various countries. The author presented two case studies from the digital sector: one referring to complex advertising services with digital delivery, and the second referring to the research and development of new products which are to be commercialized. The author subsequently analyzed the development of the ICT sector in Romania via the net margin indicator obtained by the providers. The comparison is made with a number of EU countries, thus revealing that the ICT sector is indeed a big contributor to the Romanian economy and to the taxes raised by the state. The purpose is to see how the new trends in international transfer pricing policies would affect the level of taxable profits in Romania, in the specific sector of ICT and R&D.

The literature review starts from the key transfer pricing concepts presented in the IBFD book named *Transfer Pricing and Business Restructurings*. The book also presents trends relating to business restructurings. In recent years,

reorganizations of international operations were based not only on commercial factors, but also on the constraints imposed by the local transfer pricing regulations, in the country where the commercial activity is carried out. Business restructurings are a reaction to global competitive pressures and changing market demand. In response to market forces, multinational enterprises (MNE's) may be able to retain their profit margins only by restructuring.

The review of the book *Transfer Pricing - Between Tax Optimization and International Fiscal Evasion* addresses the extreme approach that the tax authorities in any country may take, in order to increase the profits considered as taxable in their jurisdiction, by considering that aggressive tax planning was made. The case study was conceived based on this approach, aligning the practical implications which may arise, with the provisions of the OECD BEPS Actions.

While the wish of the OECD and G8 states is to avoid double non-taxation, as a result of transfer pricing adjustments made by the tax authorities in one jurisdiction, it is likely that an increased number of cases of double taxation will arise. The book issued by IBFD, named *Transfer Pricing and Dispute Resolution* addresses the complexity of the administrative procedures which are in place, in order to allow multinationals not to face cases of double non-taxation. The issue of dispute resolution remains on the list of matters to be better addressed by the OECD.

This study is divided into 5 parts. The first title presents general aspects, including the necessity of BEPS actions due to the globalization process. The second title contains the 3 pillars proposed by the OECD to be used in order to assess the right amount of corporate income tax to be paid, and also the most important concern of the OECD: double taxation or double non-taxation.

The third title contains an overview of Action 1 of BEPS, and also how the analysis approach of profits generated by advertising services, research and development and derived profits will change. The fourth title is a presentation of the profit generated by ICT in Romanian and other European countries. The final title contains the author's conclusions regarding the new guiding approach introduced by OECD.

1. Substance, transparency, and coherence under the OECD's BEPS actions

The pillars of the new approach introduced by the OECD and the G8 (the most powerful 8 countries) of assessing the right level of corporate tax to be paid in a specific country are: substance, transparency and coherence.

1.1. Substance

Several years ago, Romania introduced a set of rules allowing tax authorities to analyze the substance of a transaction, and potentially reclassify it, hence leading to the application of a different type of tax treatment.

Romania's legal system is quite straightforward with respect to the creation of companies, branches and partnerships. Each economic presence of an entity carrying out economic activity in Romania involves fiscal registration.

Classic transactions include financing operations, which may more reasonably be seen as capital infusion, and consequently financial expenses are often neglected by the tax authorities.

1.2. Transparency

Transparency involves access by the tax authorities to the financial data of the companies in a specific group, although they do not operate in that specific jurisdiction. Action 13 of BEPS introduced the Country-by-Country report, which makes private data transparent to the tax authorities of other jurisdictions. This data may then be used to carry out a deep analysis of the group's activity and of the profits taxable in each jurisdiction.

Certainty remains a goal, but has been rather reduced in practice, as a result of the BEPS Actions. The whole approach of the transactions analysis has changed, and the analysis has become increasingly extensive. The Actions do not provide solutions, but instead highlight points for attention and possible questions to be asked, based on specific scenarios.

1.3. Coherence

In the context of the magnitude of the ICT sector worldwide, OECD intends to intensify the coherence between the various taxation systems. The amounts involved in transactions between companies in the ICT

sector, either independent or related parties, are significant and thus, the new guiding approach introduced by the OECD BEPS Actions have, as a declared objective, to ensure that the profits should be taxed in the countries where the value added is created. This means that Romania has a real opportunity in supporting the expansion of the ICT sector.

1.4. Double taxation versus double non-taxation

The OECD and G8 countries aim to avoid cases of double non-taxation, meaning that the recipient of profits does not pay tax under its domestic tax legislation in the country where it operates, while at the same time deducting related expenses for corporate tax purposes, based on the tax legislation applicable in the country where it has its headquarters.

Where payments are made, e.g. royalty payments (for transfer of know-how), the OECD and G8 aim to prevent companies choosing to locate intellectual property rights in specific countries which grant more favorable tax treatment, based on so-called “treaty-shopping”. Some Double Tax Treaties provide for favorable tax regimes for royalties and other types of payments. This is in addition to the corporate tax regime, where various rates and regimes (for taxable or non-taxable revenues) may apply.

However, when the BEPS Actions are implemented, it will also be important to prevent double taxation. Each state will try to increase its taxable profits and the mechanism currently in place does not easily allow for an increase of taxable profits in one state to be recognized as an equivalent reduction of profits in another (Neacșu and Feleagă, 2017).

2. BEPS Action 1 – Addressing the Tax Challenges of the Digital Economy

2.1. Digitalization and BEPS Action 1

Business models have evolved rapidly in recent years. Companies nowadays rely more on digitalization in order to enhance their activity, to be more visible on the market, to protect their data, etc. This has been possible because of development of the technology used and of

the ICT (information and communication technology) sector. Some other important element has been the fact that more and more people have access to information and that it is affordable (e.g. the Internet). Consequently, the development of the ICT sector has made technologies cheaper and more standardized, with innovation playing an important role for companies across all industries.

The main characteristics of the digital economy are: mobility (of intangible assets, users, and business functions), a strong emphasis on data (“data is king”), networking, multi-sided businesses and volatility (the increasing speed of technological development).

The development of companies’ business models has an impact on the economy in general, and thus on local and international taxation.

Action 1 of the Base Erosion and Profit Shifting (BEPS) Action Plan focuses on the digital economy and its impact on corporate income tax and transfer pricing. It also mentions some VAT influences.

With respect to transfer pricing, Action 1 noted that the digital economy has also accelerated the spread of global value chains of multinational companies. The development of the ICT sector led to integration, making things like communication, transportation, and currency exchange rules easier and faster, allowing multinational companies to operate to a greater extent at a global level. The development of the ICT sector has even allowed small companies to operate and employ personnel in different countries, the result being the so called “micro-multinationals”.

2.2. Digitalized client contacts and delivery – advertising services

One important aspect of today’s businesses is the mixing of almost any other activity with digital solutions, digital communication and digitally delivered products or services. For example, a big advertising group of companies sets up a subsidiary B Co. (a company) in country B. The business is conducted via A Co., a group company registered in country A, which enters the market of country B in the advertising sector. The aim of A Co. is to attract clients in country B and subsequently provide them with complex advertising solutions, including advertising spots and TV related advertising. A Co. has a wide range of resources: experienced

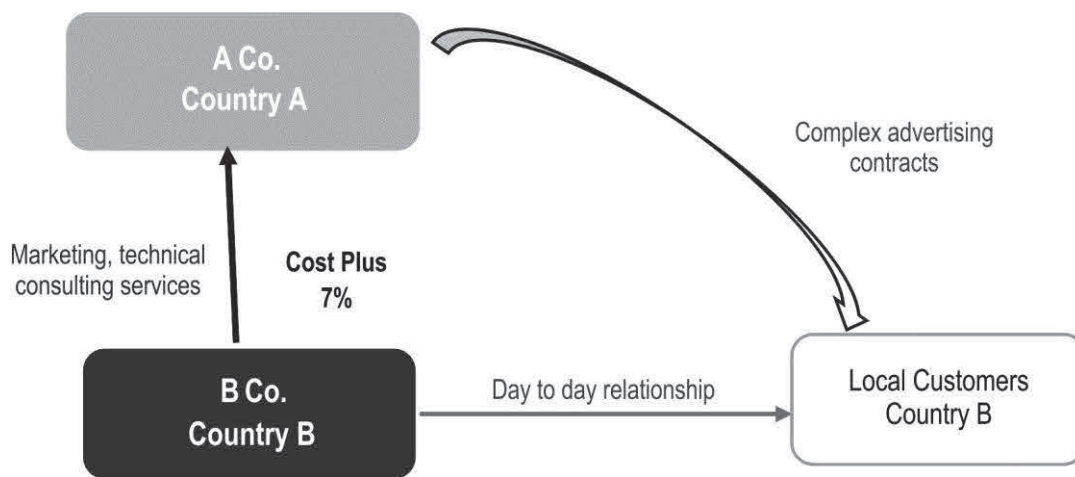
professionals, equipment, and financing, as well as a reputable brand.

B Co., the company set up by the group in country B, has employees who deal with the local customers of the group, on the one hand by promoting the complex advertising services which may be rendered by A Co., and on the other hand by having one-on-one interaction with local customers, providing education and technical consulting to customers, when needed.

The commercial contracts are concluded between A Co. and the local customers directly. The revenues from the complex advertising services in country B are registered by A Co. and subject to corporate tax in Country A.

In country B, B Co. registers revenues charged to A Co. under a “cost plus” mechanism, i.e. cost plus a mark-up of 7%, where all its costs for employees, office related costs and other operating costs are included in the cost base. The profit margin results in taxable profits in country B.

Figure 1: Example no. 1



The standard approach followed by the tax authorities and taxpayers so far, has been as described above. The central idea of the new approach would be that the tax authorities of country B may consider that B Co. is involved in creating the demand for services to be rendered by A Co. and thus in contributing to the creation of new business for A Co. This would mean that the tax authorities of country B may consider that B Co. creates value in the supply chain and is therefore entitled to receive a part of the profits earned by A Co. from the business carried out in country B. The standard approach in the past would have categorized the profits earned by A Co as so-called “business profits” which consequently should be taxed in Country A.

The OECD has aimed to reduce the burden of taxpayers with respect to the documentation needed for transfer pricing related to intra-group transactions, especially for SMEs (small and medium sized enterprises). However, by introducing the BEPS Actions, the opposite effect has

been achieved: a higher burden is placed on the companies operating in groups. The new approach is based on the guidance issued by the OECD, according to which profits should be allocated to the most important economic activities. The parties which contribute to the economic value of the group should have allocated profits, and these profits should be taxable in their respective jurisdiction. The rule appears to be simple, but its application is extremely difficult in practice. There is a degree of subjective judgment with respect to the level of value created by each entity, in a business carried out worldwide by a group of companies. The allocation of profits to a certain company, on the grounds that it creates value for the business within a group is even more difficult and subjective. This is even more surprising, given that the profit split method has rarely been accepted in the past, for instance in Romania, by the tax authorities. The measurement of the value created by each party of the

group actually involves an allocation of profits between those companies, meaning, in fact, the application of a profit split method.

Detailing the concept of value creation as one of the main drivers for being entitled to a particular share of profits, a company having 3 employees would by definition be a lower value creator compared against a company employing 100 professionals. Companies with a low number of personnel would be deemed not to receive large profits. The OECD emphasizes some critical sectors where countries consider that complex operations should no longer be analyzed under the standard approach, but rather look to who is providing financing, and who has the personnel and the equipment, as well as the know-how and experience. When analyzing the circumstances, focus should be placed on the available commercial opportunities, meaning that it is important to consider whether the company had other options to conduct the business or to enter into other commercial arrangements.

Standard methodology

Let the costs of B Co. be 1,000 m.u. (i.e. monetary units) per month, and let the services fees charged by B Co. to A Co. be 1,070 m.u. per month, meaning that the taxable profits (excluding the impact of taxation such as non-deductible expenses) would be 70 m.u.

The methodology used in this paper is to assess additional profits assigned to B Co., i.e. a portion of the profits earned by A Co. from the market in country B.

Let the profits earned by A Co. from the advertising contracts signed with customers in country B be 50,000 m.u. per month. The contracts are directly concluded between A Co. and the customers.

The research methodology undertaken by this paper

A complex question arises: which company contributes to the value of the group and to which extent? There is no methodology provided by legislation in this respect, just guidance brought by BEPS Action 1 and BEPS Actions 8-10 with respect to how to determine the main drivers of value. The entity creating value is entitled to receive profits, as well as the entity providing the financing and, more importantly, the company taking the risks.

The author's research in this paper seeks to identify the main components of the activity carried out which may be considered as creating economic value, and thus generating profits which should be subject to tax.

In the case of applying the profit split method for the above mentioned example, the functions carried out and risks taken can be found in the table below:

Table no. 1: Functions performed and risks taken		
Functions	B Co.	A Co.
Providing the know-how function	vvv	n/a
Providing the expertise function	vvv	n/a
Providing the strategy function	vvv	n/a
Creativity function	n/a	vvv
Promoting and marketing (in country B) function	vvv	n/a
Technical consulting function	vvv	n/a
Finding the local client function	vvv	n/a
Keeping in touch with the local clients	vvv	n/a
Negotiating the contracts	vv	vv
Risks	B Co.	A Co.
Market risk	vv	vv
Payment risk	v	v
Quality risk with respect to the services provided	vv	vv

Note: v = only carries out this function to a limited extent/bears a low risk; vv = does not fully carry out the function/bears moderate risk; vvv = carries out most of the function/bears most of the risk; vvvv = fully carries out the function/bears high risk; n/a = not applicable

Below is a summary of the main resources employed by the companies involved:

Resources	B Co	A Co
Highly specialized personnel		vvvv
Equipment		vvvv
Know-how and experience		vvvv
Financing	n/a	vvvv
Innovative techniques		vvvv
Client relationship personnel	vvv	v

Note: v = only carries out this function to a limited extent/bears a low risk; vv = does not fully carry out the function/bears moderate risk; vvv = carries out most of the function/bears most of the risk; vvvv = fully carries out the function/bears high risk; n/a = not applicable

Research results

The tax authorities of country B could consider that more profit should be allocated to B Co. as compared to the 70 m.u. received as a result of the “cost plus” mechanism. The standard 5% rate could be applied to the overall profit derived from advertising services to customers located in country B, meaning $5\% \times 50,000 = 2,500$ (m.u.).

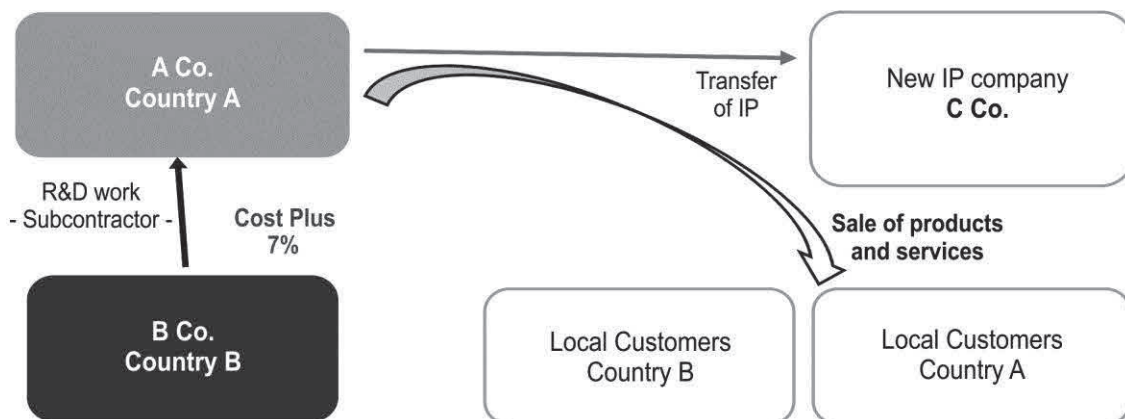
The tax authorities of country A will try to argue that the level of profits which are taxable in Country A should be maintained, as A Co. has the idea, the main resources and the know-how. Such an approach is in contradiction with the purpose of the authorities in country B. Hence, a divergence is expected to arise between the tax authorities' approach across the two countries. Moreover, an increasing number of groups of companies will resort to the amicable procedure or arbitration, leaving the authorities of the two states to reach an agreement. This hampers the process and is expected

to increase the tension level of the transfer pricing adjustments.

2.3. R&D activities and the derived profits

Besides the ICT sector, R&D activities are also one of the sectors where the analysis approach will be changed. If A Co. starts a major research and development activity and subcontracts to B Co. the day-to-day activities and tasks for that R&D project, the standard approach would be that B Co. would charge fees to A Co. under a “cost plus” method. The approach may remain the same, but additional questions arise. Who has the financing? Who assumes the risks of non-favorable results of the R&D process? Who decides if a specific R&D project will be continued or stopped? The taking of decisions and risks leads to the assumption that the respective company would be entitled to receive the excess profits from the realization of the R&D project. The level of profits which should be attributed to each company depends on the answers to these questions.

Figure 1: Example no. 2



Standard methodology

Assuming that the costs of B Co. are of 1,000 m.u. per month, the services fees charged by B Co. to A Co. would be 1,070 m.u. per month, meaning that the taxable profits (excluding the impact of taxation such as non-deductible expenses) would be 70 m.u.

The methodology employed in this paper is to assess additional profits to B Co., namely a portion of the profits earned by A Co. from the market in country B.

Let the profits earned by A Co. as a result of the sale of the innovative products to customers in country B be 100,000 m.u. per month. The contracts are concluded between A Co. and the customers directly.

The research methodology employed by this paper

Another complex question arises: which company

contributes to the value of the group and to which extent? Current legislation provides no methodology in this respect, while BEPS Action 1 and BEPS Actions 8-10 merely give guidance on how to determine the main drivers of value. The entity creating value is entitled to receive profits, as well as the entity providing the financing and, more importantly, the company taking the risks.

The author's research in this paper seeks to identify the main components of the carried out activity, which may be considered as creating economic value, and thus generating profits which should be subject to tax.

In the case of applying the profit split method for the above mentioned example, the functions performed and risks taken can be found in the table below:

Table no. 3: Functions performed and risks taken		
Functions	B Co.	A Co.
Providing the know-how function	v	vv
Providing the R&D services function	v	vv
Providing the strategy function	n/a	vvv
Creativity function	vv	v
Day to day tasks related to the R&D project	vvv	n/a
The function of giving instructions	n/a	vvv
Coordination function	n/a	vvv
Owning the intellectual property (IP)	n/a	vvv
Risks	B Co.	A Co.
Market risk	v	vv
The risk of the R&D project	n/a	vvv
Payment risk	vv	v
Quality risk with respect to the services provided	vv	v

Note: v = only carries out this function to a limited extent/bears a low risk; vv = does not fully carry out the function/bears moderate risk; vvv = carries out most of the function/bears most of the risk; vvvv = fully carries out the function/bears high risk; n/a = not applicable

Below is a summary of the main resources employed by the involved companies:

Table no. 4: Resources employed by the involved companies		
Resources	B Co.	A Co.
Highly specialized personnel		vvv
Equipment		vvv
Know-how and experience		vvv
Innovative techniques		vvv
Client relationship personnel	vv	v
Financing	n/a	vvv

Note: v = only carries out this function to a limited extent/bears a low risk; vv = does not fully carry out the function/bears moderate risk; vvv = carries out most of the function/bears most of the risk; vvvv = fully carries out the function/bears high risk; n/a = not applicable

In the research methodology applied in this paper, the most important issue is who takes the risk of the R&D project, as it may result in good or bad sales results. It is also important to establish who has the know-how, experience and expertise to effectively deploy the R&D project.

In the same context, where A Co. transfers the intellectual property deriving from the intangibles resulting from the R&D activities to C Co., an entity in country C, the arrangement would most likely be seen as lacking in economic substance, since the correct price paid for the transfer, as a single payment or as recurring installments is difficult to establish, because it is not easy to perform a valuation for intangible assets. The actual price depends on the profits generated by the sale of products or services developed through the R&D process.

Research results

The tax authorities of country B could consider that more profits should be allocated to B Co. as compared to the 70 m.u. received as a result of the “cost plus” mechanism. The standard 5% rate could be applied to the overall profit derived from the sale of the innovative products to customers in country B, i.e. $5\% \times 100,000 = 5,000$ (m.u.).

The tax authorities of country A will try to argue that the level of profits which are taxable in Country A should be maintained, as A Co. brought the idea, the main resources and the know-how. More importantly, A Co. bears the risk of the failure of the R&D project: if sales are poor, A Co. bears the losses from the R&D project, while B Co. is guaranteed a profit of 70 m.u.

Because companies in the R&D and ICT sectors rely on innovation and development of know-how, there are many cases where intellectual properties (IP's) are registered. BEPS Action 1 expresses concern that the transfer of intellectual properties may not be at “arm's length” due to the difficulties in valuing and also because of the differences between tax administrations (when foreign transactions are carried out). Furthermore, BEPS Action 1 sets out that there should not be inconsistencies between IP holders and the functions carried out, risks assumed

and assets used on the value chain in a multinational group. Thus, the IP holder in the economic chain in a multinational group should be the company that created added value, innovated and developed know-how, irrespective of the tax burden in its country or whether that company is a “parent” company or not.

In this context, the tax authorities in country A would try to get back the profits earned by C Co. in country C, from owning the intellectual property created in A Co.'s R&D projects.

Such an approach would also create tensions between the tax authorities of the A, B and even C, countries, making the respective authorities most likely part of an amicable process of determining the level of profit in each country, the aim of the groups being to respect the well-established principle of international taxation, i.e. the avoidance of double taxation.

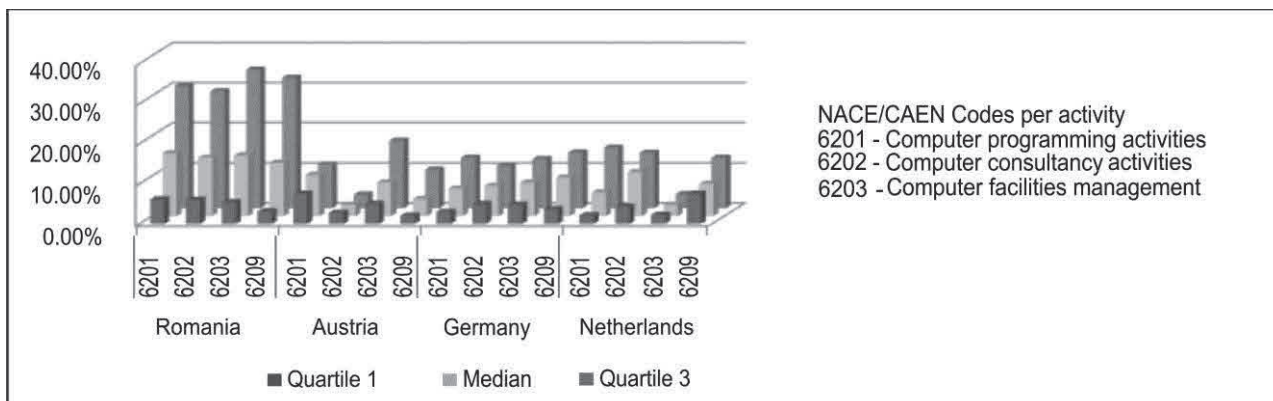
3. Profit earned by ICT companies in Romania and other European countries

3.1. The digital sector in European countries

Innovation is seen by the European Commission as vital for Europe in order to increase the competitiveness of European products and services, as well as to improve processes – business processes, production processes, as well as delivery and logistics processes. Many activities have the potential to become partially automatized, by embedding software components into their processes: flow monitoring, out tasks performing, information processing and many other activities.

It may also be an effect of the still low direct and indirect costs registered in Romania, as compared to the other countries, but nevertheless there is a significant volume of ICT projects in Romania, carried out as a direct result of the proficiency of local personnel who specializes in ICT.

Figure no. 2: Profitability ranges for the ICT industry in 2015



Source: Amadeus Database, version December 2016

Table no. 5: Average of profitability ranges for ICT industries per NACE code in Romania, Austria, Germany and Netherlands

NACE Code Rev. 2	1 st Quartile	Median	3 rd Quartile
6201	5.58%	10.96%	18.03%
6202	4.61%	8.37%	14.46%
6203	5.09%	10.64%	21.30%
6209	3.00%	9.07%	18.73%

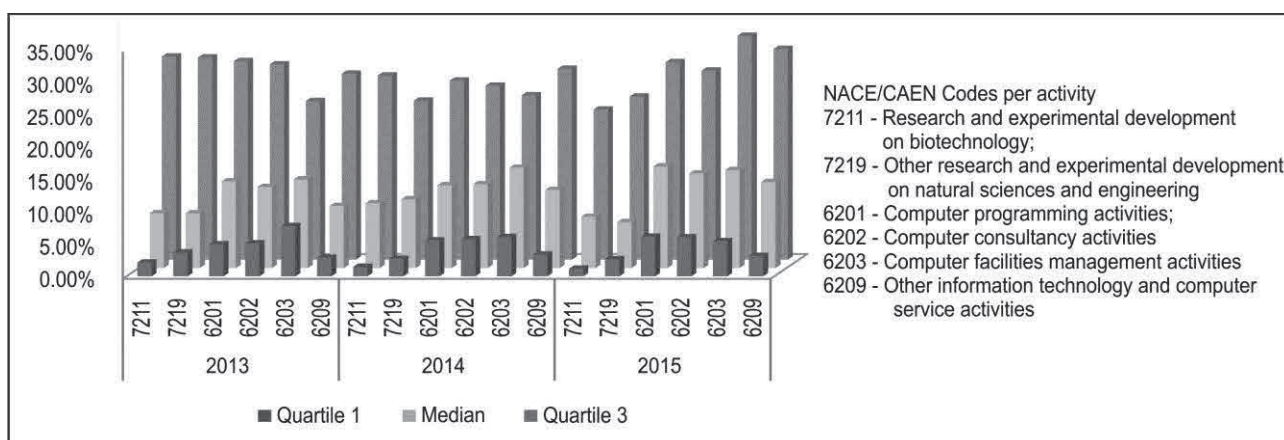
Source: Amadeus Database, version December 2016

3.2. The Digital Sector in Romania

Romania is the home for a concentration of micro-multinationals in various regions, such as in Cluj-Napoca, Iasi, Timisoara, in addition to well-known multinationals

operating in the ICT sector. The development of the ICT sector is reflected in the analysis below, in which the profitability of the companies operating in Romania in this sector is presented as a graph.

Figure no. 3: Profitability ranges for the R&D and ICT industries in Romania



Source: Amadeus Database, version December 2016

The profit margin earned by Romanian registered companies which operate in sectors such as ICT or R&D is quite diverse. Statistically speaking, the less profitable ICT companies earn a margin of 2-3%, but that can be even lower. At the same time, most

companies earn a margin of at least 7% and margins such as 20% or above can also be seen. Such high margins arise in cases where the know-how and innovation component plays an important role in product development.

Table no. 6: Average of profitability ranges for the R&D and ICT industries per NACE code in Romania

NACE Code Rev. 2	1 st Quartile	Median	3 rd Quartile
7211	1.59%	8.81%	27.72%
7219	3.02%	8.74%	27.03%
6201	5.55%	13.98%	29.66%
6202	5.62%	13.38%	28.80%
6203	6.43%	14.80%	28.21%
6209	3.14%	11.68%	30.30%

Source: Amadeus Database, version December 2016

Research results

The ICT sector is very important to Romania, as it generates significant taxable profits, offers a big number of highly qualified jobs and moreover, innovation and technology become resources for the Romanian economy, which may be used for a future increase of competitiveness.

Conclusions

Focusing to a greater level of detail, the objective of this paper is to analyze and assess the magnitude of the taxable profits registered in the ICT sector in Romania, as well as the impact the new regulations launched by OECD through the issuing of BEPS Actions may have upon the level of profits in this sector. Specifically, the importance of the Romanian ICT sector is determined via the taxable profits the industry brings as a contributor to the Government budget. The analysis focuses on Romania, as well as on several European countries. As ICT is essentially an innovative sector, the author extended the analysis of the Romanian ICT sector with the R&D activities. The interferences of the new OECD regulations regarding transfer pricing approach in the ICT and R&D sector are analyzed by performing two case studies. The results of the research undertaken via the two case studies reveals how the European

countries will seek to increase the level of the taxable corporate income declared by the ICT and R&D companies registered in that specific tax jurisdiction.

The effect of government policies should also be taken into account. Specifically, there is a commitment to support R&D, as well as the ICT sector. Romania is aligned to the EU strategy of promoting innovation and the ICT sector is the closest to creation of innovation, as compared to others. Companies can see the support for ICT in Romania, thus being reflected also in higher margins obtained by Romanian registered companies as compared to highly technologized countries such as Austria, Germany, Switzerland, and the Netherlands.

Due to the fact that BEPS's main topic is corporate income tax, we should also take into consideration how countries react to the continuous market development, and how can they adapt their indirect taxation in order to obtain a more successful collection rate. Therefore, BEPS proposes that countries use criteria based on the services' actual consumption place in order to exempt imported goods with low value, and identify the place of taxation for the supplies of services between a company and its customer.

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