

Keep watching

The tax avoidance structures of ViacomCBS



Maarten Hietland

Colophon

Keep watching

The tax avoidance structures of ViacomCBS

June 2021

Author: Maarten Hietland

With contributions from: Arnold Merkies

Layout and graphics: Frans Schupp

Cover photo: James Genchi / Unsplash

With special thanks to Arnold Merkies for his research assistance and insightful comments and contributions.

Acknowledgements

Jasper van Teeffelen (SOMO), Vincent Kiezebrink (SOMO), Jenny Pannenbecker (SOMO), Irene Keizer (SOMO), Anna Heredia (Intern SOMO), Ann Doherty (Editor)

We would also like to thank Jan Gooijer, assistant professor in international taxation (Vrije Universiteit Amsterdam) and tax expert Monique Sterk, lecturer in Dutch tax law (Amsterdam University of Applied Sciences) for their review of the draft report.



Stichting Onderzoek Multinationale Ondernemingen

Centre for Research on Multinational Corporations

T: +31 (0)20 639 12 91

info@somo.nl

www.somo.nl

The Centre for Research on Multinational Corporations (SOMO) is an independent, not-for-profit research and network organisation working on social, ecological and economic issues related to sustainable development. Since 1973, the organisation investigates multinational corporations and the consequences of their activities for people and the environment around the world.



Keep watching

The tax avoidance structures of ViacomCBS

SOMO

Maarten Hietland

Amsterdam, June 2021

Contents

Executive summary	4
Introduction	6
Research methodology.....	7
An introduction to ViacomCBS	9
The Netherlands ViacomCBS’ IP licensing conduit	11
The use of the Netherlands as conduit – at least since 2002.....	11
The current use of the Netherlands as conduit.....	13
Current rulings with the Dutch government.....	13
Why the Netherlands?.....	14
CBS Corporation Tax avoidance structures since 2005	16
CBS Corporation’s IP in Bermuda: 2005-2010.....	16
Corporate tax avoidance by CBS: 2005-2010.....	17
CBS Corporation’s IP in Luxembourg: 2010-2016.....	18
Corporate tax avoidance by CBS: 2010-2016.....	20
CBS Corporation’s IP in the Netherlands: September 2016 - March 2019.....	21
CV/BV structure.....	22
Distribution agreements.....	22
Change of ownership.....	25
Corporate tax avoidance by CBS: September 2016 - March 2019.....	26
The shift of CBS Corporation’s IP licensing rights to the UK.....	26
Corporate tax avoidance by CBS: March 2019 – December 2019.....	27
The logic behind relocating IP licensing rights to the UK.....	28
Corporate tax avoidance by CBS – UK base erosion payments since 2015.....	29
Conclusions.....	29

Viacom Tax avoidance structures since 2005	31
Viacom's IP in Curaçao: 2006-2012	31
Corporate tax avoidance by Viacom: 2006-2012	31
Viacom's IP in the Netherlands: 2012-2015	33
Corporate tax avoidance by Viacom: 2012-2015	33
Viacom's IP from the Netherlands to the UK: 2015	33
Viacom's IP in the UK: From 2015 onwards	34
Corporate tax avoidance by Viacom - UK	35
Corporate tax avoidance: Viacom 2006-2019	35
Conclusions	37
Total amount of revenues shifted offshore	37
Relocation of IP licensing rights	37
Source countries have missed out on tax income	38
A game of cat and mouse	39
Recommendations	39
Annex The shift in value creation from tangible to intangible assets	41

Executive summary

ViacomCBS, a self-described “fundamental content company”, reaches about 700 million consumers in more than 180 countries around the world with its media content. About 24% of the company’s total revenue stems from content licensing outside the North American market. Through the shifting of IP licensing rights from country to country, ViacomCBS has been able to avoid paying billions of dollars in taxes in several countries.

For almost two decades, ViacomCBS has been using the Netherlands to avoid paying corporate income tax in the United States. From 2002 onwards, this multinational mass media conglomerate has been sublicensing its television rights to third parties and consumers outside the North American market via the Netherlands. In total, at least US\$32.5 billion in revenues has been collected by the company’s Dutch subsidiaries during the period 2002-2019. Through this conduit construction with the Netherlands, the company has managed to avoid US corporate income tax payments totalling \$1.46 billion (for CBS Corporation) and an estimated \$2.5 billion (for Viacom). Furthermore, due to the sale of IP licensing rights via low-tax jurisdictions and non-taxed entities, the UK government is expected to lose an estimated \$365 million (through Viacom’s IP sale) and \$855 million (through CBS Corporation’s IP sale) in corporate income tax.

By analysing the company’s annual reports, SOMO was able to ascertain that the Dutch government provided ViacomCBS with so-called “rulings” as far back as 2002. Through these rulings, the Dutch government has ensured that only a small part (since 2011 specifically referred to as 0.8%) of the billed revenues of ViacomCBS subsidiaries in the Netherlands have been subject to taxation there. These rulings have given the media conglomerate the legal certainty that their revenue collected in the Netherlands will only be marginally taxed there. In this way, the incorporation of conduit subsidiaries in the Netherlands has made it possible for ViacomCBS to create international tax schemes that leave billions of dollars of the company’s revenues untaxed.

ViacomCBS has also been able to avoid paying US corporate income tax by shifting its intellectual property (IP) licensing rights to countries with limited or no corporate income tax, or to countries where the ViacomCBS entities will not be taxed. Following the demerger of Viacom into CBS Corporation and Viacom at the end of 2005, Viacom shifted its IP licensing rights to a non-taxed subsidiary located in Curaçao. In 2012, the IP licensing rights were relocated again, this time to a non-taxed entity in the Netherlands. In 2015, Viacom once again shifted its IP licensing rights, this time to a subsidiary in the United Kingdom. Following the transition of IP licensing rights from the non-taxed Dutch partnership to the UK subsidiary, the latter obtained an IP asset worth nearly \$1.8 billion. Through the amortisation of this asset, the UK subsidiary has been able to deplete its gross profits, thus avoiding the payment of UK corporate income taxes worth \$365 million.

During the same period, CBS Corporation shifted its IP licensing rights to Bermuda (2005-2010), Luxembourg (2010-2016) and the Netherlands (2016-2019). On 29 March 2019, the IP licensing rights of CBS Corporation, worth \$4.5 billion at the time, were shifted via Barbados to the United Kingdom.

Through this shift of IP licensing rights, Viacom has created an asset that can be used to offset future revenues through amortisation. In late 2019, Viacom and CBS Corporation remerged into ViacomCBS. Following Viacom's 2015 and CBS' 2019 shift of IP licensing rights to the UK, ViacomCBS will ultimately avoid paying \$1.2 billion in UK corporate income tax.

Introduction

Media companies like Disney, Netflix and ViacomCBS produce digital content such as television shows, movies and subscription channels. All of these intangible “goods” are protected by intellectual property rights (IPs), and they are represented as intangible assets on the balance sheet. By nature, intangible assets are easily relocated from one jurisdiction to another. This means that companies that rely on intangible assets can easily shift a large part of their global profits to tax havens, where most of their profits remain untaxed. As this report will show, the international rules for the taxation of multinational companies have not been adjusted to the economics of value creation through intangible assets.

Currently, the largest US multinationals predominantly create value through intangible assets. The five largest US companies, based on market valuation, are Apple, Alphabet, Microsoft, Amazon and Facebook, followed by companies active in the financial sector,¹ energy² and the pharmaceutical³ sector.⁴ The media and entertainment sector is another sector that relies heavily on intangible assets but has received little attention with regard to tax avoidance. This research aims to fill that gap, and to expose the tax planning and avoiding mechanisms utilised by multimedia companies, and more specifically, by ViacomCBS. As will be shown, conduit countries such as the Netherlands play an important role for the tax avoidance structures of companies such as ViacomCBS.

Most companies taking advantage of international tax avoidance schemes make use of a conduit country to connect the source country (where the revenue is generated) with the tax haven jurisdiction (where the judicial property is located). One key aspect of conduit countries is that they ensure that taxation rights (held for example by the source country) are not exercised over the company’s international financial transactions. For multinationals, the Netherlands is one of the most important conduit countries in the international tax avoidance structure.⁵ This explains why, after the United States, the Netherlands has the largest incoming and outgoing foreign direct investment flows worldwide.⁶

1 Berkshire Hathaway, JP Morgan Chase, Wells Fargo & Co.

2 ExxonMobil.

3 Johnson & Johnson.

4 J. Kauflin, “America’s top 50 companies 1917-2017”, *Forbes*, 19 September 2017, <<https://www.forbes.com/sites/jeffkaufliin/2017/09/19/americas-top-50-companies-1917-2017/?sh=4556ec5e1629>> (18 May 2021).

5 CPB Netherlands Bureau for Economic Policy Analysis, “Conduit country the Netherlands in the spotlight”, 24 January 2019, <<https://www.cpb.nl/en/conduit-country-the-netherlands-in-the-spotlight#>> (18 May 2021).

6 International Monetary Fund (IMF), “Inward direct investment position: Top 10 reporting economies in the world, US dollars, millions, 2019” (Chart), 12 September 2020, <<https://data.imf.org/?sk=40313609-F037-48C1-84B1-E1F1CE54D6D5&slid=1482247616261>> (18 May 2021) and International Monetary Fund (IMF), “Outward direct investment position: Top 10 reporting economies in the world, US dollars, millions, 2019”, (Chart), 12 September 2020, <<https://data.imf.org/?sk=40313609-F037-48C1-84B1-E1F1CE54D6D5&slid=1482247616261>> (18 May 2021).

One of the main reasons for this situation is that the Netherlands does not levy withholding taxes on outbound passive income payments.⁷ A second and related reason for the role of the Netherlands as a conduit country are the bilateral tax treaties that it has negotiated with other countries. Based on these tax treaties, the source country can levy only a limited withholding tax on passive income payments (dividend, interest, royalty) to the Netherlands.⁸ Thanks to these mechanisms, the Netherlands' incoming and outgoing flows of foreign direct investment are disproportionately large when compared to the size of its real economy.⁹

Research methodology

This report shows the role of the Netherlands in the corporate structure of ViacomCBS. To this end, we have analysed all of the ViacomCBS subsidiaries that are incorporated in the Netherlands. In the first part of the report, a division is made between the actual business presence¹⁰ of ViacomCBS in the Netherlands and its incorporation there as a means for tax avoidance. We show how the sublicensing of ViacomCBS' content has been structured over the past two decades, and how the global sublicensing of the company's content via the Netherlands is one of the main aspects of the company's presence there. Related to this, we examine the collection of royalty revenues from Europe, Asia, Africa and Latin America. Finally, we also look at the role of the Dutch Tax and Customs Administration in providing legal certainty to the structure created by ViacomCBS.

The second part of the report focusses on the relocation of ViacomCBS' IP licensing rights over the past two decades. Although CBS Corporation has already been incorporated in the Netherlands since 1968¹¹, and Viacom since at least the early 1990s¹², no annual accounts are publicly available prior to 2002. Therefore, the period under analysis ranges from 2002-2019 (as the most recent publicly available annual accounts of ViacomCBS entities stem from 2019).

We analyse how CBS Corporation entities in the Netherlands have passed on their royalties (obtained through globally licensing their content via the Netherlands) to low-tax jurisdictions during the period between 2005 and 2010. We show that the CBS Corporation used partnerships both

-
- 7 On 1 January 2021, a conditional withholding tax on interest and royalty transactions made to affiliated companies in low-tax jurisdictions (jurisdictions with a statutory corporate income tax rate below 9%) was introduced. However, the implementation of this conditional withholding tax will only address a small part of the outbound passive income payments. CPB Netherlands Bureau for Economic Policy Analysis, "Conduit country the Netherlands in the spotlight", 24 January 2019, <<https://www.cpb.nl/en/conduit-country-the-netherlands-in-the-spotlight#>> (18 May 2021).
 - 8 PWC website, Worldwide Tax Summaries, "Netherlands: Corporate - Withholding taxes", 25 December 2020, <<https://taxsummaries.pwc.com/netherlands/corporate/withholding-taxes>> (18 May 2021).
 - 9 International Monetary Fund (IMF), "Inward direct investment position: Top 10 reporting economies in the world, US dollars, millions, 2019", (Chart), 12 September 2020, <<https://data.imf.org/?sk=40313609-F037-48C1-84B1-E1F1CE54D6D5&slid=1482247616261>> (18 May 2021) and International Monetary Fund (IMF), "Outward direct investment position: Top 10 reporting economies in the world, US dollars, millions, 2019 [Chart]", 12 September 2020, <<https://data.imf.org/?sk=40313609-F037-48C1-84B1-E1F1CE54D6D5&slid=1482247616261>> (18 May 2021).
 - 10 For example, actual studio productions or licensing/marketing of ViacomCBS products on the Dutch market.
 - 11 OpenKVK, CBS International (Netherlands) B.V. – Hoofdvestiging, <<https://openkvk.nl/openkvk/hoofdvestiging-33122106-0000-cbs-international-netherlands-bv>> (20 May 2021).
 - 12 Drimble, Paramount Home Entertainment International BV, 20 May 2021, <<https://drimble.nl/bedrijf/amsterdam/18191320-paramount-home-entertainment-international-bv.html>>.

in Luxembourg and in the Netherlands between 2010 and 2019 to avoid tax payments. In 2019, CBS Corporation once again relocated its intellectual property licensing rights via Barbados to the United Kingdom.

A similar examination is made of Viacom's IP licensing rights, which were first moved to Curaçao (2006-2011), then to a partnership in the Netherlands (2012-2015), and thereafter to the United Kingdom. In addition to mapping the relocation of CBS Corporation's and Viacom's IP licensing rights, we explain the logic behind moving these rights to different jurisdictions.

The data sources we have made use of include:

- ▣ Approximately 200 annual accounts of the relevant Viacom, CBS Corporation and ViacomCBS subsidiaries in the Netherlands, Luxembourg, Singapore and the UK.
- ▣ The limited information provided by the various Chambers of Commerce about the incorporated Viacom, CBS Corporation and ViacomCBS subsidiaries in Barbados, Bermuda and Curaçao.
- ▣ The annual reports of ViacomCBS, Viacom Inc. and CBS Corporation.

The findings in this report and the estimations of tax avoidance are circumscribed by the accessibility and quality of the information in the annual accounts published by ViacomCBS and its subsidiaries. In order to interpret and analyse the various tax schemes used by Viacom, CBS Corporation and ViacomCBS in these different jurisdictions, we have also made use of country-specific tax and regulatory framework analyses.

SOMO's analysis and our findings have been reviewed by various fiscal experts and fiscal advisors.¹³ A review of the draft report was carried out by Jan Gooijer, assistant professor in international taxation at the Vrije Universiteit Amsterdam, and tax expert Monique Sterk, lecturer in Dutch tax law at the Amsterdam University of Applied Sciences. The conclusions of this report are, however, of the author alone.

Prior to publication, ViacomCBS had the opportunity to review the findings. As part of SOMO's internal quality assurance policies, our reports are published or shared with external parties only after the investigated company has had the opportunity to respond to research findings. On 30 March 2021, SOMO sent ViacomCBS a copy of the research findings with a request for comments. ViacomCBS did not respond.

¹³ These people prefer to remain anonymous.

An introduction to ViacomCBS

ViacomCBS is one of the world's largest media conglomerates, and serves the largest share of the US television audience in the United States.¹⁴ It is best known for its television series (for example CSI: Crime Scene Investigation, Teenage Mutant Ninja Turtles, Star Trek, Mission: Impossible); subscription channels (CBS, Nickelodeon, MTV, BET, Comedy Central, Paramount Network, VH1 etc.); and film productions (Titanic, Shrek, Forrest Gump, Kung Fu Panda, etc.).¹⁵

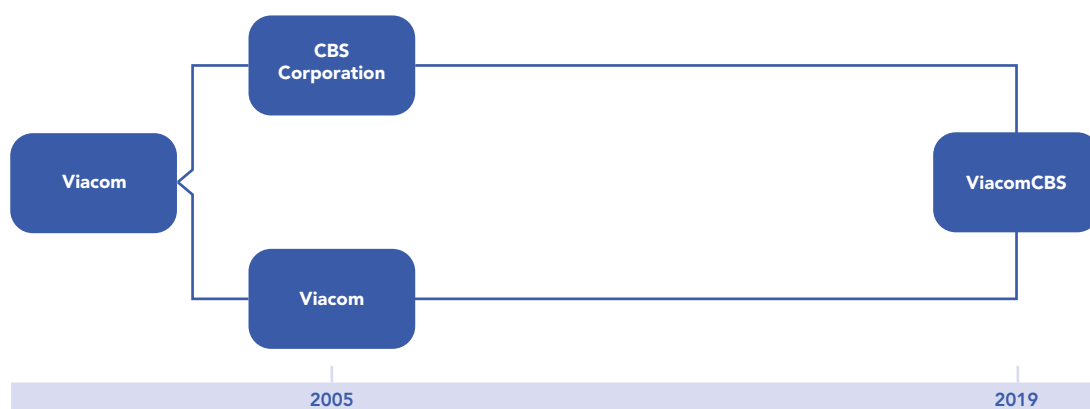
It is headquartered in New York City.¹⁶ The three segments through which it operates are TV Entertainment¹⁷ (42%), Cable Networks¹⁸ (50%) and Filmed Entertainment¹⁹ (10%).²⁰ In total, the company has about 170 networks through which it reaches about 700 million subscribers worldwide.²¹

In 2020, the annual revenue realised by the company was a bit over \$25 billion, and was derived from advertising (38%), affiliate fees (36%)²², content licensing (24%) and other (2%).²³ Most revenues derived from sales in the United States, with the remaining 20% from international locations.²⁴ The company's operating income in 2020 was \$4.1 billion (in 2019 it was the same).²⁵

The CBS company was founded in 1927. The company divided in 1971, and the spin-off was called Viacom 1970. The two companies merged again in 2000 under the name Viacom. Viacom and CBS then demerged at the end of 2005, creating CBS Corporation and Viacom. This separation held until 2019, when the two remerged into ViacomCBS.²⁶

-
- 14 "ViacomCBS Inc. to report first quarter financial results on May 6, 2021", Business Wire, 7 April 2021, <<https://www.businesswire.com/news/home/20210407005871/en/ViacomCBS-Inc.-to-Report-First-Quarter-Financial-Results-on-May-6-2021>> (18 May 2021).
- 15 ViacomCBS website, Investors, "SEC filings", 2020, p. I-5-I-10, <https://ir.viacomcbs.com/sec-filings/viacomcbs?field_nir_sec_form_group_target_id%5B%5D=471&field_nir_sec_date_filed_value=#views-exposed-form-widget-sec-filings-table> (25 May 2021); Viacom, Annual Report 2015, p. 13; CBS Corporation, Annual Report 2015, pp. I-4, I-5.
- 16 S. Seth, "The world's top media companies", Investopedia, 7 October 2020, <<https://www.investopedia.com/stock-analysis/021815/worlds-top-ten-media-companies-dis-cmsa-fox.aspx>> (18 May 2021).
- 17 Specific television programmes.
- 18 Specific subscription cable networks: Showtime Networks, Nickelodeon, MTV, BET, Comedy Central, Paramount Network, VH1, TV Land, CMT, Smithsonian Channel, Pop TV, Network 10, Channel 5, Telefe, Paramount+, Colors, Pluto TV.
- 19 Paramount Pictures, Paramount Players, Paramount Animation, Paramount Television Studios.
- 20 ViacomCBS website, Investors, "SEC filings", 2020, p. I-1, <https://ir.viacomcbs.com/sec-filings/viacomcbs?field_nir_sec_form_group_target_id%5B%5D=471&field_nir_sec_date_filed_value=#views-exposed-form-widget-sec-filings-table> (18 May 2021).
- 21 B. Bianchi, "CBS and Viacom to merge again in a \$12 billion deal", Bocconi Students Capital Markets, 1 November 2019, <<https://www.bscapitalmarkets.com/cbs-and-viacom-to-merge-again-in-a-12-billion-deal.html>> (18 May 2021).
- 22 Affiliate revenues are principally comprised of fees received from multichannel video programming distributors (MVPDs) and third-party live television streaming services (vMVPDs) for the carriage of cable networks ("cable affiliate fees"); fees received from television stations affiliated with the CBS Television Network ("reverse compensation"); fees for authorising the MVPDs' and vMVPDs' carriage of their owned television stations ("retransmission fees"); and subscription fees for their streaming services. ViacomCBS, Annual Report 2020, 24 February 2021, sec. I, p. I-1; sec. II p. II-5, p. II-9.
- 23 ViacomCBS, Annual Report 2020, 24 February 2021, sec. II, p. II-11.
- 24 Ibid, sec. I, p. I-1; sec. II, p. II-110.
- 25 Ibid, sec. II, p. II-5.
- 26 "History timeline of CBS corporation", NoCable, no date, <<https://nocable.org/timeline/cbs-history>> (18 May 2021).

Figure 1 Remerger



The tables below show both the revenues and profits of Viacom and CBS Corporation over the past decade. As can be seen, both companies generated similar revenues over that period. Average annual revenue for the period 2011-2018 was approximately \$13 billion for CBS Corporation and \$13.5 billion for Viacom. Viacom has been more profitable, however, with annual average earnings of \$3.3 billion, compared to \$2.7 billion for CBS Corporation.²⁷

Table 1 Financial information for CBS Corporation, 2011-2018²⁸

CBS Corporation	2011	2012	2013	2014	2015	2016	2017	2018
Revenue (billions of US\$)	11.5	12.8	12.7	12.5	12.7	13.2	13.7	14.5
Operating income (billions of US\$)	2.4	2.8	2.7	2.6	2.7	2.9	2.9	2.8

Table 2 Financial information for Viacom, 2011-2018²⁹

Viacom	2011	2012	2013	2014	2015	2016	2017	2018
Revenue (billions of US\$)	14.9	13.9	13.8	13.8	13.3	12.5	13.3	12.9
Operating income (billions of US\$)	3.7	3.9	3.8	4.1	3.1	2.5	2.5	2.6

²⁷ CBS Corporation, Annual Report 2018, 15 February 2019, sec. II, p. II-5; CBS Corporation, Annual Report 2016, 17 February 2017, sec. II, p. II-3; Viacom Inc., Annual Report 2018, 16 November 2018, p. 61; Viacom Inc., Annual Report 2014, 13 November 2014, p. 29.

²⁸ CBS Corporation, Annual Report 2018, 15 February 2019, sec. II, p. II-5; CBS Corporation, Annual Report 2016, 17 February 2017, sec. II, p. II-3.

²⁹ Viacom Inc., Annual Report 2018, 16 November 2018, p. 61; Viacom Inc., Annual Report 2014, 13 November 2014, p. 29.

The Netherlands

ViacomCBS' IP licensing conduit

Licensing is an important practice in the international media sector. With the creation of any product (such as a television series), the producer can choose to license the content of its production to another party. Generally, the licensor receives a remuneration (also known as a royalty) for allowing the licensee to use this content. Through licensing, the licensee is provided with the right to use the content while the producer retains ownership (of the television series for example). Media and broadcasting companies often use licensing as a method for distributing their content worldwide. Although licensing can take place between two separate companies, most multinationals also license content to entities within their corporate group. In 2020, ViacomCBS reported that about 24% of its total revenue was derived through the licensing of its content.³⁰

The use of the Netherlands as conduit – at least since 2002

CBS Corporation and Viacom³¹ have been using the Netherlands to distribute content worldwide at least since the early 2000s, and this practice continues today. The earliest publicly available annual accounts of Viacom subsidiaries registered in the Netherlands stem from Viacom International (Netherlands) BV and WVI Films BV. In 2002, these Viacom subsidiaries generated revenues that respectively totalled \$921 million and \$42 million.³² The 2003 annual accounts of WVI Films state that *"Taxation is provided on the estimated liability for the year based on the existing tax ruling"* and furthermore that *"The low effective tax rate of 3% is the result of the tax ruling."*³³ A similar wording was used in the Viacom International (Netherlands) BV 2003 annual report: *"The Netherlands income taxes are based on taxable income, which is defined under rulings obtained from the Netherlands tax authorities."*³⁴

Other important subsidiaries that generated revenue based on sublicensing the IP of CBS Corporation and Viacom during the period between 2002 and 2019 are Viacom Global Netherlands BV, CBS-CSI International BV, Showtime Distribution BV and CBS Broadcast International BV.

For at least the past 20 years and up until the present, ViacomCBS subsidiaries³⁵ in the Netherlands have been playing a key role in the sublicensing of ViacomCBS content throughout the world. Based

30 ViacomCBS, Annual Report 2020, 24 February 2021, sec. II, p. II-9.

31 As noted before, Viacom demerged at the end of 2005, creating CBS Corporation and Viacom. This separation held until 2019, when the two remerged into ViacomCBS.

32 Viacom International (Netherlands) BV, Annual Report 2003, p. 6; WVI Films BV, Annual Report 2003, p. 5.

33 WVI Films BV, Annual Report 2003, pp. 7 & 10.

34 Viacom International (Netherlands) BV, Annual Report 2003, p. 22.

35 ViacomCBS has about 29 subsidiaries in the Netherlands. The following six entities played a key role in the IP conduit structure of ViacomCBS throughout the period 2002-2019: Viacom Global (Netherlands) BV, CBS International (Netherlands) BV, WVI Films BV, Showtime Distribution BV, CBS-CSI International BV and CBS Broadcast International BV.

on the available annual accounts, these subsidiaries have collected an average of \$1.8 billion per year in revenues throughout the period 2002-2019. This adds up to more than \$32.5 billion in total revenues.³⁶ Five of these subsidiaries state that their revenue is comprised of royalty income from the sale of television licensing.³⁷ The annual accounts of the sixth, Viacom (Global) Netherlands BV, do not specify the share accounted for by royalties in the total revenues collected by the subsidiary.

With regard to the royalties paid to the licensor, most subsidiaries specifically account for these payments in their annual accounts. Based on this information, between 90% to 100% of the royalties are generally passed on to the licensor: either a subsidiary in a low-tax jurisdiction or a non-taxable entity. As both Viacom and CBS have changed their licensing structures several times, and as the tax schemes are relatively complex, the exact restructuring of the IP licensing scheme will be analysed in depth in the next two chapters.

With regard to the number of people employed by the subsidiaries, only CBS International (Netherlands) BV and Viacom Global Netherlands BV reported having employees. CBS International (Netherlands) employed an average of 27 people per year in the period 2002-2019,³⁸ and Viacom Global Netherlands BV reported approximately 60 employees³⁹ during the period 2006-2015.⁴⁰ The other four sublicensing entities in the Netherlands reported that they have not had personnel in any of the years that they have been incorporated.⁴¹

Only some of the subsidiaries specify which programme content the royalties are based upon. The Dutch subsidiary Viacom Global (Netherlands) BV, for example, described in its annual reports from 2007 through 2015 that their revenues stemmed inter alia from Shrek 3, Kung Fu Panda, Star Trek, Iron Man, The Wolf of Wall Street, Mission: Impossible and the SpongeBob movie "Sponge out of Water".⁴² The CBS International (Netherlands) BV subsidiary also specifically referred to its sublicensed content as an important generator of revenue in its annual reports during the period 2013-2019. This content included NCIS, Beauty and the Beast, Hawaii Five-O and Star Trek.⁴³

36 For some years, the annual reports of the relevant subsidiaries have not been publicly available. The actual collection of revenues over the period 2002-2019 is therefore probably much higher than \$32.5 billion.

37 CBS International (Netherlands) BV, Annual Report 2019, p. 30; WVI Films BV, Annual Report 2019, p. 10; Showtime Distribution BV, Annual Report 2019, p. 13; CBS-CSI International BV, Annual Report 2019, p. 13; CBS Broadcast International BV, Annual Report 2019, p.13.

38 CBS International (Netherlands) BV, Annual Report 2003, p. 23; Annual Report 2005, p. 27; Annual Report 2006, p. 22. No information is available regarding the number of employees for 2007, 2008 and 2009.

39 No information is available regarding the number of employees before 2006.

40 Viacom Global (Netherlands) BV, Annual Report 2006, p. 23; Annual Report 2008, p. 20; Annual Report 2010, p. 25; Annual Report 2012, p. 5; Annual Report 2014, p. 3; Annual Report 2015, p. 3.

41 CBS-CSI International BV, Annual Report 2019, p. 18; CBS Broadcast International BV, Annual Report 2019, p. 18; WVI Films BV, Annual Report 2019, p. 15; Showtime Distribution BV, Annual Report 2019, p.18.

42 Viacom Global (Netherlands) BV, Annual Report 2007, p. 1; Annual Report 2008, p. 1; Annual Report 2010, p. 2; Annual Report 2012, p. 3; Annual Report 2014, p. 6; Annual Report 2015, p. 33.

43 CBS International (Netherlands) BV, Annual Report 2018, p. 3.

The current use of the Netherlands as conduit

There are currently five ViacomCBS subsidiaries in the Netherlands that receive substantial revenues from royalties.⁴⁴ The annual revenue of the five ViacomCBS subsidiaries that report annual revenues based on sublicensing⁴⁵ totalled \$1.15 billion in 2019.⁴⁶ In terms of sublicensing revenue, ViacomCBS' most important Dutch subsidiary is CBS International (Netherlands) BV.⁴⁷ This subsidiary reported in its annual accounts that all of its revenues⁴⁸ stem from television licensing, with 72% coming from the EU,⁴⁹ 23% from the rest of the world and 3% from other European countries.⁵⁰ Less than 2% of its total revenues come from the Netherlands. Another important subsidiary in the field of sublicensing is Showtime Distribution BV. Similar to CBS International (Netherlands) BV, the vast majority (99.5%) of Showtime Distribution BV's total revenue stems from non-Dutch consumer markets.⁵¹ The other three subsidiaries involved in sublicensing (CBS-CSI International BV,⁵² CBS Broadcast International BV⁵³ and WVI Films BV⁵⁴) also report that their revenues are mainly realised in non-Dutch consumer markets.⁵⁵

Current rulings with the Dutch government

As previously mentioned, the distribution and licensing of television rights is the most important source of income for the five subsidiaries described above. Interestingly, all five subsidiaries currently have tax rulings⁵⁶ with the Dutch Tax and Customs Administration. All of the available annual reports of the Dutch subsidiaries mention the provision of a ruling by the Dutch tax authority.⁵⁷ The latest (2019) annual report of all five subsidiaries states that the current tax agreement has been extended

-
- 44 In 2015, the Dutch subsidiary Viacom Global (Netherlands) BV merged with a UK subsidiary and became the Dutch branch of that UK subsidiary. As the annual accounts of this Dutch branch are not available, no information can be provided regarding the amount of revenue it receives.
- 45 Only subsidiaries with an annual revenue of more than \$10 million have been included. These are the following: CBS International (Netherlands) BV; WVI Films BV; Showtime Distribution BV; CBS-CSI International BV; and CBS Broadcast International BV.
- 46 Based on the annual reports of the above-mentioned subsidiaries.
- 47 In total, ViacomCBS has about 29 ViacomCBS subsidiaries incorporated in the Netherlands. Based on available information, only five of them currently play an important role in the collection of IP licensing related revenues.
- 48 \$863.7 million in 2019 and \$986.7 million in 2018, Annual Report 2019, p. 30.
- 49 Excluding the Netherlands.
- 50 CBS International (Netherlands) BV, Annual Report 2019, p. 30.
- 51 Showtime Distribution BV, Annual Report 2019, p. 16.
- 52 From the \$61 million in revenue realised in 2019, 98.7% stemmed from sales outside the Netherlands. CBS-CSI International BV, Annual Report 2019, p. 16.
- 53 From the \$44.5 million in revenue realised in 2019, 97% stemmed from sales outside the Netherlands. CBS-CSI International BV, Annual Report 2019, p. 17.
- 54 From the \$16.5 million in revenue realised in 2019, 99.99% stemmed from sales outside the Netherlands. WVI Films BV, Annual Report 2019, p. 13.
- 55 CBS-CSI International BV, Annual Report 2019, p. 16; CBS Broadcast International BV, Annual Report 2019, p. 17; WVI Films BV, Annual Report 2019, p. 13.
- 56 In most cases the tax rulings are referred to as "advance pricing agreements".
- 57 An applicable ruling is mentioned in all of the annual reports available for the five Dutch subsidiaries. See for example: CBS-CSI International BV, Annual Report 2013, p. 11; CBS Broadcast International BV, Annual Report 2005, pp. 8 & 11; WVI Films BV, Annual Report 2003, pp. 7 & 10; Showtime Distribution BV, Annual Report 2011, pp. 11 & 17; CBS International (Netherlands) BV, Annual Report 2003, p. 22; Viacom Global (Netherlands) BV, Annual Report 2006, p. 23.

until the end of 2022. With regard to the ruling, four of these subsidiaries use a wording similar to the following in their most recent annual accounts:⁵⁸

“An advanced pricing agreement with the Dutch tax authorities is in place, based upon which the estimated corporate income tax liability for the year is calculated. This tax ruling has been extended until the end of 2022.”⁵⁹

Based upon this ruling, the subsidiaries are obliged to retain 0.8% of the billed revenue as stated in their annual reports.⁶⁰ The amount paid to the licensor⁶¹ of the content consists of 99.2% of the royalties, reduced by general and administrative costs, foreign exchange results and remittance taxes.⁶²

According to this agreement with the Dutch tax authority, less than 1% of the revenues of the five ViacomCBS subsidiaries in the Netherlands are subject to taxation there. For this reason, although revenues totalled \$1.15 billion in 2019, the reported corporate income tax expenses that year in the Netherlands amounted to only \$10.6 million.⁶³

Why the Netherlands?

There are several reasons why the Netherlands stands out as a preferred conduit jurisdiction for ViacomCBS. One of the most important reasons is the willingness of the Dutch Tax and Customs Administration to provide legal certainty with regard to the fiscal treatment of ViacomCBS' structure in the Netherlands. From 2002 onwards, the tax authority provided ViacomCBS with rulings that ensured that the low effective tax rate would be applicable to the company's entities in the Netherlands. Another important reason for using the Netherlands as a conduit country is the absence of an outbound withholding tax on royalty payments.⁶⁴ In other words, it is not necessary to pay withholding tax when royalties are paid from a Dutch entity to another ViacomCBS entity outside the Netherlands. Furthermore, the Netherlands has negotiated close to 100 bilateral tax

58 CBS-CSI International BV, Annual Report 2019, p. 12; CBS Broadcast International BV, Annual Report 2019, p. 11; WVI Films BV, Annual Report 2019, p. 8; Showtime Distribution BV, Annual Report 2011, p.11.

59 Only for the CBS International (Netherlands) BV subsidiary is the wording somewhat different: *“For the Company's activities of the distribution of TV products a tax ruling is in place, based upon which the estimated corporate income tax liability for the year is calculated. This tax ruling has been extended until the end of 2022.”* CBS International (Netherlands) BV, Annual Report 2019, p. 21.

60 Only for CBS International (Netherlands) BV does the subsidiary commit to retaining between 0.7 and 0.9% of the billed revenue.

61 Currently, the Dutch ViacomCBS subsidiaries sublicense the TV rights from two entities located in the United Kingdom. However, the location of the IP licensor has often changed in the past, as will be explained later in this report.

62 See for example Showtime Distribution BV, Annual Report 2019, p.11 and WVI Films BV, Annual Report 2019, p. 8.

63 CBS International (Netherlands) BV, Annual Report 2019, p. 33: \$10,100,000; WVI Films BV, Annual Report 2019, p. 15: \$23,765; Showtime Distribution BV, Annual Report 2019, p.18: \$282,288; CBS-CSI International BV, Annual Report 2019, p. 18: \$86,523; CBS Broadcast International BV, Annual Report 2019, p. 18: \$75,900.

64 On 1 January 2021, a conditional withholding tax on interest and royalty transactions made to affiliated companies in low-tax jurisdictions (jurisdictions with a statutory corporate income tax rate below 9%) was introduced. However, the implementation of this conditional withholding tax will only address a small part of the passive income payments. CPB Netherlands Bureau for Economic Policy Analysis, “Conduit country the Netherlands in the spotlight”, 24 January 2019, <<https://www.cpb.nl/en/conduit-country-the-netherlands-in-the-spotlight#>> (18 May 2021).

treaties with other countries. Based on these tax treaties, the source country can generally levy only limited withholding tax on passive income payments – such as royalties – to the Netherlands.⁶⁵

For ViacomCBS, the sublicensing of IP rights through the Netherlands has been of key importance in its tax avoidance structure. As will be further explained, billions of dollars in US corporate income tax have been avoided through using such conduit entities in the Netherlands.

ViacomCBS: Little real economic presence in the Netherlands

A very small part of ViacomCBS' presence in the Netherlands is related to the production and sale of content to the Dutch consumer market. However, the "actual business" of ViacomCBS in the Netherlands is relatively small compared to the use of the country in ViacomCBS' international tax schemes. As will be explained, less than 5% of the total revenue collected by the above-mentioned ViacomCBS subsidiaries in the Netherlands was related to real business activities in the country. In other words, most of the 29 ViacomCBS subsidiaries incorporated in the Netherlands aim to benefit from the fiscal advantages offered by the country.

In the next two chapters, the various tax avoidance structures used by CBS Corporation and Viacom since 2005 will be explained.

65 PWC website, Worldwide Tax Summaries, "Netherlands: Corporate - Withholding taxes", 25 December 2020, <<https://taxsummaries.pwc.com/netherlands/corporate/withholding-taxes>> (18 May 2021).

CBS Corporation

Tax avoidance structures since 2005

CBS Corporation's IP in Bermuda: 2005-2010

With the demerger of Viacom into CBS Corporation and Viacom at the end of 2005, CBS Corporation transferred its US-based IP rights to Bermuda.⁶⁶ Following the sublicense agreement between the subsidiaries in Bermuda and the Netherlands, a substantial part of the revenues collected by the CBS Corporation subsidiaries in the Netherlands were passed on to these offshore subsidiaries in Bermuda.⁶⁷ The three CBS Corporation subsidiaries⁶⁸ in the Netherlands received a ruling from the Dutch tax authority. For example, the following was stated in the 2006 Annual Report of WFI Films BV with regard to the ruling:

"The effective tax rate for the current year activities is 1.3%. The result of the current tax is due to exempt elements and application of the ruling."⁶⁹

This shows that at least since 2005, ViacomCBS has been using the Netherlands, with explicit permission and with legal certainty provided by the Dutch revenue authority, as their most important conduit country for channelling international revenues to low-tax jurisdictions.

The diagram on the next page summarises CBS Corporation's sublicensing structure. Most of CBS Corporation's content originates in its studios in the United States. The TV licensing rights were then moved to an offshore jurisdiction, in this case Bermuda. The offshore entity next licenses the content to the relevant Dutch BVs. Subsequently, the Dutch BVs sublicense this content to their subsidiaries in the countries where it is ultimately sold to customers. Based on the sublicense, the Dutch BVs receive all of the revenues generated from the ViacomCBS content. More than 90% of the royalties collected by the Dutch BVs are then shifted to the licensor, based in Bermuda. As there is no corporate income tax in that country, all of the royalty income related to the licensing remains untaxed.⁷⁰

66 CBS International Netherlands BV, Annual Report 2006, pp. 2 & 25; WVI Films, Annual Report 2006, pp. 3, 4 & 14; CBS Broadcast International BV, Annual Report 2006, pp. 3, 4 & 14.

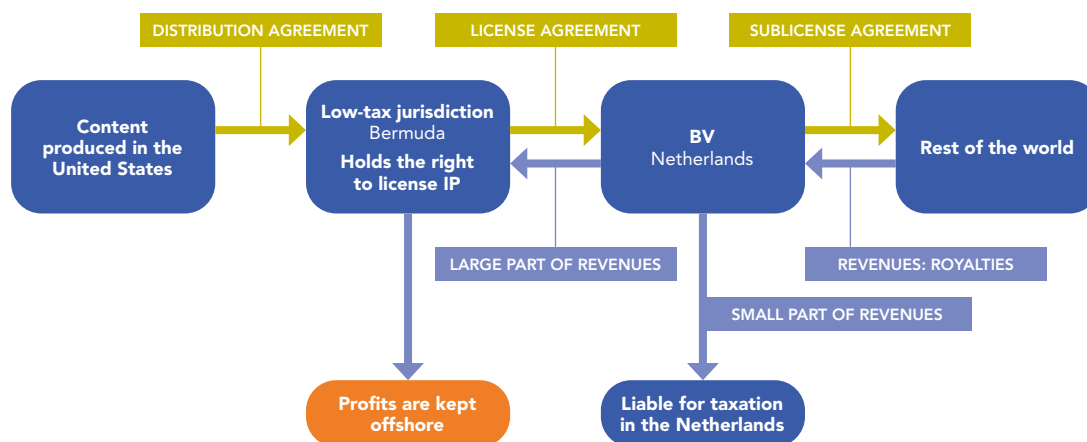
67 WVI Films BV and CBS International (Netherlands) BV and CBS Broadcast International BV.

68 WVI Films BV, CBS International (Netherlands) BV and CBS Broadcast International BV. The other two Netherlands-based CBS entities that reported substantial royalty revenues in the period after 2010 do not have publicly available annual accounts for the years prior to 2010.

69 WFI Films BV, Annual Report 2006, p. 23.

70 PWC website, Worldwide Tax Summaries, "Bermuda: Corporate - Taxes on corporate income", 7 February 2021, <<https://taxsummaries.pwc.com/bermuda/corporate/taxes-on-corporate-income>> (18 May 2021).

Figure 2 Tax scheme used by CBS Corporation during the period 2005-2010



Corporate tax avoidance by CBS: 2005-2010

Based on the available information, there are three Dutch subsidiaries⁷¹ that generated revenue based on sublicensing and passed the royalty income on to Bermuda. However, the annual accounts of these three subsidiaries are only available for some of the years between 2005 and 2010. There is a high probability⁷² that two other CBS subsidiaries also channelled revenues to Bermuda, but no annual accounts are available for these subsidiaries for the period under investigation. Also, the IP licensing entity in Bermuda has not published any annual accounts. Based on the information that is available from the three Dutch entities, about \$586 million in royalties were transferred to Bermuda, and these royalties remained untaxed during the period 2005-2010. However, as this calculation is based on the limited availability of annual accounts, the actual royalty payments to Bermuda were probably much larger.

71 WVI Films BV, CBS International (Netherlands) BV and CBS Broadcast International BV.

72 In the available annual accounts, it is described that the two subsidiaries, WVI Films and CBS-CSI International BV, had been distributing royalties to the Luxembourg IP licensor since 2010. As this Luxembourg IP licensor obtained its IP licensing rights from two corresponding IP licensing entities based in Bermuda, it is highly likely that both WVI Films and CBS-CSI International BV distributed royalties to Bermuda in the period before 2010.

CBS Corporation's IP in Luxembourg: 2010-2016

On 12 May 2010, CBS Corporation's IP licensing rights were transferred from Bermuda to five partnerships in Luxembourg.⁷³ With the transfer of IP licensing rights from Bermuda to Luxembourg, CBS Corporation changed its tax avoidance structure (see Figure 3). Following this new structure, each of the Luxembourg partnerships had a distribution agreement with an affiliated US subsidiary where the original content was produced. Through these distribution agreements, the partnerships obtained the right to license the CBS Corporation content. In turn, the Luxembourg partnerships licensed the content to one of the five Dutch BVs,⁷⁴ which subsequently sublicensed the content further abroad.⁷⁵ The revenues collected by the five Dutch BVs were then distributed back to the intermediate licensors: the Luxembourg partnerships.

Effectively, the Luxembourg partnerships distributed 65% of the royalty income (based on the royalty income received at the level of the Dutch entity) to the ultimate US licensor, and retained the remaining revenue as gross profit. In other words, about 65% of the royalty income received at the level of the Dutch entity was distributed to the United States during the period 2010-2016. As the Luxembourg partnership was not subject to corporate income taxation in Luxembourg, the remaining revenues remained untaxed. The five Luxembourg partnerships were all registered at Rue de Glacis 1 in Luxembourg City, the same registered address as the trust company Alliance Revision.⁷⁶ Throughout the course of 2011, all of the partnerships were moved to a new address in Luxembourg and registered through the Capita Fiduciary S.A. trust company.⁷⁷

All five Luxembourgish partnerships had one general and one limited partner (see Figure 3). The limited partner, with a 99.99% interest in the partnership, was incorporated in the Netherlands.⁷⁸ This Dutch limited partner was a partnership itself, called PTC Holdings C.V.⁷⁹ The Dutch partnership was also administered by a general and a limited partner.⁸⁰ The limited partner, with a 99.93% interest, was the Luxembourgish entity CBS Luxembourg Sàrl.⁸¹

73 CBS-CSI Distribution - CBS-Lux Holding LLC S.C.S., Annual Report 2010, p. 10; CBS Broadcast Kingworld - CBS-Lux Holding LLC S.C.S., Annual Report 2010, p. 10; CBS Showtime - CBS-Lux Holding LLC S.C.S., Annual Report 2010, p. 10; CBS Worldvision - CBS-Lux Holding LLC S.C.S., Annual Report 2010, p. 10; CBS Studios - CBS-Lux Holding LLC S.C.S., Annual Report 2010, p. 10.

74 CBS-CSI International BV, Annual Report; CBS Broadcast International BV; WVI Films BV; Showtime Distribution BV; CBS International (Netherlands) BV.

75 CBS-CSI International BV, Annual Report 2011, p. 4 & 7; CBS Broadcast International BV, Annual Report 2014, p. 4; WVI Films BV, Annual Report 2010, pp. 4 & 15; Showtime Distribution BV, Annual Report 2013, pp. 4 & 18; CBS International (Netherlands) BV, Annual Report 2014, p. 25.

76 Alliance Revision, "Welcome", no date, <<https://www.alliance-revision.lu/welcome,1.html>> (18 May 2021).

77 Registre de Commerce et des Sociétés Luxembourg, "CBS Showtime - CBS-Lux Holding LLC S.C.S.: Modification siège social [Modification of registered office]", 29 July 2011, <https://www.lbr.lu/mjrscs/jsp/DisplayConsultDetailCompanyAction-NotSecured.action?time=1621588099314&CURRENT_TIMESTAMP_ID=1621588080200#null> (21 May 2021).

78 The general partner, with a 0.001% interest in the partnership, was incorporated in Delaware, United States.

79 PTC Holdings C.V., Annual Report 2010, p. 2.

80 The general partner of PTC Holdings C.V., with 0.07% of the shares, was the Bermudian subsidiary CBS Worldwide Ltd.

81 Ibid.

At the end of 2009, CBS Luxembourg Sàrl⁸² issued nearly \$5 billion in Intellectual Property Convertible Preferred Equity Certificates, or (IP)CPECs. These equity certificates were acquired by CBS International Inc., a subsidiary incorporated in the United States.⁸³ With the (IP)CPECs, interest payments transferred to CBS International Inc. could be recorded as expenses and deducted from the gross income in Luxembourg. As the interest payments paid by the Luxembourgish subsidiary to the US subsidiary CBS International Inc. were considered dividend payments for US tax purposes, no income tax had to be paid in the United States.⁸⁴

Furthermore, as the interest payments were accrued at the level of the Luxembourg entity, dividend payments only became subject to US taxation once distributed to the United States. In reality, interest payments were not distributed to the US and were accounted for as accrued interest payments at the level of CBS Luxembourg Sàrl.⁸⁵ In addition, no withholding tax was levied on the international interest or dividend transactions from Luxembourg to the United States.⁸⁶

By paying out the same amount of interest it received in portfolio income, CBS Luxembourg Sarl managed to deplete its net income and limit the tax it owed in Luxembourg. The CBS Luxembourg Sàrl annual reports from 2010 to 2016⁸⁷ state that the interest payments were automatically linked with the corresponding income: “IPCPECs accrue with a fixed yield of 1% plus a variable yield of 99% of net portfolio income, which includes the gains and losses on certain of the company’s assets and/ or liabilities.⁸⁸ In other words, all income received by the entity CBS Luxembourg Sàrl was included as (IP)CPEC yield. During the period 2010-2016, (IP)CPEC-based interest/dividend payments totalled more than \$2.35 billion.⁸⁹

As this “tax avoidance instrument” was created through a mismatch resulting from differences in qualification, in this case stemming from discrepancies between US and Luxembourg tax laws, the instrument is referred to as a “hybrid instrument”. As a result of this tax avoidance structure, no corporate income tax was paid on the amount equivalent to \$2.35 billion in revenues at the level of CBS Luxembourg Sàrl throughout the period 2010-2016.

82 This Luxembourg subsidiary was also registered at the address of the trust company Alliance Revision, and also moved during the course of 2011 to the address of the Capita Fiduciary S.A. trust company.

83 CBS Luxembourg Sàrl, Annual Report 2010, p. 11.

84 J.L. Cummings, “Convertible preferred equity certificates”, Lexology, 13 July 2011, <<https://www.lexology.com/library/detail.aspx?g=d9546d27-f284-4fec-ad63-b9b20b3dd084>> (18 May 2021); “Tax reform and the tax treatment of financial products: Joint hearing before the United States Senate Committee on Finance and the United States House of Representatives Committee on Ways and Means”, 112th Congress, 6 December 2011, <<https://www.finance.senate.gov/imo/media/doc/75771.pdf>> (18 May 2021).

85 CBS Luxembourg Sàrl, Annual Report 2013, p. 11; Annual Report 2014, p. 16; Annual Report 2015, p. 16.

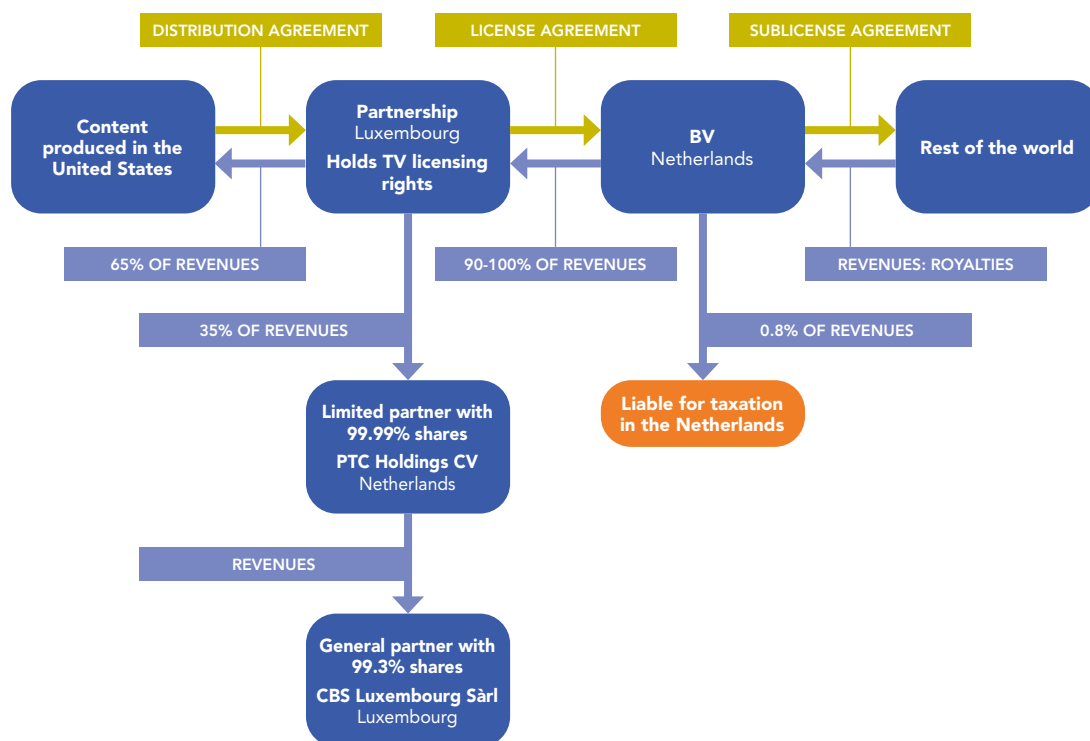
86 Creatrust website, Intradomus, “Hybrid instrument: Structured products”, no date, <<https://www.intradomus.net/en/Hybrid-Instrument-Structured-products-144.html>> (18 May 2021).

87 CBS Luxembourg Sàrl, Annual Report 2010, p. 18; Annual Report 2011, p. 14; Annual Report 2012, p. 11; Annual Report 2013, p. 11.

88 This text changed to some extent from 2013 onwards: “IPCPECs accrue with a fixed yield of 1% of their average par value plus a variable yield calculated so as to amount 100% of net financial result and 100% of the net times the average par value of an IPCPEC.” CBS Luxembourg Sàrl, Annual Report 2013, p. 11; Annual Report 2014, p. 16; Annual Report 2015, p. 16.

89 CBS Luxembourg Sàrl, Annual Report 2010, p. 18; Annual Report 2011, p. 14; Annual Report 2012, p. 11; Annual Report 2013, p. 11; Annual Report 2014, p. 18; Annual Report 2015, p. 18.

Figure 3 Tax scheme used by CBS Corporation during the period 2010-2016



Corporate tax avoidance by CBS: 2010-2016

The annual reports of all five Luxembourgish partnerships are available for the years 2010 through 2015. Unfortunately, none of their annual reports are available for 2016. The total amount of royalties obtained from the Dutch entities can be calculated based on the information available from the Luxembourg partnerships. Furthermore, information about the amount charged by the ultimate IP holders in the United States is available in the annual accounts of the Luxembourg partnerships. Based on this information, the total amount of royalties retained at the level of the five Luxembourg partnerships throughout the period 2010-2015 totals \$1.5 billion.

CBS Corporation ultimately relocated its IP licencing rights from Luxembourg to the Netherlands at the beginning of September 2016. As the annual accounts of the Luxembourgish partnerships are not available for 2016, no information can be obtained concerning the royalties retained by the partnerships in 2016. Nonetheless, it can be derived from the 2016 annual account of CBS Luxembourg Sàrl that accrued (IP)CPEC interest payments over the period 2010-2016 totalled \$2.35 billion. In other words, through the incorporation of the Luxembourg entities in the CBS corporate structure, about \$2.35 billion of the company's income remained untaxed.

The tax scheme shown above lasted until 2016. CBS Corporation does not provide any information about the logic behind restructuring its tax scheme at that point. Nonetheless, important legislative and regulatory changes occurred in Luxembourg during the course of 2015 and 2016 that could explain the liquidation of all CBS entities in that country.

One possible explanation is the potential reputational damage to CBS Corporation from having registered entities in Luxembourg. Following “Lux Leaks” in November 2014,⁹⁰ concern by multinationals about tarnishing their images impacted the attractiveness of including Luxembourg in their international tax avoidance structures. Following international media attention for the country’s so-called “sweetheart deals”,⁹¹ many US multinationals, including McDonalds, moved their business away from Luxembourg in order to prevent potential reputational damage.⁹² A similar reasoning might have evoked the exodus from Luxembourg by the CBS entities.

A second explanation is the amendment of certain EU directives with regard to tackling specific tax avoidance structures that use hybrid instruments.⁹³ From 2016 onwards, all EU member states were obliged to implement these amendments. The amendments were aimed at stopping situations of double non-taxation created by the use of certain hybrid instruments, such as (IP)CPECs, and at incorporating a general anti-abuse rule (GAAR) into the EU Parent-Subsidiary Regime directive. Following these amendments, payments to the Luxembourg subsidiary (CBS Luxembourg Sàrl) based on the (IP)CPEC would no longer lead to a hybrid treatment of the (IP)CPEC equity /debt. In other words, the fiscal attractiveness of the (IP)CPEC instrument disappeared with the implementation of this legislation.⁹⁴

CBS Corporation’s IP in the Netherlands: September 2016-March 2019

At the beginning of September 2016, CBS Corporation’s IP licensing rights were moved again, this time to the newly established partnerships (CVs) in the Netherlands.⁹⁵ These Dutch partnerships were organised under Dutch law and administered (and therefore registered at an address) in Delaware, and had no employees. The Dutch partnerships started sublicensing content directly CBS’ Dutch BVs.⁹⁶ The logic for establishing this so-called “CV/BV structure” in the Netherlands is explained below.

90 In the “Lux Leaks” exposé of 6 November 2014, the International Consortium of Investigative Journalists revealed that the Luxembourg tax authority had been a key player in arranging favourable tax rate deals for businesses.

91 “Sweetheart deals” refer to advance pricing agreements (APAs) between multinational entities and tax authorities to establish how the multinational entities’ transfer pricing arrangements will be treated for tax purposes in the countries covered by the APAs.

92 J. Brundsen, “LuxLeaks: Luxembourg’s response to an international tax scandal”, *Financial Times*, 23 June 2017, <<https://www.ft.com/content/de228b90-3632-11e7-99bd-13beb0903fa3>> (18 May 2021).

93 European Union, Council Directive (EU) No. 2015/121, 27 January 2015, “Amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States”, <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L0121>> (18 May 2021).

94 De Brauw Blackstone Westbroek, “Luxembourg bill implements anti-abuse and anti-hybrid rules for EU intra-group dividends”, 9 September 2015, <<https://www.debrauw.com/legalarticles/luxembourg-bill-implements-anti-abuse-anti-hybrid-rules-eu-intra-group-dividends/>> (18 May 2021).

95 CBS Broadcast Kingworld Distribution C.V., Annual Report 2016, pp. 3 & 10; CBS CSI Distribution C.V., Annual Report 2016, pp. 3 & 10.; CBS Showtime Distribution C.V., Annual Report 2016, pp. 3 & 10; CBS Studios Distribution C.V., Annual Report 2016, pp. 3 & 10; CBS Worldvision Distribution C.V., Annual Report 2016, pp. 3 & 10.

96 Ibid.

CV/BV structure

The CV/BV structure is an infamous tax planning mechanism that was used by US multinationals during the period 2005-2019 to avoid paying income tax on their non-US profits. In order to create a CV/BV structure, a company must create a so-called “closed” Dutch limited partnership (the CV). As the management of the CBS Corporation’s partnerships (through the general partner) takes place in Delaware, the Dutch Revenue Authority refrains from taxing the partnership. The CV generally holds all the shares in the corresponding BV. The BV then distributes the earnings to the CV, which would be royalties when the BV acts as an IP licensing company⁹⁷.

Key in this CV/BV structure is the absence of taxation at the level of the CV; due to a well-known mismatch in Dutch and US legislation, both revenue authorities refrain from taxation.⁹⁸ The profits realised by the Dutch CV, with the limited partner residing outside the Netherlands, are only taxed by the US revenue authorities in the case that the income is repatriated back to the United States.⁹⁹ However, companies that make use of the CV/BV structure generally avoid repatriating the profits back to the US. To that end, most retained earnings are accrued (and sometimes reinvested) outside the United States.¹⁰⁰

Distribution agreements

Like the Luxembourg partnerships during the period 2010-2016, all of the Dutch partnerships had a distribution agreement with an affiliated US subsidiary where the original content was produced. Through the distribution agreement, the partnership obtained the right to license the CBS Corporation content. The Dutch partnerships then licensed the content to one of the five BVs, which subsequently sublicensed the content further abroad (either within or outside Europe).¹⁰¹ For example, the Dutch CBS Studios Distribution C.V. had a distribution agreement with CBS Studios Inc., the US-based owner of most of the content of the former CBS Corporation.¹⁰² The Dutch CV then licensed the content to CBS International (Netherlands) BV, which sold content to related subsidiaries and customers in Europe, Africa, Asia and Australia.¹⁰³ CBS International (Netherlands) BV

97 J. Vleggeert, “What about CV-BV structures and state aid?”, Leiden Law Blog, 20 April 2015, <<https://leidenlawblog.nl/articles/what-about-cv-bv-structures-and-state-aid>> (18 May 2021).

98 Tweede Kamer der Staten-Generaal, Kamerstuk 25087 nr. 153 bijlage 1, 23 May 2017, “Beschrijving stand van zaken APA-/ATR-praktijk 2017” (in Dutch), “Description state of affairs APA/ATR practices 2017”, translation by author, p. 26, <<https://zoek.officielebekendmakingen.nl/blg-808253>> (18 May 2021).

99 J. Vleggeert, “What about CV-BV structures and state aid?”, Leiden Law Blog, 20 April 2015, <<https://leidenlawblog.nl/articles/what-about-cv-bv-structures-and-state-aid>> (18 May 2021).

100 Tweede Kamer der Staten-Generaal, Kamerstuk 25087 nr. 153 bijlage 1, 23 May 2017, “Beschrijving stand van zaken APA-/ATR-praktijk 2017”, (in Dutch), “Description state of affairs APA/ATR practices 2017”, translation by author, p. 26, <<https://zoek.officielebekendmakingen.nl/blg-808253>> (18 May 2021).

101 CBS-CSI International BV, Annual Report 2018, pp. 3 & 14; CBS Broadcast International BV, Annual Report 2018, pp. 4 & 14; WVI Films BV, Annual Report 2018, pp. 13 & 3; Showtime Distribution BV, Annual Report 2018, pp. 3 & 14; CBS International (Netherlands) BV, Annual Report 2018, pp.5 & 35.

102 CBS Studios Distribution C.V., Annual Report 2017, p. 4.

103 CBS International Netherlands BV, Annual Report 2017, p. 2.

then collected and distributed the royalties to the related Dutch CV.¹⁰⁴ The Dutch CV then had the obligation to distribute 65% of the royalty income to its ultimate licensor (CBS Studios Inc.) in the United States, retaining the remaining revenue as income.¹⁰⁵ As the partnership is not taxable in the Netherlands, the partnership's profits remained untaxed until its repatriation, via its partners, to the US.¹⁰⁶

It is not clear on what basis the Luxembourg and Dutch partnerships were able to collect close to 35% of the revenue as income during the period between 2010 and 2019. Generally, the distribution agreement should result from a transfer pricing analysis based on the functional analysis of the parties and, in the absence of good market comparables, on the value of the relative contributions of the parties to generating profits for the group. If one of the parties performs relevant decision-making functions with regard to key risks of the business, or carries out fundamental functions with regard to the IP (also known as DEMPE - Development, Enhancement, Maintenance, Protection and Exploitation), this should be reflected in the profit split, with more profits being allocated to the parties carrying the most risks or responsibilities. If the distributor performs some of the DEMPE functions, it might also be entitled to keep profits from the IP.¹⁰⁷ Most value-added distributors earn a profit margin of approximately 4% (i.e. earnings before interest and taxes (EBIT) as well as sales).¹⁰⁸ A return of close to 35% of the billed revenue suggests that the distributor performs some of the DEMPE functions with regard to valuable intangibles and makes some of the key decisions regarding business risk for the group.

However, the fact that the CBS partnerships in the Netherlands and Luxembourg did not employ personnel¹⁰⁹ does not support the argument that the partnerships carry out important DEMPE functions or other key decision-making processes. The allocation of about 35% of the billed revenue to the income of the partnerships that did not employ any personnel is therefore highly questionable, and does not appear to follow the logic of transfer pricing. Furthermore, it is unclear where the actual DEMPE functions with regard to the IP licensing have taken place.

104 CBS International Netherlands BV, Annual Report 2017, pp. 2, 3 & 9.

105 CBS Studios Distribution C.V., Annual Report 2017, pp. 6 & 10.

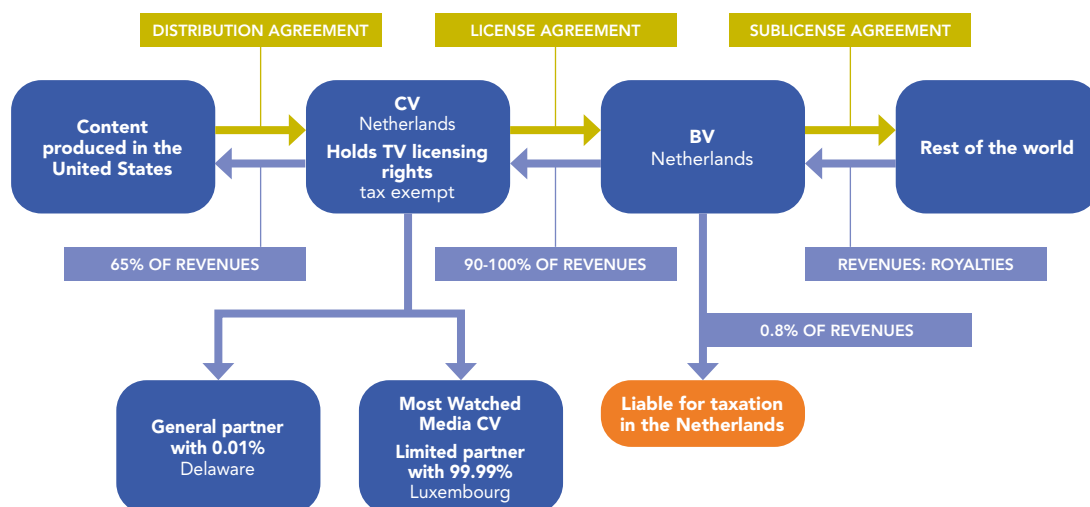
106 CBS Studios Distribution C.V., Annual Report 2017, p. 9.

107 OECD, "OECD transfer pricing guidelines for multinational enterprises and tax administrations", (Paris: OECD Publishing, July 2017) <<http://dx.doi.org/10.1787/tpg-2017-en>> (18 May 2021).

108 KPMG, "Transfer pricing analysis of arm's length returns to sales, market & distribution activities", February 2020, <<https://tinyurl.com/KPMG-TPreport>> (18 May 2021).

109 CBS Broadcast Kingworld Distribution C.V., Annual Report 2016, p. 14; CBS CSI Distribution C.V., Annual Report 2016, p. 14.; CBS Showtime Distribution C.V., Annual Report 2016, p. 14; 2016, p. 4; CBS Studios Distribution C.V., Annual Report 2016, p. 14; CBS Worldvision Distribution C.V., Annual Report 2016, pp. 3 & 14. The Luxembourg partnerships do not explicitly state that no personnel are employed. However, none of the annual reports of the partnerships account for staff costs: CBS CSI Distribution - CBS-Lux Holding LLC S.C.S., Annual Report 2015, p. 7; CBS Broadcast Kingworld - CBS-Lux Holding LLC S.C.S., Annual Report 2015, p. 7; CBS Showtime - CBS-Lux Holding LLC S.C.S., Annual Report 2015, p. 7; CBS Worldvision - CBS-Lux Holding LLC S.C.S., Annual Report 2015, p. 7; CBS Studios - CBS-Lux Holding LLC S.C.S., Annual Report 2015, p. 7.

Figure 4 CV/BV structure used by CBS Corporation during the period 2016-2019



The above diagram shows that CBS Corporation’s media content is produced in the United States. CBS’s subsidiaries in the United States then redistributes the TV licensing rights abroad. During the period 2016-2019, the distribution agreement was provided to the Dutch partnerships (CVs) located in Delaware. As shown in the previous diagram, the content was then licensed by the CVs to the Dutch BVs, which sublicensed the content worldwide. In this example, the Dutch BV distributed the generated revenue back to the partnership. Based on the distribution agreement, the partnership subsequently returned 65% of the billed revenues (calculated at the level of the BV) to the licensor in the United States. The remaining revenues were retained at the level of the partnership or were distributed to the partners of the partnership (as happened at the end of 2018). As the income of the partnerships was not taxed by Dutch and US tax authorities, the remaining revenue was also not taxed.

During the period between 2016 and 2019, most of the royalties of CBS Corporation that were received at the level of the BV were channelled to the Dutch CVs. By nature, CVs administered abroad are not subject to taxation in the Netherlands. The income generated by the CVs was taxed at the level of the partners after the income had eventually been distributed to them. However, in the first two years of incorporation (2016 and 2017), all of the profits that were realised at the level of the Dutch CVs (around \$500 million) were retained.¹¹⁰ It was only in 2018 that the income was distributed to the partners, following the change in ownership of the five partnerships described below.

¹¹⁰ CBS Broadcast Kingworld Distribution C.V., Annual Report 2016/2017, p. 3; CBS CSI Distribution C.V., Annual Report 2016/2017, p. 3; CBS Showtime Distribution C.V., Annual Report 2016, p. 3; Annual Report 2017, p. 4; CBS Studios Distribution C.V., Annual Report 2016/2017, p. 3; CBS Worldvision Distribution C.V., Annual Report 2016, p. 3; Annual Report 2017, p. 4.

Change of ownership

On 30 August 2018, Most Watched Media C.V., the limited partner of all five Dutch partnerships, contributed and transferred its 99.99% interest in the partnership to Columbia Broadcasting System International (Barbados) SRL in Barbados.¹¹¹ Subsequently, the five partnerships started distributing a large part of their retained earnings in the form of dividends to their partners. After this change in ownership of the partnership, practically all of the distributed dividends (amounting to more than \$720 million) were collected by the limited partner in Barbados (with 99.99% interest in the partnership).¹¹² In Barbados, the corporate income tax for large foreign companies is approximately 1%.¹¹³ According to this new structure, the corporate income tax that needed to be paid over the distributed profits of \$720 million was only 1% of the total.

Although ViacomCBS did not specify the reason for altering its tax structure, this was in part likely related to changes in tax legislation. The so-called CV/BV structure became less appealing following legislative changes in both the United States and the Netherlands. Following the US Tax Cuts and Jobs Act reform of 2017, the taxation of US multinationals' foreign profits changed significantly. More specifically, the Global Intangible Low-Taxed Income (GILTI) that was introduced by the United States had the purpose of discouraging companies from using intellectual property to shift profits out of the country. Following this tax reform, profits that were shifted to a formerly non-taxable Dutch partnership¹¹⁴ became liable for taxation in the US at a rate between 10.5 and 13.12%.¹¹⁵ In other words, the attractiveness of the CV/BV structure substantially decreased following the implementation of the GILTI legislation in 2018. Furthermore, EU member states agreed in 2017 on the implementation of ATAD II¹¹⁶, a directive aimed at preventing hybrid mismatches. This legislation, which was implemented in the Netherlands on 1 January 2020, has most certainly put an end to the fiscal attractiveness of this type of CV/BV structure.¹¹⁷

The later change of ownership of the Dutch CBS partnerships to an entity in Barbados in August 2018 and the relocation of licensing rights from the Netherlands to the UK in March 2019 were also most likely spurred by the changes in US and Dutch tax legislation as explained above.

111 CBS Showtime Distribution C.V., Annual Report 2018, p. 3.

112 CBS Broadcast Kingworld Distribution C.V., Annual Report 2018, p. 9; CBS CSI Distribution C.V., Annual Report 2018, p. 10.; CBS Showtime Distribution C.V., Annual Report 2018, p. 11; CBS Studios Distribution C.V., Annual Report 2018, p. 13; CBS Worldvision Distribution C.V., Annual Report 2018, p. 10.

113 PWC website, Worldwide Tax Summaries, "Barbados: Corporate: Taxes on corporate income", 29 January 2021, <<https://taxsummaries.pwc.com/barbados/corporate/taxes-on-corporate-income>> (18 May 2021).

114 Partnerships in the Netherlands are regarded as transparent (not classified as a taxable entity for Dutch fiscal purposes) and are therefore not liable for taxation in the Netherlands.

115 B. Rasch & J. Kaplan, "Insight: Fundamentals of tax reform: GILTI", Bloomberg Tax, 16 November 2018, <<https://news.bloombergtax.com/daily-tax-report/insight-fundamentals-of-tax-reform-gilti>> (18 May 2021).

116 European Union, Council Directive (EU) No. 2017/952, 29 May 2017, "Amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries", <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2017.144.01.0001.01.ENG> (18 May 2021).

117 Baker McKenzie, "Dutch government publishes ATAD 2 implementation bill", 9 July 2019, <<https://www.bakermckenzie.com/en/insight/publications/2019/07/dutch-government-publishes-atad-2>> (18 May 2021).

Corporate tax avoidance by CBS: September 2016 - March 2019

There is only limited information available regarding the five Dutch partnerships. The annual accounts of the five Dutch entities (which sublicensed the content licensed by the five Dutch CBS partnerships) provide information about royalty flows in 2016, 2017 and 2018. Throughout the period September 2016 - December 2016 about \$97 million in royalties was accrued at the level of the Dutch partnerships (what remained after payments to the ultimate IP licensor in the US). In 2017, \$378 million in royalty income was accrued at the level of the Dutch partnerships. In 2018, royalty-based revenues increased, and about \$402 million in royalty income was retained. The share of royalty income retained at the level of the Dutch partnerships throughout the period January 2019 - March 2019 was about \$119 million.¹¹⁸ The total amount withheld from US tax authorities in the period between 2016-2019 was thus \$996 million.

The shift of CBS Corporation's IP licensing rights to the UK

On 30 August 2018, the Most Matched Media C.V. limited partner contributed into company and transferred ownership of the Dutch partnership, with a combined net value of \$5.66 billion, to Columbia Broadcasting System International (Barbados) SRL., based in Barbados.¹¹⁹ A few months later, on 29 March 2019, all of the assets and liabilities of the partnership itself, including those of the five Dutch partnerships, were contributed to a UK-based CBS subsidiary, called CBS Studios Distribution UK Limited.¹²⁰

From March 2019 onwards, the sublicensing of CBS Corporation's content to the Dutch BVs took place via this UK subsidiary.¹²¹ And since 29 March 2019, this UK subsidiary has held the intangible property relating to CBS Corporation's media content¹²² on its balance sheet, with a value of \$4.5 billion.¹²³

118 The amount of royalties distributed by the five CBS Corporation entities in the Netherlands to both the Dutch partnerships and the UK entity in 2019 was \$1.07 billion. As the UK entity received about \$730 million, about \$340 million must have been distributed to the Dutch partnerships. Following the distribution agreement with the US studios, the cost of sales recognised by the US company (the ultimate licensor) is calculated at 65% of the revenue recognised by the Dutch registered BVs as described above. Therefore, about \$119 million (35% of \$340 million) remained tax exempt at the level of the Dutch partnerships for the year 2019.

119 CBS CSI Distribution C.V., 2018, Annual Report 2018, p. 3; BS Showtime Distribution C.V., Annual Report 2019, p. 3; CBS Worldvision Distribution C.V., Annual Report 2018, p. 3; CBS Broadcast Kingworld Distribution C.V., Annual Report 2018, p. 3; CBS Studios Distribution C.V, Annual Report 2018, p. 3.

120 Ibid.

121 CBS Studios Distribution UK limited, Annual Report 2019, p. 1.

122 The reported intangible assets (TV licenses) retained by CBS Studios Distribution UK Limited were developed by the following US-based ViacomCBS subsidiaries: CBS Studios Inc., Showtime Network Inc., CBS Broadcasting Inc., CBS Broadcast International and Worldvision Enterprises Inc. CBS Studios Distribution UK Limited, Annual Report 2019, p. 16.

123 CBS Studios Distribution UK Limited, Annual Report 2019, p. 16.

Since March 2019, following the shift of CBS Corporation's IP licensing rights to the United Kingdom, the revenues received by the Dutch subsidiaries have been channelled towards the CBS Studios Distribution UK Limited subsidiary in the UK. CBS Studios Distribution UK Limited has only license agreements with Dutch companies, and does not collect revenue from the UK consumer market.¹²⁴ For the period April-December 2019, these revenues totalled about \$730 million.¹²⁵

The annual reports of the UK subsidiaries are only available for 2019. At that time, the UK company reported that they had no personnel.¹²⁶ The company, which was incorporated in November 2018, is registered at the office of the CMS Cameron McKenna Nabarro Olswang LLP tax advisory company.¹²⁷ Like the Dutch partnerships, the UK company CBS Studios Distribution UK Limited is obliged to distribute 65% of the revenues, collected at the level of the Dutch registered BVs, to the ultimate IP licensor in the United States.¹²⁸

Corporate tax avoidance by CBS: March 2019 – December 2019

From April 2019 onward, the five CBS Corporation subsidiaries in the Netherlands started distributing their revenues to the UK. In total, about \$730 million was distributed to the UK subsidiary during the period between April and December 2019.¹²⁹ The annual report of the UK subsidiary states that "pursuant to the sublicense, the Company recognizes 100% of the licensee royalty share as revenue".¹³⁰ It is furthermore stated that all \$730 million in revenue stemmed from the sublicensing of CBS Corporation's content.¹³¹ As with the Dutch and Luxembourg partnerships, 65% of the obtained revenues were distributed to the United States. As a consequence thereof, about \$255 million in 2019 royalty revenues were not included in ViacomCBS' US corporate income tax base. Furthermore, as will be explained below, close to zero corporate income tax was paid in the United Kingdom on the income realised by CBS Corporation in 2019.

124 CBS Studios Distribution UK Limited, Annual Report 2019, pp. 3 & 7.

125 CBS Studios Distribution UK Limited, Annual Report 2019, pp. 16 & 17

126 CBS Studios Distribution UK Limited, Annual Report 2019, pp. 3 & 7.

127 Companies House register, "CBS International Holdings UK Limited", no date, <<https://find-and-update.company-information.service.gov.uk/company/11605619>> (18 May 2021); Companies House register, "Columbia Broadcasting System Holdings UK Limited", no date, <<https://find-and-update.company-information.service.gov.uk/company/11682614>> (18 May 2021); Companies House register, "CBS Studios Distribution UK Limited", no date, <<https://find-and-update.company-information.service.gov.uk/company/11682919>> (18 May 2021).

128 CBS Studios Distribution UK Limited, Annual Report 2019, pp. 16 & 17.

129 CBS Studios Distribution UK Limited, Annual Report 2019, pp. 16 & 17.

130 Ibid.

131 CBS Studios Distribution UK Limited, Annual Report 2019, p. 17.

The logic behind relocating IP licensing rights to the UK

In 2019, CBS Corporation moved its IP licensing rights, which were held by the Dutch partnerships, via a subsidiary incorporated in Barbados to CBS International Holdings UK Limited in the United Kingdom:

“On 29 March 2019 CBS Barbados¹³² contributed into the Company¹³³ \$5,656,000,000 which represented the fair market value of the assets net of the liabilities of five limited partners all organized under the laws of the Netherlands (“DCV”: CBS CSI Distribution C.V., CBS Showtime Distribution C.V., CBS Worldvision Distribution C.V., CBS Broadcast Kingworld Distribution C.V. and CBS Studios Distribution C.V.) and the novation of the DCVs bank accounts.”¹³⁴

On the same date, CBS International Holdings UK Limited contributed all of the assets and liabilities obtained from the five Dutch partnerships to its wholly owned subsidiary, CBS Studios Distribution UK Limited:

“On 29 March 2019 the Company made a contribution of \$5,656,000,000 which represented the fair market value of the assets net of the liabilities of DCVs and the novation of DCV bank accounts into the share capital of CBS Studios Distribution UK Limited for consideration of \$1,000,000,000 additional share capital and \$4,656,999,000 share premium. And adjustment of the purchase price established subsequently reduced the fair market value by \$80,312,482 to \$5,575,687,618.”¹³⁵

Following that transaction, CBS Studios Distribution UK Limited was able to amortise¹³⁶ IP assets worth \$4.5 billion:

“The intangible assets amortization is related to the net asset contribution of \$5,575,687,519 received from the parent on 29th March 2019 which included an Intangible asset of \$4,500,000,000, being the fair value of the licenses contributed by the parent entity. Management has determined that the useful life of the Intangible asset of 20 years commencing from the 1st April 2019.”¹³⁷

132 Columbia Broadcasting System International (Barbados) SRL.

133 CBS International Holdings UK Limited.

134 CBS International Holdings UK Limited, Annual Report 2019, p. 3.

135 Ibid.

136 Amortization is an accounting technique used to periodically lower the book value of an intangible asset over a set period of time. When applied to an asset, amortization is similar to depreciation.

137 CBS Studios Distribution UK Limited, Annual Report 2019, p. 17.

Corporate tax avoidance by CBS – UK base erosion payments since 2015

Through selling the IP licensing rights kept by the Dutch partnership (worth \$4.5 billion) through the Barbados subsidiary, an amortisable asset worth \$4.5 billion was created in the UK to offset future profits (for a maximum period of 20 years). The annual report of the Barbados subsidiary is not publicly available, and it is therefore not known how the subsidiary accounted for the sale of the IP asset. As Barbados does not levy a capital gains tax on the sale of foreign assets, the sale has most probably not undergone accounting for taxation in Barbados.¹³⁸ If the sale had incurred the payment of corporate income tax in Barbados, it would have been very limited considering the corporate income tax rate of 1% for large international businesses.¹³⁹ In such a case, a maximum corporate income tax of \$45 million¹⁴⁰ would have been paid on the profits realised by Columbia Broadcasting System International (Barbados) SRL. The transaction, however, created the possibility for CBS Studios Distribution UK Limited to offset gross profits worth \$4.5 billion. As the corporate income tax rate in the United Kingdom is at the time of writing 19%,¹⁴¹ ViacomCBS¹⁴² could possibly avoid up to \$855 million in future¹⁴³ corporate income tax payments.¹⁴⁴

Conclusions

With the separation of Viacom into two separate companies at the end of 2005 (CBS Corporation and Viacom), IP licensing rights were shifted offshore. For CBS Corporation, IP licensing rights were moved to Bermuda in 2005. CBS Corporation's IP licensing rights were shifted again in 2010 (to partnerships in Luxembourg), in 2016 (to partnerships in the Netherlands) and in 2019 (to the UK). Dutch BVs connected with the sublicensing of CBS' IP generated more than \$15 billion in revenues from 2002 onwards. Following tax rulings by the Dutch revenue authority, it was certified that taxable income would only be based on a percentage of the recognised revenue. These tax rulings were further specified in 2011, when it was ascertained that only 0.8% of the billed revenue would be included in the taxable income. Therefore, almost no taxable income remains in the Netherlands.

138 PWC website, Worldwide Tax Summaries, "Barbados: Corporate: Income determination", 29 January 2021, <<https://taxsummaries.pwc.com/barbados/corporate/income-determination>> (18 May 2021).

139 PWC website, Worldwide Tax Summaries, "Barbados: Corporate: Taxes on corporate income", 29 January 2021, <<https://taxsummaries.pwc.com/barbados/corporate/taxes-on-corporate-income>> (18 May 2021).

140 1% of 4.5 billion.

141 PWC website, Worldwide Tax Summaries, "United Kingdom Corporate - Taxes on corporate income", 12 January 2021, <<https://taxsummaries.pwc.com/united-kingdom/corporate/taxes-on-corporate-income>> (21 May 2021).

142 CBS Corporation until the end of 2019.

143 The intangible asset amortisation was already booked as an administrative expense in the 2019 annual account of the UK entity. The IP asset amortisation reduced gross profits by an amount of \$168,750,00 in 2019. CBS Studios Distribution UK Limited, Annual Report 2019, pp. 10 & 17.

144 19% of \$4.5 billion = \$855 million (using the 2021 UK corporate income tax rate of 19%).

From 2010 onwards, CBS Corporation started distributing 65% of its incoming revenues to the licensor in the United States.¹⁴⁵ In this period, close to one third of total revenues passed on to low-tax jurisdictions or non-taxable entities remained untaxed. Through the structures discussed above, about \$4.19 billion in royalty income was passed on to low-tax jurisdictions and non-taxable entities outside the United States between 2005 and 2019. Following the corporate income tax rate applicable to CBS Corporation in the US,¹⁴⁶ the payment of about \$1.46 billion in US corporate income tax has been avoided throughout this period.

The previously discussed March 2019 IP transaction created the possibility for CBS Studios Distribution UK Limited to offset gross profits worth \$4.5 billion. As the corporate income tax rate in the United Kingdom is 19%¹⁴⁷, CBS Corporation¹⁴⁸ could still possibly avoid up to \$855 million in future corporate income tax payments.¹⁴⁹

145 The annual reports of the relevant Bermuda subsidiaries (in the period 2005-2010) are not available. It is therefore unclear whether or not the Bermudian subsidiaries had a similar distribution agreement with the US studios during this period.

146 37.5% during the period 2005-2017 (based on the US Federal Statutory Income Tax of 35% and average state and local taxes of 2.5%, based on the period 2005-2017) and 22.8% in 2018 and 23.2% in 2019 (based on the US Federal Statutory Income Tax rate of 21% in 2018/2019 and relevant state and local taxes of corresponding years). CBS Corporation, Annual Report, 2007, p. II-71; CBS Corporation, Annual Report, 2009, p. II-70; CBS Corporation, Annual Report, 2011, p. II-71; CBS Corporation, Annual Report, 2014, p. II-63; CBS Corporation, Annual Report, 2016, p. II-76; CBS Corporation, Annual Report, 2019, p. II-92. The state and local taxes are not published in CBS Corporation's annual reports. The state and local taxes, as reported in the annual reports of Viacom (situated in the same state of New York) have been used as a proxy.

147 PWC website, Worldwide Tax Summaries, "United Kingdom Corporate - Taxes on corporate income", 12 January 2021, <<https://taxsummaries.pwc.com/united-kingdom/corporate/taxes-on-corporate-income>> (21 May 2021).

148 ViacomCBS since the end of 2019.

149 19% of \$4.5 billion = \$855 million.

Viacom

Tax avoidance structures since 2005

Viacom's IP in Curaçao: 2006-2012

The story for Viacom is different. Following the demerger in 2005, the most important Viacom subsidiary in the Netherlands was Viacom (Global) Netherlands BV. This subsidiary received, on average, close to \$2 billion in annual revenues during the period 2006-2012.¹⁵⁰ In turn, it channelled a substantial part of the received royalties¹⁵¹ to a Dutch partnership, registered in Curaçao (then part of the Netherlands Antilles), called Viacom Overseas Holdings C.V.¹⁵² All annual accounts of Viacom (Global) Netherlands BV state that this entity passed part of the royalty income back to Viacom Overseas Holdings C.V.¹⁵³ This partnership was registered at the address of a tax advisory firm (United International Trust N.V.). For the years 2006-2011, the annual reports of Viacom Overseas Holdings C.V. have not been publicly available.¹⁵⁴

Corporate tax avoidance by Viacom: 2006-2012

The amount of royalty income paid to the partnership is not specified in the annual accounts of Viacom Global (Netherlands) BV. It is stated, however, that the company only employed an average number of 60 "administrative" employees throughout the period 2005-2012.¹⁵⁵ As the company realised annual revenues close to \$2 billion and accounted for costs of sales of about 85%¹⁵⁶ of the generated revenues, it seems highly likely that a large part of the incoming revenues and costs of sales for the Dutch subsidiary were royalty flows based on the sublicensing of Viacom's IP. Only the 2006 and 2007 annual report state how many "costs"¹⁵⁷ were charged by the parent company

150 Viacom (Global) Netherlands BV, Annual Report 2006, p. 7; Annual Report 2007, p. 6, Annual Report 2008, p. 6; Annual Report 2009, p. 8; Annual Report 2010, p. 8; Annual Report 2011, p. 8.; Annual Report 2012, p. 9, Annual Report 2013, p. 9; Annual Report 2014, p. 10; Annual Report 2015, p. 10.

151 Viacom (Global) Netherlands BV, Annual Report 2006, pp. 2 & 28; Viacom Global (Netherlands) BV, Annual Report 2010, p. 9; Viacom Global (Netherlands) BV, Annual Report 2008, pp. 2 & 7.

152 Curaçao Commercial Register, "Viacom Overseas Holdings C.V.", no date, <<http://www.Curaçao-chamber.cw/services/registry/search-company>> (18 May 2021).

153 Viacom (Global) Netherlands BV, Annual Report 2006, p. 28; Annual Report 2007, p. 25, Annual Report 2008, p. 7; Annual Report 2009, p. 9, Annual Report 2010, p. 9; Annual Report 2011, p. 9.

154 United website, "About us", no date, <<https://www.uibt.com/about-us>> (18 May 2021).

155 Viacom (Global) Netherlands BV, Annual Report 2006, p. 23; Annual Report 2007, p. 22, Annual Report 2008, p. 20; Annual Report 2009, p. 24, Annual Report 2010, p. 25; Annual Report 2011, p. 27.

156 Viacom (Global) Netherlands BV, Annual Report 2006, p. 7; Annual Report 2007, p. 6, Annual Report 2008, p. 6; Annual Report 2009, p. 8; Annual Report 2010, p. 8; Annual Report 2011, p. 8.; Annual Report 2012, p. 9, Annual Report 2013, p. 9; Annual Report 2014, p. 10; Annual Report 2015, p. 10.

157 It is not specified whether the "costs" charged by the parent are accounted for as royalties. However, as it is stated in the annual report that Viacom Global (Netherlands) B.V. passes part of the royalty income back to Viacom Overseas Holdings C.V., it is assumed that the "costs" are made up of royalties.

Viacom Overseas Holdings C.V. in Curaçao. The estimated amount of royalties that have been shifted to Curaçao during the years 2006-2011 is based on two assumptions. The first assumption relates to the costs charged by the parent company "Viacom Overseas Holdings C.V.". It is assumed that financial flows going to the Curaçao based mailbox company are made up primarily of royalties. Because Viacom Overseas Holdings C.V. is registered and managed by a trust company in tax haven Curaçao, it seems likely that any payments to it – be they royalties, management fees, or interest payments – are fiscally motivated, shifting profits to low-tax Curaçao. The second assumption relates to the calculated amount of "costs" paid to Viacom Overseas Holdings C.V. by its Dutch subsidiary Viacom Global Netherlands B.V. These costs are about 38% of the generated revenues for the years 2007/8. However, the accounting section "Related Parties", where this information is reported, is not available in the company's annual accounts for later years. Following the theory that Viacom has used Viacom Global Netherlands B.V. as a conduit for royalty flows coming from across the world going to Curaçao, the assumption is made that these flows have stayed stable over time, with the same 38% of revenues the company receives being paid out to its Curaçao-based parent company. As such, the figures derived from this analysis only provide an estimation of profits shifted and tax revenues foregone, as Viacom may have increased or decreased the amount of royalty income shifted to Curaçao during these years.

Doing so, it is estimated that a total amount of \$4.3 billion in royalties have been passed on to Viacom Overseas Holdings C.V. during the period 2006-2011.

As with the CBS Corporation subsidiaries in the Netherlands, Viacom (Global) Netherlands BV obtained rulings by the Dutch revenue authority throughout its period of incorporation in the Netherlands. In the subsidiary's 2006 annual account, the applicable ruling is referred to as follows:

"The effective tax rate for the current year activities is 1.3 %. The result of the current tax is due to exempt elements and application of the ruling." ¹⁵⁸

Similar to the structure used by CBS Corporation during the period between 2016 and 2019, Viacom made use of the CV/BV structure. The Viacom Overseas Holdings C.V. partnership was organised under the laws of the Netherlands but located and managed by a trust in Curaçao. The CV was not taxed on its income (until the repatriation of profits back to the partners in the US), as the CV was not subject to either Dutch or US corporate income tax due to a mismatch in the classification of the CV. All royalty flows directed towards the CV partnership located in Curaçao were kept outside the scope of US tax authorities. It is for this reason that these CV/BV entities are referred to as a hybrid entities.

158 Viacom Global (Netherlands) BV, Annual Report 2006, p. 23.

Viacom's IP in the Netherlands: 2012-2015

Throughout the course of 2012, the Curaçao-based partnership changed its location to the Netherlands.¹⁵⁹ Following this relocation, the revenues distributed by Viacom Global (Netherlands) BV were collected by Viacom Overseas Holdings C.V. in the Netherlands.¹⁶⁰ Following this transition, the management of the partnership was taken over by its general partner (Viacom Netherlands Management LLC), an entity formed under Delaware laws.¹⁶¹ As the CV was transparent¹⁶² as far as Dutch fiscal purposes were concerned (and effectively managed outside the Netherlands), the Dutch tax authorities refrained from levying taxation rights over the partnership's income. Similar to Viacom's previous structure, all royalty flows directed towards the CV were kept outside the scope of the US tax authorities.

Corporate tax avoidance by Viacom: 2012-2015

As with the annual accounts prior to 2012, Viacom (Global) Netherlands BV does not specify the share of royalties accounted for in the total revenues collected by the subsidiary. Although Viacom (Global) Netherlands BV accounted for more than \$4 billion in revenues between 2013 and 2015, it is unclear what percentage of those revenues were then shifted to the tax exempted partnerships. For the years 2012-2015, the annual reports of Viacom Overseas Holdings C.V. have not been publicly available. The same argument regarding the number of employees and the large amounts of revenues can be made for this period as for the period between 2006 and 2012. Based on the two assumptions stated above, for calculating the total amount of royalties shifted to Viacom Overseas Holdings C.V. in Curaçao, it is estimated that a total amount of \$2.3 billion in royalties have been passed on to Viacom Overseas Holdings C.V. during the period 2012-2015.

Viacom's IP from the Netherlands to the UK: 2015

On 1 September 2015, all IP licensing rights (worth about \$1.8 billion) were transferred from Viacom Overseas Holdings C.V. to the UK incorporated subsidiary Paramount Pictures International Limited.¹⁶³ This UK subsidiary is the current owner of Viacom's IP distribution rights for licensing its content outside the United States:

159 In the 2011 Annual Report of Viacom Global (Netherlands) BV (p. 9) it was still noted that its parent company Viacom Overseas Holdings C.V. was located in the Netherlands Antilles. However, in the 2012 Annual Report (p. 2) it was no longer noted that its parent company (Viacom Overseas Holdings C.V.) was located in the Netherlands Antilles.

160 Viacom Global (Netherlands) BV, Annual Report 2012, p. 2.

161 Ibid.

162 Fiscally Transparent Entities are entities in which the owners and investors are taxed for the income earned by the entities rather than the entities themselves being taxed. The income flows through to the investors and owners of the entities. These entities are considered as non-entities for tax purposes, as the entire burden of taxation is borne by the owners and investors.

163 Paramount Pictures International Limited, Annual Report 2015, p. 1; Paramount Pictures International Limited, 2015, Notice of a cross-border merger involving a UK registered company, pp. 6 & 7.

“The Company owns Paramount’s international film distribution rights. Under licenses from Paramount Pictures Corporation and from Paramount Home Entertainment Inc. the Company has, generally exclusive, rights to distribute Paramount movies in all territories and across all media, the “Licensed Territories”, outside the US, Canada and some other minor territories.”¹⁶⁴

Following the transition of IP licensing rights from the Dutch partnership, Viacom Overseas Holdings C.V., to the UK subsidiary, Paramount Pictures International Limited, the UK subsidiary obtained an IP asset worth nearly \$1.8 billion.¹⁶⁵ Through the amortisation of this asset, the UK subsidiary is currently able to deplete its gross profit, thus avoiding the payment of UK corporate income taxes worth an estimated \$365 million.¹⁶⁶ As the sale of the IP was recorded by the fiscally transparent Dutch partnership as being from the Viacom Overseas Holdings C.V., no corporate tax needed to be paid on the sale of the IP asset until the repatriation of the income to the United States. Based on the latest available annual account (2019) of the UK subsidiary, about \$1 billion in IP assets still remains to be amortised by Paramount Pictures International Limited.¹⁶⁷

Viacom’s IP in the UK: From 2015 onwards

Following the transfer of the IP licensing rights to the UK, the revenues distributed by Viacom Global (Netherlands) BV were intended to be collected by the UK subsidiary, Paramount Pictures International Limited. The Dutch subsidiary Viacom Global (Netherlands) BV was furthermore merged into Paramount Pictures International Limited at the end of 2015.¹⁶⁸ However, Viacom Global (Netherlands) BV’s main offices in the Netherlands continued operations from 1 January 2016 onwards as the Dutch branch of the UK company.¹⁶⁹ It is furthermore stated in the UK entity’s annual report that:

“The Company’s European Business Centre, which provides critical support services to Paramount’s film distribution activities around the world, is located in Amsterdam as the Dutch branch office of the Company. In addition, the Amsterdam office houses a limited number of Viacom employees that provide various regional support services to Viacom’s corporate management group.”¹⁷⁰

Between 2016 and 2019, the company employed an average of about 40 employees in its Amsterdam branch.¹⁷¹

164 Paramount Pictures International Limited, Annual Report 2019, p. 1.

165 At the end of 2015, the Dutch Viacom Global (Netherlands) BV merged with, and became, the Dutch branch of the UK subsidiary Paramount Pictures International Limited. The reasons for this merger, and the change of the Viacom Global (Netherlands) BV into a Dutch branch office of the UK company, are unclear.

166 Following the application of the UK applicable statutory corporate income tax of 20.5% (2015). Paramount Pictures International Limited, Annual Report 2015, p. 17.

167 Paramount Pictures International Limited, Annual Report 2019, p. 23.

168 Paramount Pictures International Limited, Annual Report 2015, p. 27.

169 Paramount Pictures International Limited, Annual Report 2016, p. 1

170 Paramount Pictures International Limited, Annual Report 2019, p. 1

171 Paramount Pictures International Limited, Annual Report 2007, p. 19; Annual Report 2019, p. 20.

Corporate tax avoidance by Viacom - UK

Paramount Pictures International Limited obtained revenues worth \$4.5 billion and reported total gross profits of \$1.25 billion during the period between September 2015 and September 2019.¹⁷² However, the UK corporate income tax on their profits during this period was only about \$18 million.¹⁷³ There are two main reasons why the UK subsidiary paid so little tax during these years.

The first reason relates to the aforementioned amortisation of the intangible asset. On 1 October 2019, the accumulated amortisation totalled more than \$350 million.¹⁷⁴ In other words, during this period, gross profit was reduced by “expenses” of \$350 million. A second important reported cost that substantially decreased Paramount Pictures International Limited’s corporate tax payment was its intercompany interest payments. On 31 August 2015, the company issued unsecured loan notes worth \$1.23 billion (with an interest rate of 6.95%) to another Viacom subsidiary, ParaUSD Singapore Private Ltd.¹⁷⁵ Based on this loan, this related subsidiary in Singapore charged annual interest payments of around \$90 million.¹⁷⁶ As the interest charged by ParaUSD Singapore Private Ltd is exempt from corporate income tax in Singapore, no tax needs to be paid on the interest income.¹⁷⁷ The interest charged by ParaUSD Singapore Private LTD at the level of the UK subsidiary has therefore led to a reduction in taxable income in the UK while ensuring a tax exemption for the interest income in Singapore.

Corporate tax avoidance: Viacom 2006-2019

During the period 2006-2015, the Viacom subsidiary in the Netherlands generated close to \$17.5 billion in revenues.¹⁷⁸ Although the royalty payments in the annual accounts of this subsidiary are not specified, it is highly likely that Viacom shifted close to \$6.65 billion in royalties to the non-taxable partnership in Curaçao and the Netherlands. Based on the corporate income tax rate applied to Viacom’s income in the US,¹⁷⁹ an estimated \$2.5 billion in US corporate income tax was avoided throughout the period 2006-2015.

172 Paramount Pictures International Limited, Annual Report 2016, p. 8; Paramount Pictures International Limited, Annual Report 2017, p. 7; Paramount Pictures International Limited, Annual Report 2019, p. 8;

173 Paramount Pictures International Limited, Annual Report 2016, p. 21; Paramount Pictures International Limited, Annual Report 2017, pp. 21-22; Paramount Pictures International Limited, Annual Report 2019, p. 22;

174 Paramount Pictures International Limited, Annual Report 2019, p. 23.

175 Paramount Pictures International Limited, Annual Report 2016, p. 26.

176 Paramount Pictures International Limited, Annual Report 2016, p. 20; Paramount Pictures International Limited, Annual Report 2017, p. 20; Paramount Pictures International Limited, Annual Report 2019, p. 20.

177 ParaUSD Singapore Private Ltd, Annual Report 2016, p. 12; Annual Report 2018, p. 15.

178 Viacom (Global) Netherlands BV, Annual Report 2006, p. 7; Annual Report 2007, p. 6, Annual Report 2008, p. 6; Annual Report 2009, p. 8; Annual Report 2010, p. 8; Annual Report 2011, p. 8.; Annual Report 2012, p. 9, Annual Report 2013, p. 9; Annual Report 2014, p. 10; Annual Report 2015, p. 10.

179 2006: 38.8%; 2007: 38.5%; 2008: 38.4%; 2009: 38.2%; 2010: 38.2%; 2011: 37.6%; 2012: 37.2%; 2013: 37.2%; 2014: 36.9%; 2015: 36.8%; Viacom Inc., Annual Report 2018, p. 89; Viacom Inc., Annual Report 2016, p. 84; Viacom Inc., Annual Report, 2014, p. 78; Viacom Inc., Annual Report 2012, p. 105; Viacom Inc., Annual Report 2009, p. 102; Viacom Inc., Annual Report 2008, p. 117.

In 2015, Viacom's IP rights were relocated from the Netherlands to a UK subsidiary. Through this shift, an \$1.8 billion asset was created in the United Kingdom that could be used for UK tax deductions. Due to this transaction, UK corporate income tax valued at an estimated \$365 million have been avoided. The UK subsidiary that obtained this IP asset, Paramount Pictures International Limited, had revenues worth more than \$4.5 billion throughout the period 2015-2019.¹⁸⁰ Although the subsidiary recorded a gross profit of \$1.25 billion, the company paid only \$18 million in UK corporate tax income. The low effective tax rate on gross profit (about 1.4%) is explained by the use of hybrid mismatches, related to the amortisation of the obtained IP assets and the tax deductibility of interest payments that are being paid to and remain untaxed at the level of a Singaporean subsidiary which enjoys a tax exemption on this income.

¹⁸⁰ During 2016-2019, the company employed on average 65 employees in its UK office and about 40 employees in its Amsterdam branch.

Conclusions

Total amount of revenues shifted offshore

According to the author's calculations, at least \$32.5 billion in revenues was collected by the six ViacomCBS entities in the Netherlands during the period 2002-2019.¹⁸¹ Of this amount, close to \$11 billion was distributed to offshore locations during the period 2005-2019, and thus remained untaxed. This is commensurate to the avoidance of nearly \$1.46 billion for CBS and an estimated \$2.5 billion for Viacom in US corporate income taxes.¹⁸² Furthermore, due to the sale of IP licensing rights via low-tax jurisdictions and non-taxable entities, the British public is expected to lose an estimated \$365 million (through Viacom's IP sale) and \$855 million (through CBS Corporation IP sale) in corporate income tax.

For at least the past 20 years and up until the present, ViacomCBS' subsidiaries in the Netherlands have been playing a key role in the sublicensing of ViacomCBS content throughout the world.¹⁸³ Based on the available information derived from publicly accessible annual accounts, all ViacomCBS subsidiaries report to have obtained a ruling from the Dutch Tax and Customs Administration during the period that they had operations in the Netherlands. This shows that at least since 2005, the Dutch tax authority has facilitated using the Netherlands as ViacomCBS's most important conduit country for channelling their international revenues to low-tax jurisdictions and non-taxable entities.

Relocation of IP licensing rights

With the separation of Viacom into Viacom and CBS Corporation in late 2005, both companies relocated their IP licensing rights offshore. The IP licensing rights of CBS Corporation were shifted to Bermuda, Luxembourg, the Netherlands and Barbados. The last known shift of CBS Corporation's IP took place in 2019, when its IP licensing rights were relocated to the UK (see Figure 5).

181 The annual reports of the relevant subsidiaries are not publicly available for all years. The actual collection of revenues over the period 2002-2019 is probably much higher than \$32.5 billion.

182 Based on US statutory income rates (federal, state and local) as referred to in the annual accounts of Viacom Inc. and CBS Corporation. During the period 2005-2017, the US federal statutory income tax rate was 35%. Throughout 2018, the US federal statutory income tax rate was 24.5% for Viacom Inc. and 21% for CBS Corporation. In 2019, the US federal statutory income tax rate was 21% for both companies. The state and local tax varied from 1.4 to 3.8% (on average 2.5%) during the period 2005-2019. It has been assumed that Viacom's distributed royalties to Viacom Overseas Holdings C.V. and CBS subsidiaries in Bermuda were calculated fully as income at the level of the partnership.

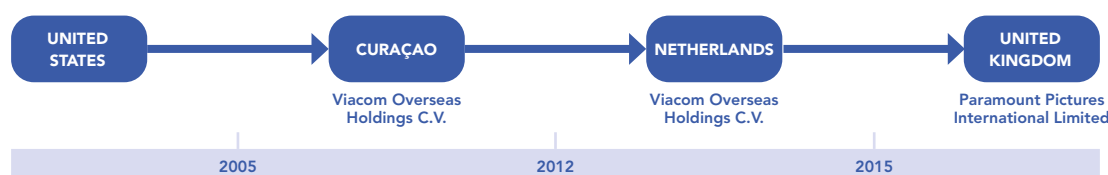
183 Viacom Global (Netherlands) BV, CBS International (Netherlands) BV, WVI Films BV, Showtime Distribution BV, CBS-CSI International BV, CBS Broadcast International BV.

Figure 5 The shifting of CBS Corporation’s IP licensing rights from 2002 onwards.



The same applies for Viacom. The licensing rights of Viacom’s intellectual property were also relocated several times. After relocations to Curaçao (2005) and the Netherlands (2012), its IP licensing rights were finally moved to a UK entity in 2015 (see Figure 6). As has been shown throughout this report, most of the changes in the location of IP licensing rights are related to changes in relevant fiscal law and regulations, both at the national and the international level.

Figure 6 Shift of Viacom’s IP rights.



Source countries have missed out on tax income

It has already been demonstrated that both the US and the UK have been losing substantial amounts of corporate income tax over the past two decades due to ViacomCBS’ tax avoidance structure. Two important aspects in this loss are ViacomCBS’ conduit structure via the Netherlands and the shift of IP licensing rights to low-tax jurisdictions and non-taxable entities. It was explained in the introduction why the Netherlands is a preferred conduit jurisdiction for multinationals such as ViacomCBS.

One reason is the bilateral tax treaties that the Netherlands has negotiated with other countries. These tax treaties generally lower the withholding tax that other source countries can levy over passive income payments, such as royalty payments. In other words, these bilateral tax treaties have hindered the levying of royalty payments by the countries in which ViacomCBS’ content is sold. These countries – in Europe, Asia, Africa and Latin America – have therefore lost out substantially due to the conduit structure with the Netherlands. However, as the annual accounts of the Dutch entities of ViacomCBS do not specify the source of their royalty revenues, it is impossible to calculate the extent to which source countries have lost out in tax revenues.

A game of cat and mouse

This report has demonstrated that multinational corporations such as ViacomCBS are keen to adapt their corporate structures so as to circumvent fiscal laws and regulations that will increase their tax liability at the group level. It has further shown that national governments have the ability to tackle the tax avoidance schemes of multinationals. Nonetheless, actions taken by individual countries or by a relatively small group of countries can easily be circumvented by multinational companies. Ultimately, unilateral measures by governments must be supported by changes in tax laws and regulations in other countries. There is an urgent need for countries worldwide to cooperate and coordinate their attempts to close loopholes and to prevent mismatches and other opportunities for tax avoidance. This is the only way to ensure that multinational corporations pay their fair share of taxes.

Recommendations

To the Dutch government:

- ❑ Stop providing multinational corporations with tax rulings that enable them to exempt incoming revenues from taxable income and to use the Netherlands as a conduit country.
- ❑ Implement non-static substance requirements.
- ❑ Implement a general withholding tax on outbound passive income payments (such as interest, royalties and intercompany dividends).
- ❑ Ensure that the withholding tax that both countries can levy over bilateral passive income transactions (such as interest, royalties and intercompany dividends) based on bilateral tax treaties is no less than half of the other state's statutory corporate income tax rate (with a minimum of 10%).

To the US government:

- ❑ Prevent hybrid mismatches that exploit differences between tax systems in order to achieve double non-taxation: double deduction, deduction without inclusion and/or non-taxation without inclusion.
- ❑ Implement legislation that prevents the intercompany relocation of intellectual property rights to low-tax jurisdictions.

If the government of the United Kingdom wants to prevent the base erosion of its tax base due to international tax avoidance as well as the use of the United Kingdom as a conduit by multinational companies, it should:

- ❑ Prevent hybrid mismatches that exploit differences between tax systems to achieve double non-taxation: double deduction, deduction without inclusion and/or non-taxation without inclusion.
- ❑ Apply substance requirements that will prevent the incorporation of letterbox companies (companies with no employees that are registered at the address of a trust company).
- ❑ Implement adequate transfer pricing regulation that is based on a functional analysis. Currently, companies in the UK¹⁸⁴ are able to retain income streams based on selling TV licenses to third party customers without employing a single person.

This research clearly shows the importance of the implementation of anti-tax avoidance measures. Further, it has shown that the current implementation of the 2015 BEPS action plan is not sufficient in preventing international tax avoidance. Multinational companies such as ViacomCBS are still able to find loopholes and make use of mismatches in countries' tax legislation. Further coordinated international cooperation is needed to ensure that corporations can no longer exploit these mismatches. Governments should therefore:

- ❑ Strive for international cooperation, on an equal footing with low- and middle-income countries, to adapt the allocation of taxing rights on business profits in a way that the tax architecture addresses digital business.
- ❑ Strive for international cooperation, on an equal footing with low and middle-income countries, on designing a global minimum corporate income tax.
- ❑ Implement public Country-by-Country-Reporting (Public CbCR).

184 Such as the ViacomCBS subsidiary CBS Studios Distribution UK.

Annex

The shift in value creation from tangible to intangible assets

The international rules around the taxation of multinational companies were developed in the 1920s and are very much based on the so-called “brick-and-mortar” economy.¹⁸⁵ For example, when looking at the 10 largest US companies around 1917, most companies¹⁸⁶ were focused on the processing of natural resources,¹⁸⁷ food¹⁸⁸ and chemicals.^{189, 190} Currently, the largest US multinationals predominantly create value through intangible assets. The five largest US companies, based on market valuation, are Apple, Alphabet, Microsoft, Amazon and Facebook, followed by companies active in the financial sector,¹⁹¹ energy¹⁹² and the pharmaceutical sector.¹⁹³

The international rules for the taxation of multinational companies have not been adjusted to the economics of value creation through intangible assets. For example, a media company that produces television programmes in home country A and sells content in foreign country B without having an actual physical presence in that foreign country will pay corporate income tax over its realised profits in country A. Although its products are sold to costumers based in foreign country B and revenue is collected there, country B is not given taxation rights over the realised profits. The company may also move the rights and management of the intellectual property it produces to a tax haven (country C), where a low or zero corporate income tax is levied. While the content is still produced in country A, and still sold to customers in country B, profits are now artificially shifted to country C where the content is located and managed.

Companies that rely on intangible assets can easily shift a large part of their global profits to tax havens where most profits will remain untaxed. By nature, intangible assets are easily relocated from one jurisdiction to another. Over the past decades, companies have made a considerable transition from value creation through tangible assets to value creation through intangible assets. Currently, 80% of the value of companies in the S&P 500 stems from intangible assets, as opposed to 20% from

185 OECD website, Tax, Base erosion and profit shifting, BEPS actions, “Action 1: Tax challenges arising from digitalization”, no date, <<https://www.oecd.org/tax/beps/beps-actions/action1/>> (18 May 2021).

186 Only one company, American Telephone & Telegraph, focused on developing technologies that can be seen as a predecessor of modern-day digitalised companies.

187 U.S. Steel, Standard Oil of N.J., Bethlehem Steel, Midvale Steel & Ordnance, US Rubber.

188 Armour & Co., Swift & Co.

189 E.I. du Pont de Nemours.

190 J. Kauflin, “America’s top 50 companies 1917-2017”, Forbes, 19 September 2017, <<https://www.forbes.com/sites/jeffkauflin/2017/09/19/americas-top-50-companies-1917-2017/?sh=4556ec5e1629>> (18 May 2021).

191 Berkshire Hathaway, JP Morgan Chase, Wells Fargo & Co.

192 ExxonMobil.

193 Johnson & Johnson.

tangible assets.¹⁹⁴ For publicly-traded companies in general, about 70% of the companies' value is derived from intangible assets.¹⁹⁵ Due to this change in value creation by companies, governments are insufficiently able to tailor tax laws and regulations and collect tax revenues from multinational corporations, especially in countries where revenue is generated but the company has no physical presence.¹⁹⁶

The combination of an inadequate international tax system for taxing these companies and their increasingly strong reliance on intangible assets explains the incredibly low effective tax rates that such companies have paid over the past decades. Some companies have received a great deal of attention in this regard. Investigations by the European Commission revealed that Apple paid "an effective corporate tax rate of 1 per cent on its European profits in 2003 down to 0.005 per cent in 2014",¹⁹⁷ and that Amazon "was allowed to pay four times less tax than other local companies subject to the same national tax rules"¹⁹⁸ in Luxembourg. A 2019 report by the non-profit organisation Fair Tax Mark showed that the Silicon six¹⁹⁹ avoided paying around \$100 billion in taxes during the period 2010-2019.²⁰⁰

Governments have been struggling to effectively tax intangible assets-based companies for a long time. As the largest companies are active in more than 100 countries, unilateral measures are often found to be undesirable vis-à-vis multilateral measures by both the multinationals and the national governments. It is for this reason that over the past decade in particular governments have been trying to come up with an international solution. This has resulted in the OECD's Base Erosion Project Shifting (BEPS), which was founded in 2012. In the new BEPS 2.0 project that was launched a few years ago, countries have set the goal to "address the tax challenges arising from the digitalization of the economy".²⁰¹ Nonetheless, participating countries have not yet been able to deliver a satisfactory outcome, inter alia through the diverging interests between states.²⁰²

-
- 194 J. Knowles, "Intangible assets represent 80% of the value of the S&P 500", (Article), LinkedIn, 19 July 2019, <<https://www.linkedin.com/pulse/intangible-assets-represent-80-value-sp-500-jonathan-knowles/>> (18 May 2021).
- 195 J. Knowles, "Intangible value is 70% of the global economy [Article], LinkedIn, 6 January 2020, <<https://www.linkedin.com/pulse/intangible-value-70-global-economy-jonathan-knowles/>> (18 May 2021)
- 196 OECD, "Tax challenges arising from digitalization: Interim report 2018: Inclusive framework on BEPS", (Paris: OECD Publishing, March 2018), <<https://doi.org/10.1787/9789264293083-en>> (18 May 2021).
- 197 European Commission, "State aid: Ireland gave illegal tax benefits to Apple worth up to €13 billion", (Press release), 30 August 2016, <https://ec.europa.eu/commission/presscorner/detail/gr/IP_16_2923> (18 May 2021).
- 198 European Commission, "State aid: Commission finds Luxembourg gave illegal tax benefits to Amazon worth around €250 million", (Press release), 4 October 2017, <https://ec.europa.eu/commission/presscorner/detail/en/IP_17_3701> (18 May 2021).
- 199 Facebook, Apple, Amazon, Netflix, Google and Microsoft.
- 200 Fair Tax Mark, "Tax gap of Silicon Six over \$100 billion so far this decade", 2018, <<https://fairtaxmark.net/tax-gap-of-silicon-six-over-100-billion-so-far-this-decade/>> (21 May 2021).
- 201 OECD/G20 Inclusive Framework on BEPS, "Cover statement by the Inclusive Framework on the report on the blueprints of pillar one and pillar two", October 2020, <<https://www.oecd.org/tax/beps/cover-statement-by-the-oecd-g20-inclusive-framework-on-beps-on-the-reports-on-the-blueprints-of-pillar-one-and-pillar-two-october-2020.pdf>> (18 May 2021).
- 202 L. Kably, "OECD's Sec Gen: If a solution is not delivered by mid-2021, 40 countries will move ahead with digital services tax", Times of India, 28 January 2021, <<https://timesofindia.indiatimes.com/business/international-business/oecd-sec-gen-if-a-solution-is-not-delivered-by-mid-2021-40-countries-will-move-ahead-with-digital-services-tax/articleshow/80513698.cms>> (18 May 2021); OECD website, "11th meeting of the Inclusive Framework on BEPS: Remarks by Angel Gurría, Secretary-General, OECD", 27 January 2021, <<https://www.oecd.org/about/secretary-general/oecd-sg-at-meeting-of-the-inclusive-framework-on-beps-27-january-2021.htm>> (18 May 2021).

Most companies that use international tax avoidance schemes make use of a conduit country to connect the source country (where the revenue is generated) with the tax haven jurisdiction (where the profits are booked). Conduit countries ensure that taxation rights (for example by the source country) are not exercised over the company's international financial transactions. The Netherlands is one of the most important conduit countries in the international tax avoidance structure of multinational companies.²⁰³ For this reason, the Netherlands has, in absolute terms, the second largest incoming and outgoing flows of foreign direct investment worldwide, topped only by the United States.²⁰⁴

There are many sectors in which companies are strongly dependent on intangible assets: for example, the life sciences and health care sector, the digital-centric sector and the consumer products and services sector.²⁰⁵ Another sector that has a heavy reliance on intangible assets is the media and entertainment sector. To date, however, no study has focused on the specific conduit role of the Netherlands with regard to media and entertainment companies that rely heavily on intangible assets. This research aims to fill that gap by looking at companies that are active in this sector but that have not received much attention with regard to tax avoidance.

203 CPB Netherlands Bureau for Economic Policy Analysis, "Conduit country the Netherlands in the spotlight", 24 January 2019, <<https://www.cpb.nl/en/conduit-country-the-netherlands-in-the-spotlight#>> (18 May 2021).

204 International Monetary Fund (IMF), "Inward direct investment position: Top 10 reporting economies in the world, US dollars, millions, 2019", (Chart), 12 September 2020, <<https://data.imf.org/?sk=40313609-F037-48C1-84B1-E1F1CE54D6D5&slid=1482247616261>> (18 May 2021).

205 KPMG, "Intangible assets and goodwill in the context of business combinations: An industry study", May 2009, p. 11, <<https://www.consultancy.nl/media/KPMG%20-%20Intangible%20Assets%20and%20Goodwill-836.pdf>> (18 May 2021).



Stichting Onderzoek Multinationale
Ondernemingen
Centre for Research on Multinational
Corporations

T: +31 (0)20 639 12 91
info@somo.nl
www.somo.nl