THE EFFECTS OF THE BASE EROSION AND PROFIT SHIFTING (BEPS) ACTION 13 ON TRANSFER PRICING PRACTICES: A COMPARATIVE EMPIRICAL STUDY OF NEW ZEALAND AND VIETNAM

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Abstract

This thesis was shaped from Action 13 of the recent Base Erosion and Profit Shifting (BEPS) project adopted by the Organisation for Economic Co-operation and Development (OECD) and G20 countries to prevent profit shifting by multinational enterprises (MNEs). In response to the BEPS Action 13, New Zealand and Vietnam have recently introduced new transfer pricing rules. As little research has been done to examine the effects of the BEPS Action 13 on the transfer pricing landscape of respective countries, the main objective of this study is to understand how the New Zealand and Vietnamese governments have reacted to and adapted the BEPS Action 13 and what tax consultants and taxpayers in both countries think about the new transfer pricing regulations. This study is exploratory in nature. As such, a qualitative case study approach has been adopted using institutional theory as a theoretical framework. Semi-structured interviews were conducted with two tax officers and ten transfer pricing consultants in both countries to identify the differences and similarities, and to draw conclusions. Other sources of publicly available data were also used to support the study.

The findings of this study suggest that New Zealand as an OECD member and Vietnam as a non-OECD country have shared various common features regarding their responses to the BEPS Action 13. In general, the New Zealand and Vietnamese governments have intended to move closer to international standards by implementing several significant changes in their transfer pricing landscape following the BEPS Action 13. However, each country has also taken some different approaches in response to the BEPS Action 13. In addition, it is acknowledged that many tax consultants and taxpayers are not satisfied with some aspects of the new transfer pricing rules in New Zealand and Vietnam, posing the need for more transparency. This study also presents some theoretical and practical contributions for the current literature and policy makers. It also provides some implications for future research to tackle the BEPS issues.

All information presented in this thesis is up to date as of 30 June 2020.

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Glossary of Abbreviations and Acronyms

Concepts	Details
APA	Advance Price Agreement (an arrangement, either unilateral, involving one taxpayer and one tax authority, or multilateral, involving the agreements of two or more tax authorities, which determines agreed transfer pricing criteria such as methods, comparables, and assumptions of related party transactions for a fixed period of time (OECD, 2017b)).
Arm's length principle	An international standard agreed by OECD member countries stating that the transfer price charged in related party transactions should be similar to that of independent third parties for similar goods and services under similar terms and conditions (OECD, 2017b).
BEPS Action 13	Action 13 (guidance on transfer pricing documentation and country-by-country reporting) of the BEPS project (OECD, 2017a).
BEPS project	Base Erosion and Profit Shifting project (a project initiated by the OECD/G20 countries to address tax avoidance with a 15-point Action Plan (OECD, 2015a)).
BRICS	Brazil, Russia, India, China, and South Africa
CbC MCAA	The Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (an initiative of the OECD to facilitate the exchange of country-by-country reports among jurisdictions (OECD, 2020g)).
CbCR	Country-by-country report
Circular 117	Circular 117/2005/TT-BTC: Providing Guidelines on Calculation of Market Prices in Business Transactions between Related Parties in Vietnam.
Circular 201	Circular 201/2013/TT-BTC: Guidance on Application of Advance Price Agreements to Tax Administration in Vietnam.
Circular 41	Circular 41/2017/TT-BTC: Providing Guidance on Implementation of Certain Articles of the Government's Decree 20 on Tax Administration for Enterprises Engaged in Transfer Pricing in Vietnam.
Circular 66	Circular 66/2010/TT-BTC: Guiding the Determination of Market Prices in Business Transactions between Associated Parties in Vietnam.
Comparability analysis	An analysis that compares a related party transaction with one or more third party transactions (OECD, 2017b).
CP method	Cost Plus method

Concepts	Details
CUP method	Comparable Uncontrolled Price method
Decree 20	Decree 20/2017/NĐ-CP: Prescribing Tax Administration for Enterprises Engaged in Transfer Pricing in Vietnam.
Decree 68	Decree 68/2020/NĐ-CP: Amending and Supplementing Clause 3, Article 8 of Decree 20/2017/NĐ-CP Dated 24 February 2017 on Tax Administration for Enterprises Engaged in Transfer Pricing in Vietnam.
DST	Digital service tax
DTA	Double Taxation Agreement (an agreement that aims at avoiding the taxation of the same income twice by two different countries (OECD, 1963)).
EBIT	Earnings before interest and tax
EBITDA	Earnings before interest, tax, depreciation, and amortisation
EBITE	Earnings before interest, tax, and exceptional items
EUR	Euro
G20	An international economic forum with participants from 19 countries and the European Union (G20, 2020).
GDT	General Department of Taxation, Vietnam
GSO	General Statistics Office of Vietnam
HKSAR	Hong Kong Special Administrative Region
Intra-group / related party / affiliated / associated transactions	Transactions between associated entities or affiliates within the same Group.
LTA	Law on Tax Administration No. 38/2019/QH14, Vietnam
MAP	Mutual Agreement Procedure (a procedure described by Article 25 of the OECD Model Tax Convention, which can be used to settle disputes related to double taxation arising from transfer pricing adjustments (OECD, 2017b)).
MCS	Management control system
MNE	Multinational enterprise (a firm that is part of a multinational group).
MNE group	Multinational enterprise group (a group of related party companies having business operations in two or more countries).

Concepts	Details
MOF	Ministry of Finance, Vietnam
NZD	New Zealand Dollar
OECD	Organisation for Economic Co-operation and Development (an intergovernmental economic organisation with 37 member countries. The OECD's purpose is to facilitate world trade (OECD, 2020a)).
OECD Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations – July 2017
OECD/G20 Inclusive Framework	A framework in which OECD/G20 countries and other interested jurisdictions come together to develop a plan for monitoring the implementation process of the BEPS project (OECD, 2017c).
PS method	Profit Split method
PwC	PricewaterhouseCoopers
RP method	Resale Price method
RTP rule	Restricted Transfer Pricing rule
Safe harbours	Simplified measures that relieve qualified taxpayers from certain compliance responsibilities such as documentation preparation (OECD, 2017b).
The BEPS Act	Taxation (Neutralising Base Erosion and Profit Shifting) Act 2018 enacted by Inland Revenue in New Zealand
The Commissioner	The Commissioner of Inland Revenue in New Zealand
The U.K.	The United Kingdom
The U.S.A.	The United States of America
The Vietnamese tax authorities	Vietnam's General Department of Taxation and other local or provincial tax departments
TIEA	Tax Information Exchange Agreement (an agreement signed by two or more countries that promotes "international co-operation in tax matters through exchange of information" (OECD, 2020f)).
TNMM	Transactional Net Margin method
Transfer pricing	The process of setting prices of products or services provided in intra-group transactions between group entities within an MNE (Gao and Zhao, 2015).
USD	United State Dollar
VND	Vietnam Dong

Table of Exchange Rates

For comparison purposes, Euro (EUR), United States Dollar (USD), and Vietnam Dong (VND) have been translated into New Zealand Dollar (NZD) based on the following exchange rates:

Currency	Exchange rates as of 30 June 2020
EUR 1[1]	NZD 1.65
USD 1[2]	NZD 1.46
VND 14,931[3]	NZD 1

[1] Bank of New Zealand's exchange rate for selling EUR cash.
[2] Bank of New Zealand's exchange rate for selling USD cash.
[3] The State Bank of Vietnam's exchange rate for tax evaluation purposes.

Chapter 1: Introduction

1.1. Background

Multinational enterprises (MNEs)[4], who have their operations in many countries around the world, usually take advantage of the complexity of international trade to maximise their profits (Leitch & Barrett, 1992). To accomplish this, managers within MNEs use different methods to manipulate transfer prices (Leitch & Barrett, 1992). According to Gao and Zhao (2015), transfer pricing refers to the process of setting prices of products or services transferred among group entities within an MNE. Transfer pricing is used as a mechanism for allocating an MNE's overall profit (Gao & Zhao, 2015). In other words, it is considered as the main way of avoiding tax (Clempner, 2018). Many MNEs are trying to find ways to shift their profits from higher-tax jurisdictions to lower-tax jurisdictions using transfer pricing as the main mechanism (Klassen et al., 2017). For example, an MNE operating internationally may have a tax policy where its headquarters are located in the United States of America (U.S.A.) and the United Kingdom (U.K.), while its true profit or intellectual property is housed in Bermuda, whose tax system is very liberal (Morphy, 2018). The importance of transfer pricing issues has become clear as MNEs conduct more than 60 percent of world trade (Neighbour, 2008). Thus, tax authorities in many countries are increasing their focus on transfer pricing issues and on creating measures to ensure greater transparency in the entire supply chains of MNEs (KPMG, 2011).

In response to the global profit shifting by MNEs, the Base Erosion and Profit Shifting (BEPS) project (with a 15-point Action Plan) was adopted by the Organisation for Economic Co-operation and Development (OECD)[5] and G20 countries[6] in September 2013, and completed two years after its adoption (OECD, 2015a). Action 13 (guidance on transfer pricing documentation and country-by-country reporting) of the BEPS Action Plan has been intended to enhance transparency for tax administrations by providing a template for MNEs to report to their respective tax authorities on

[4] For the purpose of this study, MNEs are also referred to as "taxpayers" in New Zealand and Vietnam.
[5] The OECD is an intergovernmental economic organisation with 37 member countries. The OECD's purpose is to facilitate world trade (OECD, 2020a).
[6] G20 is an international economic forum with participants from 19 countries and the European Union (G20, 2020).

an annual basis (OECD, 2017a; 2019a). In July 2017, the OECD introduced its 2017 edition of the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (OECD Guidelines), which provides a consolidated approach to the changes proposed by the BEPS project (OECD, 2017b). This 2017 edition is the latest update of the OECD Guidelines and reflects the revised safe harbours[7] and other substantial revisions on Actions 8-10 (aligning transfer pricing outcomes with value creation) and Action 13 of the BEPS project (OECD, 2017b; Ernst & Young, 2017a). The OECD Guidelines also provide MNEs with instructions on how to apply the "arm's length principle", which is an international standard agreed to by OECD members in assessing the appropriateness of the cross-border transactions entered into by related parties within the same MNE groups (OECD, 2017b). The arm's length principle is defined in Article 9 of the OECD Model Tax Convention as follows:

> [Where] conditions are made or imposed between the two [associated] enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly. (OECD, 2017b, p. 35)

In other words, the OECD Guidelines recommend that a comparability analysis should be undertaken to prove that the results of MNEs' cross-border related party transactions are consistent with the results that would have been achieved in uncontrolled transactions entered into by independent enterprises under similar terms and conditions (OECD, 2017b).

Given the above recommendations and changes, many countries around the world have taken actions to follow the OECD's BEPS Action 13 and international standards. For instance, New Zealand, a member of the OECD, has recently amended Sections GC 6 to GC 13 of the *Income Tax Act 2007*, which have been applied to the financial years starting on or after 1 July 2018, to align with the latest 2017 OECD Guidelines (Inland Revenue, 2019a). In the same vein, Vietnam, a non-OECD country, has also introduced its new transfer pricing regulations, taking effect from 1 May 2017 (Ministry of Finance [MOF], 2017a; 2017b). Despite the emergence of the BEPS project and transfer pricing issues, academic literature has shown a lack of comparative studies to

[7] Safe harbours are simplified measures that relieve qualified taxpayers from certain compliance responsibilities such as documentation preparation (OECD, 2017b).

understand transfer pricing issues in different countries, particularly the effects of the BEPS Action 13 on their transfer pricing practices. In order to fill these gaps, this study aims at examining the effects of the BEPS Action 13 on transfer pricing practices in New Zealand and Vietnam.

1.2. Why New Zealand and Vietnam?

The researcher has been inspired by his personal professional career to conduct this study. Having worked as a tax consultant in Vietnam and New Zealand, the researcher is familiar with the tax environments in both countries and has realised that the BEPS project has had a big impact on the policy development processes in New Zealand and Vietnam.

In particular, although Vietnam is not a member of the OECD, it has participated in the OECD/G20 Inclusive Framework to implement many changes in its transfer pricing regulations following the BEPS project, which affect many MNEs (Coronado, 2018; Bortoletti, 2019). As an emerging economy, Vietnam had a total of 766,512 operating enterprises as of 19 March 2020 and 3,147 licensed foreign direct investment projects in 2018 (General Department of Taxation [GDT], 2020; General Statistics Office of Vietnam [GSO], 2020). Therefore, collecting the right amount of tax from MNEs operating in Vietnam is of importance to the Vietnamese government (GDT, 2020).

Meanwhile, as an OECD member, New Zealand has actively participated in the BEPS project, and has recently amended its transfer pricing rules to align with the BEPS Action 13 (Sadiq et al., 2019a; Inland Revenue, 2019a). With 623 foreign-owned groups currently operating in New Zealand, MNEs play an important role in New Zealand's economy as significant enterprises with an annual revenue exceeding NZD 80 million account for 45% of New Zealand's total corporate tax base (Inland Revenue, 2019b).

Therefore, by comparing the transfer pricing regimes (including relevant transfer pricing legislation, regulations, rules, documents issued by the OECD, and government publications) of New Zealand and Vietnam, the researcher can explore how both developed and developing countries have responded to the BEPS Action 13. The findings of this study will also advance the current academic literature.

1.3. Research Questions

The purpose of this study is to understand the effects of the BEPS Action 13 on transfer pricing practices in New Zealand and Vietnam. This involves a comparative analysis considering opinions of different interest groups such as governments, MNEs, and tax consultants. Therefore, this study proposes the following research questions:

- Research question 1 (RQ1): How have two different jurisdictions (New Zealand and Vietnam) reacted to and adapted the BEPS Action 13?

- Research question 2 (RQ2): How have MNEs and tax consultants reacted to the changes in transfer pricing regulations in both New Zealand and Vietnam?

1.4. Research Methodology

A qualitative case study approach is adopted using institutional theory as a theoretical framework to address the research questions. Semi-structured interviews are conducted with two government agency representatives and ten transfer pricing specialists in both countries to identify the differences and similarities, and to draw conclusions. Other sources of publicly available data are also used to support the study.

1.5. Structure of Thesis

This thesis consists of five chapters. An introduction is provided in Chapter 1. This chapter provides a brief background to the research, including the reasons why New Zealand and Vietnam have been chosen for this study. The remainder of the thesis is organised as follows:

Chapter 2 – Literature Review – firstly provides an overview of transfer pricing studies. The chapter then discusses the OECD and the BEPS project, as well as the BEPS Action 13 in more detail. A section about the current academic studies on the BEPS project is also presented. Finally, Chapter 2 illustrates the transfer pricing landscape in New Zealand and Vietnam, and transfer pricing studies about these countries, before concluding the findings of the literature review.

Chapter 3 – Methodology – describes the purposes of this thesis and the research questions. Next, it outlines the theoretical framework applied to conduct the analysis and findings. The remainder of the chapter focuses on the research methods that are employed by the researcher to answer the research questions, including case study, document analysis, and semi-structured interviews.

Chapter 4 – Findings and Discussion – presents the findings of the interviews conducted with tax consultants in both New Zealand and Vietnam. The researcher also discusses different issues regarding the transfer pricing regimes of both countries after the adoption of the BEPS Action 13 and provides a comparison between the two countries. This chapter plays an important role in answering the research questions of this thesis.

Chapter 5 – Conclusions, Contributions, Limitations and Future Research – summarises the findings from Chapter 4 in order to address the research questions. In addition, this chapter presents the contributions of the study, as well as some limitations facing the researcher in conducting the study. Lastly, Chapter 5 provides implications for future research, based on the findings of the study.

Chapter 2: Literature Review

2.1. Introduction

Holtzman and Nagel (2014) define the term transfer pricing as the pricing of inter-company transactions or arrangements among related parties across different jurisdictions. As mentioned in Chapter 1, it is the main mechanism for MNEs to shift profits from higher-tax jurisdictions to lower-tax jurisdictions (Klassen et al., 2017). Inter-company arrangements involve various types of transactions such as transfers of intangible properties, transfers of goods and services, and provisions of loans and other financial arrangements (Holtzman & Nagel, 2014). It is clear that, presently, transfer pricing plays an important role in the business operations of MNEs due to their rapid expansion and globalisation (Cazacu, 2017). As a result, tax authorities around the globe are looking at ways to protect their tax systems, given the complexity of transfer pricing (Holtzman & Nagel, 2014). This has increasingly led to more challenges for MNEs in operating their businesses because governments have started implementing stricter and more complicated transfer pricing regulations, increasing their audit activities, and imposing more severe penalties for non-compliance. As a result, MNEs have sought assistance from consulting firms to manage their transfer pricing risks (Holtzman & Nagel, 2014).

Holtzman and Nagel (2014) state that tax consultants can help MNEs mitigate their transfer pricing risks in the following areas:

- Planning: tax consultants help MNEs to develop transfer pricing policies for their cross-border related party transactions and to carry out their tax planning in order to maximise tax rate benefits, taking into account their value chains.

- Compliance and documentation: the level of support provided by tax consultants focuses mainly on documenting the cross-border related party transactions of MNEs in order to ensure compliance with the documentation requirements in their respective countries.

- Implementation: tax consultants set up the procedures for MNEs to implement and monitor their transfer pricing policies.

- Transfer pricing disputes: this involves helping MNEs with audit disputes, Advance Price Agreement (APA)[8] negotiations, and litigation assistance.

According to Cazacu (2017), there are several studies that focus on the microeconomics and accounting aspects of transfer pricing. However, despite the complexity of transfer pricing issues, these studies only emphasise the use of transfer pricing in business operations (Cazacu, 2017).

Therefore, the purpose of this chapter is to provide more detail about transfer pricing research in the context of the emergence of the BEPS project. Section 2.2 presents the findings from the general transfer pricing literature. Section 2.3 provides details about the OECD, and the current developments of the BEPS project in general and Action 13 in particular. This also includes a high-level overview of the OECD Guidelines and academic studies on the BEPS project. Section 2.4 describes the current regulatory frameworks for transfer pricing in New Zealand, a member of the OECD, and Vietnam, a non-OECD country, before concluding in Section 2.5. This review is also important for the researcher to understand the transfer pricing landscape in both countries and to partly address the first research question:

- RQ1: How have two different jurisdictions (New Zealand and Vietnam) reacted to and adapted the BEPS Action 13?

2.2. General Transfer Pricing Literature

Ho (2008) stated that studies in transfer pricing can be classified into three main categories, including prescriptive studies, behavioural studies, and applied studies, of which the first and the third categories are dominant. The purpose of this section is to understand general research into

[8] An APA is an arrangement, either unilateral, involving one taxpayer and one tax authority, or multilateral, involving the agreements of two or more tax authorities, which determines agreed transfer pricing criteria such as methods, comparables, and assumptions of related party transactions for a fixed period of time (OECD, 2017b).

transfer pricing considering all of the above categories from various disciplines such as economics, accounting, and management.

Using a prescriptive approach, Hirshleifer (1956) studied how the prices of goods and services transferred between autonomous divisions (profit centres) within a firm should be set in order to encourage the maximisation of profit of the firm by each division. This study found that with the existence of a completely competitive market, the transfer price for intermediate goods should be the market price; otherwise, the transfer price should be set at the marginal costs of the division that sells the goods (Hirshleifer, 1956). In the same vein, Chan et al. (2006) studied the impact of foreign subsidiaries' autonomy in making pricing and sourcing decisions on their tax compliance through international transfer pricing. Using a sample of 163 transfer pricing audit cases in China, Chan et al. (2006) found that there are fewer audit adjustments in foreign investment enterprises that have the autonomy to make pricing and sourcing decisions than in those whose transfer prices are controlled and determined by their parent companies. A recent study by Chen et al. (2014) also investigated the determinants and consequences of transfer pricing autonomy among 210 divisional managers. In particular, the empirical evidence supports the prediction of the study that transfer pricing autonomy is influenced by many factors such as "intermediate product standardisation, foreign investment, tax rate difference, and the weight on firm-level performance measures" (Chen et al., 2014, p. 225). This study also concluded that divisional managers perceive a lower degree of fairness and transfer pricing effectiveness due to a mismatch between transfer pricing autonomy and the characteristics of the organisation (Chen et al., 2014).

Prior research has also focused on the relationship between organisational behaviour and transfer pricing. David and Baumler (1975) attempted to place the transfer pricing question in a behavioural context, rather than in a mathematical model, and argued that transfer pricing can be used as a mechanism to enhance an organisation's differentiation and to enable integration within that organisation. Cravens (1997) commented that transfer pricing has an impact on the behaviour and performance of different organisations, and contributes to achieving their organisational goals. On the contrary, Lambert (1979) argued that transfer pricing leads to most conflicts within an organisation, due to the increasing facilitation of the evaluation of divisional management. Behavioural transfer pricing is further explained by Mehafdi (1990), whose study drew on contingency theory, economics of the firm, and agency theory to examine the relationship between

transfer pricing policies and organisational structure, as well as managerial behaviour in a large decentralised organisation.

In addition, researchers have recently focused on the role of transfer pricing in the use of a management control system (MCS). For instance, Cools et al. (2008) studied how transfer pricing compliance affects the design and the use of the MCS in an MNE. This study concluded that transfer pricing compliance has an immediate impact on how an MNE designs its MCS which relates to the planning, evaluating, and rewarding activities (Cools et al., 2008). Cools and Slagmulder (2009) continued to investigate the design and use of the MCS under external environmental pressures. Specifically, the study found that the elimination of transfer pricing negotiations prevents profit centres within an MNE from making sound economic decisions and that the simplification of transfer pricing policy within an MNE could lead to decisions that are suboptimal (Cools & Slagmulder, 2009). Cools and Slagmulder (2009) contribute significantly to the literature of transfer pricing by presenting a mixed responsibility accounting centre structure that has not been studied before.

In terms of applied studies, numerous studies have examined the application of transfer pricing in MNEs. Miller and De Matta (2008) presented a global transfer pricing profit maximising model that helps global organisations with various manufacturing and distribution divisions develop a business strategy to maximise profit. Klassen et al. (2017) also conducted a survey among tax executives within MNEs, and found that some companies try to minimise their tax payments using transfer pricing as a mechanism, while most other companies are compliant with transfer pricing regulations. This study suggested that companies have used different internal transfer pricing policies, which can be seen via the tax payments that these companies made (Klassen et al., 2017). Likewise, Ćirić and Gracanin (2010) examined the use of a cost model in a company, and concluded that transfer pricing plays an important role in reducing costs and achieving efficiency, given limited resources, as well as improving the performance of profit centres and the company as a whole. Curtis (2008), on the other hand, focused on studying the application of transfer pricing for corporate treasury in MNEs. Curtis (2008) challenged other researchers' opinions that transfer pricing is regarded as an issue of taxation and, therefore, the tax department is responsible for it. This study, instead, presented an argument that MNEs need an integrated and multi-functional

approach for corporate treasury to manage its cross-border related party transactions efficiently in the context of transfer pricing (Curtis, 2008).

Other researchers have examined the application of different transfer pricing methods within MNEs as they affect the profits and tax payments of subsidiaries within them (Li, 2005a). There are multiple transfer pricing methods applied by MNEs to determine the "arm's length" nature of cross-border related party transactions (Royalty Range, 2017). As defined in Appendix 5, the latest guidelines by the OECD (2017b) introduced five transfer pricing methods that MNEs can use in pricing their cross-border related party transactions, including the Comparable Uncontrolled Price (CUP) method, the Resale Price (RP) method, the Cost Plus (CP) method, the Transactional Net Margin method (TNMM), and the Profit Split (PS) method. In their study, Huh and Park (2013) considered two commonly used transfer pricing methods, the CP method and the RP method for tax purposes in MNEs, and they compared the supply chain profits achieved under these two methods. They concluded that divisional and firm-wide profit is higher when MNEs apply the CP method, rather than the RP method. Hammami and Frein (2014), in contrast, developed an optimisation model for global supply chain design by adopting the PS method. Steyn (2004) focused on the application of transfer pricing methods in intangible property. He evaluated the suitability of existing transfer pricing methods in the transfer of intangible property among related parties within MNEs and concluded that the CUP method is the most appropriate method to determine the arm's length nature of cross-border intangible transactions (Steyn, 2004). Borkowsk (1992) investigated how MNEs' organisational and environmental characteristics affect the choice of transfer pricing methods. Borkowsk (1992) found that the nature of the transaction does not affect the choice of transfer pricing methods, but the application of transfer pricing methods is related to the organisational and environmental characteristics of MNEs. Chan and Lo (2004) also provided an empirical study to examine how environmental variables affect management choices of transfer pricing methods in foreign-owned enterprises in China. This study commented that a market-based transfer pricing method is preferred by management if they want to maintain a good relationship with local tax authorities (Chan & Lo, 2004).

More importantly, research in transfer pricing has also focused on the role of transfer pricing in performance management within MNEs. Doff et al. (2009) pointed out in their study that the asset and liability management system adopted by insurance firms fails to reflect organisational goals

and objectives. Instead, a fund transfer pricing system can be applied in insurance companies to solve performance management issues (Doff et al., 2009). Similarly, a recent study by Rossing et al. (2017) also discussed transfer pricing in the context of responsibility accounting, particularly in performance management. Rossing et al. (2017) commented that transfer pricing is useful in measuring performance management of divisions within MNEs.

Based on the above discussion on transfer pricing research, it is clear that researchers have approached transfer pricing issues in different ways. Most of the studies have focused on the application of transfer pricing methods, the role of transfer pricing in setting corporate strategy, and performance evaluation. However, little research has been conducted using comparative studies to explore transfer pricing practices in different jurisdictions. As a pioneer, Abu-Hijleh (2016) conducted a comparative study to investigate the APA process in New Zealand and other jurisdictions, such as Australia, the U.S.A. and the U.K. Abu-Hijleh (2016) found that there are certain differences in the APA process in New Zealand compared to other countries. In the same vein, a comparative study by Li (2005b) also focused on examining transfer pricing practices and audits in New Zealand and other countries including Australia and China. This study contributed to the transfer theory and practices study (Li, 2005b). Due to the complexity of transfer pricing regulations and an ever-changing landscape, transfer pricing has now become an important issue facing all MNEs (Bakertilly International, 2019). This has led to the need for further research including comparative studies to capture the development of transfer pricing.

The next section of this literature review provides an overview of the OECD, the current developments of the BEPS project, as well as some of the few studies examining the effects of BEPS Action 13 on transfer pricing development.

2.3. Overview of the OECD and the BEPS Project

2.3.1. Overview of the OECD

The OECD was established in 1961 in Paris, and currently consists of 37 members (OECD, 2020a). The OECD members are spread across different regions of the globe, from America to Europe and Asia Pacific. Since 2010, the OECD has accepted 7 new members. For a country to become a

member of the OECD, it has to undergo a rigorous assessment process. Currently, Costa Rica is a candidate under assessment to join the OECD. The aim of the OECD is to provide a forum for countries around the world to share their experiences and find solutions to economic and social issues (OECD, 2020a).

Some of the world's largest economies have become the OECD's key partners, including South Africa, China, Brazil, India, and Indonesia (OECD, 2020a). These countries have participated in policy discussions and debates to bring more valuable opinions to the OECD framework. It works closely with other countries to help them move closer to the OECD standards and to assist their policy reforms in such areas as governance and investments. The OECD also has a Development Centre with countries from Latin America, Africa, Africa, and Asia coming together to discuss and facilitate policy development in emerging economies (OECD, 2020a).

2.3.2. Overview of the BEPS Project

2.3.2.1. History of the BEPS Project

With the rapid changes in the international tax landscape, countries have recently tried to establish new standards to protect their tax bases (OECD, 2017c). It is estimated that governments around the world suffer an annual revenue loss of approximately USD 100 to 240 billion (NZD 146 to 351 billion) because of base erosion and profit shifting activities by MNEs. Due to the aggressive tax planning of MNEs and to the 2008 financial crisis, the OECD and G20 leaders have worked together to address the loopholes of the international tax regimes that create chances for MNEs to shift their profit. In September 2013, G20 leaders and OECD members introduced the BEPS package with a 15-point Action Plan that "set out minimum standards, the revision of existing standards, as well as common approaches" (OECD, 2017c, p. 9). The BEPS project also provides other recommendations in relation to hybrid mismatch and interest deductibility. The BEPS package received 1,400 submissions from various stakeholders, and was finally agreed upon and endorsed by OECD members and G20 countries in 2015 (OECD, 2017c).

The 2015 final BEPS Action Plan initiated by the OECD and G20 countries has three main objectives, including (1) enhancing international tax regulations, (2) enhancing its focus on economic substance, and (3) providing a more transparent tax environment (Ernst & Young,

2017b). In general, the Action Plan determines the actions needed to address profit shifting, presents deadlines to execute these actions, and identifies the resources for implementation (OECD, 2013). The OECD/G20 BEPS Action Plan is shown below in Figure 2.1 (OECD, 2015b).

Figure 2.1: The BEPS Action Plan

Action 1	• Address the tax challenges of the digital economy
Action 2	• Neutralise the effects of hybrid mismatch arrangements
Action 3	• Designing effective controlled foreign company rules
Action 4	• Limiting base erosion involving interest deductions and other financial payments
Action 5	• Counter harmful tax practices more effectively, taking into account transparency and substance
Action 6	• Preventing the granting of treaty benefits in inappropriate circumstances
Action 7	• Preventing the artificial avoidance of permanent establishment status
Action 8-10	• Aligning transfer pricing outcomes with value creation
Action 11	• Measuring and monitoring BEPS
Action 12	• Mandatory disclosure rules
Action 13	• Guidance on transfer pricing documentation and country-by-country reporting
Action 14	• Making dispute resolution mechanisms more effective
Action 15	• Developing a multilateral instrument to modify bilateral tax treaties

2.3.2.2. BEPS Action 13

Action 13 is an important part of the BEPS project as it sets out the documentation requirements for MNEs (OECD, 2015c). In particular, Action 13 aims to "develop rules regarding transfer pricing documentation to enhance transparency for tax administration, taking into consideration the compliance costs for business" (OECD, 2013, p. 9).

In order to meet those requirements, a new transfer pricing documentation approach has been introduced by BEPS Action 13 (OECD, 2015c). This Action requires taxpayers to meet reporting deadlines and provide correct and consistent information through a three-tiered documentation approach (OECD, 2015c). Specifically, the three-tiered approach for MNEs includes a master file, a local file, and a country-by-country report (CbCR) (OECD, 2017a). According to the OECD (2015c), the content requirements of these documents are explained further below.

- **A master file** contains high-level information about MNE operations and businesses worldwide. MNEs should provide tax authorities around the world with information relevant to all group members, including the group's operations, transfer pricing policies, intangible transactions, inter-company agreements, and other information.

- **A local file** contains information on specific intra-group transactions of specific group entities. Therefore, the local file provides local tax authorities with the nature of related party transactions between a local entity and its cross-border related parties, a comparability analysis, and the transfer pricing method applied to test the arm's length nature of related party transactions.

- **A CbCR** refers to the allocation of income and tax of the group across different countries. The CbCR also requires the disclosure of all group entities and countries of incorporation where the group has its operations and reports financial data. The new CbCR requirements were to be effective for financial years beginning on or after 1 January 2016, and MNES with a global revenue equal to or exceeding EUR 750 million (NZD 1.24 billion) would be subject to these new requirements.

The three-tiered documentation package is important for taxpayers in considering their reporting requirements and for tax authorities in conducting transfer pricing risk assessments. In fact, this documentation package has three main purposes as follows (OECD, 2015c):

- **Compliance assessment**: the documentation shows whether taxpayers have considered the three-tiered approach requirements to set up their transfer prices, and whether they have applied appropriate transfer pricing methods to ascertain the arm's length nature of their related party transactions. Documentation that is well-prepared can prove to the tax authorities that a taxpayer has analysed its position appropriately in accordance with its tax returns.

- **Risk assessment:** due to their limited resources, tax authorities need to conduct proper transfer pricing risk assessments before choosing a taxpayer for a transfer pricing audit. It is important for tax authorities to look at the documentation and consider if further assessments should be done to examine a taxpayer's transfer pricing position. Therefore, clear and reliable transfer pricing documentation can enable the tax authorities to carry out their risk assessment more efficiently.

- **Transfer pricing audit:** three-tiered documentation is also a useful source for tax authorities to conduct their transfer pricing audits on local taxpayers. The availability of factual information from the documentation is a basis for the tax authorities to request more detailed information to support the transfer pricing audit processes. If taxpayers have sufficient information in their documentation, the audit processes can run more smoothly and efficiently.

2.3.2.3. Inclusive Framework

The adoption of the 15-point Action Plan by OECD and G20 countries, together with other developing countries who have actively participated in the development process of the BEPS project, will establish a new international taxation framework for MNEs (OECD, 2015b). The implementation process of the BEPS project results in certain challenges because while the transfer pricing documentation requirements can be applied immediately, other changes in tax treaties, mismatch rules, and interest deductibility will take tax administrations more time and effort to

implement (OECD, 2015b). Therefore, an inclusive framework needs to be agreed on by the OECD and G20 countries in order to make the implementation process more effective and consistent among different jurisdictions (OECD, 2017c). The Inclusive Framework is available for other non-OECD/G20 countries to apply to their local tax regimes (OECD, 2017c). In this regard, the G20 leaders in their Communiqué (15-16 November 2015) emphasise the importance of an Inclusive Framework to "implement the BEPS project, including developing economies, on an equal footing" (G20, 2015).

Following the call of G20 leaders, the Inclusive Framework was established by OECD and G20 countries in 2016 in order to facilitate cooperation among developing countries and OECD and G20 countries on developing BEPS standards, and monitoring the BEPS project implementation (OECD, 2017c). At time of writing this thesis, 137 countries around the world have participated in the framework (OECD, 2019b). The members of the Inclusive Framework have come together to develop a plan for monitoring the implementation process of the BEPS project, considering the advantages and disadvantages to each member (OECD, 2017c).

2.3.2.4. The OECD Guidelines

In order to consolidate the changes recommended by the BEPS project, the OECD introduced the 2017 edition of the OECD Guidelines (OECD, 2017b). This is the latest update of the previous guidelines issued by the OECD. The original OECD report *"Transfer Pricing and Multinational Enterprises"* was issued in 1979 and was subsequently revised to be used as official OECD Guidelines in 1995. The last update of the OECD Guidelines was in 2010 (OECD, 2017b).

The main focus of the 2017 OECD Guidelines is to provide guidance for MNEs on how to apply the arm's length principle (Ernst & Young, 2017a). As mentioned in Chapter 1, the arm's length principle generally states that the transfer price charged in related party transactions should be similar to that of independent third parties for similar goods and services under similar terms and conditions (Choe & Matsushima, 2013).

Besides introducing the five transfer pricing methods, including the CUP method, the RP method, the CP method, the TNMM, and the PS method, the OECD Guidelines state that a comparability analysis which compares a related party transaction with one or more third party transactions

should be conducted in order to apply the arm's length principle (OECD, 2017b). This analysis is considered as "the heart of the arm's length principle" (Avoseh, 2014; OECD, 2017b, p. 43).

The first step of a comparability analysis is to "accurately delineate the controlled transactions by identifying the commercial or financial relations between the related parties and the relevant economic circumstances surrounding those relations" (OECD, 2017b, p. 43). The second step is to "compare the conditions and the economically relevant circumstances of the related party transactions with the conditions and the economically relevant circumstances of comparable third party transactions" by conducting external benchmarking studies (OECD, 2017b, p. 43). In Chapter 1 of its Guidelines, the OECD (2017b) also provides guidance on identifying the commercial and financial relations using five factors, including:

- The terms of the inter-company agreements entered into by the related parties.
- The functional profiles of the related parties that enter into the transactions. This includes a detailed functional analysis considering the functions performed, the assets employed, and the risks assumed by each of the relevant related parties. This also includes an analysis of the functions performed by related parties in relation to the whole value chain of their MNE group, taking into account industry conditions and other relevant circumstances.
- The characteristics of services provided, or goods transferred in the related party transactions.
- The economic conditions of the related parties and the market conditions that influence their operations.
- The related parties' business strategies.

In addition, the OECD Guidelines introduce administrative approaches to reduce compliance costs and transfer pricing disputes for MNEs (OECD, 2017b). One of the most fundamental points under this introduction is the recommendation of using "safe harbours", which are simplified measures that relieve qualified taxpayers from certain compliance responsibilities such as documentation preparation. In particular, the OECD Guidelines recommend that a mark-up of 5 percent should

be added to the costs of low value-adding intra-group services when calculating the service fees (OECD, 2017b).

More importantly, in order to consolidate the recommendations of the BEPS Action 13 on transfer pricing documentation requirements, the OECD Guidelines provide contents to be included in the master file, the local file, and the CbCR (OECD, 2017b). These contents are shown in Appendices 6 to 8 of this dissertation.

2.3.2.5. Recent Achievements and Developments of the BEPS Project

As mentioned above, the Inclusive Framework has attracted 137 countries, many of which are non-OECD/G20 members (OECD, 2019b). Besides, the BEPS project has also made other significant achievements with nearly 100 countries exchanging information on the financial data of MNEs through bilateral automatic exchanges of information in 2019, and an additional tax revenue of EUR 100 billion (NZD 165 billion) being collected by tax authorities worldwide. Since the finalisation of the BEPS project in 2015, 290 tax regimes have been examined and those that are harmful have been amended or abolished. Eighty four countries around the world have been participating in the automatic exchange of CbCRs while 94 jurisdictions have signed "the Multilateral Convention to Implement Tax Treaty Measures to Prevent BEPS" (the BEPS Multilateral Instrument)[9] covering 1,600 tax treaties in order to deal with tax avoidance by MNEs (OECD, 2020b).

Despite these accomplishments, the BEPS project is still facing a lot of challenges, including reaching a "consensus-based solution" (OECD, 2020b, p. 5) in order to deal with issues arising from the digital economy by the end of 2020. Since 2015, the members of the OECD/G20 Inclusive Framework have been working together to find solutions for issues related to the digital world with several proposals being grouped into two main pillars, including (OECD, 2020b):

- Pillar One discusses the "allocation of taxing rights", focusing on determining the portion of profits that should be taxed in the countries where the customers are based.

[9] New Zealand joined the BEPS Multilateral Instrument on 1 October 2018, while Vietnam has not participated in this convention yet (OECD, 2020b).

- Pillar Two focuses on other BEPS issues, including mechanisms to stop MNEs from shifting profits to jurisdictions with zero or low tax rates.

In November 2019, the OECD Secretariat issued a consultation document for a "unified approach" under Pillar One to seek public opinions (OECD, 2020c). In December 2019, the OECD Secretariat continued to seek public comments, issuing another consultation document on the Global Anti-Base Erosion Proposal under Pillar Two (OECD, 2020c). As a result of a meeting on 29-30 January 2020, members of the Inclusive Framework decided to go ahead with the Two-Pillar negotiations, and agreed on "an outline of the architecture of a unified approach on Pillar One as the basis for negotiations and welcomed the progress made on Pillar Two" (OECD, 2020d, p. 4). With respect to Pillar One, the participants agreed to look for new rules to tax the digital economy by the end of 2020, which require them to have "improved tax certainty, including effective and binding dispute prevention and resolution mechanisms" (OECD, 2020d, p. 4). The statement made by the Inclusive Framework endorses the use of "safe harbours" to implement Pillar One, while also acknowledging the fact that many of the Inclusive Framework members have raised concerns about the safe harbour approach. The statement also recognises that other political challenges should be addressed before a consensus can be made under Pillar One. With respect to Pillar Two, the Inclusive Framework appreciates the technical design done by the working parties and outlines further work that needs to be done in the future (OECD, 2020d).

Following the Inclusive Framework's efforts on taxing the digital world, many countries such as Australia, the U.K., and the European Union are considering a digital service tax (DST) (Deloitte, 2019b). In June 2019, New Zealand also released a government discussion document outlining Inland Revenue's proposal for a DST (Inland Revenue, 2019b). While a DST helps New Zealand collect revenue from large digital MNE groups, it may result in consumers bearing the cost of this tax (Deloitte, 2019b). In June 2019, the National Assembly of Vietnam introduced a new *Law on Tax Administration No. 38/2019/QH14* (LTA), effective from 1 July 2020, to regulate the digital economy (National Assembly of Vietnam, 2019). In particular, the Vietnamese government will introduce a national e-commerce payment system in which commercial banks will withhold and deduct taxes on income generated in Vietnam by overseas e-commerce companies on their behalf (National Assembly of Vietnam, 2019).

Also, in response to the BEPS Inclusive Framework: Action 4, 8-10, the OECD introduced a draft document on pricing intra-group financial transactions in July 2018 (OECD, 2020e). On 11 February 2020, a final version of this document was released by the OECD as a supplement of the 2017 OECD Guidelines. The document focuses on various topics such as how to accurately delineate the intra-group financial transactions, pricing of inter-company loans, and guarantees (OECD, 2020e).

2.3.3. Academic Studies of the BEPS Project

Since the initial introduction of the BEPS Action Plan in 2013, some researchers have studied its development and how different countries around the world have responded to BEPS. Dharmapala (2014) discussed the empirical approach to profit shifting and provided a summary of empirical literature reviews on BEPS. This study highlighted the economic and legal factors that hamper the implementation of BEPS and provided further suggestions for future research. In particular, Dharmapala (2014) suggested that, although there is growing literature across all disciplines that analyses the tax avoidance activities of MNEs, there is still a lack of research in corporate tax planning in terms of structures and processes. Webster and Augustinos (2014) further analysed the problem of BEPS and looked at how it is tackled in Australia through information exchange in bilateral Double Taxation Agreements (DTAs)[10] and Tax Information Exchange Agreements (TIEAs).[11] This study concluded that Australia needs a new information exchange system to address BEPS issues and that the application of an automatic information exchange system could tackle these issues (Webster & Augustinos, 2014). In the same spirit, a recent study by Sawyer (2017) provided an update on the automatic exchange of information applied by Hong Kong in response to BEPS. Sawyer (2017) commented that the Hong Kong Special Administrative Region (HKSAR) generally complies with local laws and regulations in relation to information exchange and transparency. Sawyer (2017) further reported that the HKSAR has played an important role in facilitating the BEPS Action Plan in Hong Kong.

[10] A DTA is an agreement (or a tax treaty) that aims at avoiding international double taxation, which is the taxation of the same income twice by two different countries (OECD, 1963).
[11] A TIEA is an agreement signed by two or more countries that promotes "international co-operation in tax matters through exchange of information" (OECD, 2020f).

In addition to the study of information exchange, some researchers have examined how different jurisdictions have responded to the BEPS Action Plan. Oguttu (2015) evaluated how developing countries, such as those in Africa, should react to the BEPS Action Plan. This study suggested that as BEPS is a global issue, African nations should consider the OECD's suggestions in tackling BEPS and learn from the initiatives of global organisations, including the OECD and G20 countries, to create a better tax system. Oguttu (2015) also reported the need for international cooperation in tackling such a global issue as BEPS. Shelepov (2017) further evaluated the level of BEPS implementation in Indonesia and the BRICS countries (i.e. Brazil, Russia, India, China, and South Africa). According to Shelepov, each of the BRICS countries has different approaches to implementing the BEPS Action Plan. All of the BRICS countries have shown their efforts in implementing BEPS, even though some countries have fallen behind others (Shelepov, 2017). Sadiq et al. (2019a, 2019b) also conducted a study to investigate how 19 different jurisdictions have responded to the BEPS Action Plan. This paper firstly analysed the positions of each jurisdiction in terms of region, economy status, and exporting/importing status, and then considered their respective position in the BEPS framework (Sadiq et al., 2019a, 2019b). A study by Plowgian (2013) also emphasised that, given the complexity of the international tax system in the context of BEPS, MNEs should implement proactive actions in "managing reputation risk, managing change risk, and participating in policy-making process" (Plowgian, 2013, p. 260). The BEPS project provides an opportunity for governments and MNEs around the world to work together in such a way that they are all better off (Plowgian, 2013).

Among many studies of BEPS, there are very few studies on the BEPS Action 13 regarding transfer pricing. Sawyer and Sadiq (2019) studied CbCR requirements under the BEPS Action 13, using a comparative case study analysis. In particular, Sawyer and Sadiq (2019) reported that Australian and New Zealand tax consultants found enormous challenges in implementing CbCR for their clients. Also, a study by Wardhana (2019) provided Indonesian policymakers with recommendations to address transfer pricing issues in relation to the BEPS Action 13. Wardhana (2019) suggested that Indonesia should apply a location-specific advantage transfer pricing regime to tackle the issues of BEPS. According to Wardhana (2019, p. 204), "Location savings, location advantages, and market premium" are the three categories that Indonesia should consider under this suggested transfer pricing regime.

2.4. Transfer Pricing Landscape in New Zealand and Vietnam

The purpose of this section is to review the transfer pricing regulatory framework in both New Zealand, an OECD member, and Vietnam, a non-OECD country. This section also looks at some current academic studies on the effects of the BEPS Action 13 on the transfer pricing landscape in both countries.

2.4.1. New Zealand

2.4.1.1. Old Transfer Pricing Regime

In comparison with its main trading partners, like the U.K., the U.S.A., and Australia, New Zealand's transfer pricing regime is considered to be relatively recent (Li, 2005b). The old transfer pricing rules were contained in Section GC 1 of the *Income Tax Act 1994*, governed by the Commissioner of the Inland Revenue Department (the Commissioner) (Inland Revenue, 1995). In a discussion document issued in early 1995, Inland Revenue proposed new transfer pricing rules, focusing on improving assessments of New Zealand-sourced income and non-resident investors in order to prevent MNEs from manipulating their transfer prices to shift profit out of New Zealand. As a result, New Zealand implemented its transfer pricing regulations in the middle of 1995, taking effect from the financial year ending 31 March 1997 (Inland Revenue, 1995). After that, Inland Revenue issued the final transfer pricing guidelines in October 2000 (Inland Revenue, 2000). Inland Revenue initially enacted its transfer pricing guidelines in draft form in two parts: Part 1 was released in 1997, while Part 2 was released in 2000. According to Inland Revenue, the transfer pricing guidelines were supplemental to the OECD Guidelines at that time, to provide taxpayers with clearer guidance. The 2000 transfer pricing guidelines provided an overview of the transfer pricing framework in New Zealand, including the level of documentation needed in accordance with the arm's length principle, some specific issues related to intangibles, inter-company services, cost contribution agreement, and procedures for APAs. Unlike other jurisdictions, New Zealand's 2000 transfer pricing guidelines stated that the burden of proof remained on the Commissioner, not the taxpayers (Inland Revenue, 2000).

2.4.1.2. Current Transfer Pricing Regime

In order to consolidate the changes of the BEPS project initiated by the OECD/G20 countries, the New Zealand government enacted the *Taxation (Neutralising Base Erosion and Profit Shifting) Act 2018* (the BEPS Act) in June 2018 (Inland Revenue, 2019a). In its "Tax Information Bulletin" issued in April 2019, Inland Revenue (2019a) issued five special reports on the changes of the legislation under the BEPS Act, including administrative measures, transfer pricing rules, permanent establishment rules, hybrid and branch mismatch rules, and interest limitation rules. The following parts discuss some key changes to New Zealand's transfer pricing regime.

2.4.1.2.1. Transfer Pricing Rules

In relation to its transfer pricing rules, the New Zealand government amended Sections GC 6 to GC 13 of the *Income Tax Act 2007* to align with the 2017 OECD Guidelines, which were updated as part of the BEPS project (Inland Revenue, 2019a). The amendments have replaced the prior transfer pricing rules in New Zealand and have been applied to financial years starting on or after 1 July 2018 as a response to the OECD's BEPS Action Plan. In general, Inland Revenue also applies a three-tiered approach, including a master file, a local file, and a CbCR, and recommends five transfer pricing methods in accordance with the 2017 OECD Guidelines. The new transfer pricing rules also include a reference to the 2017 OECD Guidelines stating that New Zealand transfer pricing rules follow these guidelines (Inland Revenue, 2019a).

In summary, Inland Revenue (2019a) introduced the following key changes in relation to transfer pricing rules:

- In addition to transactions between associated parties, New Zealand's transfer pricing rules also apply to transactions between non-resident companies.

- Inland Revenue prioritises the substance and actual conditions of related party transactions over their legal contracts. In particular, related party transactions have to be accurately delineated, based on the approaches recommended by the OECD Guidelines.

- If related party transactions are not commercially rational, Inland Revenue has the ability to disregard or reconstruct the transactions in accordance with Paragraph 1.122, Section 2, Chapter I of the OECD Guidelines. Specifically, this Paragraph states that:

> The transaction as accurately delineated may be disregarded, and if appropriate, replaced by an alternative transaction, where the arrangements made in relation to the transaction, viewed in their totality, differ from those which would have been adopted by independent enterprises behaving in a commercially rational manner in comparable circumstances, thereby preventing determination of a price that would be acceptable to both of the parties taking into account their respective perspectives and the options realistically available to each of them at the time of entering into the transaction. (OECD, 2017b, p. 78)

- Taxpayers have the burden of proof to demonstrate that their transfer pricing positions are appropriate. This responsibility no longer lies with the Commissioner.

- The time bar for Inland Revenue to assess and make adjustments on a taxpayer's transfer pricing position is increased from four to seven years if a written notification has been sent to the relevant taxpayer within four years after a tax return is filed.

2.4.1.2.2. Interest Limitation Rule

Inland Revenue (2019a) also introduced a new rule for pricing inbound loans (Sections GC 15 to 19 of the *Income Tax Act 2007*) between a New Zealand-resident borrower and a non-resident lender, effective for financial years starting on or after 1 July 2018. The rule stipulates that inbound loans exceeding NZD 10 million should be priced using a "Restricted Transfer Pricing" (RTP) approach. More specifically, in order to determine the arm's length interest amounts, the RTP rule provides guidance on determining the credit rating of the borrower in inbound loans and on disregarding any exotic feature not endorsed by third party loans (Inland Revenue, 2019a). According to PricewaterhouseCoopers (PwC, 2019), the RTP rule has the greatest impact on the parties to the loans as it moves away from the typical arm's length principle to a certain set of rules. Recently, Inland Revenue has made minor amendments on Section GC 18 of the *Income Tax Act 2007* regarding loan features disregarded by the RTP rule (Inland Revenue, 2020a).

2.4.1.2.3. Disclosure Requirements

In order to expand its information collection power and support the new rules, Inland Revenue has recently introduced the BEPS disclosure form which requires taxpayers to declare information on interest limitation, hybrid and mismatches, and the MNE group thin capitalisation (Inland Revenue, 2020b). From 2019, the BEPS disclosures are to be completed at the same time as the income tax returns via an online tool called myIR (Inland Revenue, 2019b). The BEPS disclosure form is shown in Appendix 9 of this thesis.

In the same vein, besides the annual international questionnaires that are sent to foreign-owned taxpayers to measure the impact of BEPS, since late 2019, Inland Revenue has also sent questionnaires to more than 375 taxpayers identified as distributors and wholesalers (Inland Revenue, 2019b; PwC, 2019). These distributors and wholesalers are the first target as they account for 24 percent of the total enterprises in New Zealand (Inland Revenue, 2019). In the first quarter of 2020, Inland Revenue continued issuing questionnaires to loss-making companies while questionnaires in relation to royalties and debt are expected to be sent to taxpayers in the second and third quarters of 2020, respectively (Inland Revenue, 2019b; PwC, 2019). This could mean that taxpayers are to receive four different questionnaires in the same financial year, potentially causing those taxpayers to incur excessive compliance costs (Inland Revenue, 2019b; PwC, 2019). Some of the questionnaires issued by Inland Revenue are presented in Appendix 10.

2.4.1.2.4. Transfer Pricing Practice Issues

On its website, Inland Revenue also provides information on transfer pricing practice issues, including APAs, documentation, intangibles, financial transactions, and simplified measures. (Inland Revenue, 2020c). In relation to documentation, as illustrated in Appendix 11, Inland Revenue outlines how a good documentation package should look. Furthermore, in order to reduce compliance costs for small businesses, Inland Revenue (2020c) introduces some simplified measures to transfer pricing, including the following:

- 5 percent mark-up on total costs for low value-adding services below NZD 1 million.
- Application of the RTP rule to outbound loans.

- Indicative interest margins for inbound loans less than NZD 1 million.

- 3 percent of earnings before interest and tax (EBIT) for small wholesale distributors.

2.4.1.3. Multinational Enterprises Compliance Focus

In November 2019, Inland Revenue issued the "Multinational Enterprises Compliance Focus 2019" document to provide more transparency and certainty after the changes in its transfer pricing regime (Inland Revenue, 2019b). This document had been last updated in 2016 with the same purpose. It provides a summary of the New Zealand tax context, international tax changes, the progress of the BEPS implementation process in New Zealand, transfer pricing changes and simplified measures, Inland Revenue's compliance focus, and other significant topics (Inland Revenue, 2019b).

In terms of achievements, Inland Revenue has closely monitored large enterprises whose revenue is more than NZD 80 million, and foreign-owned enterprises with a revenue greater than NZD 30 million (Inland Revenue, 2019b). Inland Revenue has been focusing on the following groups of enterprises (as set out in Figure 2.2):

Figure 2.2: Enterprises operating in New Zealand

(Inland Revenue, 2019b, p. 6)

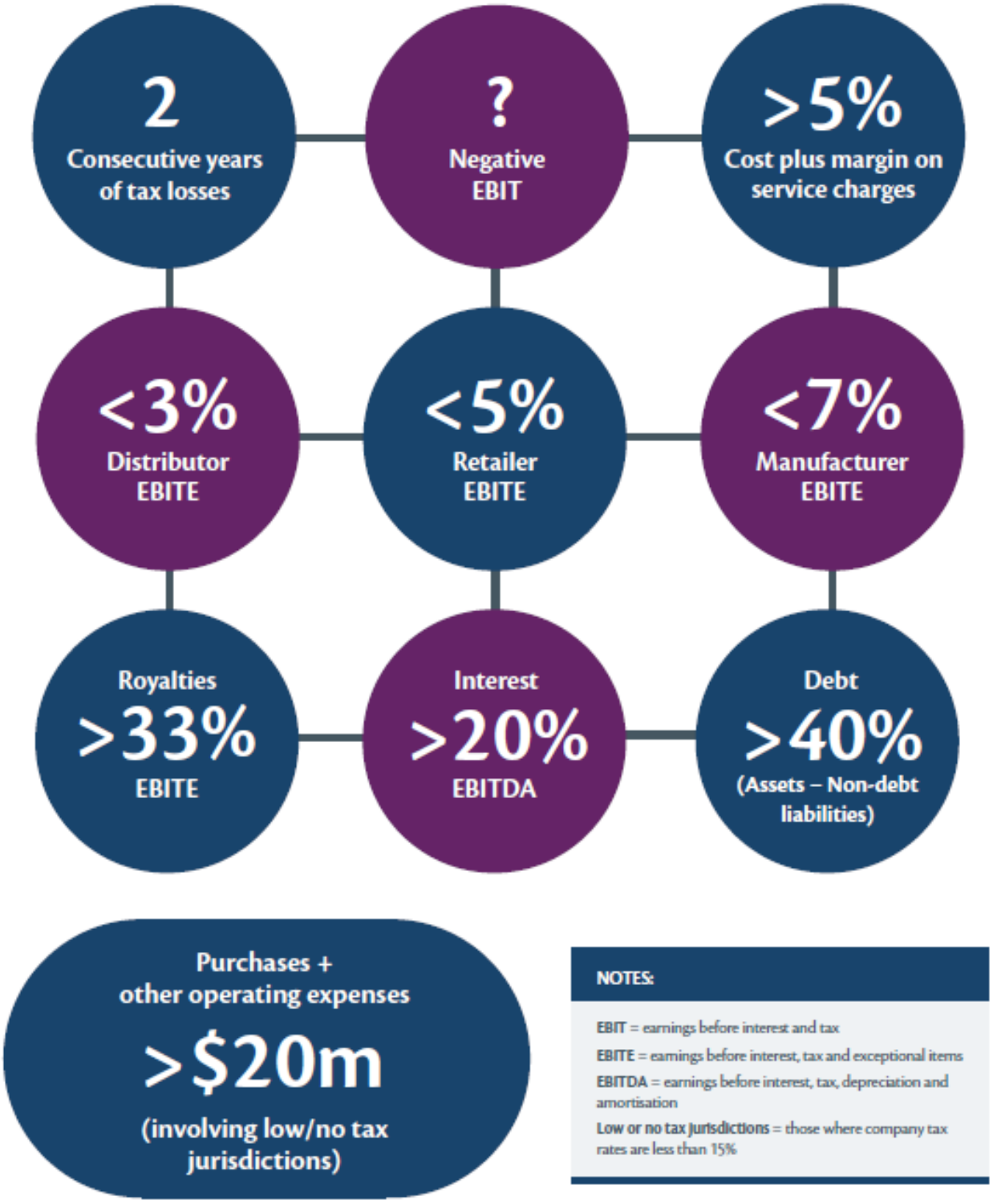
Since 2016, New Zealand has been one of the signatories to the "Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports" (CbC MCAA), an initiative of the OECD to facilitate the exchange of CbCRs (OECD, 2020g).

As part of the BEPS Action 13 implementation, Inland Revenue has implemented the automatic exchange of CbCRs since 2018 (Inland Revenue, 2019b). By the end of 2018, Inland Revenue received 1,402 CbCRs not only from significant enterprises with a revenue exceeding NZD 80 million, but also from small and medium-sized businesses. The CbCR template provided by Inland Revenue is shown in Appendix12. In addition, Inland Revenue completed 23 APAs in 2019, making a total of 205 completed APAs from the time NZ concluded its first APA to 30 June 2019. Most of New Zealand's bilateral APAs are with its main trading partner, Australia. Inland Revenue has also concluded APAs with other countries such as the U.S.A., the U.K, Korea, Canada, and China. (Inland Revenue, 2019b).

More significantly, in the compliance focus document, Inland Revenue also outlines a "You Do The Math" checklist covering risk factors that are possibly subject to scrutiny (Inland Revenue, 2019b).

As shown in Figure 2.3 below, Inland Revenue's future campaigns will focus on issues such as losses, royalties, and thin capitalisation (Inland Revenue, 2019b). Therefore, it is expected that companies should review their current positions based on these focused areas before they receive further questions from Inland Revenue (Deloitte, 2019a).

Figure 2.3: You Do The Math checklist



(Inland Revenue, 2019b, p. 18)

2.4.2. Vietnam

2.4.2.1. Old Transfer Pricing Regime

Vietnam has been undergoing economic reforms since 1986, which has attracted more direct foreign investments into the country (Hoang, 2014). Given Vietnam's economic development, the first transfer pricing regulations, *Circular 117/2005/TT-BTC: Providing Guidelines on Calculation of Market Prices in Business Transactions between Affiliated Parties* (Circular 117), were enacted in 2005 by Vietnam's Ministry of Finance (MOF) and took effect in 2006 (MOF, 2005). On 22 April 2010, the MOF introduced new transfer pricing regulations: *Circular 66/2010/TT-BTC: Guiding the Determination of Market Prices in Business Transactions between Associated Parties* (Circular 66), replacing Circular 117 (MOF, 2010). Both Circular 117 and Circular 66 required taxpayers to prepare contemporaneous transfer pricing documentation and submit an annual transfer pricing declaration form (MOF, 2005; 2010). Under the old regulations, taxpayers were not required to prepare transfer pricing documentation on an annual basis, but only to submit it to the Vietnamese tax authorities[12] upon request (MOF, 2005; 2010).

Also, as a part of building a transparent transfer pricing regulatory framework in Vietnam, the MOF enacted *Circular 201/2013/TT-BTC: Guidance on Application of Advance Price Agreements to Tax Administration* (Circular 201), effective from 5 February 2014, to provide official guidance on the APA process, including APA regulations, APA applications, and roles and responsibilities of both taxpayers and tax authorities in the APA process (MOF, 2013). According to PwC (2014), Circular 201 was a positive step taken by the Vietnamese tax authorities towards creating a more transparent and collaborative legal framework. While transfer pricing documentation requirements were regulated under Circular 66, Circular 201 was introduced to deal with APA procedures in Vietnam only (MOF, 2013). Presently, Circular 201 is still effective and has not been replaced by any new rules (MOF, 2013).

[12] In Vietnam's tax system, the General Department of Taxation (GDT) is the head of the local or provincial tax departments. For the purpose of this thesis, the GDT, and the local or provincial tax departments are all referred to collectively as "the Vietnamese tax authorities".

2.4.2.2. Current Transfer Pricing Regime

Although Vietnam is not a member of the OECD, it is one of the 137 countries that has participated in the OECD/G20 Inclusive Framework to reach a consensus on the implementation of the BEPS project (OECD, 2019b). Therefore, after the introduction of the BEPS project in general and the BEPS Action 13 in particular, the MOF introduced new transfer regulations, namely *Decree 20/2017/NĐ-CP: Prescribing Tax Administration for Enterprises Engaged in Transfer Pricing* (Decree 20) and *Circular 41/2017/TT-BTC: Providing Guidance on Implementation of Certain Articles of the Government's Decree 20 on Tax Administration for Enterprises Engaged in Transfer Pricing* (Circular 41), which are effective from 1 May 2017 (MOF, 2017a; 2017b). While Decree 20 regulates the Vietnamese transfer pricing framework, Circular 41 provides detailed guidance on how to apply the provisions under Decree 20, including selection and application of the five transfer pricing methods recommended in the OECD Guidelines, comparability analysis, documentation and disclosure forms, as well as documentation and disclosure exemptions (MOF, 2017a; 2017b). Some key features of Vietnam's transfer pricing landscape under Decree 20 and Circular 41 are discussed further below.

2.4.2.2.1. Documentation Requirements

The new transfer pricing regulations follow a three-tiered documentation approach recommended by the OECD, and provide for the disclosure of detailed information (MOF, 2017a). The new regulations also endorse the "substance over form" principle and require the actual conditions of related party transactions to be consistent with their legal agreements. A CbCR is also required for those ultimate parent companies whose consolidated revenue during a certain financial year is equal to or more than VND 18,000 billion (approximately NZD 1.24 billion) (MOF, 2017a). The most significant change in the new Vietnamese transfer pricing regulations is that taxpayers only have 90 days after the end of their financial year to prepare the three-tiered documentation on an annual basis (PwC, 2018; MOF 2017a).

Circular 41 also provides taxpayers with more clarification on their reporting requirements (Orbitax, 2020). For instance, if the CbCR of an MNE group is not available within 90 days after the end of a taxpayer's financial year, the previous CbCR can be provided to the tax authorities,

but an explanation letter is needed (Orbitax, 2020; MOF, 2017b). In addition, if a local entity is a joint venture (jointly owned by other MNE groups), then the local taxpayer has to keep copies of the master file and CbCR of each MNE group that consolidates its financial results (MOF, 2017b). Recently, Vietnam has expressed its interest to join the "Global Forum on Transparency and Exchange of Information for Tax Purposes", a forum that has over 160 members coming together to ensure the implementation of "internationally agreed standards of transparency and exchange of information in the tax area" (OECD, 2017d). However, up till now, the Vietnamese tax authorities have just collected CbCRs from taxpayers, and have not been engaged in exchanging CbCRs with other countries via the CbC MCAA (OECD, 2020g).

In terms of performing comparability analysis for the local file, the Vietnamese tax authorities prefer local comparable companies, but regional data can be used with adjustments if there is insufficient local data (MOF, 2017a). For unique related party transactions where close comparable companies are not available, taxpayers can expand the search to different industry sectors and geographic markets to benchmark these related party transactions. However, quantitative and qualitative analysis should be performed for comparability and material differences (MOF, 2017a).

2.4.2.2.2. Transfer Pricing Declaration Forms

In addition to the three-tiered documentation approach, the new regulations introduced more complex transfer pricing declaration forms that taxpayers have to submit together with their annual corporate income tax return (MOF, 2017a; 2017b). These forms replace the old transfer pricing declaration form under Circular 66 (MOF, 2017a; 2017b). In particular, the new disclosure transfer pricing forms include the following (MOF, 2017a):

- Form 01 – Disclosures of related party information (names, countries of incorporation, and types of relationship) and transaction quantum.

- Form 02 – A checklist covering the content of the local file prepared by the taxpayers.

- Form 03 – A checklist covering the content of the master file prepared by the taxpayers.

- Form 04 – Disclosures by CbCR. Taxpayers are required to maintain a copy of the CbCR prepared by their ultimate parent companies.

Forms 02, 03, and 04 basically follow the contents recommended by the OECD, but also require some more specific information (MOF, 2017a; 2017b). Refer to Appendices 13 to 16 of this dissertation for more details.

2.4.2.2.3. Documentation Exemptions

Decree 20 outlines cases where the taxpayers are exempted from preparing their transfer pricing documentation, but must still provide certain forms (MOF, 2017a). Specifically, the exemptions apply to the following cases (MOF, 2017a):

- Taxpayers who are involved in related party transactions and generate total sales revenue below VND 50 billion (NZD 3.35 million) and the total quantum of their related party transactions is less than VND 30 billion (NZD 2.01 million) in one financial year.

- Taxpayers who have concluded an APA and submitted their annual APA reports.

- Taxpayers who perform simple functions, do not incur expenses and generate revenue related to the employment of intangibles, have a revenue of less than VND 200 billion (NZD 13.39 million), and achieve the following EBIT to revenue ratios:

    - From 5 percent upwards for distributors.
    - From 10 percent upwards for manufacturers.
    - From 15 percent upwards for processors.

2.4.2.2.4. Expense Deductibility

In relation to intra-group services, the new regulations set out several criteria for the deductibility of such expenses (MOF, 2017a). Taxpayers can deduct service expenses in their tax return in the following cases (MOF, 2017a):

- The services provided to the Vietnamese taxpayers have commercial, financial, and economic values and support the operations of the taxpayers in Vietnam. The service fees should be determined based on what is agreed to by independent third parties.

- The taxpayers can provide evidence such as invoices, calculation sheets, and legal agreements related to the services provided.

Service expenses will not be deducted if the services only provide benefits to other related parties rather than the Vietnamese taxpayers, or are duplicate services (MOF, 2017a). In addition, no mark-up should be applied to third party costs that are recharged to the Vietnamese entities (MOF, 2017a).

Furthermore, Decree 20 introduced an interest limitation rule that limits a taxpayer's interest expenses to 20 percent of earnings before interest, tax, depreciation, and amortisation (EBITDA) (MOF, 2017a). Any interest expenses in excess of this 20 percent ratio will not be deducted. However, this rule does not apply to banking and insurance companies (MOF, 2017a). According to PwC (2017), this rule causes a lot of problems for highly leveraged firms, such as those operating in the real estate and infrastructure industries. This rule moves away from OECD recommendations in such a way that it does not consider a group-ratio test. Besides, the rule leads to uncertainty as it does not stipulate whether it applies to both related party and third party loans (PwC, 2017). As a result, large enterprises in Vietnam such as EVN, Vinacomin, Vicem, and Lilama raised their concerns about the effects of this rule to the MOF in early 2018 (MNE Tax, 2018). These enterprises said that:

> Limiting loan interest costs between related companies would harm enterprises and damage investment and business development because borrowing and re-lending activities between parent companies and their subsidiaries are common, legitimate, and a beneficial means of capital mobilisation. As a result of these limits, legitimate profits of a company are reduced and additional capital expenses would be incurred. (MNE Tax, 2018).

Therefore, this rule was put under scrutiny during a National Assembly in 2018 (MNE Tax, 2018). After taking into account public consultation, on 24 June 2020, the Vietnamese government enacted *Decree 68/2020/NĐ-CP: Amending and Supplementing Clause 3, Article 8 of Decree 20/2017/NĐ-CP Dated 24 February 2017 on Tax Administration for Enterprises Engaged in*

Transfer Pricing (Decree 68) to change the interest limitation rule to 30 percent of EBITDA (MOF, 2020). Under Decree 68, effective from the 2019 tax year onwards, taxpayers are allowed to carry forward non-deductible interest expenses to subsequent tax years for up to five years if the EBITDA ratio is less than 30% in those years. In addition, Decree 68 also introduced a new Form 01 to replace the existing Form 01 of Decree 20 (MOF, 2020).

2.4.2.3. Law on Tax Administration (LTA)

As mentioned above, the National Assembly of Vietnam (2019) has recently introduced a new LTA, effective from 1 July 2020. Besides providing new rules on e-commerce businesses and some changes to tax administration procedures, the LTA has also focused on certain transfer pricing aspects as follows (National Assembly of Vietnam, 2019):

- The LTA introduces a "substance over form" approach, stating that the Vietnamese tax authorities will look at the economic substance of the related party transactions, rather than just their legal form; and

- The Vietnamese government will enhance its international co-operation with foreign tax authorities via information exchange and technical cooperation.

At time of writing, there will be a decree and a circular providing more guidance on this new law in the near future.

2.4.3. Transfer Pricing Academic Studies about New Zealand and Vietnam

From the above findings, it is clear that the BEPS Action 13 has had a significant impact not only on its OECD countries, but also potentially on other non-OECD countries. Besides the studies by Sawyer and Sadiq (2019), Wardhana (2019), Abu-Hijleh (2016), and Li (2005b), mentioned above, there is little evidence of research that focuses on the effect of BEPS in general or the BEPS Action 13 in particular on the New Zealand transfer pricing landscape. Similarly, except for the studies by Sadiq et al. (2019a, 2019b), who examined how 19 different jurisdictions, including Vietnam, have responded to the BEPS Action Plan, little is known about the impact of BEPS and the BEPS Action 13 on the transfer pricing landscape of Vietnam. Further research should be done to

understand the effects of the BEPS Action 13 on the regulatory and compliance landscape in these countries, as well as the role of government agencies, tax consultants, and MNEs in implementing the BEPS Action 13.

2.5. Conclusion

Considering the findings from general transfer pricing topics, the BEPS project, regulatory framework in New Zealand and Vietnam, this literature review presents some important points. General transfer pricing research has examined many aspects of transfer pricing, but there are few studies adopting a comparative approach to understand the development of transfer pricing in different jurisdictions. In addition, researchers have not yet paid enough attention to the study of the BEPS Action 13 on transfer pricing, although it has a significant impact on the transfer pricing landscape in many countries. Furthermore, although the transfer pricing landscape in New Zealand and Vietnam has changed as a result of the BEPS Action 13, few studies have focused on these countries to examine the effects of the BEPS Action 13 on both developed and developing countries. Therefore, there is room for future research on the effects of the BEPS Action 13 on the transfer pricing practices, as well as the important roles of government agencies, tax consultants, and MNEs in the implementation process of the BEPS project in different jurisdictions such as New Zealand, an OECD member, and Vietnam, non-OECD country. The above-mentioned literature gaps in the field of transfer pricing have motivated the researcher to further study how the BEPS Action 13 has impacted different jurisdictions, particularly New Zealand and Vietnam.

Chapter 3: Methodology

3.1. Introduction

This chapter describes the objectives of the study, the research questions, and the theoretical framework, as well as the research methods applied by the researcher to address the research questions. As mentioned in Chapter 2, little research has been conducted on the OECD/G20 BEPS project in general or the BEPS Action 13 in particular in order to understand the impact of the new transfer pricing reporting requirements on various interest groups in different jurisdictions. Considering the gaps identified in the review of the academic literature, the researcher intends to conduct a comparative study of New Zealand and Vietnam to examine the effects of the BEPS Action 13 on transfer pricing practices in these two countries. In order to conduct the study, a qualitative approach is adopted. Semi-structured interviews are conducted with government agency representatives and transfer pricing specialists in both New Zealand and Vietnam to gain an understanding of transfer pricing practices in both countries. In addition, other resources and publicly available data are also collected and analysed to support the qualitative analysis.

In this chapter, Section 3.2 presents the aims of the study, together with the research questions. Section 3.3 introduces the theoretical framework that is used as a guide to conduct this study, as well as the ontology and epistemology underpinning the study. Section 3.4 and Section 3.5 discuss the methodological approach and the research methods employed by the researcher to answer the research questions, while Section 3.6 provides a summary of the chapter.

3.2. Aims and Research Questions

The main objective of this study is to understand the transfer pricing practices adopted by New Zealand and Vietnam. Firstly, the study examines the differences and similarities in transfer pricing regulations and practices between the two countries, both before and after the adoption of the BEPS Action 13. Secondly, the study investigates the role of government agencies, tax consultants, and MNEs in creating a more transparent and compliant landscape following the

BEPS Action 13. Lastly, the study presents implications for future research on transfer pricing with respect to the BEPS Action 13.

In order to achieve these objectives, the study addresses the following research questions:

- RQ1: How have two different jurisdictions (New Zealand and Vietnam) reacted to and adapted the BEPS Action 13?

- RQ2: How have MNEs and tax consultants reacted to the changes in transfer pricing regulations in both New Zealand and Vietnam?

In order to answer RQ1, an overview of the transfer pricing landscape in New Zealand and Vietnam pre- and post-BEPS Action 13 has been presented in Chapter 2. The literature also presents the contexts that have led to the development of the BEPS project and Action 13. RQ1 is further addressed via semi-structured interviews with government agency representatives and tax consultants from Big 4 and Mid-tier accounting firms in both New Zealand and Vietnam. It is intended that these interview participants would give more insights into the introduction of the new transfer pricing regulations[13] in New Zealand and Vietnam, including the consultation and implementation stages.

Furthermore, RQ2 is addressed by conducting a comparative analysis of New Zealand and Vietnam transfer pricing regulations. Through the interviews and document analysis, the researcher is able to understand what different interest groups think about the new transfer pricing regulations in New Zealand and Vietnam following the introduction of the BEPS Action 13. The case study approach enables the researcher to explore various transfer pricing issues in both countries, make a comparison, conclude the analysis, and provide implications for future transfer pricing research.

[13] Throughout this thesis, the new transfer pricing legislation or rules and regulations refer to the amendments of Sections GC 6 to GC 13 and the new Sections GC 15 to 19 of the *Income Tax Act 2007* in New Zealand, and Decree 20, Circular 41, and Decree 68 in Vietnam, respectively.

3.3. Theoretical Framework

3.3.1. Institutional Theory

According to McKerchar (2010), the first step in designing a research study is to select a theoretical framework and its underlying ontological and epistemological perspective. This study uses institutional theory as a theoretical framework. The "institutional perspective" has become popular in modern research as it helps explain the internal and external factors that have an impact on organisational patterns (Weerakkody et al., 2009). Many research disciplines like sociology, organisational studies, political sciences, and economics have used the institutional perspective to explain both organisational and individual behaviours (Weerakkody et al., 2009). However, there is no single agreed definition of institutional theory, as each version has its own definition (Scott, 1987). According to Fernando and Lawrence (2014), institutional theory studies various forms of organisations, and explains the reasons why these organisations display the same characteristics within the same organisational field. Oliver (1997) stated that "institutional theory views organisations as operating within a social framework of norms, values, and taken-for-granted assumptions about what constitutes appropriate or acceptable economic behaviours" (p. 699). Therefore, organisations conform to pressures for change (in the organisational field) because "they are rewarded for doing so through increased legitimacy, resources, and survival capabilities" (Scott, 1987, p. 498).

In the field of taxation, Marriott (2010) stated that institutional theory "facilitates analysis of how the state, interest groups, and individuals impact the tax policy area, and the degree to which policy outputs reflect the preferences and influence of such groups" (p. 2). North (1991) defines institutions as both informal social institutions (such as norms, values, and traditions) and formal institutions (such as economic rules, regulations, laws, and constitutions). In the context of this thesis, government agencies can be classified as formal institutions while MNEs and tax consultants are regarded as social institutions. Therefore, by using institutional theory, the researcher is able to explain how the BEPS Action 13, tax consultants, and MNEs affect the new transfer pricing regulations enacted by government agencies in New Zealand and Vietnam. It also enables the analysis of whether these introduced regulations reflect the interests and preferences of these groups.

There are two dimensions of institutional theory, namely old institutionalism and new institutionalism (Scott, 1987). Old institutionalism does not endorse a particular theoretical approach and only focuses on understanding the organisational change process. New institutionalism employs economic theories to explain how individual behaviours influence organisational changes (Groenewegen et al., 1995). Groenewegen et al. (1995) expounded that "the new institutionalists explain economic, legal, and historical institutions in terms of individual behaviours" (p. 470). In the new institutionalism, the concept of "institutional isomorphism" conveys that, under the same constraints, organisations become similar to others (DiMaggio & Powell, 1983). There are three different processes of institutional isomorphism, namely coercive isomorphism, mimetic isomorphism, and normative isomorphism (DiMaggio & Powell, 1983). According to Fernando and Lawrence (2014), the first process, coercive isomorphism, is related to the pressures from stakeholders (shareholders, employees, government) that make organisations change their practices. The second process, mimetic isomorphism, occurs when organisations try to copy the practices employed by other organisations. The last process, normative isomorphism, involves the pressures from common standards or values that encourage organisations to adopt specific practices (Fernando & Lawrence, 2014).

Given the above characteristics of institutional theory, this study uses new institutionalism to understand and explain factors that impact government agencies (formal institutions) and MNEs and tax consultants (social institutions) in New Zealand and Vietnam during the implementation of BEPS Action 13. In particular, this theory is used as a guide to explain how government agencies, tax consultants, and MNEs in both countries become isomorphic under the same constrained environment or environmental field (the changes in transfer pricing reporting standards recommended by the BEPS Action 13). Although there are many variants[14] of new institutionalism, this study endorses historical institutionalism as it allows the researcher to analyse policy changes over time (Peters, 1999).

[14] These variants include normative institutionalism, rational choice institutionalism, historical institutionalism, empirical institutionalism, international institutionalism and societal institutionalism (Peters, 1999).

3.3.2. Ontology and Epistemology

The selection of the philosophical paradigm reflects the researcher's ontology (how the world is viewed) and epistemology (the belief of how knowledge is achieved) (McKerchar, 2010). Two main paradigms that are used by most researchers are "positivism" and "interpretivism" (or non-positivism). In this study, critical realism is used as this paradigm assists the researcher to answer both the "how" and "why" questions. Critical realism is considered to be non-positivism and is sometimes referred to as "post-positivism" because it lies in between positivism and interpretivism (McKerchar, 2010).

Critical realism also permits the flexibility to use qualitative methods in research and allows researchers to apply critical realism to interpret social phenomena (Tashakkori & Teddlie, 1998). From an ontological perspective, a "critical realist sees greater complexity in the relationships under study, going beyond the depths of empirical realism to the 'real reality'" (McKerchar, 2010, p. 77). In other words, researchers who apply this paradigm are permitted to study what they wish to, rather than something that is preordained. In addition, critical realism holds an epistemology that knowledge is socially generated, rather than objectively constructed by researchers (McKerchar, 2010). Therefore, given the exploratory nature of this study, critical realism is considered to be an appropriate paradigm to address the research questions.

3.4. Methodological Approach

The second step in conducting research is to select an appropriate methodological approach based on the chosen theory, and ontological and epistemological beliefs (McKerchar, 2010). Common methodologies adopted by researchers consist of quantitative, qualitative, legal or mixed approaches. It is also acknowledged that there is no perfect approach and researchers should choose the methodologies that best fit their studies. McKerchar further explained that "methodology is the middle ground between philosophical discussions on theoretical frameworks, and discussions on the methods (tools for strategies of inquiry) that are to be used" (p. 89-90).While quantitative methodology endorses the use of a deductive approach to test hypotheses and create scientific knowledge, qualitative methodology views reality as being subjective and "is not driven by deductive reasoning, hypotheses testing, the study of variables, or the making of

statistical generalisations to broader populations" (McKerchar, 2010, p. 94). Qualitative research, instead, applies an inductive approach to generate theories and identify patterns. The application of qualitative methodology is commonly seen in tax, law, and accounting research (McKerchar, 2010). Given the theoretical framework and the ontology and epistemology of this study, it is appropriate to use a qualitative approach to address the research questions. Specifically, this study does not follow a deductive approach to test hypotheses. Instead, it takes an inductive approach to understand the effects of the BEPS Action 13 on the transfer pricing landscape in New Zealand and Vietnam. Therefore, because of the exploratory nature of this study, the selection of the qualitative methodology is justified, and no further considerations are given to other methodologies.

3.5. Research Methods

The following sections discuss the specific research methods employed by the researcher to address the research questions as set out in Section 3.2 of Chapter 3 of this study.

3.5.1. Case Study

As mentioned above, a qualitative case study methodology is adopted to investigate the transfer pricing landscape in New Zealand and Vietnam. In order to apply this methodology, a comparative case study approach is selected by the researcher. According to Zainal (2007), the case study method selects a small group of individuals or an organisation as the studied subjects to investigate and examine contemporary events in their real-life contexts. In addition, Yin (2009) also stated that "a case study is an empirical inquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between the phenomenon and context are not clearly evident" (p. 18). Traditionally, the case study method has been considered as lacking robustness and objectivity in comparison with other research methods (Rowley, 2002). However, as long as this method is applied correctly, it will become a useful tool for researchers to study complicated issues (Baxter & Jack, 2008). Rowley (2002) and Yin (2009) argued that a case study approach may offer more useful insights compared to other research methods, as this method deploys the exploratory and descriptive research and provides answers to "how" and "why"

questions. Case study method also overcomes the limitations of quantitative methods by providing in-depth explanations of social phenomena and individuals' behaviour (Rowley, 2002).

Given the exploratory nature of this study, it is appropriate to use a case study analysis to compare the transfer pricing practices between New Zealand and Vietnam. Vietnam has been chosen for this study for the following reasons. Firstly, although Vietnam is not a member of the OECD, it has relied on the OECD/G20 Inclusive Framework to implement many changes in its domestic transfer pricing legislation (Coronado, 2018). Secondly, the changes in Vietnamese transfer pricing might affect many foreign investors with respect to their global supply chain policies (Bortoletti, 2019). Therefore, it is worth examining the changes in the transfer pricing regime of Vietnam following the introduction of the BEPS Action 13. The researcher has also chosen New Zealand, a member of the OECD, to make a comparison with Vietnam since New Zealand, with its unique Generic Tax Policy Process, "has actively engaged with the G20/OECD BEPS program" (Sadiq et al., 2019a, p. 213). In particular, New Zealand has recently taken actions to revise part of its *Income Tax Act 2007* in response to the BEPS project, including Action 13 on transfer pricing (Inland Revenue, 2019a). Thus, this comparison will advance the current academic literature as it shows how different developed and developing jurisdictions have reacted to and adapted the BEPS Action 13, which has not yet been extensively studied in recent research.

There are three main categories of case study: exploratory, descriptive, and explanatory (Yin, 2009; Zainal, 2007). This study focuses mainly on the exploratory aspect to examine the events and phenomena. Case studies typically use information from various sources such as documents, artefacts, and interviews (Rowley, 2002). This study uses a combination of these sources, where available, to understand the transfer pricing issues and to answer the research questions. As noted in Chapter 2, a literature review on transfer pricing, the BEPS project, and transfer pricing practices in New Zealand and Vietnam was conducted to find the literature gaps, develop research questions, and design interview questions. In general, the case study method is useful to answer the "how" questions in RQ1 and RQ2 of this thesis. Details of how information was collected via documents and interviews to support the case study method are presented below.

3.5.2. Document Analysis

Numerous research articles have used organisational and institutional reports and documents in qualitative research because document analysis evaluates information from different sources such as newspapers, government publications, annual reports, press releases, and other types of journals to examine phenomena (Bowen, 2009). As document analysis is a useful tool in qualitative research, this study adopts this method to gather publicly available information from a wide range of sources. Even though documents are easy to access and can provide researchers with useful data, researchers should pay attention to the appropriateness of the information in explaining related issues from their research (Bowen, 2009). Bowen (2009) also set out the following criteria for choosing reliable information:

- Completeness: the researchers should consider whether the documents can cover the studied topics comprehensively or selectively. This study determines this criterion based on the reliability of information sources. Therefore, official sources of information, such as government legislation and publication, journal articles published in well-known databases, are carefully selected to fully address the research questions.

- Balanced information: the researchers should also determine whether the documents can provide much or little information on the studied topics. In order to achieve balanced information, this study selects documents that are relevant to the research topics from different sources. The selection criterion is based on how well the documents can contribute to addressing the research questions.

- Author information: the researchers should examine whether the documents have specific authors and reliable original sources.

Based on the above criteria suggested by Bowen (2009), this study examines different sources of information, including,

- Documents issued by the OECD such as guidelines and reports. The 2017 OECD Guidelines, discussion papers, BEPS Action Plan reports, proposals, and other publications are the core documents of this study.

- Government publications such as legislation, regulations, decrees, circulars, notices, guidelines, and other relevant documents published by Inland Revenue, Vietnam's MOF and GDT, and other relevant government agencies.

- News briefs, tax tips, tax alerts, explanation articles, notices, and other relevant information published by reliable organisations, Big 4 and Mid-tier accounting firms.

- Transfer pricing journal articles, online articles, books, books chapters, masters and doctoral theses, and other reliable sources.

The types of documents as outlined above, were used by the researcher in Chapter 2 to gain background information about the transfer pricing practices in New Zealand and Vietnam. Moreover, they have also contributed to the design of the interview questions to get more detailed information from respective government agency representatives and tax consultants.

3.5.3. Interviews

The interview method has been regarded as one of the most popular and important qualitative data collection methods as it allows researchers to understand others through communications (Qu & Dumay, 2011). Oun and Bach (2014) stated that there are three main types of individual interviews as follows:

- In-depth interviews (or unstructured interviews): the researcher will not ask questions and wait for the interviewees to answer. The researcher, instead, will discuss different topics with the interviewees.

- Focused interviews (or semi-structured interviews): the researcher will prepare closed-ended and open-ended questions and allow the interviewees to discuss the topics openly. Semi-structured interviews also allow the researcher to have a discussion in detail with the interviewees and to direct the interviews depending on the answers provided by the interviewees.

- Structured interviews: the researcher will ask the same set of questions to various interviewees. Usually, the questions will have limited answers. Typical structured interviews include yes or no questions and rating questions.

Given that the knowledge about transfer pricing is very broad, semi-structured interviews were chosen in this study to answer the research questions. During the semi-structured interviews, the researcher had an opportunity to ask the interviewees detailed questions and direct them to important issues that the researcher wants to focus on.

According to Rabionet (2011), there are six steps in conducting semi-structured interviews, including (1) selecting the type of interview; (2) establishing ethical guidelines; (3) crafting the interview protocol; (4) conducting and recording the interview; (5) analysing and summarising the interviews (misstated as crafting the interview protocol in the abstract); and (6) reporting the findings. This research followed these six steps to conduct semi-structured interviews as illustrated in the next six subsections:

3.5.3.1. Selecting the Type of Interview

As mentioned above, semi-structured interviews were chosen for this study, as the researcher could narrow down the topics and ask some additional questions during the interviews. In addition, during the interviews, the researcher could direct the interviewees to the topics from which the researcher wanted to gain more information.

3.5.3.2. Establishing Ethical Guidelines

The study considered various ethical issues such as information confidentiality and disclosure of personal information in designing the interview questions and conducting the interviews. The researcher received an approval from the Human Ethics Committee of the University of Canterbury (attached in Appendix 1) to perform this study. The document analysis stage did not result in any significant ethical issues as the researcher used only publicly available information collected from various sources for analysis purposes. In relation to the semi-structured interviews, all information was kept confidential in accordance with the regulations of the University of Canterbury. In addition, the participants' personal information, contacts, and names were not

disclosed anywhere in the research unless a participant allowed the researcher to do so. All interview transcripts were sent to the participants for approval before being used in the research. All participants reserved the rights to withdraw from the research or had access to their interview transcripts at any time.

3.5.3.3. Crafting the Interview Protocol

Based on the academic literature review and the information gained from document analysis, the researcher formulated suitable questions to put to the interviewees. During this stage, the researcher also consulted other experts, including his supervisors to create the best protocol for the semi-structured interviews. The interview questions were designed in such a way that they could help the researcher address the research questions. As a result of this step, the researcher came up with a list of twenty questions for each category of interviewees (government agency representatives and tax consultants) in both countries respectively. Details of the interview questions are shown in Appendix 4.

3.5.3.4. Conducting and Recording the Interview

In conducting the semi-structured interviews, priority was given to face-to-face interviews, since these types of interviews would help create better interactions between the researcher and the interviewees. However, remote interviewing using telephone, Google Hangouts, and Skype was also considered where the researcher could not arrange a face-to-face interview with government agency representatives and tax consultants in New Zealand or Vietnam for various reasons. According to King and Horrocks (2010), remote interviewing can be used in the following circumstances: geographical distance of the participants, their availability, and the nature of the interview topics.

Therefore, the researcher prioritised the expertise of the interviewees, rather than their geographical locations. In this regard, besides the face-to-face interviews, the researcher decided to conduct some remote interviews with the participants using either telephone or online tools such as Google Hangouts and Skype, due to the fact that some of them were located in different cities from the researcher's location in Christchurch, New Zealand. Also, due to their busy schedules, it was extremely hard for some participants to meet the researcher in person for a face-to-face

interview. On this basis, remote interviewing was an effective alternative for the researcher in acquiring information from the interviewees and avoided incurring significant travelling costs to remote cities. Although remote interviewing has some limitations, such as the lack of physical interactions and unstable internet network, the researcher managed to run each interview smoothly and get sufficient information for further analysis.

Each interview took around 45-60 minutes on average. All interview answers were taken in note form, as well as being recorded and transcribed after the interviews. The researcher transcribed the interviews by himself to the extent possible to ensure the accuracy of the information provided by the interviewees. Any support from others in terms of interview transcriptions was carefully considered. As the researcher is fluent in both Vietnamese and English, any interview conducted in Vietnamese was then translated into English by the researcher.

3.5.3.4.1. Interview Participants

The researcher focused on two groups of interviewees, including,

- **Government agency representatives:** government agencies play an important role in this study as they are the ones who directly implement the changes of transfer pricing regulations following the BEPS Action 13. Thus, through the interviews with tax officers working for these agencies, the researcher can answer RQ1 relating to the reaction of the government to the BEPS Action 13 and understand more about the motivations behind the regulation changes. In this regard, the researcher interviewed a tax officer from Inland Revenue and another one from the Vietnamese tax authorities.

- **Tax consultants:** tax consultants are those who work for accounting firms and directly support MNEs with their transfer pricing matters before and after the recent changes in transfer pricing regulations. Thus, they understand the difficulties facing various MNEs and become the "spokespersons" for these MNEs to communicate with government agencies to make improvements on the current transfer pricing landscape. In order to address RQ1 and RQ2, the researcher interviewed senior tax professionals (partners and directors), in New Zealand and Vietnam, who have broad knowledge about transfer pricing, as well as having extensive

experience in dealing with various MNEs and tax authorities during transfer pricing disputes and audits.

3.5.3.4.2. Interview Locations

The interviews took place in both New Zealand and Vietnam. The researcher interviewed a representative of Inland Revenue and five tax consultants in New Zealand first, and then travelled to Vietnam to conduct similar interviews.

3.5.3.4.3. Number of Interviews

There are various debates relating to the sample size used in qualitative interviews (Dworkin, 2012). The most important factor in considering the sample size in the qualitative method is the concept of saturation (Mason, 2010). Dworkin (2012) defined saturation as the point at which the collection of data does not result in any new findings or theoretical insights. He also argued that the saturation point depends on various factors such as the quality of the data, the scope of the research, the budget, and the amount of information obtained from each participant. In addition, various scholars such as Daniel (2019) and Guest et al. (2006) have recommended that six to twelve interviews will be appropriate for qualitative research. Specifically, in a study on sample size in qualitative research, Daniel (2019) suggested that up to ten interviews should be conducted for exploratory study. Likewise, Guest et al. (2006) recommended that a minimum of twelve interviews should be conducted to reach the saturation point. However, if the participants are highly homogeneous, then six interviews should be enough (Guest et al., 2006). For the purpose of this exploratory study, twelve interviews are considered to be sufficient to reach the saturation point.

In particular, two interviews were conducted with respective government agency representatives, while ten interviews with tax consultants from eight Big 4 firms, and two Mid-tier firms, were conducted in New Zealand and Vietnam. Mid-tier firms usually provide services to smaller, more local clients than Big 4 firms (Lander et al., 2013). Therefore, the interviews with tax consultants of Mid-tier firms were limited to two. In total, twelve interviews were conducted. The rationale for choosing twelve interviews included:

- Government agencies can provide reliable information on the changes of the regulations, as they are the main bodies that implement such changes. Therefore, through two interviews with representatives (tax officers) of two countries, the researcher was able to gather enough information for the study. The researcher believed that these tax officers could represent the general opinions of their government organisations, as they are senior staff and have extensive experiences in dealing with tax consultants and MNEs in their respective countries.

- Each tax consultant from a Big 4 firm and a Mid-tier firm may be able to represent the experiences of their larger team. Thus, five interviews with tax consultants in each country were enough to understand the transfer pricing landscape in New Zealand and Vietnam. The researcher acknowledged that the findings of this study had reached saturation point after the twelve interviews with tax officers and tax consultants.

- As sufficient information was collected via interviews with tax officers and tax consultants to address the research questions, it was appropriate to limit the number of interviews to twelve.

The participants were recruited mostly via the social media platform LinkedIn. The researcher also utilised available sources such as websites and tax alerts to search for contacts with potential participants. In total, around twenty invitations were sent out to different potential participants. As a result, twelve participants responded and agreed to participate in the study.

Of the twelve interviews, four interviews were conducted face-to-face, while the remaining interviews were conducted via telephone (six interviews), Google Hangouts (one interview), and Skype (one interview). Interviews took place from December 2019 to February 2020. The participants were located in different cities as the researcher prioritised their expertise and experience, rather than their physical presence or geographical locations. Details of the participants are presented in the following table:

Table 3.1: Overview of the participants

Reference	Type of organisation	Location	Gender	Interview method
NZ Tax Consultant A	Big 4	Christchurch, NZ	Male	Face-to-face
NZ Tax Consultant B	Big 4	Wellington, NZ	Female	Phone
NZ Tax Consultant C	Big 4	Auckland, NZ	Female	Phone
NZ Tax Consultant D	Big 4	Auckland, NZ	Male	Phone
NZ Tax Consultant E	Mid-tier firm	Auckland, NZ	Female	Phone
NZ Tax Officer F	Inland Revenue	Auckland, NZ	Male	Phone
VN Tax Consultant G	Big 4	Ho Chi Minh, VN	Female	Face-to-face
VN Tax Consultant H	Mid-tier firm	Ho Chi Minh, VN	Male	Face-to-face
VN Tax Consultant I	Big 4	Ha Noi, VN	Male	Google Hangouts
VN Tax Consultant J	Big 4	Ho Chi Minh, VN	Male	Face-to-face
VN Tax Consultant K	Big 4	Ho Chi Minh, VN	Male	Skype
VN Tax Officer L	Vietnamese tax authorities	Ha Noi, VN	Female	Phone

3.5.3.5. Analysing and Summarising the Interviews

After conducting the interviews with the participants, the researcher transcribed the interviews and sent them to the participants for confirmation. One interview with a tax officer in Vietnam was conducted in Vietnamese. This interview transcript was translated from Vietnamese into English by the researcher, and both versions were sent to the tax officer for confirmation. The researcher then analysed the transcripts of the interviews carefully and grouped the answers into common categories or themes in order to make a comparison and address the research questions. Each theme was then divided into sub-themes where necessary. A name was given to each theme or sub-theme. In order to do this, the researcher combined the findings from the literature review with the transcriptions to pick up the themes that could assist the researcher in addressing the research questions. This process was done with the support of qualitative analysis software called NVivo. This software has special functions that allow the researcher to summarise the information effectively. All of the themes were reviewed carefully before being used in the write-up, and irrelevant themes were also eliminated at this stage. Follow-up questions were sent to the participants via email if the researcher needed to clarify any information to supplement the themes.

3.5.3.6. Reporting the Findings

At this point, the findings from the interviews, supplemented by the information obtained from document analysis and literature review, would be used to prepare a detailed write-up to address the research questions. In order to address each research question, the researcher firstly presented the findings for each country separately and then outlined his discussions on the topics. The findings should be relevant to the RQs, and to the context of the study. Chapter 4 provides more details on the findings of this study.

3.6. Conclusion and Summary

In summary, this chapter presents in detail the purpose of the thesis, the research questions, and the methodology employed by the researcher to address these questions. After careful consideration, institutional theory in general and historical institutionalism in particular were chosen, together with the philosophical paradigm of critical realism, to guide the study. By using institutional theory and critical realism, the researcher is able to explain how the BEPS Action 13,

tax consultants, and MNEs have influenced the new transfer pricing regulations enacted by government agencies in New Zealand and Vietnam. It also enables the analysis of whether these regulations reflect the interests and preferences of these groups. In addition, the concept of "isomorphism" in institutional theory is also relevant in explaining how government agencies, tax consultants, and MNEs in both countries have become isomorphic within the same constrained context following the BEPS Action 13.

In terms of the research approach, a qualitative methodology was considered to be the most appropriate methodology, given the exploratory nature of the study. In performing the qualitative analysis, a case study approach was adopted to examine the transfer pricing landscape in New Zealand and Vietnam, both before and after the BEPS Action 13. The case study approach was reinforced by detailed document analysis and semi-structured interviews. While document analysis assisted the researcher in designing and partly addressing the research questions, semi-structured interviews provided valuable information regarding the reactions of different interest groups to the changes in the transfer pricing regulations in both New Zealand and Vietnam. In total, twelve interviews were conducted: two with tax officers and ten with tax consultants in both countries respectively. The analysis of these interviews is presented in Chapter 4: Findings and Discussion.

Chapter 4: Findings and Discussion

4.1. Introduction

This chapter presents the findings and discussions of the semi-structured interviews with tax officers and tax consultants in New Zealand and Vietnam. As mentioned in Chapter 3, in total, the researcher conducted twelve interviews in both countries, including two interviews with tax officers and ten interviews with tax consultants. After the twelve interviews, the researcher found that the saturation point of this study had been reached as no new significant findings or information was derived from the later interviews in each country. The researcher then used NVivo software to code or identify the common themes from the interview transcriptions in order to address the research questions. Although the interview participants had different opinions and perspectives towards the transfer pricing landscape in New Zealand and Vietnam due to their personal beliefs and professional backgrounds, the researcher observed that common themes could be also identified to accomplish the aims of this thesis. This chapter is organised as follows:

Section 4.2 of the chapter discusses the findings on the reactions of the New Zealand and Vietnamese governments towards the BEPS Action 13. In particular, Section 4.2 addresses the first research question (RQ1) of this thesis:

- RQ1: How have two different jurisdictions (New Zealand and Vietnam) reacted to and adapted the BEPS Action 13?

RQ1 has been partly addressed in the literature review of Chapter 2, where the transfer pricing regimes of New Zealand and Vietnam pre- and post-BEPS Action 13 were investigated. Through the interview findings, Section 4.2 supplements the literature review to address RQ1 by giving more insights into the contexts that have led to the introduction of the new transfer pricing regulations in New Zealand and Vietnam, including the consultation and implementation stages.

In order to answer the second research question (RQ2) below, Section 4.3 of this chapter discusses how different interest groups think about the changes in transfer pricing regulations in both

countries. This section aims at providing a comparative analysis of various transfer pricing issues in both countries.

- RQ2: How have MNEs and tax consultants reacted to the changes in transfer pricing regulations in both New Zealand and Vietnam?

Section 4.4 provides a short summary on the findings of the interviews after addressing the two research questions. The whole of Chapter 4 sets the basis to conclude the thesis findings and provides implications for future research indicated in Chapter 5.

4.2. Reactions of New Zealand and Vietnam to the BEPS Action 13

In this section, the interview findings on the reactions of each country's government to the BEPS Action 13 are presented separately, followed by a comparative discussion of the differences and similarities between New Zealand and Vietnam.

4.2.1. New Zealand

4.2.1.1. Impact of the BEPS Action 13 on New Zealand

Six interviewees in New Zealand were initially asked if the amendments of Sections GC 6 to GC 13 of the *Income Tax Act 2007* represent a positive step taken by Inland Revenue towards creating a more transparent and comprehensive transfer pricing legal framework in New Zealand. Four tax consultants endorsed the positive aspects of the new rules, because New Zealand's old transfer pricing regime was so outdated that it needed to be modernised in order to be consistent with other OECD countries and the latest BEPS measures. These tax consultants acknowledged that the new regulations introduce a more transparent framework on which taxpayers can rely to complete their transfer pricing obligations. This was explained by one tax consultant:

> I do believe it's a positive step. Our original legislation dates back to 1996 ... So, by modernising the legislation and actually also by explicitly referencing the 2017 OECD Guidelines in our legislation, it gives advisers certainty around exactly which OECD guidance would be applied. (NZ Tax Consultant C, Big 4)

From a government perspective, this view was shared by one tax officer of Inland Revenue. He emphasised the importance of keeping up with the changes initiated by the OECD:

> What we New Zealanders are particularly cognizant of is [that] multinationals are actually quite a large part of our tax base. So, in terms of government policy, the government wants to have the most up-to-date international approach. (NZ Tax Officer F, Inland Revenue)

In addition, this tax officer stated that the BEPS Action 13 was only one of the motivations behind the changes to the new transfer pricing regulations in New Zealand. In fact, such changes were also urged by Inland Revenue's desire to be consistent with international standards:

> Regardless of Action Item 13, the government [Inland Revenue] would have updated our transfer pricing rules to the latest OECD standards. (NZ Tax Officer F, Inland Revenue)

However, two tax consultants also discussed the negative sides of the new transfer pricing regulations in New Zealand, saying that Inland Revenue has gone too far from arm's length principles:

> On the negative of those [is] the introduction of that provision that allows the authority [Inland Revenue] to reconstruct transactions. I'm not sure whether or not that was needed. I think maybe they [Inland Revenue] have gone a little bit too far on that. (NZ Tax Consultant A, Big 4)

> In several respects, they [Inland Revenue] have moved away from the pure arm's length principle and particularly with respect to financial transactions in several different ways … On the other area, I think that some of the language that's been added in Section GC 13 (1) [1A, B and C] has added a great deal of subjectivity into the law that did not exist before. (NZ Tax Consultant E, Mid-tier firm)

NZ Tax Consultant E also shared her view on the reference to the OECD Guidelines in the new regulations that could lead to unclear interpretations by the taxpayers and increase their compliance costs:

> The OECD Guidelines are there to satisfy the views of a lot of countries so that they can reach consensus in providing guidance … But for taxpayers to comply, taxpayers need clear and concise law. (NZ Tax Consultant E, Mid-tier firm)

4.2.1.2. New Zealand's Transfer Pricing Landscape Pre-BEPS Action 13

All of the tax consultants contended that New Zealand had established a reasonably good transfer pricing regime prior to the BEPS Action 13, and that the new regulations are to align with the OECD standards. This view was also shared by a tax officer of Inland Revenue:

> I think I don't see that there has been a major change in our approach or in the rules … and essentially it was a matter of updating those rules to continue to align with international best practice. (NZ Tax Officer F, Inland Revenue)

Most of the tax consultants believed that over the past ten years Inland Revenue had become more aggressive on transfer pricing matters of taxpayers in New Zealand by requesting more information, focusing more on financial transactions, and conducting audit activities regularly before the new legislation came in. This view could be seen in the following responses:

> They [Inland Revenue] had new investigators in the transfer pricing team. Those new investigators took a much more comprehensive approach to investigating. So, unlike before [prior to 2009], where you would explain how something worked, the IRD [Inland Revenue Department] would accept it … Inland Revenue wouldn't take that at face value and wanted to do their own validation … and the audits also were taking a lot longer to conclude. (NZ Tax Consultant A, Big 4)

> They [Inland Revenue] have had three financing specialists and four general transfer pricing specialists. Given the weighting of that, you can see that there is a really large focus on financing alone. (NZ Tax Consultant C, Big 4)

However, these tax consultants also acknowledged that Inland Revenue historically possessed a small team of transfer pricing specialists. One of the responses was as follows:

> Inland Revenue did not have a lot of resources. They had a transfer pricing team made up [of] three or four people. (NZ Tax Consultant D, Big 4)

4.2.1.3. New Zealand's Transfer Pricing Landscape Post-BEPS Action 13

In general, tax consultants believed that Inland Revenue had a restructure within its department in response to the BEPS project in general and the BEPS Action 13 in particular. They held the view that the so-called "business transformation" project within Inland Revenue has resulted in an increase in the size of Inland Revenue's transfer pricing team to deal with companies in New Zealand after the new legislation (amendments in Sections GC 6 to GC 13 and Sections GC 15 to 19 of the *Income Tax Act 2007*) came into force. In particular, Inland Revenue has added six transfer pricing case leads to support the operations of its transfer pricing team. Some tax consultants explained this in more detail as follows:

> IRD [Inland Revenue Department] has already gone through their transformation project. There have been like three or four waves of different transformations. So, the last wave

> was a complete restructure to the service delivery models and audit teams and stuff like that. (NZ Tax Consultant A, Big 4)

> There are four key transfer pricing specialists who will provide support to six people that are going to be leading the transfer pricing cases. (NZ Tax Consultant D, Big 4)

Although Tax Officer F explained that the business transformation project is still in its late stages and is separate from Inland Revenue's transfer pricing work, he did not deny the fact that its transfer pricing team has increased in size:

> We [Inland Revenue] have actually refocused and part of the refocus is that we have added some capacity to our transfer pricing program. (NZ Tax Officer F, Inland Revenue)

In addition, an interesting point raised by some tax consultants was that most of the case leads are not necessarily transfer pricing specialists. These people could have different expertise but would be trained by Inland Revenue for transfer pricing work:

> Case leads … are not necessarily transfer pricing specialists, but have been given transfer pricing training and they are going to be responsible for leading transfer pricing disputes, APA work, all that sort of stuff. They will be supported by the current specialists. There are three or four of them. (NZ Tax Consultant A, Big 4)

4.2.1.4. Significant Changes in New Zealand's New Transfer Pricing Landscape

Of the changes mentioned in Chapter 2 in relation to New Zealand's new transfer pricing legislation, all of the New Zealand interviewees considered the reconstruction of transactions and the new law on pricing financial transactions to be the most significant changes. These changes would affect many MNEs operating in New Zealand and their related parties in other jurisdictions. Although the new law on financial transactions is not related to BEPS Action 13 in terms of transfer pricing reporting standards and although it is stipulated in Sections GC 15 to 19 of the *Income Tax Act 2007*, these transactions are required to be priced in accordance with the arm's length principle, using the five comparability criteria introduced by the OECD. In other words, the commercial relations of inbound related party financial transactions conducted by New Zealand taxpayers should be justified. One tax consultant shared her views on these significant changes:

> The new law with GC 15 to 19 dealing with financial transactions is very significant … Other new provisions around reconstruction of transactions in GC 13 are also very important … We [tax consultants and taxpayers] will be applying the new transfer pricing

> laws in scenarios where the laws just didn't apply before as per changes in GC 6. (NZ Tax Consultant E, Mid-tier firm)

In addition to the significant changes above, all tax consultants were also asked if Inland Revenue has increased its audit activities since the new legislation came into effect. Surprisingly, they have not seen a significant increase in the audit activities conducted by Inland Revenue following the new legislation. In fact, Inland Revenue has been focusing on collecting more information from taxpayers and MNEs at this stage. One tax consultant explained:

> I don't think they [Inland Revenue] have increased their audit activities … I haven't seen a whole bunch of new [audit] work come in. What I have seen is Inland Revenue's issuing these questionnaires, the BEPS questionnaire that goes to the tax return, and the distributor questionnaire collecting a whole bunch of information which is the target of the new team. (NZ Tax Consultant A, Big 4)

An explanation for such a delay in audit activities is related to Inland Revenue's restructure, in which it has added six new case leads into its transfer pricing team:

> In fact, their audit activities have slowed somewhat because they [Inland Revenue] have been going through this restructure [business transformation project]. (NZ Tax Consultant A, Big 4)

Most of the tax consultants also argued that Inland Revenue has obviously stated its areas of focus for audit activities in the Multinational Enterprises Compliance Focus 2019 document and on Inland Revenue's website. These areas include loss-making companies, companies trading with tax havens, royalties, service charges, and interest expenses. Despite the current audit approach taken by Inland Revenue, many tax consultants expect audit activities to be increasing significantly in the future. One respondent provided more insights into this matter:

> I would expect that they [Inland Revenue] would increase a lot of activities going forward. Particularly, they have made it very clear that there are certain areas of the transfer pricing and transaction types that they are going to look at in more detail. (NZ Tax Consultant B, Big 4)

4.2.1.5. Willingness of Inland Revenue to Receive Feedback

According to one tax officer, during the drafting period of the new transfer pricing legislation, Inland Revenue actively sought feedback from various interest groups. The tax officer was also of

the view that New Zealand has benefited from the feedback that the OECD received in relation to its transfer pricing guidelines:

> New Zealand has what's called a generic tax policy process … We [Inland Revenue] certainly consult with the public, and the public includes tax practitioners, companies, and multinationals. Obviously, as a member of the OECD, we [Inland Revenue] all already have the benefits of all the feedback to the OECD in their public consultations in arriving at their transfer pricing guidelines ... So, there is an extensive public consultation undertaken prior to the final drafting and passing of any law … on BEPS and transfer pricing. (NZ Tax Officer F, Inland Revenue)

In the same vein, all of the tax consultants in New Zealand acknowledged that Inland Revenue has actively sought feedback from interest groups during the drafting and implementation processes of the new legislation. For instance, one tax consultant said that various taxpayers have sent their feedback to Inland Revenue via the Corporate Taxpayers Group in New Zealand:

> Inland Revenue is actually a very user-friendly tax authority … There is the Corporate Taxpayers Group, which is a body which includes a number of taxpayers that have sent their submissions to Inland Revenue on new legislation. There are a lot of them who would provide feedback through their advisors in both formal and informal feedback mechanisms. (NZ Tax Consultant C, Big 4)

Another tax consultant also provided his comments on the openness offered by Inland Revenue in terms of legislation discussions:

> I think we [tax consultants] are in constant discussions with the policy team around the specific aspects of the new rules, particularly the RTP [Restricted Transfer Pricing] rule. So, I think IRD [Inland Revenue Department] is open to understanding what the consequences of the new rules are and how taxpayers are satisfied with them. (NZ Tax Consultant D, Big 4)

4.2.2. Vietnam

4.2.2.1. Impact of the BEPS Action 13 on Vietnam

Similar to the participants in New Zealand, six interviewees in Vietnam were asked to examine whether the introduction of Degree 20 and Circular 41 is a positive step taken by the Vietnamese government. The majority of the participants were of the opinion that, although Vietnam is not an OECD member country, it has tried to learn from other developed countries to create a better

transfer pricing regime. The participants stated that, with the new regulations, Vietnam is moving closer to the international standards of the BEPS Action Plan and is creating more transparency for Vietnamese taxpayers. A response given by one tax consultant in this regard is as follows:

> I absolutely hold the view that this is a positive step for Vietnam in getting closer to the international standards using the BEPS Action Plan … Also, the main positive step that I can see is for [transfer pricing] professionals: we [professionals] can speak the same languages. (VN Tax Consultant G, Big 4)

A tax officer supported this view and emphasised that the main purpose of the new regulations is to enhance the legalisation of Vietnam's transfer pricing regime at a higher level. She also argued that BEPS Action 13 was only one of the motivations behind the introduction of Decree 20 and Circular 41. These new regulations, in fact, cover broader changes in response to the BEPS project:

> Decree 20 and Circular 41 have many specific provisions compared to Circular 66, of which only the provision about transfer pricing documentation follows Action 13 of the BEPS project … But I think that the changes in these regulations aim at enhancing the legalisation of transfer pricing legislation in Vietnam. We only had Circular 66 before, but now the government has upgraded it to a Decree level in relation to transfer pricing. (VN Tax Officer L, Vietnamese tax authorities)

On the other hand, one tax consultant was of the opinion that the new regulations are to benefit the government. More specifically, he believed that the Vietnamese government has not followed all of the principles recommended by the BEPS Action 13, but has added those that would favour the tax authority:

> I think the approach has been really for the Vietnamese government to adopt the principles that suit it. So, I don't think that it's a particularly fair set of rules … I think that it's not … an adoption of all of the principles that were in that BEPS Action 13. (VN Tax Consultant I, Big 4)

Likewise, another participant further explained that the new regulations would be difficult for taxpayers to follow during the implementation phase due to aspects of the law which are unclear:

> But once they [Decree 20 and Circular 41] were introduced, we do see certain unclear points under those regulations ... We were afraid from that time that those unclear points may create certain difficulties for the implementation. (VN Tax Consultant H, Mid-tier firm)

4.2.2.2. Vietnam's Transfer Pricing Landscape Pre-BEPS Action 13

When asked about the transfer pricing landscape in Vietnam before the introduction of Decree 20 and Circular 41, all of the participants agreed that Vietnam had put in place the transfer pricing requirements on documentation and transfer pricing declaration forms in Circular 66. However, one consultant commented that the old rules (Circular 66) were quite vague in terms of documentation requirements. In his opinion:

> Under the old rules, documentation is very subjective. It could be one piece of paper. It could be an agreement. It could be a couple of paragraphs saying this is our policy. (VN Tax Consultant J, Big 4)

Furthermore, some respondents contended that Vietnamese tax officers did not have a lot of expertise in transfer pricing. As a result, they did not usually focus on the transfer pricing matters of the taxpayers. Instead, they were tending to improve their transfer pricing knowledge over time. One tax consultant stated:

> In the past, they [the Vietnamese tax authorities] did not really touch transfer pricing because they did not really understand it. But since 2015, they are increasing their knowledge on transfer pricing ... In recent audits they have touched [on] transfer pricing related matters. We also experience that they can challenge complex questions as well. (VN Tax Consultant G, Big 4)

On the other hand, one tax consultant noted that, based on his observations, there were still a lot of transfer pricing audits going on in the past before the new regulations were enacted:

> There were a lot of transfer pricing audits even before the introduction of Decree 20 in 2017. There were a lot of audits already after 2010. (VN Tax Consultant K, Big 4).

The view above was shared by a tax officer as she explained that the Vietnamese tax authorities also conducted transfer pricing audits and inspections prior to the new regulations. She further declared that the new regulations would give the tax authorities more information to perform their work:

> Vietnam also conducted transfer pricing inspections and audits ... However, Decree 20 and Circular 41 … will provide the Vietnamese tax authorities with more information. (VN Tax Officer L, Vietnamese tax authorities)

4.2.2.3. Vietnam's Transfer Pricing Landscape Post-BEPS Action 13

With respect to the Vietnamese government's reactions after the new regulations were introduced, some tax consultants postulated that they have not seen the Vietnamese tax authorities increase their transfer pricing headcount to deal with companies under the new rules. Furthermore, a common idea suggested by most of the tax consultants was that the Vietnamese tax authorities have undertaken a restructure in response to the new regulations. Specifically, in 2015, Vietnam's General Department of Taxation (GDT) established a transfer pricing inspection team in each of Vietnam's four largest cities to deal with transfer pricing audits. However, recently this structure has been changed. There are no longer transfer pricing inspection teams. Instead, the Vietnamese tax authorities have established general inspection teams in which a transfer pricing inspector from the former specialised teams would be included. With this new structure, the inspection teams could easily raise transfer pricing questions to taxpayers in general tax audits with the support of the transfer pricing inspectors. This view was further reflected by one respondent:

> Well, I think that they [the Vietnamese tax authorities] have restructured their audit teams. Before, they had transfer pricing divisions to look specifically into transfer pricing, but now they have abolished these. So, they have general tax inspection teams, which include people who used to be in the transfer pricing divisions. Having said that, now these inspection teams, they look at, you know, multiple taxes or multiple areas as well as transfer pricing. (VN Tax Consultant I, Big 4).

Also, all of the participants suggested that the Vietnamese government has equipped their staff with more knowledge under the new transfer pricing regime via regular training. As a result, the inspectors have become more and more knowledgeable and are able to raise more questions on transfer pricing during tax audits. In the words of one participant:

> A lot of their [the Vietnamese tax authorities'] members were sent overseas, for example, to Japan, the U.S.A., Canada, and Australia to study transfer pricing … So, you can see that the General Department of Taxation has prepared very well for their staff to have transfer pricing knowledge to conduct transfer pricing audits on local taxpayers. (VN Tax Consultant K, Big 4).

Nevertheless, one tax consultant thought that some of the provincial tax authorities still did not have a good knowledge about transfer pricing. He commented:

> They [provincial tax authorities] have some knowledge, but they're not really advanced in terms of the way that they are applying the law at the moment. Some of them … don't have a good knowledge of transfer pricing. (VN Tax Consultant I, Big 4)

4.2.2.4. Significant Changes in Vietnam's New Transfer Pricing Landscape

A general theme appearing during the interviews was that Decree 20 and Circular 41 have presented some significant changes in Vietnam's transfer pricing regime. Firstly, the use of the three-tier approach (a master file, a local file, and a CbCR) to documentation is important as Vietnam is becoming more consistent with the OECD recommendations. Secondly, the emphasis on "substance over form" also draws the attention of Vietnamese taxpayers as the local tax authorities will now look at the substance of related party transactions alongside their legal agreements. Some consultants also said the new transfer pricing declaration forms and the earnings before interest, tax, depreciation, and amortisation (EBITDA) rule are also of importance to taxpayers operating in Vietnam. For example, a respondent noted:

> So, I think that the changes to the documentation rules are quite significant in terms of the compliance burden on taxpayers. So, they [the taxpayers] have to do a lot more these days than they used to with just the normal transfer pricing documentation. I think the 20 percent of EBITDA[15] interest deductibility cap is significant for a lot of groups. (VN Tax Consultant I, Big 4)

Besides, another tax consultant pointed out some significant changes in the new regulations. In particular, he endorsed the use of public databases to benchmark companies' returns, and he endorsed the new definitions of related parties, which could make it easier for taxpayers:

> I think there are several key changes. One is the emphasis on the use of public databases to conduct your benchmarking. So, that's a positive sign … The regulations on the definition of related parties, they dropped one of the definitions, which is if you [the taxpayers] source or have sales transactions that make over 50 percent of total sales or purchases, that's deemed as related party. (VN Tax Consultant J, Big 4)

With regard to the increase in audit activities, while one tax officer could not provide any statistics on this, the majority of them agreed that the tax authorities have increased their audit activities a

[15] The 20 percent of EBITDA interest deductibility cap was applied at the time of the interviews. However, as mentioned in Chapter 2, in June 2020, the Vietnamese government issued Decree 68 to change the interest limitation rule to 30 percent of EBITDA, and to allow the carry-forward of non-deductible interest expenses in certain circumstances. This new rule is effective from the 2019 tax year onwards (MOF, 2020).

lot since Decree 20 and Circular 41 came into effect in 2017. However, they argued that this is a step-by-step process, rather than an immediate jump. An interviewee from a Big 4 firm explained:

> I think that the increase [in audit activities] was not immediately after the introduction of the [new] regulations. Decree 20 was released in 2017, but in 2019 we saw a lot of activities and a lot of tax audits, especially in the second half of the year. (VN Tax Consultant G, Big 4)

The increase in transfer pricing audits is a result of the improved knowledge that the Vietnamese tax authorities have accumulated during their learning process. In the view of some tax consultants, tax inspectors are more and more knowledgeable about transfer pricing, which allows them to raise more questions on transfer pricing matters:

> As I said, the tax officials … are better equipped with knowledge on transfer pricing matters … Therefore, I can say that, yes, from time to time, they [the Vietnamese tax authorities] are more aggressive on transfer pricing matters. (VN Tax Consultant H, Mid-tier firm)

> So, I think with the learning curve they [the Vietnamese tax authorities] achieved, now they are much more confident to challenge transfer pricing. They have their strategy [on] how to challenge benchmarking studies. (VN Tax Consultant G, Big 4)

Nonetheless, one tax consultant added that that many transfer pricing audits are included in general tax audits and that transfer pricing is the last thing the tax authorities will challenge during a general tax audit:

> Most of the audits are still under the form of tax audits. But then the work on transfer pricing audits can be also included. They [the Vietnamese tax authorities] normally challenge the transfer pricing matters at the end of the tax audits. (VN Tax Consultant H, Mid-tier firm)

Regarding areas of tax audit focus, tax consultants provided some common examples, such as loss-making companies, deductibility of intra-group service charges, comparability studies (benchmarking studies), and royalties. They considered the areas of focus in Vietnam to be similar to those elsewhere in the world. One of their comments was as follows:

> So, I think the audits that are happening in Vietnam, to be frank, are very similar to what's happening around the world ... So, if you're making losses consistently and it doesn't match your functional risk profile, the audit risk is high … Now, if you're paying excessive or large amounts of service management fees, paying royalties, you'll be a target. Companies that are very large, big multinationals, complex, varied transactions, having domestic sales,

> exports, royalties, service fees, all sorts of transactions are a big target as well. (VN Tax Consultant J, Big 4)

4.2.2.5. Willingness of the Vietnamese Government to Receive Feedback

It was confirmed by all of the tax consultants that the Vietnamese tax authorities have sought feedback from different interest groups during the drafting and implementation process of the new regulations. For instance, the Vietnamese government published the draft regulations on their website and called for comments from taxpayers and other interest groups. The Vietnamese tax authorities have also collected comments from various stakeholders via conferences or seminars. Some tax consultants commented:

> After the first draft [Decree 20 and Circular 41] was released, they [the Vietnamese tax authorities] also sent it to those kinds of associations and businesses or consulting firms to have comments ... Normally, after the second draft, everything would be finalized and sent to the government for approval. (VN Tax Consultant K, Big 4)

> They [the Vietnamese tax authorities] would like to hear from them through different seminars, workshops, dialogs held with the participation of the taxpayers. (VN Tax Consultant H, Mid-tier firm)

Another tax consultant elaborated on this view by stating that, although there are ways to send feedback to the Vietnamese tax authorities, it is really hard to do this on an ad hoc basis:

> So, they [the Vietnamese tax authorities] have already requested feedback from advisors as well as corporations in Vietnam … There are channels to express, but those channels are limited to these. You know, it's not ad hoc. It's very difficult to make an opinion on an ad hoc basis and expect any changes now. (VN Tax Consultant J, Big 4)

4.2.3. Discussion

This section presents the researcher's discussion on the transfer pricing landscape of New Zealand and Vietnam. Through document analysis conducted in Chapter 2 and the findings of semi-structured interviews, the researcher found that both New Zealand and Vietnam have come up with new transfer pricing regulations based on the BEPS Action 13, but have also employed different approaches to transfer pricing issues. The findings are consistent with the general statement made by Shelepov (2017) and Sadiq et al. (2019a, 2019b) that each country reacts to the BEPS project differently, depending on their geographic and economic backgrounds. In addition to the

differences, the researcher could also determine various similarities between the two countries with respect to their transfer pricing regimes pre- and post-BEPS Action 13, which can help the researcher address RQ1.

New Zealand's transfer pricing regime has a longer history than that of Vietnam. In fact, New Zealand established its transfer pricing regime in 1995, while Vietnam introduced its very first transfer pricing law ten years later in 2005 (Inland Revenue, 1995; MOF, 2005). New Zealand, as an OECD country, has implemented several measures in response to the BEPS projects, such as "administrative measures, transfer pricing rules, permanent establishment rules, hybrid and branch mismatch rules, and interest limitation rules" (Inland Revenue, 2019a). Although Vietnam has not responded to the BEPS measures as comprehensively as New Zealand has, it has shown great effort in following the OECD's BEPS recommendations. For example, Vietnam responded to the BEPS Action 13 by enacting Decree 20 and Circular 41 in 2017, one year prior to introduction of the BEPS Act in New Zealand. The following parts provide more insights into the similar and different aspects of the transfer pricing landscape in both countries.

4.2.3.1. Movement towards International Standards

It is clear that most of the interview participants in both countries contended that the changes in transfer pricing regulations in New Zealand and Vietnam have shown a positive step towards creating a more comprehensive and transparent legal framework. In addition, the BEPS Action 13 was not the only motivation for the New Zealand and Vietnamese governments to implement many changes in their transfer pricing regimes. In fact, it was the desire to be consistent with other OECD countries that has led to such changes. By contrast, some opponents of this view pointed out that the governments in both countries have gone beyond the OECD recommendations to implement rules that would benefit only them.

In response to the BEPS Action 13, both New Zealand and Vietnam have followed the OECD's three-tier approach to document reporting, including a master file, a local file, and a CbCR. This is a positive sign, as it shows that these countries are now using the same approach. However, there is a common tendency that the New Zealand and Vietnamese governments have imposed more reporting requirements on taxpayers besides the three-tier documentation. The transfer pricing declaration forms under Vietnam's Decree 20 and the international questionnaires, the wholesaler

or distributor questionnaires, and the loss-making questionnaires issued by Inland Revenue are examples of such additional requests. These requirements are the mechanisms for the governments in both countries to collect more information from taxpayers.

Moreover, it can be seen that financial transactions have emerged as a new focus of the revenue authorities. In New Zealand, Inland Revenue introduced the RTP rule in Sections GC 15 to GC 19 of the *Income Tax Act 2007* to provide guidance on pricing inbound financial transactions. Similarly, Vietnam's EBITDA rule aims at limiting the interest payments that Vietnamese taxpayers can deduct for their financial arrangements. Although these interest limitation rules address the BEPS Action 4 (limiting base erosion involving interest deductions and other financial payments), they do not particularly follow any set of rules or the OECD recommendations. Instead, the RTP rule and the EBITDA rule are rules that are specific to New Zealand and Vietnam, respectively.

Furthermore, in spite of the fact the New Zealand and Vietnamese governments have been willing to receive feedback from various stakeholders during the drafting and implementation phases of the new regulations, Inland Revenue has shown a more open attitude towards receiving feedback. The Vietnamese tax authorities, on the other hand, prefer formal procedures to get feedback. Therefore, it is harder for Vietnamese taxpayers or tax consultants to give feedback on an ad hoc basis.

4.2.3.2. Transfer Pricing Audits

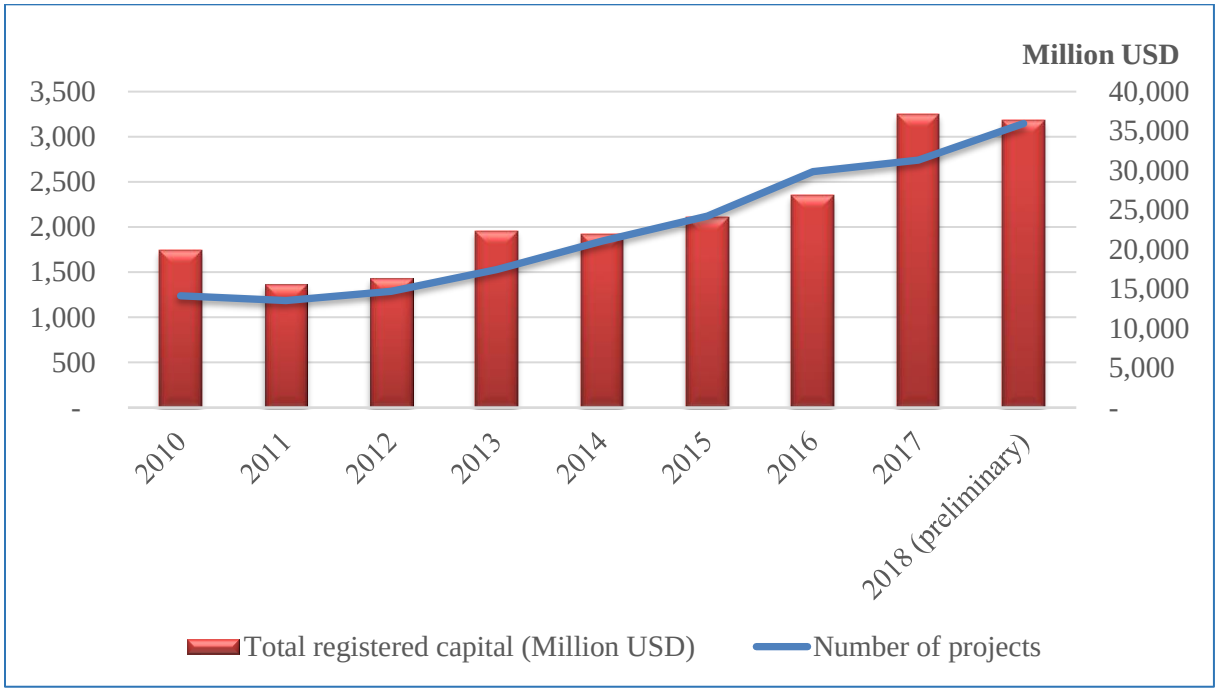
In terms of transfer pricing audits, Inland Revenue seems to have had more transfer pricing audit experience and knowledge than the Vietnamese tax authorities even prior to the BEPS Action 13. This is understandable as New Zealand's transfer pricing regime was more advanced and was in place ten years earlier than that of Vietnam. Nevertheless, the two countries have some common characteristics in their transfer pricing activities. For instance, before the new regulations came into effect, both countries had a small team of transfer pricing specialists or inspectors. Both countries then had a restructure in their team to deal with transfer pricing issues following the new regulations. The ultimate purpose of this restructure was to have more resources for existing and future audit activities. More importantly, the areas of focus during audits are quite similar between

the two countries. These include consecutive losses, service charges, royalties, interest expenses, and other similar features.

Based on the interview findings, Inland Revenue has not increased its audit activities since the commencement of the new legislation. There are several reasons for this response. Firstly, most of the interview participants were of the opinion that Inland Revenue has limited resources, and that the business transformation process has slowed down its audit activities. Secondly, as mentioned, the new legislation in New Zealand is applicable for financial years starting on or after 1 July 2018. As such, most MNE groups would not be subject to the new legislation immediately until the 2019-2020 period. Therefore, it is reasonable that Inland Revenue has focused so far on collecting information and that audit activities are predicted to increase in the future. Lastly, with corporate tax accounting for 21 percent of New Zealand's total tax revenue, Inland Revenue has tried to reduce compliance costs by closely monitoring significant enterprises with a revenue exceeding NZD 80 million and foreign-owned companies with a revenue of more than NZD 30 million (Inland Revenue, 2019b). Specifically, Inland Revenue prioritises its work "based on tax risk and materiality, keeping taxpayer compliance costs and Inland Revenue's administrative costs as low as possible" (Inland Revenue, 2019b, p. 6).

On the other hand, the Vietnamese tax authorities have shown a different pattern, in which the tax authorities have taken a more aggressive approach than Inland Revenue to increase their audit activities under the new regulations (Decree 20 and Circular 41). Unlike New Zealand's legislation, Vietnam's Decree 20 and Circular 41 have been effective immediately from 1 May 2017. Therefore, many taxpayers whose financial year ended after this date, for example September 2017 or December 2017, were subject to the new rules from the Vietnamese tax authorities' perspectives. Another explanation for the expanded audit activities in Vietnam is attributable to the significant increase of foreign direct investment in Vietnam during the last nine years as shown below:

Figure 4.1: Foreign direct investment projects licensed in Vietnam (2010 - 2018)



Adapted from the GSO (2020)

As shown in the figure above, there were 3,147 foreign direct investment projects licensed in Vietnam in 2018, with a total registered capital of approximately USD 36.4 billion (NZD 53.26 billion), representing 154 percent growth in project number and 83 percent growth in registered capital compared to 2010. By increasing audit activities, the Vietnamese tax authorities are able to collect a significant additional amount of tax from these companies. Data provided by Vietnam's GDT (2019) illustrate the Vietnamese tax authorities' focus on audit activities as, during the first ten months of 2019, they audited 417 enterprises that have related party transactions, collecting an additional tax revenue of VND 10,300 billion (NZD 689.84 million).

4.2.3.3. "Isomorphism" of Government Agencies

As mentioned in Chapter 3, new institutionalism can be used to explain the reactions of the New Zealand and Vietnamese governments to the BEPS Action 13. Acting as social institutions, the BEPS project in general, and the BEPS Action 13 in particular, have significantly influenced the formal institutions (Inland Revenue and the Vietnamese tax authorities). The "isomorphism" of both government agencies can obviously be seen through a number of similar measures that they

have implemented to tackle the transfer pricing issues in New Zealand and Vietnam. Based on the definitions of institutional theory introduced by Oliver (1997) and Fernando and Lawrence (2014), Inland Revenue and the Vietnamese tax authorities are viewed as operating within a social framework of norms and values (i.e. the BEPS Action 13). Therefore, the reporting standard recommendations of the BEPS Action 13 have functioned as a constraining factor that motivates the New Zealand and Vietnamese governments to change their old transfer pricing regimes in order to be consistent with their environmental field (i.e. the OECD standards).

It is also noted that both government agencies have been experiencing three different processes of institutional isomorphism outlined by DiMaggio and Powell (1983) and Fernando and Lawrence (2014), including coercive isomorphism, mimetic isomorphism, and normative isomorphism. With respect to coercive isomorphism, the pressure from various stakeholders, such as taxpayers, tax consultants, and the OECD's BEPS Action 13, has made the New Zealand and Vietnamese governments change their transfer pricing regulations over time to create a more transparent environment for MNEs. In the second phase, called mimetic isomorphism, Inland Revenue and the Vietnamese tax authorities have copied the recommendations of the BEPS Action 13 and other OECD standards to create their own transfer pricing rules and regulations. Lastly, both countries have been entering into the final stage called normative isomorphism, where they have tried to implement common standards of transfer pricing regulations that can motivate taxpayers in both countries to follow the new rules, which are considered to be consistent with international practice.

4.3. Reactions of MNEs and Tax Consultants to the Changes in Transfer Pricing Regulations in New Zealand and Vietnam

In order to address RQ2, this section presents the interview findings on the reactions of different interest groups such as MNEs (i.e. local taxpayers) and tax consultants to the changes in the transfer pricing regulations in New Zealand and Vietnam. This section also makes a comparison of various transfer pricing issues in both countries.

4.3.1. New Zealand

4.3.1.1. Uncertainty under New Zealand's New Transfer Pricing Regime

Notwithstanding the fact that interview participants in New Zealand appreciated the consistency of the new legislation with international rules, all tax consultants shared the same response that there is still uncertainty as to how Inland Revenue will endorse the application of the new legislation. One of the tax consultants postulated as follows:

> I think the biggest one [challenge] is about uncertainty. By uncertainty, I mean just how Inland Revenue is going to respond to the changes. (NZ Tax Consultant E, Mid-tier firm)

The uncertainty in New Zealand's new transfer pricing regime was reflected in many aspects by the tax consultants, and is further discussed below.

4.3.1.1.1. Inland Revenue's Power to Request Information

Most of the tax consultants expressed the view that Inland Revenue has more power to request information under the new legislation. This power has been shown in the shift in the burden of proof from Inland Revenue to taxpayers and the extended time bar for Inland Revenue to make adjustments on taxpayers' transfer pricing positions. In relation to the burden of proof, some respondents explained that New Zealand taxpayers are now required to prove that their transfer pricing positions are reasonable, especially during audits. This would put more pressure on companies as they have to change the ways they perceive their transfer pricing positions:

> I think one of the biggest changes from a practical point of view we see is the shift in the burden of proof in transfer pricing measure … What that means is that Inland Revenue, rather than meeting a taxpayer saying this is what we've got and Inland Revenue had to prove this is wrong, Inland Revenue can now come and say, no, they don't agree with the transfer pricing position and you [the taxpayers] have to prove it [right]. (NZ Tax Consultant B, Big 4)

One tax consultant, however, argued that the shift in the burden of proof is not a material change since the taxpayers' counter parties (related parties) have to bear this burden in their respective countries, regardless of who bears the burden of proof in New Zealand. She gave a good example of an Australian-New Zealand related party transaction:

> We have always assumed ultimately that on one side of the transaction or the other, the taxpayer has had the burden of proof. So, say you're dealing with an Australian-New Zealand transaction … you still would have had it [burden of proof] in Australia. (NZ Tax Consultant E, Mid-tier firm)

With respect to the extension of the time bar from four years to seven years, a tax officer of Inland Revenue explained that it has two purposes. The first purpose is to enable Inland Revenue to have more time for its audit investigation processes, while the second goal is to align with Australia where a seven-year time bar is currently applied:

> Firstly … transfer pricing audits can be very long exercises … which will require from time to time the involvement of external experts. Secondly, we have a situation where our predominant treaty partner, Australia, also has the ability to go back to seven years. So, we did not want to be disadvantaged compared with Australia. (NZ Tax Officer F, Inland Revenue)

Although the effects of the extended time bar will not be seen for several years, some tax consultants who opposed its use contended that it will possibly lead to lengthy audits, and increase taxpayers' compliance costs. In the words of one tax consultant:

> You [the taxpayers] have three more years to be potentially involved in a dispute with the Revenue, so that will give the Revenue more time to make an assessment. (NZ Tax Consultant D, Big 4)

Moreover, under the new legislation, Inland Revenue could also exercise their power by asking for global information to be provided by taxpayers. A tax consultant shared this view and noted that penalties are applied if taxpayers fail to provide such information:

> In the most egregious cases, [Inland Revenue] even [has] the ability to require global information [to] be provided by the New Zealand taxpayers. If it isn't provided, there are penalty options here. (NZ Tax Consultant C, Big 4)

Lastly, according to many respondents, the enhanced power of Inland Revenue was also manifested via a number of questionnaires and the BEPS disclosure forms sent to taxpayers. Regarding the BEPS disclosure forms, Inland Revenue's purpose is to evaluate the effectiveness of the BEPS project in New Zealand (Inland Revenue, 2019b). In relation to the questionnaires for distributors and wholesalers, a tax officer of Inland Revenue stated that their purpose is to gain

more insight into the operations of core sectors in New Zealand and to look at potential simplified measures:

> Firstly, we wanted some more in-depth information on what the key sector in New Zealand is. Over 25 percent of foreign owned multinationals operating in New Zealand are distributors and wholesalers ... Secondly, we also wanted better information to look seriously at some potential simplification measures for smaller businesses for SMEs [small and medium enterprises]. (NZ Tax Officer F, Inland Revenue)

From many tax consultants' perspectives, the BEPS disclosure forms, and the questionnaires are good mechanisms for Inland Revenue to assess risks of taxpayers and to conduct future audits. One tax consultant commented as follows:

> I think we'd be naive to think that they [Inland Revenue] wouldn't also do a risk assessment of the responses that they receive ... If they have some outlines in the data, you would expect that they have some follow-up questions. (NZ Tax Consultant C, Big 4)

4.3.1.1.2. Reconstruction Provision

There were mixed opinions among the interviewees about Inland Revenue's ability to reconstruct the whole transfer pricing arrangement if it is considered to be inappropriate. On the one hand, some tax consultants stated that this provision creates more uncertainty for taxpayers as there is little guidance on how Inland Revenue would apply it in practice. NZ Tax Consultant A shared his view on this provision:

> We don't know how Inland Revenue is going to use that [reconstruction] provision … and we don't also know what the reconstructed arrangement would look like … and there is not a lot of certainty around what is the result of Inland Revenue exercising their power. (NZ Tax Consultant A, Big 4)

By the same token, another tax consultant mentioned that, in reconstructing arrangements, the OECD Guidelines refer only to abnormal cases. Hence, Inland Revenue should be clear on how it is going to apply the reconstruction provision because it already has the ability to challenge related party arrangements under the anti-avoidance rules,[16] as elaborated on by this tax consultant:

[16] Section GA 1 (Part G) of the Income Tax Act 2007 allows the Commissioner to reconstruct tax avoidance arrangements.

> So, I think the law should be clearer about how it [the reconstruction provision] should be used – as an example, the ability to reconstruct arrangements, which should only be used in abnormal situations as per OECD guidance ... I think IRD [Inland Revenue Department] already had the chance to challenge a controlled arrangement under the anti-avoidance rules. So, it's important for taxpayers to get certainty around what they are going to do with their power to reconstruct or disregard arrangements. (NZ Tax Consultant D, Big 4)

On the other hand, a number of tax consultants supported the reasonableness of the reconstruction provision, saying that it only applies to egregious cases, as regulated by the OECD Guidelines, and that Inland Revenue knows how to select these cases among New Zealand taxpayers. This view was illustrated in the following response:

> The OECD Guidelines on reconstruction are quite clear that they only apply in extraordinary circumstances. So, those powers would only be applied very infrequently, and I've never seen them, to be honest, in [any] cases so far. It would have to be a pretty egregious case before that power would be imposed. (NZ Tax Consultant C, Big 4)

From Inland Revenue's point of view, a tax officer made a statement that Inland Revenue applied the reconstruction provision only in exceptional cases. Also, this provision is more in the nature of an anti-avoidance provision, rather than a provision that will be used regularly in applying the arm's length principle:

> We think it [the reconstruction provision] will only apply in truly exceptional circumstances. In general, if companies are acting commercially and putting arrangements in place that have true commercial substance to them, then there is nothing to be concerned about. (NZ Tax Officer F, Inland Revenue)

4.3.1.1.3. Restricted Transfer Pricing (RTP) Rule

An Inland Revenue tax officer was also asked about his thoughts on the new RTP rule. He admitted that there was a debate as to whether the RTP rule should belong to the transfer pricing area. It was actually a result of the BEPS Action 4. He further commented that Inland Revenue was initially looking at the EBITDA rule recommended by the OECD's BEPS Action 14, but then created its own special rule, as the EBITDA rule was not really suitable for New Zealand:

> What New Zealand has done is we've looked at the EBITDA approach of the OECD and in consultation with the private sector. The private sector's feedback was that the EBITDA rule was not fit for purpose in relation to New Zealand businesses – that it was very difficult to manage earnings as opposed to what you're essentially looking at with the Action Item

> 4. In terms of interest deductibility, you're looking at managing capital. So, we actually came up with these special rules which are quite tailored to New Zealand circumstances. (NZ Tax Officer F, Inland Revenue)

With reference to the RTP rule, every single tax consultant expressed dissatisfaction with this new rule, and all were convinced that it does not follow the arm's length principle. In addition, they added that the RTP rule will lead to negative consequences for MNEs and ultimately increase their compliance costs as a consensus should be made between New Zealand loan borrowers and their related party lenders in other jurisdictions. In these tax consultants' words:

> What's happening is that there's going to be a position that needs to be taken in New Zealand under the Restricted Transfer Pricing rule that is not arm's length. You've got obviously a company on the other side of the transaction, say Australia for example, that say, "No, no, it should be something else". We're going to get into a mutual agreement between IRD [Inland Revenue Department] and ATO [Australian Taxation Office] that directly increases compliance costs. (NZ Tax Consultant B, Big 4)

> The mechanics of actually doing those [RTP] analyses, it requires a lot of information from the overseas group in terms of working out the members of the group with the most significant levels of unsecured borrowings ... Hence, it's not necessarily quicker or easier or more efficient. (NZ Tax Consultant C, Big 4)

In a similar fashion, a tax consultant from a Mid-tier firm indicated Australia's perspective on the uncertainty of the RTP rule and its applications. She gave an example, in which companies cannot apply the CUP method where available for their financial transactions immediately but have to follow New Zealand's specific rule:

> We understand that the ATO [Australian Taxation Office] has expressed dissatisfaction with GC 15 to GC 19 … For example, the partial application of CUPs thereunder is inconsistent with international TP [transfer pricing] practice and principles. So, if you have a CUP in your business, you may not be able to fully rely upon this uncontrolled benchmark, as the New Zealand rules entail a pro rata basis. This is difficult to explain to and gain acceptance from the revenue authority on the other side of the transaction. (NZ Tax Consultant E, Mid-tier firm)

In answering the researcher's question on the appropriateness of the RTP rule, a tax officer explained that the RTP rule should only be a good approximation of the arm's length principle:

> Partly we believe that it [the RTP rule] is a good proxy of the arms' length principle … So, it will often result in exactly the same answer, which is applying the arm's length principle under the OECD Guidelines, but not always. (NZ Tax Officer F, Inland Revenue)

4.3.1.2. Documentation Level and Advance Price Agreements (APAs)

In New Zealand, the level of transfer pricing documentation was perceived by many of the interview participants to be flexible regardless of the reference to the OECD Guidelines' three-tiered approach under the new legislation. They agreed that Inland Revenue follows a "cost-risk" based approach to transfer pricing documentation to balance taxpayers' costs of compliance and risk levels, especially for small businesses. Thus, combining the local file and master file together for small businesses could definitely meet Inland Revenue's expectations. In the words of a respondent:

> But I think even though they're endorsing the OECD three-tiered documentation approach for small companies in New Zealand which have New Zealand headquarters, I think it's still a cost-risk based approach to transfer pricing documentation. So, combining the master file and the local file together, to some of those companies, I think should be fine. (NZ Tax Consultant B, Big 4)

An Inland Revenue tax officer also held the view that Inland Revenue does not expect small companies to prepare a local file and a master file at the same time. However, in a self-review tax system like New Zealand, companies need to prove that their cross-border related party transactions have been conducted in an appropriate manner:

> We do recognize that for smaller entities with very few related party cross-border transactions, there may be a little need for transfer pricing documentation. But we really leave it up to the companies concerned to exercise reasonable care in that regard in terms of what documentation they maintain in relation to transfer pricing. (NZ Tax Officer F, Inland Revenue)

Another interesting point in relation to the documentation deadline raised by the interview participants was that, although New Zealand does not have any specific law or rule to regulate the time that taxpayers have to prepare their transfer pricing documentation, the best approach is to have this documentation in place at the time taxpayers file their tax returns. In practice, a tax consultant stated that Inland Revenue also gives taxpayers the flexibility in terms of the time to prepare their transfer pricing documentation:

> In practice, Inland Revenue doesn't mind if the documentation wasn't available at the time you filed your tax return. In my experience, if your tax return is due in March and if you prepare your documentation in the following May, there's no penalty unless your transfer pricing was wrong. (NZ Tax Consultant C, Big 4)

However, NZ Tax Consultant C also elaborated on the weakness of not having a legislated deadline for transfer pricing documentation in New Zealand:

> When I'm dealing with multinationals … they can be expected to focus their transfer pricing compliance efforts in the first instance on the jurisdictions where there is a mandated contemporaneous requirement first … If you don't have a very clear due date or requirement, and New Zealand is a small market, sometimes New Zealand documentation never happens. (NZ Tax Consultant C, Big 4)

When it comes to APA applications, as mentioned in Chapter 2, in 2019, Inland Revenue concluded a total of 23 APAs. From tax consultants' observations, they noted that they have not seen a particularly big increase in APA requests since the new legislation came in. However, they revealed that Inland Revenue is very co-operative when discussing APA applications with taxpayers. As put forward by a tax consultant,

> They [Inland Revenue] want to have more APAs. They want to change behaviour and they are happy to engage productively. The Inland Revenue's view that I agree with is that it takes less time to be engaged in an APA than a dispute. (NZ Tax Consultant D, Big 4)

While there was a concern raised by some tax consultants that an APA is very time-consuming and can lead to a lot of back and forth communications, an Inland Revenue tax officer argued that most of New Zealand's APAs are unilateral APAs, which can be concluded within six months:

> Typically, most companies look to get a unilateral APA which we have a standard to complete these APAs within six months … So, we think the turnaround time is extremely good. (NZ Tax Officer F, Inland Revenue)

Despite the positive comments above, two tax consultants asserted that due to the RTP rule, there may be more double taxation in the future. Therefore, they expected to have more government-to-government treaties in the form of Mutual Agreement Procedures (MAPs)[17], rather than APAs. One of them noted:

> I think as a result of BEPS, what we're going to see then is a lot more double tax type issues … I think what we'll see actually is a lot more of those types of issues being flipped into mutual agreement procedures. (NZ Tax Consultant A, Big 4)

[17] A MAP is a procedure described by Article 25 of the OECD Model Tax Convention, which can be used to settle disputes related to double taxation arising from transfer pricing adjustments (OECD, 2017b).

4.3.1.3. Have Compliance Costs Increased in New Zealand?

When asked to describe taxpayers' compliance behaviour, each of the interviewees strongly believed that New Zealand taxpayers had been quite compliant under the old regime, and that they have become more cautious with respect to their documentation under the new legislation. In particular, one tax consultant responded as follows:

> So pre and post change in the legislation, I think what we are probably seeing is a combination of things happening all at once … which means that now taxpayers appreciate that they have to stay on top of their transfer pricing. It's not optional. (NZ Tax Consultant E, Mid-tier firm)

Notwithstanding, some tax consultants pointed out that most New Zealand taxpayers are not happy with the new legislation, due to its subjectivity. The dissatisfaction was reflected by one tax consultant regarding the RTP rule:

> The Restricted Transfer Pricing [rule] has been a nightmare. Clients … have been really disappointed with the way that comes through. I mean, the reality is that it's just going to increase compliance costs. (NZ Tax Consultant B, Big 4)

Additionally, although all of the tax consultants acknowledged that Inland Revenue stated it would like to reduce compliance costs in its Multinational Enterprises Compliance Focus 2019, New Zealand taxpayers thought that additional information requested by Inland Revenue such as the questionnaire and the BEPS disclosure form have actually increased their compliance costs. However, a tax consultant argued that the compliance costs of such requests is not huge:

> The questions aren't terribly difficult … So, I don't think that the compliance costs are huge. They're relatively straightforward questionnaires. (NZ Tax Consultant C, Big 4)

An Inland Revenue tax officer backed up this view by noting that the questionnaires concerning distributors or wholesalers, losses, royalties, and debts are one-off requests:

> The issuance of a questionnaire is actually quite a cost-effective exercise and it's not a full audit … Secondly, we are looking at it as a one-off exercise, so it's not a regular exercise. Thirdly, the information will be useful for us in looking at some simplification measures. (NZ Tax Officer F, Inland Revenue)

4.3.1.4. Working with Inland Revenue

Many of the tax consultants interviewed were of the opinion that the attitude of Inland Revenue depends on whom they interact with, but in general, Inland Revenue holds a collaborative approach when working with tax consultants and taxpayers, especially when it comes to APAs or MAPs. One tax consultant explained:

> The discussions on APAs or MAPs or something like discussions when we are upfront are much friendlier and more commercial[18] than when we are in disputes. (NZ Tax Consultant D, Big 4)

Nevertheless, a concern raised by some tax consultants was that there are circumstances where Inland Revenue does not inform either tax consultants or taxpayers of the changes that they have made in their website regarding transfer pricing issues:

> There's certainly been circumstances where we go to their [Inland Revenue's] website to look for something and realise that they have made some changes that they haven't told us. (NZ Tax Consultant B, Big 4)

Looking forward to the future, two tax consultants expected Inland Revenue to be consistent in terms of the approaches taken by its staff. One of the comments was as follows:

> Something that was spoken to Inland Revenue about on most occasions of recent times has been a lack of consistency in decisions that they're making across the transfer pricing team. (NZ Tax Consultant A, Big 4)

Another opinion expressed by some tax consultants was that Inland Revenue needs to be more commercial when requesting information from taxpayers. For instance, NZ Tax Consultant D noted:

> They make decisions, or they challenge things that are not commercial ... Sometimes, for example, they want to see segmented data ... and they don't want to understand that that information is not available to the business. (NZ Tax Consultant D, Big 4)

[18] Throughout this study, being "commercial" means the materiality and level of information that Inland Revenue requests taxpayers to provide it with are reflective of their business size and their capabilities to provide such information.

With respect to future amendments of the legislation, one tax consultant would like to see an increase in safe harbours or simplified measures implemented by Inland Revenue. Another one emphasised the need to change the RTP rule and the reconstruction provision:

> I think the financial transaction provisions need to be changed, taking into account the requirements of the revenue authorities on the other side of the transactions … and then on the reconstruction. I'm just concerned that these provisions have the potential to be abused by Inland Revenue. (NZ Tax Consultant E, Mid-tier firm)

Some consultants did not want to have the rules changed constantly, which may cause more inconsistency. Instead, Inland Revenue should unify the criteria to apply the new rules. An Inland Revenue tax officer also shared this view and expected to see some small tweaks around the RTP rule. He also stated that Inland Revenue is giving consideration to addressing the digital economy in the future:

> Firstly, the only amendment that we are considering currently is just some remedial tweaks to our rules to deal with some unanticipated situations. They are in relation to the Restricted Transfer Pricing rule. Secondly, there will be a consideration in the future to the current work that is occurring at our OECD on the unfinished work on the digital economy. (NZ Tax Officer F, Inland Revenue)

4.3.2. Vietnam

4.3.2.1. Vietnamese Taxpayers' Pressures under Decree 20 and Circular 41

A response shared by most of the tax consultants interviewed in Vietnam was that Decree 20 and Circular 41 have given the Vietnamese tax authorities the ability to request more information than they did under Circular 66. The Vietnamese tax authorities also have the power to conduct more audit activities, which imposes more pressure on MNEs or taxpayers operating in Vietnam. As VN Tax Consultant J put it,

> I think certainly now with the new regulations, it has given tax officials more power … and more legal basis to conduct and carry out more audits than before. (VN Tax Consultant J, Big 4)

Moreover, another tax consultant shared the notion that during audits, the Vietnamese tax authorities have not effectively applied some of the principles of the new regulations, such as the

substance over form principle. But he noted that some parts of Decree 20 have moved away from the arm's length principle and only benefit the Vietnamese tax authorities:

> For example, the substance over form principle, which in practice we don't ever see used in tax audits at the moment. But I think that that's because the tax authorities are not particularly sophisticated in terms of how they're doing the auditing yet ... But again, there are lots of principles in Decree 20 that really favour the tax offices. They diverged from the arm's length principle as well. (VN Tax Consultant I, Big 4)

The pressures faced by companies in Vietnam with respect to some key features of Decree 20 and Circular 41 are discussed in detail below.

4.3.2.1.1. Burden of Proof

Two interviewees explained that the burden of proof has always been with the taxpayers regardless of the new regulations. Therefore, one of them stated that this concept is not new, and that taxpayers should be responsible for their documentation:

> When they [the taxpayers] lodge their tax returns, they should have the basis for determining their responsibilities. Therefore, they should be responsible for proving to the tax authorities their tax results, and this is not their new responsibility under Decree 20 and Circular 41. (VN Tax Officer L, Vietnamese tax authorities)

In contrast, some tax consultants believed that the burden of proof has been reinforced under the new rules as the Vietnamese tax authorities can impose their preferred profit margin on taxpayers' returns immediately if their documentation is not available upon request. This has actually put more pressure on companies. An explanation was also given by a tax consultant regarding the use of the burden of proof under the substance over form principle:

> Actually, the burden of proof … I think it will happen around the substance over form principle. Because actually that happens for the services … and eventually the local taxpayers have to prove the price of the services received from the related party has to be conducted at arm's length … So, before the TP documentation, the local taxpayers need to have a lot of documents to support the benefits and the demands and also to prove that the services were actually performed. (VN Tax Consultant K, Big 4)

4.3.2.1.2. Three-tiered Documentation and a Tight Deadline

As stated in Chapter 2, the Vietnamese government has stipulated clearly in its domestic regulations that a Vietnamese subsidiary of an MNE group should put in place its contemporaneous documentation, including a local file, a group master file, and a copy of the group's CbCR on an annual basis (MOF, 2017a). However, taxpayers are given a tight deadline of 90 days after their financial year to prepare the documentation (MOF, 2017a).

When asked about the appropriateness of the three-tiered documentation approach in the economic context of Vietnam, many of the interviewees commented that it is suitable to Vietnam due to its fast-paced economic development. VN Tax Consultant G explained:

> It [the] three-tiered approach] is really suitable ... If we look into the economic situation, the Vietnamese economy is growing … There is an increasing number of investments of multinationals having their headquarters in jurisdictions where complex, OECD based transfer pricing regulations were implemented ... With Decree 20 it becomes easier for multinationals to design their transfer pricing model. (VN Tax Consultant G, Big 4)

Another tax consultant further asserted that large MNE groups operating in Vietnam have been used to this new approach since the new regulations were introduced in 2017. However, for local companies, it may take them some time to understand the new requirements:

> I would say this is the third year of Decree 20. All my clients … even if they're regional head offices, they're also very familiar with it … The only companies that I still find that it's taking time to understand these rules are the domestic local Vietnamese companies. (VN Tax Consultant J, Big 4)

A different idea raised by two tax consultants was that the Vietnamese tax authorities are focusing on the local file without paying attention to the master file and CbCR at the moment. In a tax consultant's words:

> But I'm pretty sure that the tax offices, they don't even read the master file or the country-by-country reports. They do ask for it, but I think it's more to check whether the taxpayer just hasn't prepared it and then they can say they've been non-compliant … They only try to get an adjustment some other ways just by looking at the local file. (VN Tax Consultant I, Big 4)

In terms of documentation deadline, one tax officer postulated that there should be no burden for taxpayers to prepare such documentation as they still need to prepare the transfer pricing declaration forms for their tax returns and can ask for the master file and the CbCR from their groups because most Vietnamese companies are not required to prepare these documents:

> This deadline, in my opinion, is not short as they still prepare the tax returns as usual ... Under Decree 20 and Circular 41, they are required to prepare the additional master file and country-by-country report, of which I think the master file is the main document ... But the master file is already available from the Group. (VN Tax Officer L, Vietnamese tax authorities)

In the same fashion, a tax consultant was of the view that it is the OECD that came up with the idea of preparing documentation by the time of a taxpayer's return filing date:

> If you look at the OECD Guidelines … the OECD also recommends filing the completion within the annual CIT [corporate income tax] filings. So, it's not Vietnam who came up with this … There is a hard deadline in terms of completion, but there is no submission requirement for that date. (VN Tax Consultant J, Big 4)

The opponents of this deadline argued that it is not realistic to ask taxpayers to prepare the transfer pricing documentation within the regulated deadline. Taxpayers are likely able to have a draft local file by the deadline, but the master file and the CbCR are the responsibilities of their groups. A consultant shared this view and further explained that the OECD Guidelines give taxpayers twelve months, rather than three months, to complete the documentation:

> There are challenges in compliance with the strict deadline especially if we think about [the] master file and the CbCR … So, what they [the taxpayers] are trying to do is around the filing of the annual declaration forms: they already have a draft version [of the local file], which helps to evaluate their transfer prices and allows them to make appropriate disclosure in the transfer pricing declaration forms ... The master file is a tricky one because it is prepared by the headquarters ... The BEPS recommendation gives twelve months for companies to have the master file in place; the Vietnamese regulations give only three months. (VN Tax Consultant G, Big 4)

Despite this deadline, most of the interviewees admitted that the Vietnamese tax authorities do give the flexibility to provide the prior year's master file and CbCR in case the latest ones are not available. One of the responses was as follows:

> In the regulation, it also allows taxpayers to use the information of one year prior ... If the current year's master file is not available, they can also submit the prior year's master file. (VN Tax Consultant K, Big 4)

With respect to the exemption criteria applied to documentation preparation under the new rules, there was a consensus among most of the respondents that the exemptions have been introduced to reduce compliance costs for small taxpayers. However, these respondents also contended that it is really hard to define companies with "simple functions" and the exemption criteria may not be applicable, given the fast-changing economy of Vietnam:

> The issue with Vietnam is how do you define small? How do you define immaterial? I think this is one of the exemptions that needs to be revisited as the time changes because the country is developing so fast that those exemption rules … have no benefit. (VN Tax Consultant J, Big 4)

Another respondent also mentioned that it is not easy for companies with simple functions to maintain a margin of 5, 10 or 15 percent consistently over time to be qualified for exemptions:

> This year they [the] taxpayers] may be exempted. Next year they may not ... With such conditions, it's more difficult for them to meet the deadline. (VN Tax Consultant H, Mid-tier firm)

4.3.2.1.3. Transfer Pricing Declaration Forms

The new transfer pricing declaration forms were considered by some respondents to be not materially different from those under Circular 66. From the Vietnamese tax authorities' perspective, a tax officer reported that the purpose of the new forms is to collect more information for risk assessments:

> The purpose of these forms is to provide the tax authorities with preliminary information about related party transactions and the taxpayers' transfer pricing methods. This will be used for risk management purposes only. It can also be understood that the forms help identify potential companies for further inspections. (VN Tax Officer L, Vietnamese tax authorities)

However, according to the majority of the tax consultants, taxpayers think that the new forms are burdensome and could increase administrative costs for both taxpayers and the authorities. One tax consultant specifically pointed out that the profit segmentation between related party and third

party transactions under the new forms is delicate as the Vietnamese tax authorities can use this as a basis for making adjustments:

> Another challenging part is the segmentation of the profit and loss statements between related party and non-related party transactions. This information can be easily used by tax authorities to evaluate risk levels in the transfer pricing model, select companies for transfer pricing audits … They can challenge the profit level achieved on related party transactions using the non-related party transactions' profit level. (VN Tax Consultant G, Big 4)

4.3.2.1.4. Interest Limitation Rule

At the time the interviews were conducted in Vietnam in January - February 2020, the vast majority of the tax consultants said that companies had raised complaints regarding the EBITDA rule. One of the consultants elaborated that there has been little guidance from the Vietnamese tax authorities on this rule, which has led to inconsistent applications among different local tax authorities. The fact that the Vietnamese tax authorities are unclear about whether or not taxpayers should take into account third party loans in calculating the EBITDA ratio for deductibility purposes has a big impact on the real estate sector in Vietnam as real estate companies usually have extensive financial backing from external lenders. The unclear instructions from the Vietnamese tax authorities are illustrated in the following quotation:

> They [the Vietnamese tax authorities] said that all of the interest payments, including the interest rate from loans from third parties and related parties, should not be exceeding 20 percent of the EBITDA of the local taxpayers ... So, that creates a lot of concerns to the local taxpayers, especially for those operating in heavy industries or real estate ... Now they're seriously looking to revise it. (VN Tax Consultant K, Big 4)

Furthermore, some tax consultants highlighted that the Vietnamese tax authorities have consulted over the EBITDA rule introduced by the OECD but have not fully employed all aspects of the recommendations. They have chosen the aspects that suit themselves in implementing the EBITDA rule. As stated by a tax consultant,

> The BEPS [project] is already handling [interest limitation rules] in much more detail than it is here in Vietnam … Clear guidance would be needed whether the EBITDA rule is applied for third party loans as well or only for related party loans. (VN Tax Consultant G, Big 4)

As mentioned in Chapter 2, after considering public opinions, in June 2020, the Vietnamese government issued Decree 68 to change the interest limitation rule to 30 percent of EBITDA, and to allow the carry-forward of non-deductible interest expenses in certain circumstances. This new rule is effective from the 2019 tax year onwards (MOF, 2020). However, to the researcher's knowledge, Decree 68 does not provide any instruction on whether the EBITDA rule is only applied for related party loans or also takes into account third party loans.

4.3.2.2. Are Advance Price Agreements (APAs) Popular in Vietnam?

It was generally agreed by many of the interviewees that although Circular 201 relating to APA applications and procedures was enacted in 2014, Vietnam has yet to conclude any APA. They stated that taxpayers are interested in having more certainty, especially under Decree 20, but they are afraid to proceed with an APA as it is not really supported by the Vietnamese tax authorities. A consultant explained the difficulties of having an APA in Vietnam:

> It's natural that people would like to have less uncertainty. But the fact in Vietnam is not so encouraging. If you do see that APA is not yet signed in Vietnam, I don't think people would like to submit their APA applications to the government and then deal with the government for concluding any APAs at the moment. (VN Tax Consultant H, Mid-tier firm)

In providing the reasons for such a delay, a tax officer argued that due to the lack of experience and the risks underpinning APAs, the Vietnamese tax authorities hesitate to conclude these arrangements:

> APA is basically a future obligation, which means we use current data to consider a future obligation … Vietnam only applied APA rules for the first time. If you study the experience of those developed countries, they have worked for many years already … We do not have sufficient data and should consider APAs with caution, because the Vietnamese tax authorities do not have any commercial databases … [However], the Vietnamese tax authorities are [now] allowed to purchase these databases for work such as APAs … like ORBIS, OSIRIS, ORIANA, Thomson Reuters, and international trade databases. (VN Tax Officer L, Vietnamese tax authorities)

On the contrary, some tax consultants suggested that people within the Vietnamese tax authorities are afraid to take responsibility to handle APA cases in Vietnam. As put forward by one tax consultant,

> But at the moment it's very stalled because of internal politics and people in [the] GDT [General Department of Taxation] being worried about … giving a decision on APAs, or people in the MOF [Ministry of Finance] because they don't want to make a decision that will later mean that they get blamed. (VN Tax Consultant I, Big 4)

4.3.2.3. Working with the Vietnamese Tax Authorities

Under the new regulations, most of the interviewees generally posited that the compliance behaviour of Vietnamese taxpayers has changed. In particular, under Circular 66, the documentation requirements were still vague and many companies with huge profits tended not to prepare documentation. Decree 20 and Circular 41 have made them pay more attention to their annual transfer pricing documentation:

> We do see that taxpayers of every sector now pay more attention to transfer pricing matters. (VN Tax Consultant H, Mid-tier firm)

Besides, all of the tax consultants witnessed an improvement in the ways the Vietnamese tax authorities interact with taxpayers and their advisors although the Vietnamese tax authorities' attitudes also depend on the cases and the persons in charge. However, some tax consultants asserted that in some cases, the Vietnamese tax authorities act aggressively regardless of the reasonable explanations provided by taxpayers. In a tax consultant's opinion:

> I think that it's very dependent on who you're dealing with. Some of the people [from the Vietnamese tax authorities] can be very reasonable and they listen to, you know, what's being discussed ... But some of the other ones, they're aggressive. (VN Tax Consultant I, Big 4)

Another tax consultant shared a view that advisors need to find something in common with the Vietnamese tax authorities to support their clients:

> I mean we have to understand … their [the Vietnamese tax authorities'] pressure as well, and we understand the issues of our clients as well. So, we must find something in common with tax authorities so that we can help our clients to achieve the best position in front of the tax authorities. (VN Tax Consultant K, Big 4)

In order for the Vietnamese tax authorities to improve, a tax consultant expected to see more open discussion between the authorities and taxpayers or tax consultants:

> We want to have a lot of policy discussions, open discussion between these stakeholders. Then, a different view might be discussed. Different conclusions may be met. But at least taxpayers might have their own voice. (VN Tax Consultant H, Mid-tier firm)

Another expectation raised by some tax consultants was that the Vietnamese tax authorities should be more consistent in their approaches and provide more information on their approaches, especially guidance on audit disputes processes:

> I think the rule [Decree 20 and Circular 41] is very good at highlighting the compliance, but doesn't provide guidance on how to resolve or conduct audits and what to look for. (VN Tax Consultant J, Big 4)

VN Tax Consultant J further commented that the Vietnamese tax authorities are currently focused on whether a taxpayer's result is within an arm's length range without having a thorough understanding about its functional profile during audit cases:

> The issue that most taxpayers face is during disputes, whether the transactions are arm's length … and the facts of these cases, such as looking at function risks of each case, I think Vietnam was not there yet. I think it's more of "Are you in the range or not?". So, I think those kinds of audits, looking purely at the range, may not be the most effective because there's still a lot of disputes within the companies trying to explain their business. (VN Tax Consultant J, Big 4)

In relation to the current transfer pricing regulations (Decree 20 and Circular 41), many of the tax consultants hoped that the Vietnamese authorities will strengthen their transfer pricing knowledge to have a more consistent approach among provincial tax authorities during audit inspections. Although a tax officer from the Vietnamese tax authorities stated that the government would focus on the implementation stages, rather than amending the current regulations, some tax consultants did expect that the issues arising from the EBITDA rule would be addressed soon. Another interesting point raised by two tax consultants was that the Vietnamese tax authorities should provide taxpayers with data of "secret comparables" they have used to make adjustments on companies if they want to continue using this in the future. As stated by one tax consultant:

> If the Vietnamese tax authorities need to have the Vietnamese comparables, they need to find ways that the financial data of the Vietnamese companies is somehow public or available or some databases could be available. Otherwise, how can the taxpayers fulfil this requirement? (VN Tax Consultant G, Big 4)

Another tax consultant continued to elaborate that the requirement to conduct comparability analysis under the current regulations is so strict that no company can satisfy it:

> If we look in the law that, if you select comparables that are non-Vietnamese, you need to make adjustments for the geographic demographic differences … If you choose a company in Thailand, you have to make adjustments for various factors. In real life, it's impossible. (VN Tax Consultant J, Big 4)

Last, some tax consultants hoped that the Vietnamese tax authorities will start to engage in more information exchange and negotiations with other countries via CbCR, APAs, and MAPs:

> I think the things that need to be improved are the APA and the MAP procedures so that Vietnam can have more opportunities to interact, to exchange information with other countries. (VN Tax Consultant K, Big 4)

> Vietnam is on the list of countries that have committed to have information exchange, but they haven't done this yet [through CbCRs]. So, I think that they'll probably be pressured into doing this. (VN Tax Consultant I, Big 4)

4.3.3. Discussion

This section presents the researcher's discussion on the reactions of tax consultants and MNEs or taxpayers to the changes of transfer pricing rules in New Zealand and Vietnam to answer RQ2. Institutional theory allows taxation researchers to analyse how different interest groups affect tax policies made by government agencies, and to examine if these policies reflect the preferences and influences of such groups (Marriott, 2010). Overall, besides the BEPS Action 13, tax consultants and MNEs as social institutions have such a big impact on the new regulations implemented by the formal institutions, namely the New Zealand and Vietnamese governments. Specifically, the burden of proof, the three-tiered documentation, the interest limitation rule, and other approaches taken by both governments have been generated based on their experiences working with taxpayers and advisors over the years. Therefore, from a governance perspective, government agencies always claim that they have acted in the best interests of the stakeholders including taxpayers and tax consultants. However, the findings of this thesis show that the preferences of taxpayers and their advisors have not been fully considered under the new transfer pricing regulations in both countries. But the input from both taxpayers and tax consultants will be valuable for these

government agencies to continue adjusting their current legal frameworks. The following parts discuss the reactions of both tax consultants and taxpayers in more detail.

4.3.3.1. Transparency

It is obvious that both tax consultants and taxpayers in New Zealand and Vietnam have not been satisfied with the new transfer pricing regulations. While they expect to see more transparency in the legal framework in each country, the governments have acted in their own interests by enhancing their power to request information for risk assessments. It is undeniable that the burden of proof in transfer pricing documentation preparation should be the responsibility of taxpayers. Government agencies around the world including Inland Revenue and the Vietnamese tax authorities have their rationales in imposing the burden of proof on taxpayers. However, certain additional requirements, some of which are vague, have also been introduced by the New Zealand and Vietnamese governments. These requirements, such as New Zealand's reconstruction provision and RTP rule or Vietnam's transfer pricing declaration forms and EBITDA rule, do not entirely follow the recommendations of the OECD. The unclear requirements of these new rules have led to different interpretations by taxpayers and caused their compliance costs to increase to some extent. In addition, in New Zealand, the BEPS disclosure forms, and a number of questionnaires are considered to have increased taxpayers' compliance costs in the short-term as the questionnaires are one-off requests.

In terms of documentation level, although New Zealand's legislation refers to the OECD Guidelines, it does not have any legislated transfer pricing requirements or deadlines. Inland Revenue's purpose in doing this is to provide taxpayers with the flexibility to decide on which documents they should prepare. However, as mentioned by a tax consultant, although Inland Revenue does expect taxpayers to have the documentation in place when they submit their tax returns, preparing documentation is not likely to happen in a small market like New Zealand without clear rules. Vietnam, on the other hand, has stated clearly in Decree 20 and Circular 41 that taxpayers need to have a master file, a local file, and a CbCR in place within 90 days after the end of a taxpayer's financial year, although, in reality, the Vietnamese tax authorities have not challenged the master file and the CbCRs as yet. Vietnamese tax consultants and taxpayers have expressed their concerns about this unrealistic deadline as in other countries like New Zealand, taxpayers may have a longer period of twelve months to prepare the documentation. In addition,

although the documentation exemptions given by the Vietnamese tax authorities are good, tax consultants expect the Vietnamese government to adjust the thresholds regularly, based on the economic circumstances of Vietnam.

When it comes to the interest limitation rule, tax consultants and taxpayers in both countries view the RTP rule and the EBITDA rule as a huge challenge for MNE groups, which may lead to double taxation, because these rules do not take into account their effects on the lenders in other jurisdictions. In applying the fixed ratio rule and the group ratio rule on interest payments introduced by the OECD guidance, countries should consider the risk of double taxation and whether they allow "an entity to carry forward or carry back disallowed interest expense or unused interest capacity" (OECD, 2016, p. 72). In addition, the fixed ratio itself does not acknowledge the fact that various groups may need different amounts of leverage due to their distinctive business sectors. Therefore, the OECD encourages countries to have a combination of the fixed ratio and the group ratio that allows taxpayers to deduct more interest expenses in some special circumstances (OECD, 2016). Both New Zealand and Vietnam have not fully followed the OECD recommendations and have created their own set of rules.

Overall, the findings of the interviews have suggested that government agencies in both countries should continue looking at the OECD recommendations and consulting other organisations to establish a better transfer pricing landscape that reflects taxpayers' interests. These findings are similar to those reported by Oguttu (2015) in relation to the transfer pricing practice adopted by African countries. Oguttu (2015) stated that as BEPS is a global issue, African nations should consider the OECD's suggestions in tackling BEPS and should learn from the initiatives of global organisations, including the OECD and G20 countries, to create a better tax system.

4.3.3.2. Co-operation

Although Inland Revenue sometimes requests information that is not commercial, tax consultants in New Zealand have generally appreciated the authority's willingness to cooperate with taxpayers in APA negotiations. As a consequence of this cooperation, as mentioned in Chapter 2, Inland Revenue has so far concluded a large number of APAs (205 as of 30 June 2019) since it started the APA program in New Zealand (Inland Revenue, 2019b). By contrast, the Vietnamese tax authorities have not yet concluded any, although MNEs have had a great interest in reaching an

agreement with the Vietnamese government. As revealed by most of the tax consultants interviewed in Vietnam, no one within the MOF or the GDT is willing to make a decision for a future APA arrangement for which they may be blamed later. However, there should be a culture change within the MOF and the GDT where responsible individuals working for the Vietnamese tax authorities will consider decisions made on APAs to be owned by their organisations as a whole, rather than by themselves, provided that all proper procedures have been followed.

There is also a major difference between New Zealand and Vietnam when it comes to automatic exchange of information. Vietnam has not taken any action to exchange financial information of MNEs with other countries despite its interest to join the Global Forum on Transparency and Exchange of Information for Tax Purposes and its focus on international co-operation under the new LTA (*Law on Tax Administration No. 38/2019/QH14*). New Zealand, by contrast, has been actively engaged in this activity and received 1,402 CbCRs by the end of 2018 as part of the BEPS Action 13 (Inland Revenue, 2019b). As stated in the study of Webster and Augustinos (2014) about Australia's information exchange system, the application of an automatic information exchange system could tackle BEPS issues. Therefore, New Zealand has been on the right track to utilise the exchange of CbCRs effectively with other countries. Vietnam, on the other hand, should be more active in cooperating with other countries, as BEPS issues can only be tackled by international cooperation (Oguttu, 2015). In the near future, there is a need for both New Zealand and Vietnam to be involved in a number of negotiations with other countries to tackle double taxation via the use of MAPs or DTAs. As such, international cooperation will play an important role in making these negotiations a success. Both New Zealand and Vietnam should be prepared for these future arrangements.

4.3.3.3. Roles of Different Interest Groups

In order to have a more transparent transfer pricing legal framework in both countries, there should be collaboration between different interest groups. In terms of government agencies, tax consultants in New Zealand and Vietnam have shared a common concern that there is inconsistency in the approaches taken by the authority's staff, especially during transfer pricing audits. Therefore, it is recommended that creating consistency in relation to transfer pricing approaches using guidelines should be the priority of the New Zealand and Vietnamese governments. There should be more certainty in both countries as to how the tax authorities will

implement some key aspects of the new transfer pricing regulations. In other words, Inland Revenue should continue providing guidance on how to apply the reconstruction provision: reconsidering the arm's length aspect of the RTP rule, becoming more commercial in asking for taxpayers' information, and introducing more simplified measures in addition to the current safe harbours mentioned in Chapter 2 of this thesis to reduce taxpayers' compliance costs. In relation to the Vietnamese tax authorities, it is important that they should continue monitoring the application of the EBITDA rule under Decree 68 and become less aggressive in working with tax consultants and taxpayers. In particular, the use of secret comparables should be changed so that taxpayers have more certainty as to how the Vietnamese tax authorities make adjustments on their profitability. Given the fact that external commercial databases will soon be used by the Vietnamese tax authorities during audits or APAs, some positive changes are expected to happen.

During the consultation and implementation phases of the new transfer pricing regulations in both New Zealand and Vietnam, tax consultants have played an important role in bridging the communications between taxpayers and tax authorities. For instance, all of the tax consultants in both countries contended that they have organised a number of seminars and conferences to update taxpayers on the new transfer pricing rules. For any future amendments of the regulations in New Zealand and Vietnam, tax consultants will continue to contribute their professional experience and provide the governments with more feedback on behalf of taxpayers. For taxpayers, it is now time for them to reconsider their current transfer pricing positions and become more engaged in the policy making process so that the introduced regulation will reflect their interests. This is consistent with what was stated in a study by Plowgian (2013) that MNEs should take proactive roles in "managing reputation risk, managing change risk, and participating in the policy-making process" (p. 260), given the complexity of the BEPS project.

4.4. Comparison of the Transfer Pricing Landscape in New Zealand and Vietnam

A detailed comparison table outlining the key similarities and differences in the transfer pricing landscape of New Zealand and Vietnam is presented in Table 4.1 below.

Table 4.1: Transfer pricing landscape in New Zealand and Vietnam

Main characteristics	New Zealand	Vietnam
Pre-BEPS Action 13 (old transfer pricing landscape)		
Previous transfer pricing rules	Income Tax Act 1994, transfer pricing rules (1995), and Inland Revenue's transfer pricing guidelines (2000)	Circular 117 (2005) and Circular 66 (2010) on transfer pricing, and Circular 201 on APA procedures (effective from 5 February 2014 until today)
Who bore the burden of proof?	New Zealand's Commissioner	Taxpayers
Did the old transfer pricing rules have a reference to the OECD Guidelines?	No	No
Was transfer pricing documentation a legal requirement?	No (but taxpayers prepared transfer pricing documentation to mitigate risks and penalties)	Yes
Was the three-tiered documentation approach applied?	No	No
Was there a legislated deadline for taxpayers to prepare transfer pricing documentation?	No (taxpayers only submitted documentation when requested)	No (taxpayers only submitted documentation when requested)
Additional reporting requirements	International questionnaire	Transfer pricing declaration forms

Main characteristics	New Zealand	Vietnam
Post-BEPS Action 13 (new transfer pricing landscape)		
Current transfer pricing rules	Sections GC 6 to GC 13, and Sections GC 15 to GC 19 of the Income Tax Act 2007 (with a reference to the 2017 OECD Guidelines) (applied to financial years starting on or after 1 July 2018)	Decree 20 and Circular 41 (effective from 1 May 2017) Decree 68 (applies from the 2019 tax year)
Who bears the burden of proof?	Taxpayers	Taxpayers
Do the new transfer pricing rules have a reference to the OECD Guidelines?	Yes	No
Is transfer pricing documentation a legal requirement?	Yes	Yes
Is the three-tiered documentation approach applied?	Yes (following a cost-risk based approach that allows taxpayers to prepare documentation that suits their risk levels)	Yes (clearly stating the requirements for a master file, a local file, and a CbCR)
Is there a legislated deadline for taxpayers to prepare transfer pricing documentation?	Yes (When taxpayers file their tax returns (usually 12 months) in accordance with the OECD recommendations)	Yes (90 days after the end of taxpayers' financial year)
Threshold requirement for CbCRs	MNEs with a global revenue equal to or exceeding EUR 750 million (NZD 1.24 billion)	Vietnamese ultimate parent companies whose consolidated revenue during a certain financial year is equal to or more than VND 18,000 billion (approximately NZD 1.24 billion)
Additional reporting requirements	International questionnaire, BEPS disclosure form, and other questionnaires in relation to distributors or wholesaler, royalties, losses, and debts	New transfer pricing declaration forms (4 separate forms)

Main characteristics	New Zealand	Vietnam
Are simplified measures applied?	Yes (published on Inland Revenue's website, some measures have been based on the OECD Guidelines)	Yes (exemptions for transfer pricing preparation only – no reference to the OECD Guidelines' simplified measures)
Has the authority been engaged in the exchange of CbCRs with other countries?	Yes	No
Time bar for the authority to assess and make adjustments on taxpayers' results	Increased from 4 years to 7 years	Not specifically stated in Decree 20 and Circular 41. Any open (non-audited) years are possibly subject to future assessments and audits. However, there is a time limit for imposing penalties (either 2 or 5 years from the day on which the tax offence is committed, depending on the types of offences) as regulated in the LTA.
Can the authority reconstruct related party transactions in accordance with Paragraph 1.122, Section 2, Chapter I of the OECD Guidelines?	Yes	Not specifically stated in the regulations (but the Vietnamese tax authorities can make adjustments on taxpayers' results if their transfer pricing positions are deemed inappropriate)
Does the authority focus on substance and actual conditions of related party transactions over their legal contracts?	Yes	Yes
Interest limitation rule	RTP rule	EBITDA rule
Has the interest limitation rule fully followed the OECD recommendations?	No	No

Main characteristics	New Zealand	Vietnam
Tax consultants' opinions about the new transfer pricing rules		
Do the changes in regulations represent a positive step taken by the authority?	Yes (but the new legislation also has some negative sides)	Yes (but the new regulations also have some negative sides)
Motivation behind the changes of the regulations	A movement towards international standards	A movement towards international standards
Transfer pricing landscape under old rules	Inland Revenue established a good transfer pricing regime, focused on financial transactions and audits, and possessed a small team.	Circular 66 was unclear in terms of documentation. The Vietnamese tax authorities also conducted a lot of audit activities, but did not have sufficient transfer pricing expertise.
Transfer pricing landscape under new rules	Inland Revenue had a restructure in its transfer pricing team as a result of the business transformation project. Audit activities have not increased.	The Vietnamese tax authorities had a restructure in their transfer pricing team and have improved their knowledge. Audit activities have increased.
Is the authority willing to receive feedback during the consultation and implementation stages of the BEPS Action 13?	Yes	Yes (but not on an ad-hoc basis)
Have the new transfer pricing regulation resulted in more uncertainty for taxpayers?	Yes (more power for the Revenue to request information and to reconstruct related party transactions)	Yes (the reinforced burden of proof on taxpayers, the tight deadline for documentation preparation, and the burdensome transfer pricing declarations)
Is the interest limitation rule appropriate?	No (creating more problems such as double taxation)	No (unclear interpretation on whether the rule is also applied to third party loans)

Main characteristics	New Zealand	Vietnam
Are APAs popular?	Yes (Inland Revenue have concluded a large number of APAs and strongly encourage taxpayers to submit their APA applications, especially unilateral APAs)	No (no APA has been concluded in Vietnam; no government department wants to take responsibility for APAs)
Does the authority hold a collaborative attitude when working with tax consultants and taxpayers?	This depends on the cases, but generally Inland Revenue is very supportive when it comes to APAs or MAPs.	This depends on the cases. The Vietnamese tax authorities have made an improvement in the ways they work with tax consultants and taxpayers. However, in some cases, they still have very aggressive approaches.
Suggested improvements for the authority	Inland Revenue's staff should be more consistent in their approaches and more commercial when requesting information.	The Vietnamese tax authorities should have more open discussions with tax consultants and taxpayers, and enhance their transfer pricing knowledge to become more consistent in the approaches taken by different officers.
Suggested future amendments on regulations	Inland Revenue should consider increasing the number of safe harbours or simplified measures and make some tweaks around the RTP rule and the reconstruction provision.	The Vietnamese tax authorities should continue monitoring the application of the EBITDA rule under Degree 68 and make changes in accordance with the OECD recommendations if necessary. The Vietnamese tax authorities should also provide taxpayers with the data of secret comparables that they use to make adjustments on taxpayers' results and start to engage in information exchange with other countries via CbCRs, APAs, TIEAs, and MAPs.

4.5. Chapter Summary

This chapter discusses the findings of semi-structured interviews conducted with a total of twelve participants in New Zealand and Vietnam in order to address RQ1 and RQ2. Based on the interview findings, there are a number of similarities between New Zealand and Vietnam regarding their responses to the BEPS Action 13. In general, the New Zealand and Vietnamese governments have intended to move closer to international practice by implementing several significant changes in their transfer pricing landscape in response to the BEPS Action 13. Their reactions can be explained using the "isomorphism" concept in institutional theory, which implies that under the pressure of the BEPS Action 13, both New Zealand and Vietnam have acted similarly to introduce new regulations in order to give more power to their governments. However, due to each country's economic circumstances, New Zealand and Vietnam have had different approaches to transfer pricing audits after the introduction of the new regulations.

In addition, tax consultants and taxpayers are not happy with some aspects of the new rules introduced by New Zealand and Vietnam and they suggest potential changes. There is a general concern that the governments in both countries have gained more power under the new transfer pricing rules, causing more uncertainty for taxpayers. The findings have shown the need to have more transparency in both New Zealand and Vietnam with respect to the application of some transfer pricing provisions under the new rules. Moreover, international cooperation plays an important role in helping countries like New Zealand and Vietnam to tackle BEPS issues. This chapter also presents the roles of interest groups such as government agencies, tax consultants, and taxpayers in creating a more transparent transfer pricing legal framework.

Chapter 5: Conclusion, Contributions, Limitations, and Future Research

5.1. Introduction

MNEs are looking at ways to shift their profits from higher-tax jurisdictions to lower-tax jurisdictions using transfer pricing as the main mechanism (Klassen et al., 2017). In response to the global profit shifting by MNEs, the OECD/G20 BEPS project with a 15-point Action Plan was adopted by the OECD and G20 countries in September 2013, and completed two years after its adoption (OECD, 2015a). Action 13 of the BEPS Action Plan has been intended to enhance transparency for tax administrations by providing a template for MNEs to report to their respective tax authorities on an annual basis (OECD, 2017a; 2019a). Following the BEPS Action 13, both New Zealand and Vietnam have introduced new transfer pricing regulations to tackle BEPS issues. Therefore, this study aims at understanding the effects of the BEPS Action 13 on transfer pricing practices in New Zealand and Vietnam using a comparative case study analysis and institutional theory. The findings from the twelve interviews with tax consultants and tax officers in both countries together with document analysis have been used to address the following research questions:

- RQ1: How have two different jurisdictions (New Zealand and Vietnam) reacted to and adapted the BEPS Action 13?

- RQ2: How have MNEs and tax consultants reacted to the changes in transfer pricing regulations in both New Zealand and Vietnam?

The conclusion of the study is presented in Section 5.2, followed by a discussion of the contributions of this study in Section 5.3. Then Section 5.4 discusses the limitations of the study while Section 5.5 provides some implications for future research.

5.2. Conclusion

In summary, the findings of this study have shown that both New Zealand and Vietnam have shared certain common features in their transfer pricing landscape. However, there are still some different approaches taken by the two countries in response to the BEPS Action 13.

In relation to RQ1, it is clear that both countries have enacted new transfer pricing rules and regulations to deal with profit shifting by MNEs following the BEPS Action 13. These changes are considered to be a positive step in both countries as the governments' intention is to align their transfer pricing rules and regulations with international transfer pricing standards. Under the new rules, both the New Zealand and Vietnamese governments have followed a three-tiered approach to transfer pricing documentation that includes a master file, a local file, and a CbCR. Besides, New Zealand and Vietnam have a common tendency to impose more reporting requirements on taxpayers, such as the transfer pricing declaration forms in Vietnam, and the BEPS disclosure forms, and the various questionnaires issued by Inland Revenue. In addition, in order to limit the interest payments that are deductible by local taxpayers on their tax returns, New Zealand has applied the RTP rule on inbound loans. An interest limitation rule called the EBITDA rule has also been introduced in Vietnam for the same purposes.

In responding to the BEPS Action 13, during the drafting and implementation phases of the new legislation, Inland Revenue has maintained a collaborative attitude by openly receiving feedback and consultations from different interest groups. The Vietnamese government, on the other hand, does not endorse informal or ad-hoc feedback, although it still receives contributions from different stakeholders. With respect to New Zealand's transfer pricing landscape, Inland Revenue had established a good transfer pricing landscape prior to the new legislation, but its transfer pricing team has been historically small. Despite the fact that Vietnam also had Circular 66 in place prior to Decree 20 and Circular 41, most of the local tax authorities did not have much expertise in transfer pricing during audits. As such, since Decree 20 and Circular 41 came into effect, the Vietnamese government has restructured their transfer pricing team to establish the general inspection teams in different provinces and provided more training to their staff. By the same token, Inland Revenue has also implemented the business transformation project to include six case leads into its new structure to better support transfer pricing audit activities. However, this

project has caused a lack of resources within Inland Revenue, which has not led to an increase in audit activities under New Zealand's new legislation. On the contrary, the Vietnamese tax authorities have been more aggressive under Decree 20 and Circular 41 in terms of increasing audit activities, because their transfer pricing knowledge has improved, and Vietnam foreign direct investments have been growing.

With regard to RQ2, it has been acknowledged by tax consultants and taxpayers that the new transfer pricing regulations in New Zealand and Vietnam have not fully reflected the interests of tax consultants and taxpayers. Instead, the New Zealand and Vietnamese governments have enacted rules that suit themselves in many aspects. Specifically, from the perspectives of tax consultants and taxpayers, Inland Revenue has gained more power under the new rules, which has led to an increase in taxpayer's compliance costs. This has been manifested in the shift in the burden of proof to taxpayers, the reconstruction provision, the issue of the BEPS disclosure forms, and questionnaires concerning distributors or wholesalers, losses, royalties, and debts. Likewise, the power of the Vietnamese tax authorities has been enhanced under Decree 20 and Circular 41 via the taxpayers' burden of proof during tax audits, and the burdensome annual transfer pricing declaration forms. When it comes to New Zealand's RTP rule and Vietnam's EBITDA rule, tax consultants and taxpayers have shown their dissatisfaction with the application of these rules because these rules do not entirely follow the OECD recommendations and may cause issues of double taxation. All of the above concerns have created uncertainty for MNEs operating in both countries, posing the need for more transparency and clearer instructions.

Regarding the level of transfer pricing documentation, Inland Revenue has not introduced clear documentation requirements and deadlines except for including a reference to the OECD Guidelines in its domestic rules. By doing this, Inland Revenue has allowed small companies to decide on the level of information that they need to prepare. However, a concern has been raised that, without clear documentation and a clear deadline, documentation may not become a reality in a small market like New Zealand. Conversely, Vietnam has very specific three-tiered documentation requirements and provides taxpayers with a tight deadline of 90 days after the end of their financial year to prepare documentation under Decree 20 and Circular 41. To the vast majority of taxpayers and tax consultants, this deadline is unrealistic. In addition, although the

Vietnamese government has also stated some criteria for documentation exemptions, there is a need to adjust the thresholds constantly, due to the rapid economic development in Vietnam.

Moreover, the study has also found some distinct differences between New Zealand and Vietnam in terms of APA procedures and international cooperation. While New Zealand has an advanced transfer pricing regime in which Inland Revenue has been openly engaged in APA negotiations with taxpayers and actively involved in the exchange of MNEs' financial information via CbCRs, Vietnam has neither concluded any APAs nor taken any action in exchanging CbCRs with other jurisdictions. When working with Inland Revenue, tax consultants and taxpayers in New Zealand have a general perception that Inland Revenue is relatively co-operative, especially during APA discussions, although they are sometimes not commercial in requesting unnecessary information. By contrast, the Vietnamese tax authorities are more aggressive in their ways of working with tax consultants and taxpayers, but they have not yet obtained good transfer pricing expertise, although there have been some improvements.

For future improvements, tax authorities, tax consultants, and taxpayers in both countries should work together to create a more transparent transfer pricing framework. In the near future, Inland Revenue is expected to introduce more simplified measures for New Zealand taxpayers, continue amending the RTP rule, and provide clearer guidance on how to apply the reconstruction provision. Also, tax consultants and taxpayers in Vietnam would like the Vietnamese tax authorities to continue improving their transfer pricing knowledge, monitoring the application of the EBITDA rule under Decree 68, and being more proactive in APA negotiations and international cooperation via CbCRs, TIEAs, and MAPs. Tax consultants in both countries should be the bridge between taxpayers and the authorities in making such changes. For taxpayers, they should actively monitor their transfer pricing policies to mitigate risks and actively contribute to the policy making processes in both New Zealand and Vietnam.

5.3. Contributions

The findings of this study have both theoretical and practical contributions that are further explained below.

5.3.1. Theoretical Contributions

As mentioned in Chapter 2, there is little research that has been done to examine the effects of the BEPS Action 13 on transfer pricing practices in different jurisdictions. Therefore, this study has advanced the literature by providing comparative research on the reactions of an OECD country (New Zealand) and a non-OECD country (Vietnam) to the BEPS Action 13. Moreover, this study has reinforced the importance of institutional theory in explaining social issues related to tax policy. In addition, the results of this study are also consistent with those of prior BEPS research to some extent. For example, a study by Oguttu (2015) acknowledged the importance of the OECD recommendations in establishing a better tax system in African countries. The findings from the New Zealand and Vietnamese transfer pricing landscape have confirmed this suggestion that every country should follow OECD standards to tackle issues arising from BEPS. More importantly, some prior studies by Webster and Augustinos (2014), Plowgian (2013), and Sawyer and Sadiq (2019) have emphasised the importance of international cooperation through automatic exchange of information such as CbCRs, DTAs, and TIEAs in preventing profit shifting by MNEs. In this study, the researcher has also concluded that both New Zealand and Vietnam should continue to be engaged in such activities in order to tackle the BEPS issues.

5.3.2. Practical Contributions

From a practical perspective, besides the suggested regulatory improvements mentioned above, this study provides some implications for policymakers in New Zealand and Vietnam, as well as other countries, to improve their transfer pricing landscape. For New Zealand, although Inland Revenue has put in place a more advanced transfer pricing regime than that of Vietnam, there are some good points that Inland Revenue can learn from Vietnam. Firstly, the clear requirements of transfer pricing documentation and deadlines in Vietnam have provided taxpayers with specific guidance on preparing their obligated documentation. Secondly, Vietnam has implemented specific revenue and related party quantum thresholds for documentation exemptions to decrease taxpayers' compliance costs. These applications are useful for Inland Revenue to implement more guidance on transfer pricing documentation requirements and deadlines, as well as consider the potential use of the simplified measures (thresholds) similar to those adopted in Vietnam.

However, the thresholds should be constantly reviewed by Inland Revenue in response to New Zealand's economic development.

Furthermore, it is recommended that the Vietnamese tax authorities should learn from Inland Revenue regarding their openness and willingness to work with taxpayers. In line with its commitments under the new LTA, Vietnam should consider pushing the exchange of CbCRs and participating in TIEAs or MAPs with other countries and consulting Inland Revenue's experiences in concluding APAs. In terms of documentation, Vietnam has an extremely tight documentation deadline. It is now time that the Vietnamese tax authorities should look at other countries like New Zealand and the OECD recommendations to provide taxpayers with a more reasonable deadline to prepare transfer pricing documentation. Lastly, the pragmatic approach taken by Inland Revenue in reducing compliance costs for small taxpayers through the use of simplified measures for certain service transactions and inter-company loans based on the OECD Guidelines is also a good approach for Vietnam to consider.

For other tax jurisdictions, the pros and cons of the transfer pricing landscape in New Zealand and Vietnam will have useful implications for them to reflect on their current transfer pricing regimes and make changes if necessary. For tax consultants and taxpayers in New Zealand and Vietnam, this study provides them with an opportunity to understand more deeply the difficulties facing tax authorities, as well as their rationales behind the new transfer pricing regulations. With this information, tax consultants and taxpayers can continue providing feedback to their respective governments to create a better transfer pricing landscape.

5.4. Limitations

This study has certain limitations. Firstly, the qualitative approach adopted in this study has some weaknesses. Specifically, no statistical analysis was conducted to understand the relationship between different variables that may affect the adoption of the BEPS Action 13 in New Zealand and Vietnam. According to Atieno (2009), this may affect the reliability of qualitative research. Furthermore, interview participants may have potential biases in their responses, which affects the findings of this study. However, the impact of biases could be minimised by examining data and collecting evidence from different sources such as case studies, document analysis, and interviews

(Bowen, 2009). In conducting this study, the researcher did not have a chance to interview MNEs or taxpayers to understand their perspectives on the new transfer pricing regulations in both countries, due to limited time and resources. However, the researcher believes that tax consultants are good representatives of taxpayers as they work closely with them to help with their transfer pricing issues.

In addition, the scope and findings of this study are limited to two countries, while other jurisdictions can also provide the researcher with more interesting facts. Due to its limited scope, the study has focused on only the main aspects of the transfer pricing landscape in New Zealand and Vietnam. As profit shifting is a complicated phenomenon, this study only analyses the effect of the BEPS Action 13 on transfer pricing practices in both countries and does not cover other related transfer pricing issues or relevant rules, such as permanent establishment rules or hybrid and branch mismatch rules.

During the time the researcher carried out this study, the COVID-19 pandemic was occurring around the world and has resulted in serious implications for MNEs regarding their transfer pricing policies, APAs, and documentation (Deloitte, 2020). Therefore, this study does not take into account the effects of this pandemic on the transfer pricing landscape of New Zealand and Vietnam.

5.5. Future Research

This study has shed light on some recommendations for future research. Firstly, the BEPS project is a 15-Action Plan, which covers different aspects of taxation to tackle profit shifting by MNEs around the world. Besides Action 13, there is still room for future research regarding the applications of other BEPS Actions such as digital taxes, permanent establishment rules, hybrid and mismatch rules, and other similar features in both developed and developing countries. As mentioned above, this study only employs a qualitative approach to explore the transfer pricing landscape in New Zealand and Vietnam. Researchers can fill the gaps from this study by conducting quantitative studies to understand how different variables affect the transfer pricing landscape in both countries. Besides, researchers should also focus on studies that allow MNEs to share their opinions directly on the transfer pricing landscape in both countries. Future research

can also expand the scope of this study to include more jurisdictions, examine the overall trends in the world relating to transfer pricing, and provide policy makers with more insights to improve their domestic legislation.

In a constantly changing transfer pricing world, there should be a re-examination of the transfer pricing landscape in New Zealand and Vietnam in the near future to see if government agencies have considered the feedback given by tax consultants and taxpayers to adjust their transfer pricing regimes. Furthermore, it would be interesting to see how international cooperation such as CbCRs, TIEAs, and MAPs will affect the transfer pricing landscape in many countries including New Zealand and Vietnam.

The COVID-19 pandemic is expected to change the transfer pricing landscape globally. Therefore, it is recommended that future research should be done to examine the impact of this pandemic on international practices. In particular, researchers can study how MNEs could adjust their transfer pricing policies in response to the pandemic, or how tax authorities could support MNEs during this hard time through some relief measures relating to APAs, royalty payments, and transfer pricing audits, given the fact that many MNEs might make losses for years as a result of the pandemic.

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