Anti-tax avoidance measures in OPEC-member countries

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Abstract: The countries which are members of Organization of the Petroleum Exporting Countries (OPEC) have a long history of oil-dependent economies. In recent years, the try to shift these old economic versions to the non-oil economies particularly more pronounced dependence to the tax revenues are arising in OPEC countries. The tax avoidance schemes and other component of tax gap can diminish the country's tax revenues. Consequently, many developed countries have prescribed several anti-avoidance measures to combat the different types of domestic and international tax avoidances. In this paper, the main anti-avoidance measures adopted by the OPEC members are reviewed. The findings of this review demonstrate that these measures are at infancy in OPEC countries. Although different types of anti-avoidance measures have been introduced in some of the OPEC members, but it seems that emerging efforts should be started to improve such measures in these countries.
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1. Introduction

In September 1960, The Organization of the Petroleum Exporting Countries (OPEC) was found by agreement of five countries including Islamic Republic of Iran, Iraq, Kuwait, Saudi Arabia and Venezuela. Subsequently, Qatar, Indonesia, Socialist People's Libyan Arab Jamahiriya, the United Arab Emirates and Algeria in 1960s; Nigeria, Ecuador and Gabon in 1970s; and Angola in 2007 have joined to founder members. The termination of the membership of Gabon in 1995 and the suspension of the membership of Indonesia in 2009 have resulted in the current total of 12 remaining member countries. [http://www.opecfund.org]

The coordinating and unifying the petroleum policies of the member countries is one of the main missions of the OPEC. In addition, the organization attempts to stabilize the oil market, secure appropriate supply of petroleum to consumers, and provide a suitable environment for those investing in the petroleum industry. [http://www.opecfund.org]
Since many years ago, the exporting of the crude oil has been constituted the main source of the total revenues of the OPEC-member countries. Such available revenues have prohibited the governments of these countries to improve the non-oil revenues such as taxation. The history of these countries demonstrates the little priority of the governments to develop effective revenue administration. The taxation systems were antiquated and ineffective; and the Tax/GDP ratios were not appropriate. [2]

Although the OPEC's statistics shows an increasing trend of the oil prices, the instability of the oil markets and uncertainty about the oil reserves have resulted in new concerns. The exhaustibility of the oil reserves has become more prominent than before and the sustaining of these reserves as "intergenerational resources" is a public issue now in many OPEC-member countries.

Several OPEC members have started some fiscal reforms to reduce the dependence of the country to the oil revenues. The governments of these countries are focusing again to the tax revenues. Several tax reforms such as introduction of VAT have been proposed and the programs for increasing the Tax/GDP ratios have been legislated.

In all over the world, the tax revenues are exposed by some challenges. The tax gap, tax evasion, and tax avoidance are the phrases that the entire tax professionals are very familiar to them. These problems can diminish the efficiency of taxation and are barriers to achieve appropriate tax revenue.

The developed countries have introduced different measures to prevent or reduce the tax avoidance. The legislation of different anti-avoidance rules as well as black-listing of tax heavens are instances of these measures. In this paper, the anti-avoidance measures in different OPEC-member countries have been reviewed.
The oil-dependent economies of OPEC-member countries

The countries constituting the OPEC members are of a high geographical distribution. Although the majority of these countries are located in the Middle East, some of them are in North Africa and the others are in Latin and South America.
The OPEC countries have the 81.33% of the crude oil reserves of the world which is about 1193 billion oil barrels. In contrast, the share of non-OPEC countries

is about the 18.67% of the total world reserves i.e. 274 billion barrels. These statistics show the vital role of OPEC-member countries in global economy.

The shares of various members of the OPEC are not the same. According to the official figures announced by the OPEC, the member countries can be classified into four groups of oil reserves. The first group are constituted by Venezuela (24.8%) and Saudi Arabia (22.2 %) having highest reserves; the second group of Iran (12.7 %), Iraq (12%), Kuwait (8.5%), and United Arab Emirates (8.2%) are in intermediate position; the third group of Libya (3.9%), Nigeria (3.1%) and Qatar(2.1%) with low reserves; and finally, the forth groups i.e. Algeria (1.0%), Angola (0.8%), and Ecuador (0.6%) have lowest reserves.(http://www.opecfund.org)

In the OPEC-member countries, the economy and oil are strongly cross-linked. In table 1, the Gross Domestic Product (GDP) of these countries in recent three decades has been summarized. The figures demonstrate a significant increase of the GDP in the 2000s. The detail GDP statistics published by International Monetary Fund (IMF) shows a steady trend of nearly low GDPs in these countries within 1980-1990 and 1990-2000; but the GDPs have been dramatically multiplied within following years particularly in the end of 2000s.

The officially reported OPEC oil basket prices can visualize the underlying reasons of the GDP changes mentioned here. An increasing trend of the oil prices have been documented since 1999-2000. The oil prices of the OPEC basket have been dramatically increased; so that the oil price in 2011 is about 3-fold greater than the price in 2000 (107.3 Vs 27.6 US $ for each oil barrel).

The values of oil export of OPEC-member published by IMF, which is summarized in table 2, demonstrate a significant growth since 2000. In fact, given to the increased oil prices, the OPEC members have elevated their oil exports. Consequently, the GDP growth of these countries in recent years is originated mainly from such elevation of oil price and export. The oil-dependent economies of OPEC-member countries are clear by these all findings.

In contrast to OPEC countries, the four OECD-member countries have experienced a steady, balanced and constant growth in their GDP since 1980 up to now. According to the IMF statistics shown in table 1, the GDP of these counties have been growing up even in 1980s and 1990s, when the oil price was not significantly high. The GDPs of Switzerland and Saudi Arabia are comparable; while one is not an oil exporter, and the other has the highest rate of export and GDP among OPEC members. These all mean the independence of the economy of these four OECD countries to revenue of oil export.

The non-oil strategies and tax reforms

There is an increasing concern about the dependence of the national revenues to oil export in majority of OPEC-member countries. As a general knowledge, the oil reserves are exhaustible and it seems logical to maintain these sources for future generations.

The world has experienced a considerable fluctuation of crude oil price in recent decades. Such fluctuation can diminish the stability of the economy in the OPEC countries. Additionally, the dependence to oil revenues can cause an assurance in these countries, and postpone the development of the community.

Given to mentioned reasons, many OPEC countries have been planning to reduce the dependence of their economies to oil revenues. The diversification of the revenues is one of crucial non-oil strategies. For example, the growth of export of goods and services instead of crude oil selling can improve the research, technology and industry, and accelerate the process of development in the OPEC countries.

The tax is a non-oil source of revenue which constitutes important part of GDP in developed countries. In contrast, the role of these sources is not considerable in the developing countries. As demonstrated in table 3, the average tax/GDP ratio in OPEC countries are significantly lower than OECD countries' ratio. (Di John.2006).

The interregional difference in composition of the tax revenue is significant during 1997 to 2001. The social contributions are significantly lower in Middle Eastern countries than OECD members. Conversely, the customs duties are higher in Latin American and Middle Eastern countries. . In contrast, the shares of direct and indirect taxes in total tax revenue are nearly the same in all these regions.

There is a variation among OPEC countries in tax revenues (Table 3). Although the statistics demonstrate an improvement in tax revenues of many OPEC countries within recent years; but some countries such as Algeria and Qatar have the highest tax/GDP ratios. In fact, it seems that the tax revenues are more prominent in countries whose oil reserves are not significantly high.

Many of OPEC countries are performing tax and customs reform during recent years. These countries are going to reform the tax policies as well as tax administration. Some of Middle Eastern and North African members of OPEC such as Algeria, Iran, Libya, and Saudi Arabia have requested the technical assistance of International Monetary Fund to support the implementation of tax and customs administration reforms.

The survey conducted by IMF experts showed that three Middle Eastern members of OPEC have achieved some progress to modernize the tax system within 1994 to 2004. These countries including Algeria, Islamic Republic of Iran, and Saudi Arabia are of three different levels of crude oil reserves (ranging from 1.0 to 22.2 % of total world reserves). Along with attempting to changes the tax policies, some tax administration reforms have been introduced in these countries. However, the progress of some non-OPEC Middle Eastern countries such as Lebanon was more significant.

The survey demonstrated that none of the surveyed countries had a comprehensive and detailed strategy for tax administration reform in 1990s. However, Algeria and Islamic Republic of Iran have determined the reform strategy in early 2000s.

The fragmented structure of the tax administration is a crucial problem in these countries. Algeria has substituted an integrated direct and indirect tax administration instead of previous fragmented version in recent decade. In addition, a function-based organization for tax administration has been introduced in Algeria in 2000s. The Islamic Republic of Iran and Saudi Arabia are planning to develop such administrative organization. The integration of tax types has been performed partly in The Islamic Republic of Iran in recent years.

In addition to these structural changes, some segmentation efforts have been found in these countries. LTOs (Large taxpayer Offices) have been implemented in the Islamic Republic of Iran and Saudi Arabia. Algeria has been planning to implement the LTOs and is going to introduce further segmentation such as for small and medium taxpayers.

The introduction of VAT (Value-added tax) is an important step to modernize the tax system and a potential vehicle to increase tax revenues particularly in developing countries. Algeria has introduced the VAT in 1992; but the VAT legislation has been drafted in the Islamic Republic of Iran and Saudi Arabia in early 2000s. The VAT constitutes about 3.1 % of GDP in Algeria; while this is lower than other Middle Eastern and North African countries such as Tunisia (7.1%) and Lebanon (6.0). In addition, the VAT in Algeria is far from a desirable self-assessed VAT which has single positive rate, a broad base, limited exemptions, and a high registration threshold. The self-assessment which is a system of voluntary compliance without intervention of tax officials has been undergone in Algeria and has been planning in the Islamic Republic of Iran and Saudi Arabia. Furthermore, some efforts have been made to improve the taxpayer services and tax operations particularly in Algeria. The Islamic Republic of Iran and Saudi Arabia have introduced the unique taxpayer identification numbers "TINs" which is controlled by the tax administration and used for all taxes. In conjunction, the information technology in tax system has been implemented in Saudi Arabia and improved minimally in Algeria.

Although there are considerable country by country variations, the findings of tax administration reform in these surveyed countries demonstrate that the tax systems of OPEC member countries are developing. As a conclusion, it seems that the countries such as Algeria, whose oil reserves are not significantly high, have more developed tax system and administrative structures.

An overview of tax gap

It is generally known that the tax gap is the difference between the amounts of tax that theoretically would be collected through observing the tax laws, and the actual amounts of collected tax revenues (Carey, Ryan T. access 2011). Although some minor variations are founds in the definition of tax gap among different tax authorities(US Internal Revenue Service Press Release IR-2005-38, March 29, 2005) (http://www.hmrc.gov.uk/lbo/lc_forum_taxgap.htm) , it is well documented that the tax gap is the best benchmark for tax non-compliance in a country. (Logue,Kyle D and Gustavo G. Vettori. 2010). The IMF experts believe that the more the tax gap of a country, the more radical are the changes need to reform the tax system of that country. (Baer, Katherine, and Carlos Silvani, March 1997). In fact, the large tax gap shows that the potential of raising the tax revenue without increasing the tax rates; but by effective tax administration, better enforcement of existing tax laws and fighting the corruption which all improve the tax compliance. (Carey, Ryan T. access 2011).

The size of a country's tax gap and noncompliance is an important factor to design appropriate reform strategy for the tax system of that country. It is widely recognized that the tax gap is an important measure of the effectiveness of a country's tax administration (Baer, Katherine, and Carlos Silvani, March 1997).

So, increasing efforts have been made to estimate the size of different countries' tax gap by some statistical approaches.

The survey conducted by IMF experts in 1997 has classified the 25 countries into four levels of tax gaps. The first cluster includes countries such as Denmark, New Zealand, and Singapore whose tax gap is very low ranging of ten percent or lower. A combination of effective tax administration, good system of self-assessment, appropriate taxpayers' understanding of their tax liabilities are some of underlying reason for high rate of tax compliance. A second category of countries such as Canada, the United States, Chile, and some western European countries is considered as relatively effective tax system with a tax gap of 10 to 20 percents. A majority of developed and developing countries constitutes the third category which have a tax gap ranging from 20 to 40 percent and a relatively ineffective tax administration. The forth category is a list of countries with a tax gap of 40 percents and the tax administration is highly ineffective. The lack of financial material resources and trained staff in conjunction with ineffective procedures and other mismanagements had contributed in low rate of tax compliance in these countries. (Baer, Katherine, and Carlos Silvani, March 1997).The IMF experts have described several components for tax gap which all are actually a form of tax non-compliance. These components include tax evasions, tax arrears which are taxes declared but not paid, the tax not paid due to taxpayers' misunderstanding of the tax laws and other non-compliance schemes. (Baer, Katherine, and Carlos Silvani, March 1997).The gross and net tax gaps of the United States in the tax year of 2001, reported by U.S. Treasury and Internal Revenue Service (IRS), were about 345 and 290 billion dollars, respectively. About fifty percent of this gross gap is originated from underpayment of self-employed and small-business taxpayers. In addition, these taxpayers pay only half of their tax. By contrast, incomes such as wages, subjected to both reporting and withholding have shown the misreporting rate of one percent.

In addition to the source of income, the receiving of cash revenues is an important risk factor for the non-compliance of the small-business and self-employed taxpayers. Furthermore, the social norms of non-compliance such as non-compliance of taxpayers' peers can contribute in the misreporting of these taxpayers (Morse, Susan Cleary.2009).

Given the high rate of non-compliance of small-business and self-employing taxpayers in the United States, several approaches have been proposed to improve their compliance during recent years. The existing tax-gap-closing strategies include extending of third-party reporting, improvement of audit, whistleblower or qui tam provisions, and gatekeeper strategies. In addition to such strategies, using of salience and influence has been prescribed by a commentator (Morse, Susan Cleary.2009). Furthermore, it has been proposed that small and medium-sized taxpayers' non-compliance can be improved through some types of presumptive taxation. (Logue,Kyle D and Gustavo G. Vettori. 2010).

2. Material and Methods

The scope of tax avoidance and tax evasion

There is not a universally accepted definition for the tax avoidance which is a non-compliance scheme contributing in a country's tax gap. HMRC defines it as "an activity that a person or a business may undertake to reduce their tax in a way that runs counter to the spirit and the purpose of the law, without being strictly illegal".

Tax evasion is an illegal activity undertaken to reduce a person or company's tax bill (Embaye, Abel and Wei-Choun.2010).The failure to declare part or all of income to the tax authority is one of the most frequent methods of tax evasion; but other methods have also been described. At the other end of the spectrum from tax evasion, tax compliance is seeking to comply with the tax law by full disclosure of all relevant information on all tax claims, seeking to pay the right amount of tax required by law at the right time and in the right place and etc. (Olamide Fagbem et.al.2010).

The distinction of the tax avoidance and tax evasion was clear before. It was generally known that the tax avoidance is the legal escape from tax burdens; while tax evasion is an illegal activity. In recent times, the cutoff point has been blurred. (SPREUTELS,Jean and Caty, GRIJSEE .2000,Cobham, Alex.2005;.O'Shea, Tom.2011.) In fact, the tax avoidance is a gray area between tax evasion and tax compliance which means trying to get round the law but not breaking it.

Tax can be avoided for example through changing the identity of the person undertaking a transaction, changing of the location of a transaction, changing of the nature of a transaction to something different from what it actually is, and delaying recognition of a transaction.(Schwarz, Peter.2009, Gharoie Ahangar etal.2011 Tsakumis, George T. Accessed 8 June 2011)

The tax avoidance and tax evasion are two worldwide problems that both developed and developing economies are being suffered by it. A piece of examples is reviewed here to visualize the prevalence of these problems in various countries.

It has been documented in literature that the tax evasion scales are very high in the Russia. Cautious statistics demonstrated that up to 5 billion dollars of the Russian budget and social funds had been lost annually through such behavior within 1990s. (Shikalova, Maria.2004)In Greece, which is an OECD member, it had been estimated that underground economy was responsible for about 40 percent of GDP in 1997 which is the largest percentage in the European Union. High scales of tax evasion can be accompanied with such large underground economies. With a similar scenario, the

Italian tax authorities have been estimated a 15 percent of un-reporting for all economic activities in this OECD-member country in 1997. (Fiorioy, Carlo V. D'Amuri, Francesco.2010)

In Poland, along with the progressive personal tax income rates of 11 to 40 percent, some tax avoidance efforts have been made by the taxpayers to reduce the amount of payable taxes. In a context of competitive lower income tax rates in the neighbor countries (for example 12.5 percent in Czech Republic, 13 percent in Russia, and 15 percent in Ukraine) the polish companies can avoid their taxes by relocating the business in one of the neighbor countries with lower tax rates. In addition to such international avoidance efforts, the tax paid on the sale of property or on the sale of stocks or share of a corporation may be avoided domestically through the exemptions considered for inheritance or gifts. (Tarka, Michal.2008)

The avoidance schemes can involve the oil industries which are the pivotal industries in the OPEC countries. As an example, the reports of oil and gas exports' revenues in Russia, a major non-OPEC oil and gas exporter, have demonstrated different figures in World Bank and other official data in 2004 (25% Of GDP rather than 9%). It has been considered that the major reason of such discrepancy were the transfer pricing policies of oil companies operating in Russia.

The anti-avoidance rules in the world economy

Nowadays, the measures so-called as "anti-avoidance measures" are developed widespread in various countries to combat the tax avoidance. Some main anti-avoidance measures are described which can be divided into unilateral and bilateral measures [Glicklich, Peter,2008].

The unilateral measures are those measures developed by country's domestic legislations or through a country's court decision according to judicial doctrine. The specific anti-avoidance rules (SAARs) and the general anti-avoidance rules (GAARs) are two groups of measures developed by the domestic legislation of a country and constitutes the most common source of anti-avoidance measures for a jurisdiction Glicklich, Peter,2008].

The forth category of anti-avoidance measures are those provision usually included within double taxation agreements (DTA). This bilateral category of the measures is generally called as "anti-treaty-shopping rules". This category of measures can prevent the avoidance efforts resulting from the benefits specified in double tax agreements. The second broad policy to combat the tax avoidance is issuing a tax haven black list. By such policy, the national governments can penalize all citizens avoiding the tax liabilities through transactions in tax haven countries. (Grauberg,Tambet.2009)

The SAARs

The SAARs are composed by specific statutes and provisions to eliminate or reduce the avoidance-oriented transactions which are not covered by existing provisions and national governments tax policies [Luja, R.H.C.2010]. The main SAARs are discussed below.

Transfer pricing rules

One of important SAARs is the transfer pricing rules. Many countries in the world such as United Kingdom and many other European countries have prescribed their domestic version of transfer pricing rules by following the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations [OECD. Accessed 2011].

The spirit of the transfer pricing rules is that two or more cross-border related parties or entities should conduct their trading and financial transactions according to the arm's length standard. In this way, although the cross-border parties are related- for example, one controlled the others or all are under common control-; but the transactions should be done as same as two completely independent parties [Sikka,Prem and Haslam, Colin].

Thin capitalization rules

A thin capitalization is an avoidance effort to use the tax deductibility of interest through increasing the debt-to-equity ratio of a company. By means of thinly capitalized companies, the related cross-border parties can minimize their tax liabilities of interest through too much debt funding. The returns on equity investment are deductible while the debt servicing is deductible. Consequently, the related parties such as multinational enterprises (MNEs) can present the equity investments in the form of debt one of their subsidiaries, either directly or indirectly by a third party such as a bank and thereby a more favorable tax treatment can be obtained.

In most of developed countries, a particular debt-to-equity ratio is predetermined. According to the thin capitalization rules, when the debt funding of a company is higher the predetermined debt-to-equity ratio of a country, the tax authority of that country will deny the tax deduction of some or all of the interest and the excess interest superior to permitted ratio may be re-characterized as a dividend.

Controlled foreign company (CFC) rules

The profits of foreign subsidiary are not subjected to the domestic tax of the parent countries until received as dividends. Consequently, the taxpayers can avoid the tax liabilities through establishing entities in low-tax or no-tax jurisdictions and diverting income to them .

The controlled foreign company (CFC) rules have been legislated in many countries to minimize such mentioned tax avoidance scheme. As the main part of the CFC rules, the tax authorities usually apportion the income of the subsidiaries located in low-tax or no-tax jurisdictions –which so called as "CFC"- to the tax jurisdiction of the parent company(Luja, R.H.C.2010,

The GAARs

The general anti avoidance rules (GAARs) are those residual regulations which are legislated to combat the avoidance scheme in conjunction with specific anti-avoidance rules and other relevant measures. One author has described these rules as "general catch all measures" showing the broadness of such regulations. (Smith, herbert. 2010)

It is documented that the GAARs exist in several countries including Austria, Germany, and the Netherlands. Also, some countries have several provisions with similar functions in their domestic regulations. For example, in South Africa the first general anti-avoidance provisions have been introduced in Income Tax law since 1941; but the GAAR has been adopted in 2006.

Usually, some requirements should exist to apply the regulations prescribed by GAARs. The existence of an arrangement whose sole or main purpose is to obtain a tax benefit should be fulfilled. The avoidance arrangements in a business context are those with no commercial substance, arranged according to non-arm's length rights or obligations, or undergone a misuse or abuse of the tax law provisions. Some elements are also described for avoidance arrangements in the context other than business. The GAARs usually prescribe some test to evaluate the presence the different elements of an avoidance arrangement. The tests rules out the bona fide purposes of the arrangement; the objective indicative or general test(s) or presumptive test assessing the lack of commercial substance are some of these tests.(Haffejee, Yaasir.2009, PETRUS LOUW, IZAK DANIEL.2008).

Once an arrangement is considered as an "avoidance arrangement", a collection of different prohibiting remedies, which are prescribed within the GAAR, could be performed. As an example, the tax authority is empowered to disregard, combine, or re-characterize any parts of such arrangements. The parties or individual persons dealing in such arrangements could be treated through various ways. In addition, any related income can be reallocated (PREBBLE, Rebecca.2005; LOUW, PETRUS and IZAK DANIEL.2008).

Any taxes or duties imposed by the income tax laws or other related acts of a country are usually subjected to the GAARs. Although the essential components of the GAARs are some tests and remedies generally described here, but country-to-country variations can be seen. Different level of subjectivity of application may be available in different countries and the scope of the rules can differ.

The judicial doctrines

As discussed earlier, the decisions of country's court also contribute in anti-avoidance measures. The judicial doctrines include sham transaction, ineffective transactions, substance over form, step transactions, business purposes test, and abuse of rights. The main concepts of many of these doctrines are focusing on the facts involving of a transaction. In fact, the interpreting and applying the statutory tax provisions are not the case.

The blacklisting of a tax haven

A precise definition of tax haven is not generally agreed. The initial criteria explained by OECD countries features the tax havens as the regions with no or low taxes, with lack of transparency and effective exchange of information, and no requirement of substantial activity. The tax haven characteristics can differ in different jurisdictions. (Gravelle ,Jane G. 2009)

The tax revenue of a country can be lost through shifting of profits from high tax jurisdictions to the tax havens. Large multinational corporations can artificially shift profits by means of variety of techniques such as shifting debts to high tax jurisdiction, transfer pricing, and contract manufacturing. The taxes on passive income including interest, dividends, and capital gains can be evaded by taxpayer's misreporting. Such taxpayers are wealthy individuals who set up secret bank accounts in tax haven countries. (Gravelle ,Jane G. 2009)

Many strategies have been adopted by OECD countries, G-20 industrialized nations, and national legislative proposals to minimize the avoidance scheme involving the tax havens. The blacklisting of tax haven countries is an old type of such strategies (Langer, Marshall J)

Anti-treaty- shopping rules

The residents of third countries can avoid taxes through benefiting from the tax reliefs intended by reciprocal agreement between two countries. The "anti-treaty-shopping" rules are those provisions prevent this kind of avoidance efforts. A spectrum of approaches has been described as "treaty-shopping" methods to abuse the double tax treaties.

4. Discussions

Anti- avoidance measures in OPEC-member countries

In recent years, the OPEC member countries of all Middle Eastern, North African and Latin American regions have been experiencing emerging changes in the tax provisions to combat the tax avoidance schemes. However, comprehensive surveys demonstrating the recent achievements in enactment and application of anti-avoidance measures are very limited. In following parts of this paper, the related progressions of the OPEC countries will be reviewed.

The SAARs

Table 4 summarizes the final reports of the survey made by an international tax audit institution about the main three specific anti-avoidance rules in the OPEC-member countries in 2011.

The results of this report demonstrate that no specific rules entitled as "SAARs" have been legislated in majority of OPEC countries. Only Ecuador and Venezuela have introduced specific transfer pricing rules based on the OECD guidelines. However, a report made by another financial institution indicates the enactment of specific transfer pricing rules by Qatar. In addition, the specific thin capitalization rules have been enacted by only these two OPEC members. Also in this case, the other survey which focuses on Middle Eastern and North African countries has report the adoption of some thin capitalization rules in Kuwait, Qatar, and Saudi Arabia. The specific controlled foreign company (CFC) rules have not been drafted in none of these countries.

Transfer pricing rules

The reports indicate that nearly all OPEC member countries have been influenced by the OECD guidelines to some extent. A majority of the member countries have considered the arm's length principle. This principle is the international transfer pricing standard has been agreed by the OECD members. Given to the arm's length principle, the associated subsidiaries of multinational enterprises (MNEs) are considered as independent entities. The national governments can provide broad parity of tax treatment for both associated entities of MNEs and the independent enterprises which in turn, can maintain the competitive atmosphere.

The result of surveys of two financial institute showed that Libya has not reflected the arm's length principle in its tax provisions. However, the Libyan tax authority have been empowered to assess tax on a deemed profit basis. One survey indicated no application of arm's length principle in Iraq. The United Arab Emirates has not introduced the principle but the application has been recommended. In Kuwait, the principle has not been applied yet; but specific margins have been deemed for some materials or equipment importing by the domestic subsidiaries of foreign companies. Accordingly, the profit margins for non-related companies are 3.5% to 6.5%; while these are 10% to 15% for related companies.

Algeria, Angola, Nigeria, and Saudi Arabia have applied the arm's length principle. The application of the principle in the Islamic Republic of Iran has not been surveyed clearly. In Algeria, the registered subsidiary of MNEs must submit documentation supporting their transfer prices practice within 30 days after the tax authority's request. In Saudi Arabia, if the prices of the goods or services provided by related parties are higher than the prices used by independent entities, the tax authorities can make ensuring adjustments in the related parties' prices to reflect the principle.

The Venezuelan transfer pricing rule follows the OECD guidelines. The specific characterization of related entities and permitted methodologies has been described in this rule. The rule requires the taxpayer to verify the application of transfer pricing principle. The prices would be adjusted by the tax authorities if the principle is not reflected.

There are some differences among tax experts' viewpoint about the classification of anti-avoidance legislations of a country. In Qatar, as an example, while some experts believe that there is no specific transfer pricing rules and only some related provisions have been included in general legislations; the other experts consider that provisions as a specific type of transfer pricing rules in this country. One of the surveys showed that the following the adoption of transfer pricing rules in Egypt, these rules have been replicated in Qatar and Oman. Saudi Arabia has no specific transfer pricing rules; but this country as well as Egypt and Qatar are committed to providing related advanced rulings.

Several types of pricing methods have been recognized in the countries adopted the specific transfer pricing rules. The comparable uncontrolled pricing (CUP) method, the cost-plus and rescale price methods are some of these methods. The CUP methods is the most preferred methods in most of the mentioned countries. In Qatar, the taxpayers may apply their proposed pricing methods to the tax authority, and following the authority's approval, the method can be adopted for pricing purposes. In Saudi Arabia and Egypt, the application of a specified pricing method is agreed for a fixed term until the related advanced rulings would be provided.

The rules of allow ability of headquarters' overheads within multinational enterprises (MNE) are adopted by some of Middle Eastern and North African members of OPEC. For example, in Saudi Arabia, the any allocated headquarters' overheads are disallowed. In Algeria, such charges are allowed if cost up to 1% of the MNE's sales. In Kuwait, 1 to 1.5 % percent of direct revenues earned in the country is the defined ceiling for the headquarters' overheads. Similarly, the branches of a MNE in Qatar are allowed to cost up to 3% of domestically-earned net revenues. In Libya, the allowed ceiling is 5% of administrative expenses. There are some allocation rules for the branches of foreign banks in Dhabi and Abu Dhabi of the UAE. However, a variation of such rules in different Emirates of the UAE has been reported. These types of rules have not been adopted by Iraq yet.

In Ecuador, the tax authority disallows indirect expenses allocated from overseas parent companies to their domestic subsidiaries if the expenses are more than 5% of taxable income.

As reported by one of the surveys, the documentation, particularly along with OECD guidelines about the pricing of intra-group services, is required in Ecuador. However, such requirements have not been reported significantly by the both reports for other OPEC countries except to some documentation requirements in Algeria highlighted earlier.

In addition to the surveys reviewed before, a third survey has evaluated the transfer pricing rulings in 55 countries of the world in 2010. The results indicated poor awareness and concerns about such rules in the Islamic Republic of Iran. In fact, the transfer pricing is a very new phenomenon and at its infancy now in this country. But, it was estimated to be upgraded in future years. At present time, the subjected of related parties and transfer pricing arrangements are considered only through annual audit of taxpayers. No specific type of business such as MNEs is targeted to the transfer pricing interventions. However, the notice to the management charges is the main relevant efforts.

The results of surveys about Nigeria show that there are no specific provisions covering transfer pricing and the importance of such rulings is not highlighted well. However, the tax authority can scrutinize the related parties' transactions through omnibus provisions on artificial transactions prescribed by the tax laws mainly during normal audit processes. The most common scrutinizes are focused on the oil and gas industry contributing the highest tax revenue, and on large multinational manufacturing companies. According to the results of the survey, it seems that the transfer pricing rules will be adopted soon.

In Nigeria, there is no ceiling for allow ability of headquarters' overheads as described before for some of Middle Eastern countries; but if the management fees are within the thresholds approved by other governmental agency with such functions, it would be allowed. (WTS Alliance Transfer Pricing Survey 01.2010)

The transfer pricing rules are accompanied by some exemptions in many countries. For example, the transfer pricing rules are exempted in Ecuador if the tax liability of related parties exceeds 3% of taxable income; the related parties have no transactions in tax haven jurisdiction or jurisdiction with a preferential regime; and no contracts for the exploration and exploitation of renewable resources are made by the related parties (www.deloitte.com)

Thin capitalization rules

Some thin capitalization provisions have been enacted in some Middle Eastern OPEC countries such as Kuwait, Qatar, and Saudi Arabia. However, no specific debt-to-equity ratio is reported in these countries. By contrast, in Egypt, a debt-to-equity ratio of 4:1 has been determined.

In Kuwait, interest paid to head office or agent is disallowed. Similarly, the interest to related parties is not deductible in Qatar. In Saudi Arabia a cap on the level of interest deductibility has been introduced.

No specific thin capitalization rules are in Nigeria. However, only the companies of oil or gas exploration and production are required to meet the determined threshold of interest chargeable for related party loans. Although such threshold has not been proposed in the case of non-oil and gas companies, but the related party loans would be charged if exceed than those are for unrelated parties.

As discussed earlier, specific thin capitalization rules have been adopted in Venezuela and Ecuador. A debt-to-equity ratio of 1:1 is permitted in Venezuela. In Ecuador, a debt funding is deductible if it does not exceed 300% of the entity's paid-in capital.

Controlled foreign company (CFC) rules

As reviewed before, no specific version of controlled foreign company (CFC) rules has been adopted in the OPEC countries. However, Venezuela has developed some CFC provisions in 1997 with a form influenced by the Mexican CFC rules. In fact, these provisions are the fiscal transparency rules stipulated in the Venezuelan Income Tax Law. According to these rules, the income of an entity or fund in a low tax jurisdiction, which is derived by the taxpayers directly or indirectly by an agent or intermediary, is considered as foreign-source gross income and must be reported to the tax authority. The low tax jurisdictions are those with a tax rate less than 20%. Those Venezuelan taxpayers who can influence the distribution of the profits or dividends of such entities or control the administration of the entity are subjected to these rules. Some exemptions are explained especially if the 50% of the total assets of investment are used for carry on the business activity.

The GAARs and the judicial doctrines

The results of surveys reviewed report the existence of a general anti-avoidance rule in Ecuador, Venezuela and Qatar. In addition, the tax laws of Saudi Arabia and Algeria have some general anti avoidance provisions. The reports showed no similar rules or provisions in other OPEC countries. However, these countries have recognized the concept of such provisions. For example, some of Middle Eastern and North African members of OPEC, which have no general rules or provisions, are attempting to combat the transactions whose economic substances are different to the legal forms.

Venezuela had been experienced a strict territorial regimes, in which only the Venezuelan-source income of the residents were subjected to tax liabilities. Since introduction of the new Income Tax Law in 2001, the tax liabilities have been broadening and previous territorial regimes. According to this newly-introduced law, the both domestic and offshore income of a Venezuelan resident are considered as his or her tax liabilities. Also, through definition of "permanent establishment" in the new law, the foreign income of non-resident taxpayers, which is not considered before, would be subjected to the new expanded taxes. (HAY. RICHARD J.2003)

A general anti-avoidance rule has been adopted to eliminate the transactions driven only for tax reducing purposes. Furthermore, the Integrated National Service of Tax Administration “SENIAT” has been empowered to monitor and combat the transactions and procedure with purposes of tax avoidance and diminish the effectiveness of the new Income Tax Law. In addition, as a recent amendment, the Organic Tax Code has been introduced to increase the power of Venezuelan tax administration in order to minimizing the non-compliance efforts. (HAY. RICHARD J.2003)

The disclosure requirement to promote the transparency of the transaction is required in limited countries. In Nigeria, signed audited financial statements must be declared by annual tax returns. In the UAE, the companies and branches located outside the free trade zones must file the financial statements with the Ministry of Commerce. In contrast, the companies located inside the free trade zones are required report only to the tax authority of the zone. In Venezuela, no disclosure requirements are adopted except those required by the fiscal transparency rules.

The cases of application of judicial doctrines in the country's courts have not been well documented in the OPEC countries. One of the surveys has classified the judicial doctrines beside the adopted general anti-avoidance provisions in some of Middle Eastern members reviewed earlier. According to another survey, no significant transfer pricing court cases have been documented in recent years in the Islamic Republic of Iran and Nigeria.

The blacklisting of tax havens and anti-treaty-shopping rules

The blacklisting efforts are not significantly prominent in anti-avoidance polices of OPEC member countries. As a unique example among these countries, the blacklist of tax havens in Venezuela was revised in 2003 based on new adopted regulations. Essentially, the jurisdictions whose tax rates are below 20% would be considered as tax haven jurisdiction in Venezuela. However, if a double tax treaty including the provisions for exchange of information has been developed between Venezuela and a low-tax jurisdiction, that jurisdiction would not be blacklisted despite its low tax rate.

It is an important point that some of OPEC-member countries are blacklisted by other countries. In 2005, about 80 jurisdictions have been blacklisted as low tax jurisdictions by the Venezuelan government. Significantly, Qatar, Kuwait, the UAE, and the Island of Qeshm located in Iran were among the blacklisted jurisdictions. These OPEC member jurisdictions have been remained within the blacklist published in 2010. The German blacklist published in 2009 has blacklisted the UAE (Meinzer,markus.2009). Excluding the taxable companies in the oil and petrochemicals sector, the UAE have been considered as a tax haven by the Italian tax authority in 2005. Furthermore, some provisions have been adopted for those Italian taxpayers established entities in Ecuador.(Palan, Ronen.2002)

Instead of blacklisting of low-tax or no-tax jurisdictions restricting the international financial centers of the majority of OECD countries, some double agreements can be proposed between these jurisdictions and OECD members. In fact, by such agreements the current "lose-lose" situation made by blacklisting approaches can be substituted by a "win-win" scenario.

The OECD countries have adopted several agreements with the low-tax or no-tax jurisdiction in recent years. A collection of such agreements has been developed between Kuwait and the OECD countries including Czech Republic, Canada, France, Greece, Hungry, Italy, South Korea, the Netherlands, Poland, Switzerland, Turkey, and United Kingdom. In the case of the UAE, there are similar agreements made with Belgium, Canada, Finland, France, Germany, South Korea, New Zealand, Poland, and Turkey.

Several double tax agreements have been developed among the OPEC countries with each other. In addition, the OPEC countries have introduced examples of such agreements with other countries. Venezuela is an instance in which several double tax agreements undergone by Kuwait, Iran, and Qatar as well as Brazil countries. Unfortunately, the anti-treaty shopping provisions have not been introduced significantly within such agreements.

5. Conclusion

As reviewed in this paper, the dependence to oil revenues is an old problem in the OPEC-member countries. Now, the shift to non-oil revenues particularly tax revenues is an emerging concern in majority of the OPEC countries. The tax policies are reforming and the tax administrations are restructuring. But, the adoption of modern anti-avoidance measures is at the beginning.

In this paper, the five main components of the anti-avoidance measures have been reviewed. It seems that Latin American member of OPEC i.e. Venezuela and Ecuador are more successful in adoption of modern anti-avoidance measures. In fact, these measures are at preliminary levels in the majority of Middle Eastern and North African members of OPEC. Qatar is in a good position which introduced many anti avoidance legislations in recent years. However, the legislations and measures adopted by other countries of this region such as

Egypt and Lebanon are more advanced.

The most common specific anti avoidance measures introduced by the OPEC countries are the transfer pricing rules and provisions. The OPEC countries are very poor in the case of controlled foreign company (CFC) rules; only adopted by Venezuela and Ecuador. The judicial and statutory general regulations have been poorly-documented. The blacklisting are limited, and some of the OPEC countries have been blacklisted by other countries. The anti-treaty shopping rules are a new task and are not common in the OPEC countries.

All the findings reviewed here are indicated the need for pronounced concerns of OPEC members to combat the avoidance scheme. Along with focusing on tax administration reform, the modern anti avoidance legislations should be adopted as soon as possible. The government individually or through OPEC with together should improve the connections with successful OECD members. In fact, the OECD guidelines and experiences can accelerate the adoption of required rules.

Unfortunately, the OPEC are now restricted to Ministries of Energy or Petroleum of the member countries. The summit of OPEC-members' ministers are restricted mainly on the price of oil, the oil market, reserves and up-stream and down-stream projects. Consequently, wide capacities of these countries particularly in financial cooperation have been ignored. The OPEC should expand its functions. The Ministries of Finance of the member countries can promote more close relationships. The experiences and achievements can be transferred with each other. Double tax treaties with anti-treaty shopping provisions can be prescribed. The joint reforming program of member countries with assistance of international organization such as OECD can be mediated through OPEC. The joint cooperation can result in more comprehensive reforming programs which in turn can reduce the non-compliance through domestic and international avoidance schemes.

The statistics and information about the situation of tax avoidance in the OPEC countries are limited. It can be suggested that all national governments conduct more detailed surveys to evaluate the prevalence of tax avoidance precisely. The most common typologies of tax avoidance can be discovered and the provision would be directed to eliminate them.

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Appendix:

Table 1: GDP (Billions US $) in OPEC countries and selected OECD countries within 1980-2011

	1980	1990	2000	2007	2008	2009	2011
OPEC members							
Algeria	42.346	61.892	54.749	134.303	170.228	139.763	192.384*
Angola	5.003	9.473	8.420	60.449	84.178	75.508	110.060*
Ecuador	14.551	10.572	16.283	45.504	54.209	52.022*	65.032*
Iran	93.772	84.973	96.440	285.932	330.595	321.158*	420.894*
Iraq	-	-	-	56.987	86.531	65.193	108.418*
Kuwait	28.724	18.293	37.721	114.677	148.770	109.463	172.778*
Libya	38.898	30.611		71.605	88.888	60.239	-
Nigeria	60.593	31.480	46.386	165.921	207.116	168. 846	267.779*
Qatar	7.829	7.360	17.760	80.751	110.712	98.313	194.270*
Saudi Arabia	164.293	116.778	188.693	385.199	476.941	376.268	578.566*
United Arab Emirates	40.415	49.090	103.893	258.150	314.845	270.335	363.815*
Venezuela	69.843	48.393	117.153	226.221	310.696	325.678	294.271*
OECD members							
Canada	268.889	582.735	724.914	1,424.07	1,499.11	1,336.07	1,737.27*
Switzerland	109.852	238.22	249.912	434.118	502.447	491.923	594.223*
United Kingdom	542.452	1,017.79	1,480.53	2,812.05	2,679.01	2,182.43	2,471.88*
StatesUnited	2,788.15	5,800.53	9,951.48	14,061.80	14,369.08	14,119.05	15,227.07*

*The figures were estimate *Source*:
The International Monetary Fund

Table 2: Value of oil export (Billions US $) in OPEC countries and selected OECD countries within 1980-2011

	1980	1990	2000	2007	2008	2009	2011
OPEC members							
Algeria	12.971	12.35	21.062	59.61	77.192	44.411	83.333*
Angola	1.391	3.607	6.95	42.352	61.666	39.271	47.913
Ecuador	1.584	1.418	2.442	8.329	11.673	6.965	11.881
Iran	11.693	18.0	24.28	81.764	81.855	60.141*	97.005*
Iraq	-	-	-	37.137	61.164	38.243	70.855*
Kuwait	19.062	6.22	18.182	59.062	82.587	46.557	88.214*
Libya	21.239	10.724	16.791	47.82	60.68	35.701	-
Nigeria	24.942	13.508	22.25	58.165	74.305	49.714	87.923*
Qatar	4.569	3.042	10.636	39.793	61.705	42.331	107.359*
Saudi Arabia	100.6	39.96	70.748	205.59	281.405	163.282	324.837*
United Arab Emirates	19.448	17.323	27.043	73.827	102.992	68.148	107.629
Venezuela	18.077	14.085	27.874	62.993	89.638	54.201	69.344*
OECD members							
Canada	2.434	4.677	12.906	38.169	57.139	37.182	70.760*
Switzerland	-	-	-	-	-	-	-
United Kingdom	15.032	14.41	23.627	45.55	59.697	38.597	69.408*
StatesUnited	7.328	7.647	12.014	37.758	67.182	49.178	101.019*

*The figures were estimate. *Source:*
The International Monetary Fun

Table 3: Tax revenues as a percentage of GDP in OPEC countries and selected OECD countries within 1965-2009

	1965	1990	2000	2007	2008	2009
OPEC members						
Algeria	-	- (28.8)	- (38.5)	37.2	45.3	34.3
Angola	-	-	-	-	-	-
Ecuador	-	14.1	-	-	-	-
Iran	-	6.0 (4.7)	6.3 (5.8)	7.3	7.6	9.3
Iraq	-	-	-	-	-	-
Kuwait	-	1.5	-	0.9	0.9	-
Libya	-	-	-	-	-	-
Nigeria	-	-	-	0.2	0..3	-
Qatar	-	-	-	20.3	16.6	19.8
Saudi Arabia	-	- (2.6)	- (2.1)	-	-	-
United Arab Emirates	-	0.6	-	-	-	-
Venezuela	-	18.1	13.3	-	-	-
OECD members						
Canada	- (25. 7)	-	15.3 (35. 6)	13.7 (33. 0)	12.8 (32. 3)	11.8 (31. 1)*
Switzerland	- (17. 5)	8.8	11.1 (30. 0)	10.0 (28. 9)	10.9 (29. 1)	- (30. 3)*
United Kingdom	- (30. 4)	-	28.4 (36. 4)	27.8 (36. 2)	28.6 (35. 7)	26.0 (34. 3)*
StatesUnited	- (24. 7)	-	- (29. 5)	11.8 (27. 9)	10.3 (26. 1)	8.2 (24. 0)*

* The figures are estimates. *Source:* The World Bank Organization- The sources of figures in parentheses are International Monetary Fund, and OECD.

Table 4

	Transfer pricing rules	*Controlled foreign company rules*	*Thin capitalization rules*
OPEC countries			
Algeria	No	No	No
Angola	No	No	No
Ecuador	Yes	No	Yes
Iran	N.A	N.A	N.A
Iraq	N.A	N.A	N.A
Kuwait	No	No	No
Libya	No	No	No
Nigeria	No	No	No
Qatar	No	No	No
Saudi Arabic	No	No	No
UAE	No	No	No
Venezuela	Yes	No	Yes

Source: Deloitte Touche Tohmatsu Limited, 2011 N.A: not available

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