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A Meaningful Recording of Intellectual Property Assets and Related Transactions of MNE's Requires a Redesign of the Process of Elaboration of Economic Statistics

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Prior to the G20/OECD Base erosion and profit shifting (BEPS) initiative, aiming to contain opportunities of profit shifting by MNE's for tax planning purposes, Luxembourg has introduced in 2007 legal provisions exempting 80% of revenues gathered from intellectual property (patents, software, trademarks,...) to attract business to the local economy. As a result of these legal provisions, a lot of MNE's set up in Luxembourg companies whose activities consists only in holding IP assets of the MNE on the balance sheet and in perceiving royalties for the use of these IP assets mostly by other affiliates of the same MNE. These so-called Royalties and Licensing companies often employ only very few people and in many cases do not have any employment. Based on the Modified Nexus Approach for IP Regimes from the BEPS initiative and in order to be compliant in 2020 with the BEPS action plan, Luxembourg changed in 2018 the legal provisions concerning revenues earned from the use of IP assets. Beginning 2020, the new BEPS compliant IP tax regimes, which still allows encouraging through tax advantages research and development and innovation in software while avoiding profit shifting for purely tax planning reasons, will replace the former IP tax regime.

Globalisation of economic activities represents a huge challenge for economic statistics to remain meaningful for economic analyses and decision makers. IP, especially the question of economic ownership of IP, is one of hottest topics discussed within this broader globalisation debate. The UNECE guide on global production suggests using the legal property of IP assets as a proxy for economic ownership of IP assets for Royalty and Licensing companies. Based on the case of the Royalty and Licensing companies in Luxembourg, the paper will show, depending on the calculation methods to apply, that the transactions of these companies lead to statistical results, which are very delicate to use for economic analyses. Current proposals (sum of costs evaluation) may avoid the biggest problems, but have other major shortcomings, mainly the generation of substantial asymmetries in macroeconomic statistics, especially for smaller economies.

The paper will advocate that considering the global head office of an MNE as the economic owner of the IP assets of the MNE is the most meaningful option to consider for the

allocation of the economic ownership of IP assets as decisions concerning research and development and innovation are strategic decisions taken in general by the global management of an MNE. However, data collection is currently done within national data collection systems. The proposed solution would require allocating stocks and related transactions to a country (head office) different from the country where the concerned data is currently collected. Therefore, allocating the economic ownership of IP assets to the global head office would need a redesign of the process of elaboration of economic statistics concerning MNE's, which represents a huge challenge.