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UBER

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## How Uber plays the tax shell game

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**T**he VCs were desperate to give him more money. It was the spring of 2013, and Uber CEO and co-founder Travis Kalanick was weeks away from negotiating a new round of venture capital financing that would multiply the valuation of his car-hailing startup by a factor of 10—from a mere \$330 million to \$3.5 billion. The line plotting Uber's growth was turning vertical, and the company needed capital to match. But first Kalanick needed to do a little planning. Tax planning, that is.

In May, Uber formed a new business entity in the Netherlands called Uber International C.V. Over the next few weeks Kalanick's San Francisco startup executed a flurry of transactions that shifted ownership of several foreign subsidiaries to Uber International C.V. and formed an agreement with the Dutch business to split the profits from Uber's intellectual property. By mid-June, Uber was ready to continue with its dizzying rise, but with one critical difference: From that point on, nearly all its ride-share income outside the U.S. would be effectively shielded from U.S. taxes.

It was a crucial moment in the supercharged expansion of a company that has become emblematic of the dynamic, thoroughly modern global corporation—the centerpiece of the platform economy, the freelance economy, and a half-dozen other epoch-defining monikers. The startup has become so important so quickly that it's hard to see clearly.

What is Uber? Ask any 22-year-old waiting for a car on a street corner in a fashionable neighborhood of Brooklyn or Chicago or London or Shanghai, and he'll tell you that it's an essential part of urban life—an effortless ride home after a night



out. It's a status symbol, a utilitarian service, and a booming business all wrapped into one.



Already a well-established part of our cultural conversation, its name is regularly used as a verb—“Let’s Uber it.” And it’s the representative ideal for a whole new class of company: the “Uber of” phenomenon. Startups have been billed as the Uber of everything from helicopters to laundry to fertility clinics to parking. Perhaps no other company today inspires quite so much devotion—or anger. It’s a vehicle on which people project their own dreams and biases. The name—which means “above” or “over” in German—is a fitting superlative to any beholder’s eye. Love it. Hate it. Uber becomes the Uber of that emotion.

At its core, Uber is an app, a seamless smartphone tool for matching would-be riders with freelance drivers. It is also perhaps the ultimate 21st-century corporation (for more about what sets this breed apart see “Why every aspect of your business is about to change”). Uber has become a global brand largely on the



strength of its intellectual property and without a need to manufacture anything or maintain many fixed assets—though it now has more than 4,000 full-time employees. Moreover, it has grown at a pace that has roiled a ubiquitous legacy industry (taxis) and confounded government officials around the world—with an approach, epitomized by the brash Kalanick, 39, that comes across as all sharp elbows and legal gumption. “Stand by your principles,” the Uber CEO once said of his philosophy, “and be comfortable with confrontation.”

## UBER IN

Just over five years after it began offering rides in San Francisco, Uber now operates in 342 cities spread across more than 60 countries. It's the poster child for the so-called sharing economy, employing some 327,000 freelance drivers in the U.S. and hundreds of thousands more around the world. And it is the biggest of the “unicorns” (private tech startups with a valuation of at least \$1 billion) that have recently sprung up all over Silicon Valley and beyond. In Uber's most recent round of financing, investors assigned it a value of \$51 billion—a milestone it reached faster than Facebook (FB, +0.87%) had before it. That means it's worth more on paper (or on someone's paper, at least) than, say, U.S. retail giant Target (TGT, +1.43%), which had \$74.5 billion in sales in 2014 and has a market cap of just \$47 billion.

Ask Uber's investors or the Wall Street investment bankers clamoring to take it public and they'll tell you that it's destined to be one of the world's most important



companies and that it will soon (perhaps in 12 to 18 months) be the market's next marquee IPO. According to a recent report by Reuters, Uber has told prospective investors that it will reach \$10 billion in global ride payments this year—giving it \$2 billion in revenue when it takes its 20% cut. It projected those numbers, the Reuters report says, to more than double in 2016.

Such figures speak to Uber's extraordinary growth trajectory, which is clearly the company's focus now (as it is for virtually all the unicorns). Its investors want it to keep grabbing market share and not worry about generating profits. Those can come later.

While it primarily offers car rides today, there is the suggestion that Kalanick's brainchild may one day be much more. With its UberRush service, the company has experimented with delivery. There is even speculation that it could end up being the company that dominates the driverless-car revolution. Kalanick himself has described Uber as a new platform to help replace inefficient 20th-century transportation systems.

Many of the car-hailing company's freelance drivers around the world might describe it as a flexible and empowering employer. But the small band of Uber drivers in the U.S. who recently called for a three-day strike or those who have filed a class-action lawsuit against the company in California seeking full employee benefits (and challenging the company's contractor-based business model) would certainly beg to differ.

Taxi companies and critics the world over portray Uber as a reckless and dangerous operation that puts unregulated drivers on the road with passengers and doesn't pay its fair share of taxes to support the infrastructure it needs to exist. The Australian Taxation Office has attempted to impose a sales tax on Uber rides. Local officials in Rio de Janeiro and São Paulo have taken steps to ban the service. The company's office in Amsterdam has been raided twice in 2015 by authorities investigating its UberPop ride-pooling service.



Uber is nothing if not heavily scrutinized. Yet despite the heavy focus on its operations, Uber's corporate structure has not until now received a great deal of attention. It is still privately held, after all. But a careful examination of available records reveals a surprisingly complicated web of business entities for such a young company. Uber Technologies Inc., as the company is officially called, is a Delaware corporation with more than 60 subsidiaries in the U.S. and another 75 or more around the world. (Like the parent company, some of these offshoots in the U.S. have German names, including Neben, which means "next" in German, and Gegen, which means "against." Another subsidiary, dissolved earlier this year, was called Schaben, which can mean either "scrape" or "cockroaches.")

Outside the U.S., the company's network of subsidiaries has been carefully pieced together to create a state-of-the-art structure for minimizing taxes. The strategies that it employs are legal and similar to those of bigger tech names such as Apple (AAPL, +0.90%), Google (GOOG, +0.58%), and Facebook, not to mention multi-national companies such as Starbucks (SBUX, +1.36%) and GE (GE, +1.20%). "Silicon Valley is a small place," says Ed Kleinbard, a professor of law and business at the University of Southern California who previously served as the chief of staff of the U.S. Congress's Joint Committee on Taxation. "Just as there is a vibrant atmosphere for tech innovation, there is a vibrant climate for sharing tax innovation."

Tax strategies such as the ones that Uber and Google and Facebook use are enhanced by the very nature of their businesses—the fact that so much of the value of companies like Uber is in their intellectual property. That's particularly true given that the basic structure of our tax system was established in the 1920s. It's a lot easier to move your company's IP and the profits it generates to a tax-friendly offshore destination than it is to relocate your manufacturing base. "There are lots of types of companies that are good at tax planning," says Michael Graetz, a professor at Columbia Law School and a leading expert on international tax law. "The tech companies have the luxury of not having a lot of plants and equipment. They're more mobile."



Uber’s business is taking off at a moment when global tax authorities are looking hard at the games corporations play with taxes. The Paris-based Organization for Economic Cooperation and Development (OECD) estimates that up to \$240 billion in income eludes government coffers each year because of elaborate strategies that shift income among subsidiaries. Acting at the behest of the G-20 nations, the OECD in October delivered a slew of recommendations on how to eliminate some of the loopholes. In announcing the measures, the OECD’s tax director, Pascal Saint-Amans, issued a warning to companies that “playtime is over.” But tax experts say that the process of a global tax overhaul is just beginning.

+ TAKING MONEY OFF THE TABLE -		
<b>358</b> Number of companies in the <i>Fortune</i> 500 [about 72%] that operate subsidiaries in tax-haven jurisdictions as of the end of 2014	<b>\$2.1 TRILLION</b> Collective amount held offshore by the <b>286 <i>Fortune</i> 500</b> companies that report offshore profits, with <b>30</b> companies accounting for \$1.4 trillion of that total	<b>\$100 BILLION TO \$240 BILLION</b> Amount the OECD estimates that governments worldwide lose annually in corporate income tax revenues because of tax-avoidance strategies
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Uber declined to make any of its executives available to discuss its corporate structure or its approach to tax planning. The company also declined to respond on the record to questions about the details of its tax minimization efforts. But in a statement, an Uber spokesperson wrote: “Our corporate tax structure is probably the least innovative thing about Uber. It’s the standard approach adopted by most multinational companies. Uber is a significant net contributor to hundreds of local economies—creating new economic opportunities for thousands of people in each city where we operate. In terms of corporation tax, this is a moot point today because unlike more mature, highly profitable U.S. companies, Uber is still investing heavily to roll out our service around the world.”



Kalanick's company clearly has plans to generate vast income from that investment. "If they didn't expect to be highly profitable, why would they need to do all of this?" observes Reuven Avi-Yonah, director of the International Tax LLM program at the University of Michigan Law School. And Uber appears poised to keep those future profits from being taxed at the U.S. corporate rate of 35%, one of the highest in the world. To better understand how Uber has set itself up to accomplish that, *Fortune* dug into financial statements of Uber entities and court documents in more than 100 jurisdictions globally. Here's how the strategy works.

It sounds like an order you might place at a pub: "Double Irish with a Dutch sandwich." In the tax world, however, it's a proven method—using a pair of Irish subsidiaries and another in the Netherlands—for moving income to a haven like Bermuda. Google has employed the setup to save billions on its tax bill over the years. Uber's approach is quite similar, but it removes Ireland from the equation and pulls off the same trick solely using subsidiaries created in the Netherlands. It's a structure sometimes known as a C.V.–B.V. or a double dip. Let's call it the "Double Dutch."

The strategy begins with Uber International C.V., the subsidiary that Uber created in May 2013. Uber International C.V. has no employees and, though it is chartered in the Netherlands, lists the address of a law firm in Bermuda as its headquarters. It sits atop Uber's network of subsidiaries outside the U.S. The C.V. at the end of the name stands for *commanditaire vennootschap*, which is essentially a Dutch version of a partnership.

Shortly after Uber International C.V. was formed, Uber made a couple of key agreements with its new subsidiary. On May 31, 2013, Uber International C.V. agreed to pay Uber Technologies a one-time fee of \$1,010,735 plus a royalty of 1.45% of future net revenue for the right to use Uber's intellectual property outside the U.S. The two companies also agreed to share the costs and benefits of IP developed in the future. This cost-sharing agreement effectively allows Uber to keep most of its non-U.S. profits beyond the reach of American tax authorities. The



timing of the agreements was beneficial. By arranging the transaction when Uber's private valuation was \$330 million rather than the \$3.5 billion it would jump to weeks later, the company was able to shift more future value out of the U.S. at a lower price.

The second key Uber subsidiary in the Netherlands—the one that makes its tax strategy a Double Dutch—is a company called Uber B.V. The car-hailing giant actually has a total of 10 subsidiaries in the Netherlands, all of which share a mailing address in a nine-story concrete and glass office building in the Grachtengordel, Amsterdam's historic central canal district. Seven of these companies, including Uber International C.V., have zero employees. But Uber B.V., itself a subsidiary of another Uber offshoot, had 48 employees at last count. It has a lot of transactions to process.

Whenever a passenger takes an Uber ride anywhere in the world outside the U.S., whether it's in Beirut or Bangalore, the payment is sent to Uber B.V. The company typically sends 80% of that ride payment back to the driver via yet another Dutch subsidiary and keeps the remaining 20% as revenue.







**MAN WITH A PLAN:** Uber CEO Travis Kalanick has kept his company growing despite huge resistance. Photo: David Paul Morris—Bloomberg via Getty Images

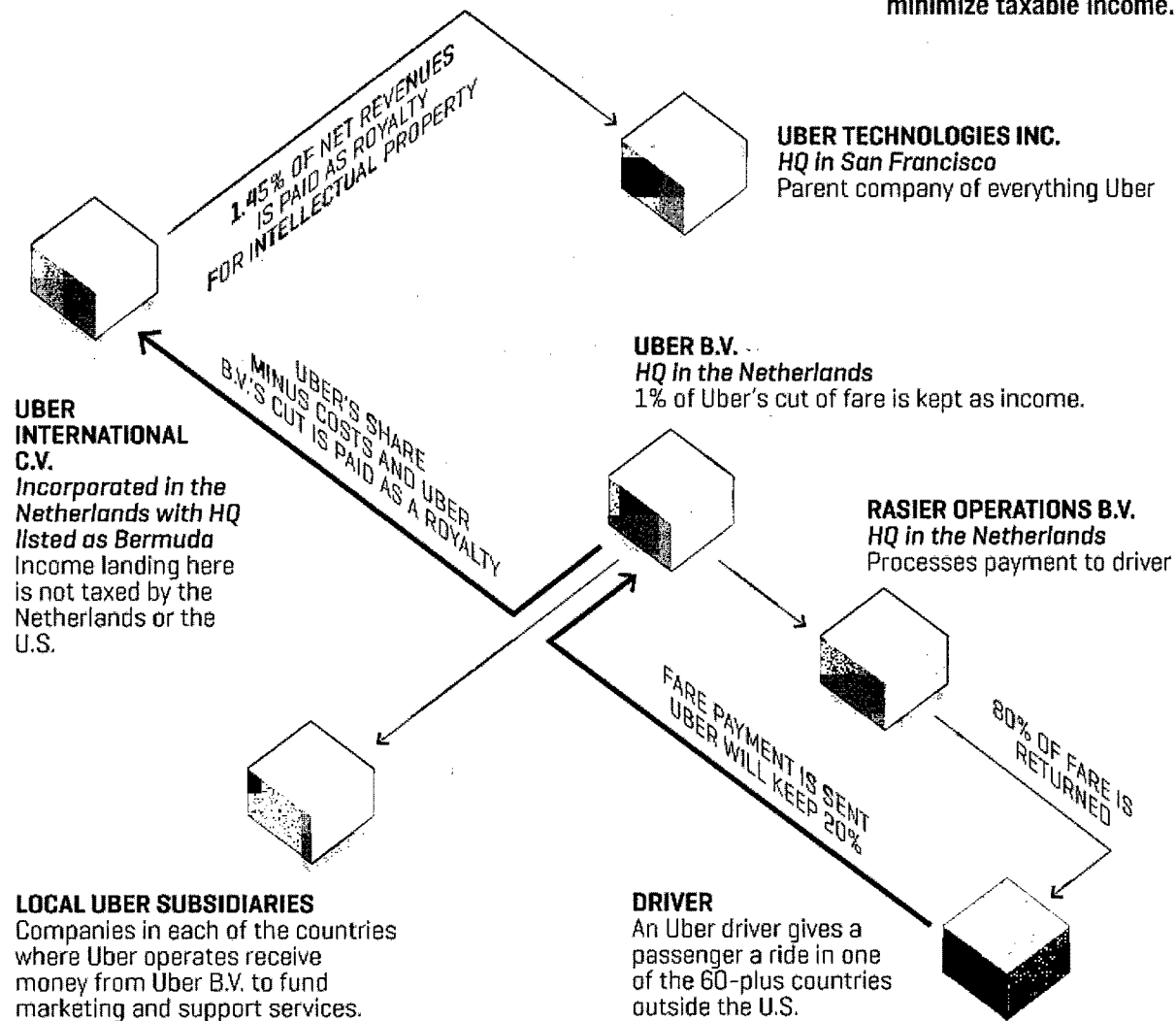
Here's where things get interesting. Uber International C.V. and Uber B.V. have an “intangible property license agreement” in which Uber B.V. must pay a royalty fee to Uber International C.V. for the use of Uber's intellectual property—basically, the app that matches driver with rider. Under the terms of the agreement, Uber B.V. is to be left with an operating margin of 1%—effectively 1% of revenue—after subtracting the costs of operation. The rest of the profits get sent to Uber International C.V. as a royalty. And under Dutch law, that royalty payment isn't taxable.

Let's say that a passenger hails an Uber and takes a \$100 ride across Rome (we'll assume “surge pricing” is in effect). The payment goes to Uber B.V., which sends \$80 back to the driver. The driver is responsible for paying his own taxes on that income. Of the \$20 that's left over, let's say that Uber subtracts half to cover costs leaving \$10. But that's not its taxable income. Uber B.V. will ultimately book only 1% of that initial \$20 in revenue, or 20¢, as income. (The top corporate tax rate in

the Netherlands is 25%, so the government will get 5¢ and the company keeps 15¢.) Uber B.V. then sends the balance of \$9.80 to Uber International C.V. for the royalty. That's one scenario. If Uber B.V. subtracts only \$5 for costs, then the royalty payment to C.V. would be \$14.80. The point is this: No matter what the amount of the royalty income that Uber International C.V. receives, virtually none of it will be taxed. It is what's known as "ocean income," because it sits in a gray area between national tax authorities.

## REVENUE DO-SI-DO

Beyond America's borders, Uber has set up a string of subsidiaries, many in the Netherlands, that effectively minimize taxable income.



The setup creates a labyrinth of technicalities. When the Dutch look at Uber International C.V., they see a company that is controlled by U.S. owners and maintains a headquarters in Bermuda—so it must not technically have business operations, or taxable income, in the Netherlands. (Bermuda doesn't charge a corporate income tax.) To the U.S., however, Uber International C.V. identifies itself as a Dutch company, even if it's a subsidiary of a U.S. business. Therefore it is allowed to indefinitely defer taxes on its income to the IRS. (In theory, the U.S. has a global tax policy, meaning that it assesses income of U.S. companies no matter where those profits are generated. Uber has found a loophole.)

The only sliver of Uber International C.V.'s income that gets taxed is the royalty that the subsidiary pays to its U.S. parent—the 1.45% of net revenue it agreed to pay for the use of Uber's existing IP in 2013. For every \$10 in net revenue that Uber International C.V. gets from Uber B.V., it must pay 14.5¢ back to Uber Technologies. That cut will be subject to U.S. taxes. The rest of the income can just pile up in Uber International C.V.'s coffers without being assessed.

In addition to its Dutch companies, Uber has separate subsidiaries in each country where it operates. But those companies don't reap direct revenues from the rides taken locally. Rather, they function as “support services” businesses. Uber Italy, for example, gets paid by Uber B.V. to market the brand in Milan and Rome. Much of Uber Italy's financing from Uber was made as a loan. The interest payments on that debt siphon off potential taxable income and are not taxed by Italy on the way out of the country because of a European Union directive. When it comes to tax management, no detail appears to be too small for Uber.

Just when Uber and other tech companies appear to have mastered the tax game, the rules could be changing. The OECD's recommendations for greater transparency will not unwind today's arcane strategies overnight. But the process is likely to lead to major reforms over time. And that could mean an even more aggressive tax environment for companies like Uber. “It represents the starting gun for a great tax grab by countries all over the world,” says Kleinbard, the USC professor. “They're going to be very vigorous in coming up with theories about how

companies like Uber or Google do business in their jurisdiction and owe taxes there.”

Figuring out how to navigate this new frontier will be a test for every 21st-century corporation. Whatever the next big thing in tax innovation is, though, odds are that Uber will be the Uber of it.

*A version of this article appears in the November 1, 2015 issue of Fortune with the headline “Uber's Tax Shell Game.” The story has been updated to reflect the fact that an Uber subsidiary named Schaben was dissolved earlier this year.*



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