1. The evolution of the international corporate tax regime, 1920–2008

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1.1 INTRODUCTION

The central focus of this book is to understand and explain the evolution of the international corporate tax regime since 2008 and the role of civil society activism and increased politicisation in this process. This chapter outlines the failings of the international corporate tax regime at the outbreak of the Financial Crisis (FC) and identifies the factors that, criticism notwithstanding, have made it resistant to change since its origins in the 1920s. Many corporate tax norms and principles devised almost a century ago still pepper contemporary tax treaties, including the allocation of taxation rights between source and residence countries, conventions governing relief from double taxation, and concepts such as permanent establishment (Jogarajan 2011). This inertia also persists in rules and decision-making procedures grounded in bilateral, rather than multilateral, agreements.

Every conundrum of global governance presents unique challenges. Nevertheless, all issues of global governance are afflicted by a common set of complications applicable to global governance challenges (Keohane 2001; Slaughter 2004; Rodrik 2011). Many arise from the mismatch between the territorially bounded authority of the primary governing units, nation states, and the global scale of the puzzle being addressed. Reluctant to forfeit their sovereignty to supranational organisations, states instead tackle these issues through international institutions and agreements. These arrangements represent, and have helped to stimulate, some impressive episodes of international cooperation; however, as products of state sovereignty, their effectiveness is constrained. A central conclusion of this book is that, despite the potential dividends of international cooperation in corporate taxation, the potential for conflict between states over the allocation of profits is an enduring threat to international tax cooperation.

Tensions between states are a hallmark of the international corporate tax regime. During the last 50 years, the surge in the number and impact of multinational corporations (MNCs) has come to symbolise economic globalisation (Mikler 2013). Although their power is sometimes exaggerated, the geographical reach and financial dexterity of MNCs has unquestionably curtailed the capacity of individual sovereign states to regulate and tax them. This predicament is exacerbated by the fact that corporate taxation remains a national prerogative and, despite numerous initiatives designed to enhance international cooperation such as bilateral treaties and international standards, the system remains vulnerable to international competition and exploitation by MNCs (Eccleston and Smith 2016; see this volume, Chapter 2).

The governance of corporate taxation is sometimes simply portrayed as a problem of collective action. From this perspective (see Thomas 2000) states have an incentive to negotiate rules to restrict fiscal practices inimical to their interest in optimising tax revenue, and to devise strong mechanisms to discourage defection. In fact, the state's interest in raising revenue is tempered by other considerations such as exploiting the tax system to boost its economic competitiveness. Lower corporate tax rates and the lenient treatment of foreign investments are indispensable tools for states eager to attract and retain mobile capital. Similarly, governments keen to stimulate expansion of domestic firms or bolster the competitiveness of 'home' MNCs are unlikely to curtail opportunities for them to profit offshore. In fact, the decentralised system of bilateral tax treaties on which the international tax regime has been built contains subtle provisions which protect the interests of powerful states and the MNCs they promote (Büttner and Thiemann 2017). The outcome is a self-defeating race to the bottom, with governments offering incentives that harm not only domestic tax revenues but those of other states.

More aggressive attempts to curb excessive or 'harmful' (OECD 1998) tax competition have clashed with tenets of state sovereignty. Taxation is 'the pre-eminent prerogative of the sovereign state' (Sharman 2012, p. 18) and is the cornerstone of the social contract on which contemporary democracy is based. Losing control over taxation has profound implications for state sovereignty, for example by undermining its ability to respond to domestic demands for welfare, security and economic competitiveness, or to protect international interests (Ring 2009). Unsurprisingly, states, even within the European Union, have ardently defended the right to design and administer domestic tax law, despite agreeing to some international norms circumscribing the reach of their tax systems (Rixen 2008). The combination of divergent and inconsistent national tax systems and competing state preferences has meant that the reform of international corporate tax laws has been incremental at best and all too often characterised by lowest-common-denominator agreements. The result is that, rather than a comprehensive multilateral agreement overseen by a World Tax Organisation, the international corporate tax regime is a matrix of bilateral treaties 'loosely coordinated' (Eccleston 2013, p. 69) by standards and model treaties agreed at the Organisation for Economic Co-operation and Development (OECD).

Accounts of the role of states and interstate relationships provide important, if incomplete, insights into the international corporate tax regime. Fully comprehending the regime's trajectory and its intransigence requires a complementary account of the role of private actors. Far from being mere subjects of the international corporate tax regime, private actors have been intrinsic to its development from the beginning. Together with national tax officials, international civil servants and academic specialists, envoys from the private sphere, including business and industry associations, MNCs, tax planning professionals and latterly civil society organisations (NGOs), have been integral parts of the community of experts whose judgements have guided the international corporate tax regime (see this volume, Chapters 6 and 7). In recent decades, private players from multinational accounting firms to global technology giants have assumed prominent positions of growing influence in the formulation and implementation of international tax rules. Before 2008 private actors were generally viewed as defenders of the status quo. The tax policy community was dominated by tax experts and professionals allied to transnational business interests that, as the key beneficiaries of a regime now recognised for its 'inadequate principles, outdated concepts and unsatisfactory policies' (Graetz 2001), worked against proposals for paradigmatic change. Since 2008, new private actors have gained entry to this closed policy community, most notably civil society organisations campaigning for tax justice. The implications of their entry into the international corporate tax regime are discussed in subsequent chapters.

This constellation of state and private interests is the primary reason why only cosmetic changes to the international corporate tax regime have been made over the last 100 years. In contrast, during the same period, the nature of corporate activity has been revolutionised. The explosion of cross-border commerce has rendered many of the regime's rules, norms and principles increasingly anachronistic. This was epitomised by the rise of MNCs and their apparent ability to exploit these rules to avoid taxes with impunity (Elbra and Mikler 2017). The next section describes the origins of the international corporate tax regime in the interwar period, while the remainder of the chapter highlights growing concerns about the capacity of the regime to effectively tax cross-border commerce.

1.2 1920–1945: THE ORIGINS OF THE INTERNATIONAL CORPORATE TAX REGIME

Intensified globalisation in the period prior to the First World War inspired the development of mechanisms to address the complications arising from cross-border commerce. By 1914, and enacted through the rudimentary forerunners of current mechanisms of global governance, states, private and professional associations and powerful individuals had developed harmonized rules and standards for trade, transport, communications, intellectual property and units of measure (Murphy 1994; Davies and Woodward 2014). At this time, the proceeds from tariffs rather than direct taxes on individuals or corporations constituted the lion's share of public revenues. From the middle of the nineteenth century, states began to develop international treaties elaborating principles for the taxation of income and profits deriving from cross-border activity (Jogarajan 2011). The objective was to galvanise international commerce by preventing double taxation, or 'the imposition of comparable taxes in two (or more) States on the same taxpayer in respect of the same subject matter and for identical periods' (OECD 2014b, p. 1).

These issues became politically charged after the First World War when the newly installed League of Nations presumed that economic liberalism would promote prospects for peace. Removing economic barriers to trade and investment would ameliorate conflict by spreading wealth and promoting interdependence, thereby making war anathema to the economic interests of leading states (Angell 1911). Against this background, the League of Nations International Financial Conference of 1920 petitioned for action to forestall double taxation, which it branded a 'serious impediment to international relations and world production, and therefore a threat to global peace' (quoted in Brooks 2013, p. 125). The following year the League of Nations Financial Committee appointed four academic economists to study the problem. Their pioneering report (League of Nations 1923) had a seminal impact on the intellectual debate and the rules that came to underpin international taxation.

The report's authors were immediately confronted with the quandary of how to establish principles that confer states with the right to tax profits gleaned from international business and investment without undermining the sovereignty of other states to raise revenue as they saw fit. To do this, they put forward three propositions. First, the right to tax should be divided between source and residence countries. Source countries, or the territory where capital was invested and a company, or its subsidiary, was permanently undertaking real economic activity, were allocated the primary taxing rights over the active income of businesses. Residence countries, or the territory inhabited by the person or company with the right to receive the returns on the investment, were allocated the primary taxing rights over 'passive' or investment income such as dividends and royalties. Second, although MNCs operate as single economic units, in a decision which would later facilitate corporate tax avoidance it was recommended that each subsidiary should be treated as a separate legal entity whose tax liability would be assessed by national fiscal authorities as a stand-alone company. Third, it was recommended that these broad conventions should underpin states' negotiations on more detailed bilateral treaties.

This report and subsequent work by a Committee of Technical Experts on Double Taxation and Tax Evasion were exercises in expediency. Their quest for politically acceptable remedies forced them to compromise on solutions identified in their academic research (see, for example, Seligman 1921; Stamp 1921; Jogarajan 2013). The Committee's malleability kept participants engaged with a package to tackle the headache of double taxation. However, members were also mindful (as the Committee's nomenclature implicitly implies) that their proposals could facilitate widespread tax avoidance. Splitting taxing rights between source and residence countries, for example, accommodates the competing preferences of both capital importing and capital exporting jurisdictions. Where source countries claim jurisdiction over activities undertaken within their borders, a tension arises with residence countries (primarily the US and the UK) that want to tax their residents' global income. In this case, as is discussed in more detail in Chapter 2, MNCs could defer residence taxation by not repatriating income made overseas.

Correspondingly the Committee of Technical Experts had lengthy discussions about whether double taxation treaties should be negotiated on a bilateral or multilateral basis. The Committee generally accepted that the superior approach was a universal multilateral pact that would manage the inconsistencies between national tax systems. Nevertheless, the Committee eventually proposed a bilateral approach, recognising that divergences amongst national fiscal systems made negotiating a collective convention 'practically impossible . . . unless it were worded in such general terms as to be of no practical value' (League of Nations 1927, p. 8). Their report sketched a prototype model convention encompassing principles applicable as a template for bilateral treaty negotiations between states. To safeguard state sovereignty, the prototype allowed contracting parties to tailor double tax agreements (DTAs) to the peculiarities of their domestic tax arrangements. The drawback of customisation was the proliferation of bilateral treaties, whose collective inconsistencies were a godsend for MNCs determined to outwit tax authorities.

Tax avoidance problems stemming from the unevenness of the treaty network were aggravated by the decision to treat each company in a corporate group as an independent entity (League of Nations 1933; Picciotto 1992). Theoretically the prices recorded for transactions between firms affiliated in the same group, so-called transfer prices, should conform to hypothetical transactions entered into at 'arm's length' (i.e. they should equate to real prices which would be charged to an unrelated company in a free market). In reality, as discussed in greater detail in Chapter 2, this system was susceptible to manipulation by corporate groups, which could reduce their overall tax liability by fixing artificial prices to funnel costs (which are tax deductible) to higher-tax jurisdictions and shift profits to low-tax environments. Throughout the 1920s and 1930s alternative proposals for unitary taxation were regularly discussed. A unitary taxation system treats corporate groups as a single entity and distributes profits amongst states according to an agreed formula related to the group's sales, assets and payroll in different jurisdictions. These proposals were confounded by a lack of international consensus on a definition of the tax base or on principles to guide its allocation (Avi-Yonah 1995). Significantly, as this book will highlight, establishing an international system of formula apportionment has become a central element of the reform agenda advocated by the tax justice movement since the Financial Crisis.

Although states were the primary shapers of the formative years of the international corporate tax regime, private actors also played a role. These private actors, with the International Chamber of Commerce (ICC) at the forefront, consisted entirely of business representatives. The ICC was consulted regularly by the Committee of Technical Experts and was granted observer status in 1929 on a new League Fiscal Committee, which masterminded a series of models for bilateral tax treaties until its conclusion in 1946. This constituency was predisposed to limit double taxation and liberalise international finance and so militated against moves to inhibit tax avoidance and evasion.

Only 60 DTAs were concluded between 1920 and 1939 (Picciotto 1992, p. 25), a modest tally that understates the progress made by the League. The League's efforts in this field established institutional and intellectual foundations upon which the post-war architects would erect a more formal international corporate tax regime. Regrettably, even before then the process of reaching consensus had shaped a regime already out of step with commercial realities by leaving a legacy of loopholes that expedited tax abuses by MNCs, flaws that would worsen after 1945 with a rapid and sustained expansion in multinational corporate activity.

1.3 1946–1996: INSTITUTIONALISATION, GLOBALISATION AND EMASCULATION

If the foundations for an international corporate tax regime were laid during the interwar period, the edifice was constructed in the second half of the twentieth century. During this time the regime became more intricate and institutionalised. The count of bilateral double tax treaties, based on refined versions of earlier model tax conventions, grew almost twentyfold to 1727 by the end of 1996 (UNCTAD 2017). Many stipulations in these agreements, however, were rendered obsolete by MNCs and their armada of tax planners. These actors, most notably the Big Four professional services firms, have increasingly wielded influence over the regime's expert policy community (this volume, Chapter 6).

After 1945, a new UN Tax Committee perpetuated the League Fiscal Committee operations but was swiftly paralysed by disagreements between capital exporting and capital importing states. Foreshadowing their later clout, international business representatives lobbied successfully to narrow dialogue to a circle of industrialised nations. In 1954, the ICC passed a resolution to sponsor a multilateral agreement on double taxation between Organisation for European Economic Cooperation (OEEC) countries. The founding of the OEEC Fiscal Committee followed two years later, and was superseded by the Organisation for Economic Co-operation and Development in 1961. Significantly the US was a full and dominant member of the OECD (unlike the OEEC), effectively ensuring that the international tax framework was consistent with American interests. The uniquely globalised nature of American MNCs left US Treasury revenues vulnerable to tax avoidance, a source of irritation for President Kennedy, who condemned the 'unjustifiable use of tax havens by growing numbers of businesses to slash their tax liabilities at home and abroad' (quoted in Houlder 2013). This hastened the arrival in 1963 of the OECD Model Tax Convention as a basis for negotiating bilateral treaties. Even within the smaller and more homogeneous setting of the OECD, reaching an agreement between states proved challenging. In practice, the Convention was simply a codification of the principles developed in the interwar years and therefore perpetuated their shortcomings.

The deficiencies of the international corporate tax regime were amplified by the changing nature and importance of MNCs. Immediately after the Second World War there were just a few hundred MNCs, whose profits came principally from foreign trade and portfolio investment. Most foreign direct investment (FDI) was from MNCs in primary industries with small numbers of affiliates looking to extract resources from specific locations. This capital was normally raised locally or financed out of retained earnings. These companies at least approximated the regime image of the MNC, with a clearly defined residence country and loosely coordinating the operations of autonomous overseas affiliates. By the 1970s things looked very different. Not only had the quantity of MNCs expanded rapidly, exceeding 9000 by 1973 (Hood and Young 1979), but the structure of companies, especially those that had emerged in the manufacturing and services sectors, increasingly bore little resemblance to that of their predecessors. Instead, modern MNCs were taking the form of single, globally integrated companies with centralised decision-making structures exerting tight control over a labyrinth of subsidiaries. These MNCs financed their FDI through borrowing on global capital markets, meaning their owners as well as their customers were geographically dispersed. The production process, value and profitability of these firms were becoming more reliant on intangible assets, most notably intellectual property rights like patents, trademarks and copyrights.

The principles on which the international corporate tax regime was constructed generated a myriad of tax avoidance opportunities for the rapidly evolving and globally integrated MNCs. The insistence on treating subsidiaries as separate companies, for example, encouraged MNCs to unbundle their assets into vast networks of offshore entities. Many of these were artificial affiliates undertaking contrived transactions to disconnect the incidence of taxation from the place where the genuine economic activity occurred (Gravelle 2009; OECD 2013). In particular, MNCs were able to manipulate corporate residence tax through the use of intangible assets, by shifting profits to low-tax jurisdictions (housing their intellectual property in tax haven subsidiaries) and then charging exorbitant fees for its use to subsidiaries in high-tax jurisdictions. MNCs also continued to capitalise on gaps and discrepancies in the network of bilateral tax treaties. For instance, it was commonplace for identical financial instruments used in cross-border activities to be differentially treated by the tax systems of the respective countries. These 'hybrid mismatches' meant that instruments regarded as debt and which generate deductible payments in one jurisdiction were regarded as non-taxable equity in jurisdictions where the proceeds were received.

MNCs' tax avoidance strategies were aided and abetted by two interconnected developments: the intensification of tax competition and the flourishing of the transnational tax planning industry. From the late 1950s, the tax havens, or jurisdictions that specialise in financial transactions for non-resident investors whom they attract by offering indulgent fiscal, regulatory and legal frameworks, grew in abundance. Small states, many of which seized on financial services as a strategy for developing and diversifying their economies, may be the most notorious tax havens, but similar enticements were intrinsic to the economic strategies of virtually all OECD countries (Woodward 2018). This is captured in the nomenclature of the now notorious 'double Irish with a Dutch sandwich', a tax avoidance technique involving two Irish companies and a Dutch one (Clyne 1977). Likewise, many OECD countries cemented their competitive position by tacitly endorsing the use of tax havens by their 'home' MNCs. Deepening their tax competitiveness enhanced tax planning opportunities for MNCs. Precipitated by the systematic selling of complex tax avoidance schemes by advanced business services firms, aggressive tax planning became a staple component of corporate strategy from the 1970s. In other words, tax was regarded as just another cost to be minimised.

Perhaps reflecting the institutionalised nature of the OECD, appetite for thoroughgoing reform to the international corporate tax regime was low. Growing reservations about the regime did result in a series of OECD working groups on double taxation, tax avoidance and transfer pricing abuses, which achieved piecemeal alterations to the Model Convention and rules on transfer pricing, including guidelines for their application (Ylonen 2017). That these groups confined their activities to incremental reform reflected a conservative bias of the OECD coupled with its reliance on consensus decision making (Carroll and Kellow 2011). This inclination is magnified in tax policy arenas, where tax reforms that may limit competition with other countries often run counter to the political interests of powerful countries which make the largest contributions to the OECD's budget.

Probabilities for regime reform were further diminished by the wholesale incorporation of the transnational tax planning industry into the underlying policy community (see this volume, Chapter 6). Narratives of corporate tax avoidance typically portray a game of cat and mouse in which the nimble tax-avoiding rodents habitually outsmart the clumsy feline tax inspector. The revolving door between the tax planning industry and bureaucracy meant swathes of the corporate tax code were being written in cahoots with the very firms that would market schemes to clients designed to circumvent these self-same laws (Brooks 2013; Sikka 2015). In other words, far from being the passive victim of provisions to shrink tax liabilities the state has, through its connivance with the tax planning industry, been their primary architect. Put another way, the cats were sabotaging their own mousetraps (Woodward 2017). These domestic trends reinforced the privileged position of private business interests at the international level. From its inception, the OECD, mainly through the Business and Industry Advisory Committee (BIAC), systematically included private sector interests in its tax deliberations. This had a rationalising effect on the regime, by undermining efforts to suppress tax avoidance. For instance, in the late 1980s, tax advisers and bankers orchestrated an energetic and successful campaign against the joint OECD–Council of Europe Convention on Mutual Administrative Assistance in Tax Matters (Picciotto 1992).

By the 1990s, the international corporate tax regime was widely regarded as anachronistic (Eccleston 2013, chapter 3). The assumptions and principles underpinning the regime correlated less and less with the reality of multinational business enterprises whose effective corporate tax rates were a fraction of the headline rate. Moreover, the system encouraged unfettered tax competition, which seemed to have locked states into a race to the fiscal bottom. This led to a dawning appreciation amongst OECD (1987) countries of the vast revenues being lost as a consequence of the estimated $5.1 trillion assets stashed offshore (Diamond and Diamond 1997), and provided the backdrop for a fresh foray into the promotion of international tax transparency.

1.4 1996–2008: PHONEY WAR AND STRATEGIC RETREAT

Commencing in 1996 at the behest of the G7, the OECD's Harmful Tax Competition (HTC) initiative marked the most serious attempt yet to overhaul the international corporate tax regime. In many respects, HTC was a pre-emptive strike by states alarmed about the impact of untrammelled tax competition in an era of mobile capital. The impetus came from a fortuitous confluence of ideational and material circumstances. The tax policy community was in thrall to liberal economic theories, portending a gloomy outlook for capital taxation (OECD 1991; Tanzi 1995). The theories forewarned that economic openness would result in capital being lost to more tax-lenient jurisdictions. This would unleash a race to the bottom amongst states seeking to attract and retain investment, the material impact of which, to borrow the phrase used in the G7 (1996) Communiqué, would be the 'erosion of national tax bases'. The OECD's (1998) preliminary report was greeted with considerable fanfare and forecasts of the 'end of offshore' (Hampton and Levi 1999; Picciotto 1999). Yet just three years later the initiative had stalled, with key states refusing to countenance an international agreement that would impinge upon their freedom to determine their tax system (see Webb 2004; Eden and Kudrle 2005; Sharman 2006).

Broadly speaking the report dubbed tax practices or tax competition 'harmful' if their consequence was to 'poach' the tax base of other countries by driving the tax rate on income from mobile activities significantly below that of other countries (OECD 1998, p. 30). Two categories of harmful tax practices were identified: tax havens and preferential tax regimes. Tax havens were defined as jurisdictions which combined low or no rates of tax with a lack of transparency or a refusal to exchange information with overseas tax authorities, or did not mandate investors to maintain substantial economic activities. In the late 1990s the agenda for identifying and sanctioning so-called tax havens was controversial. Even more arduous, however, was the related goal of identifying what the OECD called 'preferential tax regimes' (PTRs), which met transparency standards but sought to attract international investment by offering generous tax inducements. PTRs directly threatened the interests of MNCs and national governments' capacity to compete for their investment (OECD 1998). The OECD report threatened unspecified countermeasures against jurisdictions that refused to pledge to purge harmful tax practices.

Calls to reduce international tax competition through harmonisation have always raised a host of theoretical and normative concerns, and HTC was no exception. A major risk in trying to implement multilateral measures against PTRs was the lack of broad-based support for tax harmonisation across the OECD's membership. For example, France had long been apprehensive about countries such as Ireland that precipitated a destructive culture of tax avoidance competition; Ireland at the time offered a 10 per cent corporate tax rate for foreign firms that relocated (later replaced with a general 12.5 per cent corporate rate). On the other hand, the US and British governments had long opposed the agenda, arguing that it threatened the sovereign right of national governments to set budget priorities according to domestic political imperatives (Weschler 2001; Sharman 2006, p. 61).

Given this lack of consensus, the OECD HTC initiative started to unravel. Switzerland and Luxembourg had signalled their concerns by abstaining from the 1998 report, meaning that they were not bound by its contents. This led to accusations of double standards from the 41 jurisdictions identified by the OECD as tax havens. None of these territories were OECD members, yet were expected to make commitments to a project from which some OECD countries were exempted. The transnational tax planning industry and a caucus of pro-market pressure groups rallied to their aid (Easson 2004; Webb 2004), delegitimising the initiative by showing it to be inconsistent with deeply embedded norms about the value of tax competition, not least those propagated and upheld by the OECD. At this stage, civil society actors showed ephemeral interest in corporate tax justice (see Oxfam 2000) but were not prominent players and had little capacity to counter the financial wherewithal and expert prowess of the tax planning industry. The withdrawal in May 2001 of US support (US Department of the Treasury 2001) for the scheme signalled its effective end, with the OECD forced to renounce provisions such as those obliging countries to enact rules that only firms with substantial business operations could claim residency. Henceforth the HTC 'would pose little threat to the aggressive, legal, international tax planning strategies pursued by so many of the world's MNCs' (Eccleston 2013, p. 67).

By removing the potency of the HTC, the idea of tackling corporate tax avoidance lost much of its influence. After 2001, OECD reports generally endorsed broad-based tax competition and practices allowing corporations to separate the legal and physical locations of their investments (OECD 2001). Vestiges of the project were resurrected in 2009, focusing on a less gruelling agenda of promoting tax transparency and information exchange designed to make it harder for high-wealth individuals to illegally evade tax by investing in offshore tax havens. In the interim, surveys exposed the magnitude and cost of MNC tax avoidance (see Sullivan 2004, 2008; US GAO 2008; Avi-Yonah et al. 2009; Gravelle 2009; Zucman 2015), but the political will to tackle it had evaporated. However, as the next two chapters explain, the Financial Crisis strikingly altered the political calculus, and in 2012 the issue would resurface.

1.5 POST-2008: THE REVENGE OF HISTORY?

Since the Financial Crisis of 2008 there has been unprecedented interest in, and political momentum behind, reform to the international corporate tax regime (see for example Eccleston 2013; Graetz 2016; Pogge and Mehta 2016). As we have noted, austerity gave oxygen to issues of corporate tax avoidance. At a juncture when many citizens were suffering hardships inflicted by tax rises linked to austerity, the stream of stories documenting egregious cases of corporate tax avoidance has aroused considerable public anger. For states needing to placate public opinion and close yawning budget deficits, a clampdown on corporate tax avoidance is both fiscally and electorally alluring. The mobilisation of private actors campaigning under the broad banner of tax justice has also contributed to revived interest (this volume, Chapter 3). In addition to the consolidation of specialist organisations such as the Tax Justice Network (TJN), corporate tax avoidance began to intrude on the mainstream agendas of broader NGOs, including Oxfam, Christian Aid and Transparency International. Trading on their professional reputations, these bodies were able to contest ideas, and infiltrate institutions, previously exclusive to a narrow cadre of tax professionals (this volume, Chapter 4). This symbolised the emergence of a more open and expert policy community able to address complex issues of international corporate taxation and hence the possibility of meaningful revisions to the underlying regime.

Superficially, this appears to be confirmed by developments in the sphere of corporate tax governance since 2008, culminating with the endorsement of the OECD's (2015) final report on base erosion and profit shifting (BEPS) by the leaders of the Group of 20 (G20 2015). As will be discussed in greater detail in the following chapter, if the BEPS recommendations bear fruit they will represent the most dramatic amendments to the international tax rules since the 1920s. Closer inspection reveals however that the BEPS report, along with comparable developments elsewhere, does not denote a radical break with the past. Commentaries on the modifications to the international corporate tax regime assert that the proposals are much more modest than the 'change of paradigm' (quoted in *Economist* 2015) claimed by the likes of Pascal Saint-Amans, the director of the OECD's Centre for Tax Policy and Administration (CTPA). The grandfathering of supposedly obsolete concepts such as source and residence into the revamped regime, or dysfunctional regulations such as 'arm's length' laws, lends credence to Avi-Yonah and Xu's observation that 'the legal reform of international tax look[s] more like the patch-up of existing rules and principles' (2016, p. 208; see also Devereux and Vella 2014).

Echoing the past, the reasons for this are located in pathologies hereditary to global governance in general, and the international corporate tax regime in particular. Consistent with the narratives of its predecessor, the preservation of state sovereignty is of paramount consideration to the regime. Learning from its HTC experience, the OECD has sought to broker consensus with, rather than to coerce, disaffected states. The imperative of incorporating the preferences of over 100 disparate states, especially given the ambitious timescale, has again hampered fundamental change (see OECD 2014a; BIAC 2015). Moreover, despite paying lip-service to the OECD process, virtually all states continue to employ their sovereign right over fiscal matters to engage in aggressive tax competition to woo mobile corporate investment. The peer review process supporting the implementation of the BEPS minimum standards may place some restraints on tax competition. Unfortunately, the concessions made to finalise the BEPS accord have made the rules 'even more complex and in many cases contradictory' (BEPS Monitoring Group 2015), generating opportunities for tax planning experts to generate yet more tax avoidance loopholes.

BEPS has also encountered opposition from private actors in the transnational tax planning industry. The guarded public support for BEPS amongst the business community contrasts with fears expressed behind the scenes that the initiative could lead, amongst other things, to double taxation, spiralling compliance costs and the publication of commercially sensitive data. As one insider put it, the 'game plan' of many corporations remains 'to be positive but hope as little as possible happens' (Gapper 2014). Business interests also represented a strong voice in the BEPS policy process. For instance, 87 per cent of the submissions to the OECD's public consultations on the BEPS country-by-country (CbC) reporting requirements were from business stakeholders (Oxfam 2014; see also Christensen 2015). The revolving door between the Big Four accountancy firms and the upper echelons of the OECD's tax bureaucracy still turns (see Picciotto 2015). In July 2016, the OECD appointed Ernst & Young's Jefferson VanderWolk to replace Andrew Hickman, himself recruited from KPMG in 2014, as head of the CTPA's Tax Treaty, Transfer Pricing and Financial Transactions Division. Regardless of their ascent, bodies lobbying for the transnational tax planning industry and their clients vastly outnumber and outgun those agitating for action to tame tax abuses by modernising the international corporate tax regime (Woodward 2018). Predictably, these advocates have not overthrown the prevailing regime, but their interventions have nonetheless made some important contributions and achieved some significant victories. The inclusion of CbC reporting, albeit without public disclosure, in the BEPS action plan is a case in point. Conceived by Richard Murphy and John Christensen of the TJN, its elevation is the consequence of a coalition of NGOs championing its case in both domestic and international forums. NGOs have also been the watchdogs of the process, exposing examples of impropriety (see Christians 2013) and using tools such as the TJN's Financial Secrecy Index to shame corporations and states into action.

Irrespective of these successes, the aptitude of NGOs to drastically alter the international corporate tax regime, at least in the short term, should not be exaggerated. The BEPS episode serves as a reminder of the pervasiveness of the obstacles to reform identified elsewhere in this chapter and wider volume. Indeed history suggests that prophecies of thoroughgoing change should be treated cautiously.

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