15

Conclusions

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The financial crisis, combined with a fiscal crisis and the need for public revenues, has put tax regulation prominently on the international agenda. After a long phase of unsuccessful international tax policy reforms—'a cold or slow burning phase of regulation'—suddenly a 'hot or fast burning phase of regulation' occurred (see e.g. Boine et al. 2005; Seabrooke and Tsingou 2019). This meant that contrary to earlier reform efforts, which were lax, outlying, and lacked legitimacy, significant changes in international tax regulation such as improving the exchange of information, increasing transparency, closing loopholes in the international tax system, and improving cooperation among countries, seemed suddenly possible.

Throughout this book, we have explored how international tax regulation in the aftermath of the financial crisis has affected the diverse actors involved. In order to analyse complex reactions, we use the metaphor of the tax ecosystem. In Section 15.1, we describe the actors involved in international tax policy changes. Section 15.2 shows the amount of unpaid taxes at stake, and hence, the relevance and necessity of international tax reforms. Section 15.3 assesses the effectiveness of new regulations for corporations and for individuals in the tax ecosystem. We conclude with recommendations of how to improve the international tax regime in order to combat tax avoidance, tax evasion, and money laundering.

15.1 Actors Involved in International Tax Policy Change

There are multiple actors and authorities involved in an international tax system. In order to grasp their interactions, we view the tax system as an ecosystem with diverse 'species' trying to survive. When faced with large shocks, such as new international regulations, the tax ecosystem will—similar to nature after a volcano eruption—try to adapt. Species will try to survive; some will become bigger, others will be extinct, new ones will emerge. Actors are both reacting to change and driving change.

As Laage-Thompsen and Seabrooke show in Chapter 2, changes in the international tax ecosystem can be driven by diverse actors' claims to different forms of

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authority: to the official authority of governments, the professional authority of associations and tax experts, and practice-based forms of authority such as tax practices of successful companies. Their definition of actors is a broad one that includes persons, organizations, institutions, and political entities; these are the species of their tax ecosystem.

15.2 Jurisdictions and National Laws

The first type of actors involved are countries and other sovereign jurisdictions that can compete for specific segments of taxation in order to find their niches within the ecosystem. Some will do this by trying to attract Intellectual Property investments by offering tax benefits; others will try to attract general Foreign Direct Investment with low tax rates. Some aim at attracting real investment, others at attracting 'paper' investment. As a result, the political interest they have in change can be quite diverse. As Milogolov (2019) shows, the combination of tax tools that countries use depends, among other things, on their degree of economic development, a variable that changes over time and also gives rise to changes in tax competition.

The actors in our tax ecosystem act under defined rules; these rules are encompassed in the legal system that sets boundaries between what is legal and what is illegal tax behaviour. Ambiguities in these rules can create loopholes in the tax system, which new regulation can then close. However, when laws are set nationally, loopholes can emerge at the international level. A famous example is the 'Double Irish Dutch Sandwich', illustrated in Figure 15.1, by which American companies, rather than paying 35 per cent corporation tax in the US (now lowered to 21 per cent by President Trump) managed to escape taxation. They shifted their profits from European sales as royalty payments or licence fees from one Irish daughter company through The Netherlands (where intra-European transfers for royalties are tax-free) to a second Irish daughter company with remote management (which was by then tax-free in Ireland) seated in Bermuda. Under international pressure, Ireland has changed its law.

In light of such abuses of the law in a COFFERS organized conference in Vienna[1] experts discussed whether the law could draw a sharp line between what is legal (tax avoidance) or illegal tax behaviour (tax evasion). This discussion led to the deduction that even if the law in the books would be capable of drawing this line straightly, the law in practice might still vary. As Wright and Kreissl (2014) expressed: 'Black letter law is categorical and binary (yes/no; legal/illegal). Nevertheless, the real world is multidimensional, complex, and ambivalent (more

[1] For further information or summaries of COFFERS events see www.coffers.eu

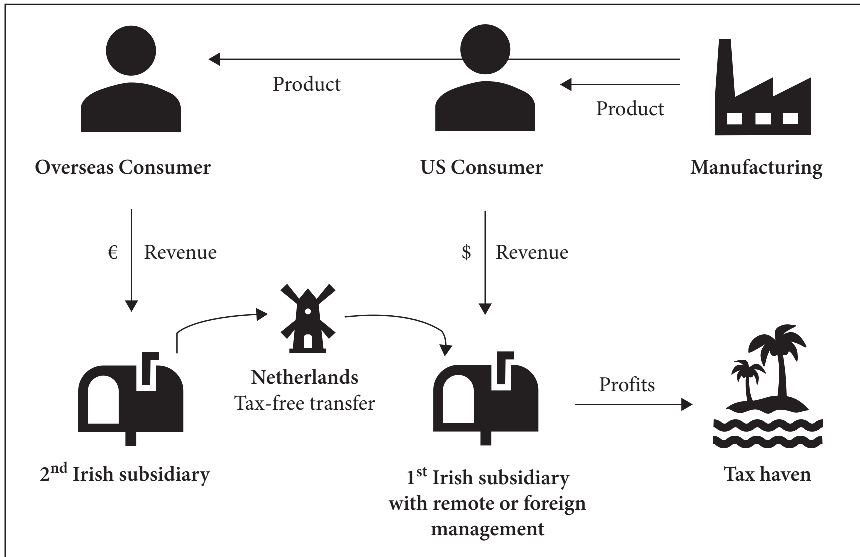

Figure 15.1 The Double Irish Dutch Sandwich.
Source: Author-made.

or less; as well as; conflicting interpretations of events and actions). It is the human factor that counts as well.' How laws are executed in practice, not only between countries but also within a country varies. In our project, we found, that even public prosecutors of the same country, gave different answers as to whether they would prosecute a specific tax evasion case and how they would do it (Rossel et al. 2019). Killian et al. in *Chapter 12* find that ambiguities in tax rules can trigger aggressive tax planning or innovation by tax advisors, opening the door for tax positions and advice that obeys the letter but not the spirit of the law.

Law is in itself complex, and tax law is not an exception. Some countries have separate tax codes that include all tax-related regulation including that in charge of punishing tax evaders; others have tax crimes included in the general penal code. Fines and criminal punishment differ widely among EU Member States, *Chapter 13* gives an overview of tax law in the twenty-eight EU Member States and shows significant differences in as to what are the maximum and minimum jail sentences that someone can face for committing a tax crime. A tax criminal in the EU could face only a maximum of six months prison time in Malta, while in Austria or France this could be up to ten years and even up to twelve years in Slovenia.

In the tax ecosystem, national governments are important actors that have to find a balance between the international pressure to fulfil treaties reducing tax competition and national requests of protecting local industry and at the same time attracting international investors. They act in a double Principal-Agent Settings,

squeezed between two different needs (as in Ferwerda et al. 2019) of maintaining international attractiveness and reputation and protecting local actors.

15.3 International Organizations

In an increasingly multipolar world, global institutions and actors also come to play and constitute an important part of the tax ecosystem. Intergovernmental organizations like the OECD which have become key players in the tax arena by pushing forward international tax reforms (Chapter 2), though they are dependent on their financing countries for the acceptance and implementation of such. The fact that only small islands but no single OECD country were on the first OECD (1998) list of Harmful Tax Practices is just one example of the politics involved in deciding which jurisdictions get shamed and which ones do not.

As Ates et al. from the Tax Justice Network show in *Chapter 6*, when ranking countries for the Corporate Tax Haven Index, there are indeed some islands, like the British Virgin Islands, Bermuda, and the Cayman Islands which rank as top secrecy providers, but these are followed by OECD member countries like the Netherlands, Switzerland, and Luxembourg, as well as Singapore, Hong Kong and the UK.

This chapter confirms that blacklists often ignore the role that powerful countries play in the international arena and overestimate the participation of smaller or politically weaker jurisdictions. As Ferwerda et al. (2019) show, blacklists made by international or intergovernmental organizations are doomed to fail. Blacklists will become empty because of diplomatic negotiations trying to escape the economic sanctions involved in blacklisting. An example of this was the failure of the EU blacklist of money laundering initiated by EU commissioner Vera Jourova, in March 2019, which had listed Saudi Arabia and then had to be withdrawn. Also diplomatic relations can be at stake and can prevent listing all the black sheep.[2]

The above points out why blacklists—if considered useful at all—should either be done by independent non-profit organizations (e.g. Tax Justice Network or Transparency International) or replaced by white lists of best practices. Pointing out positive practices might be more encouraging than naming and shaming under the pressure of economic sanctions. The latter will only lead to compliance in the books, compliance on paper, but not in practice.

In 2017, the OECD issued the Ten Global Principles to Fight Tax Crime based on the experiences of 31 jurisdictions. This living document sets out the ten essential legal, strategic, administrative, and operational requirements for effectively fighting

[2] See the news item by Reuters: 'EU states block blacklisting Saudi, Panama over dirty money', accessed 13 February 2020 at https://www.reuters.com/article/us-eu-saudi-moneylaundering/eu-states-block-blacklisting-saudi-panama-over-dirty-money-idUSKCN1QO15M

tax crimes. Principle 7 states 'make tax crimes a predicate offence for money laundering'. However, how jurisdictions will implement these principles is left up to them to decide; here is where the main weakness of these OECD principles lies.

Another intergovernmental organization involved in the international tax game is the Financial Action Task Force (FATF) in charge of fighting money laundering, which sets the international standards of anti-money laundering under a strong influence of the United States. As can be seen from the blacklisted countries over time (North Korea, Iran, Myanmar), intense geopolitical pressures influence these decisions. The fact that the FATF in 2012 set tax crimes as a predicate crime for money laundering, so that not paying taxes could suddenly become a serious crime, similar to drugs, corruption, and financing terrorism, had a severe impact on how unpaid taxes are perceived. The fact that the US has not put tax evasion on its own list of predicate crimes until today is only one of the peculiarities in which geopolitical pressure can work. As Chapters 7 and 8 show, the lack of reciprocity regarding Country Reporting Standards and Automatic Exchange of Information between the US and Europe mirrors this double standard.

15.4 Corporations

The rules of the game are partially pushed by intergovernmental actors through recommendations such as those mentioned above, and implemented but also modified by governments. But there is another group that plays literally and figuratively with these rules, namely market participants such as corporations and investors, who want to maximize profits and in turn end up paying little to no taxes. As Chapter 2 shows for one hundred big corporate holdings, company constructions that are set up to exploit loopholes in international tax law can be very sophisticated. Over time these structures have become more and more complex. The use of 'in-betweeners'—subsidiaries in offshore centres that are linked to subsidiaries in other countries—is typical for tax avoidance schemes. The authors of the chapter see 'opportunity spaces' created by corporations by setting up a large variety of shell companies in different countries so that they can make use of them whenever needed. The fact that the IMF (Damgaard et al. 2019) estimates that 15 trillion USD are parked in shell companies worldwide shows that the space of opportunity for companies to avoid taxes is vast.

15.5 Experts

Finding loopholes in international tax law is not an easy task: it requires specialized knowledge; this is why professional accounting firms or tax planning companies play an essential role in facilitating the knowledge necessary to do this.

Professional service firms like the Big Four (KPMG, PwC, EY, and Deloitte) are sometimes in a schizophrenic twofold position, advising governments on how to regulate taxation while at the same time they are advising their clients on how to avoid paying taxes. Nevertheless, they do not only advise and plan, but they are also in charge of doing the auditing of many companies (PwC does, for example, the auditing of the financial management of our COFFERS project in The Netherlands). The new international regulations, similar to a volcanic eruption in nature, disturb their business since their long-term planning depends on clear and predictable rules. This is why change can mean endangered business opportunities. For example, Lux Leaks—information about Luxembourg's tax rulings set up by PwC for more than 300 companies between 2002 to 2012—revealed tax avoidance constructions and tax rulings for big company clients from PwC between 2002 and 2012, impacting later efforts to regulate international taxation. Clients getting exposed publicly or—as is the case with Apple—having to face lawsuits, is damaging for tax experts' business. Therefore, the Big Four are also willing to accept new rules as long as they do not regularly change again and again and allow stable business. Predictable rules are essential for them rather than a vacuum of unclear, new, and ever-changing regulations.

There are all sorts of highly trained and paid lawyers, tax advisors and accountants in the tax ecosystem, making a business out of identifying tax loopholes. But as Chapter 12 shows, tax experts also have their professional ethics and have to find a balance between trying to minimize tax payments for their clients and their tax morale. They act differently in different environments. High financial secrecy and lax tax regulation influence their behaviour negatively but not uniformly. Ambition related factors, for example, are more influential in countries with higher financial secrecy.

15.6 The Public, Media, and Non-Profit Organizations

The public is another critical driver of change in the tax ecosystem. While, in earlier times, not paying taxes was not a big public issue, this has changed after the financial crisis. Much of the public no longer accepts that public money is spent on saving banks at the cost of reducing welfare benefits for the poor, while big companies get away without paying taxes to fill the public coffers. The revelations of Lux Leaks were undoubtedly a catalyst in shaping public opinion. Although companies still face more consumer sanctions when they employ child labour or when they are involved in an environmental scandal, than when they pay no taxes (Vogel 2007); the awareness of consumers of what companies are doing has increased, as has the public sense of the 'unfairness' of not paying taxes. The fact that tax crimes are now a predicate crime for money laundering (see FATF 2012 and EU AML Directive 2015), indicates a shift in the perception of how

serious it is not to pay taxes. What had long been considered a 'cavaliers delict' has now become a serious crime.

The media also has a vital role in shaping public opinion. The International Consortium of Investigative Journalists (ICIJ) is an excellent example of this. In 2016, the famous John Doe, a pseudonym used by the whistleblower of the Panama Papers, turned over 11.5 million *documents* from the law firm Mossack Fonseca to the newspaper *Süddeutsche Zeitung*. In a joint—and for journalists, unusual solidarity and compliance—action more than 90 newspapers published tax scandals of their countrymen simultaneously. Iceland's prime minister had to resign and even the British Queen was mentioned.

Nevertheless, many of the tax avoiders and evaders mentioned in tax leaks have not been punished till today. Moreover, some of the whistleblowers faced a miserable life after their exposure to tax scandals. The whistleblowers of Lux Leaks, Antoine Deltour and Raphaël Halet, who passed on confidential information, got convicted to fines and suspended jail sentences. No company mentioned in this leak was charged. This is a cautionary tale that calls for new regulations, such as whistle-blower protection, which again needs legal arrangements and compromises of conflicting interests.

There are non-governmental organizations, such as the Tax Justice Network, who regularly point at regulatory deficits of taxation. Chapter 6 shows the importance of benchmarking and of indices, such as the Financial Secrecy Index, which ranks jurisdictions according to how much secrecy they provide; or the Corporate Tax Haven Index which shows which deficits persist in national regulations that make tax havens possible. They cover more than 100 countries and their good visualization of results makes their work a beneficial tool to all working on tax havens, tax avoidance, and tax evasion. Their bilateral Financial Secrecy Index also shows which country provides the most crucial secrecy opportunities for which country. So, to give an example, Panama is not the main attractor of German tax evaders, while it is for US citizens (Jansky et al. 2018).

The fact that the actions of intergovernmental regulations or big players like the EU and the US can change the tax arena for governments, companies and tax professionals shows that change in the international tax system is the outcome of repetitive interactions between all these actors or—*in our words*—species of the tax ecosystem. As Laage-Thompsen and Seabrooke (Chapter 2) show, change towards the new international regulations was possible because of the interaction of all these actors and an interplay of all forms of authorities. Similar to what happens in nature when big shocks such as an earthquake or as a tsunami occur, changes in regulation can result in a paradigm shift in the tax ecosystem. As Picciotto (2019) mentions, the international tax system developed as a form of technocratic governance, aimed at facilitating international investment, neglecting provisions for cooperation between national governments for tax enforcement. Its endogenous flaws resulted in its politicization in the 1970s, and again in the 1990s, leading to an increasingly technicized form of global governance, centred mainly

on the OECD. However, policy-making became more uncertain after the financial crisis, which accelerated a shift towards increasingly volatile interactions between the spheres of technocracy and politics. Complex global problems requiring long time-horizons are dealt with by increasingly narrowly focused technical specialists, dominated by corporatized bureaucracies operating in public–private symbioisis; while in the sphere of politics, a wider public seeks simple solutions and mistrusts experts, with good reason given the experience of regulatory failures, often due to the capture of regulation by private interests. Instant communication favours opinion-formers claiming authority, while representative democracy has shifted to 'audience representation', opening the way for demagogue leaders, as well as clientelism and corruption. This destabilizes technical fields, opening up possibilities for a paradigm shift, illustrated by the dramatic changes of the last decade in international tax governance (Picciotto 2019).

15.7 Amounts of Unpaid Taxes

The drive for change in the international tax regime is partly also due to the large and increasing amounts involved. Table 15.1 puts forth some of the most recent estimations of illicit flows. Reducing tax avoidance, tax evasion, and money laundering is essential, given their large volume with estimates of tax evasion ranging between 190 billion USD and 650 billion USD (Henry 2012). Jansky and Palansky (2019) are in the lower bound of this range when they estimate that the lost revenues from FDI related profit shifting are 125 billion USD worldwide. A recent publication of the IMF (Damgaard et al. 2019) shows that 15 trillion USD are parked in shell companies, which can be used whenever needed by big companies in order to make use of tax loopholes. Zucman (2013) estimates that approximately 10 per cent of global GDP is held in tax havens, most of it illegally. Cobham et al. (2019) estimate a trade reporting gap of 9561 billion USD. Ferwerda et al. (2019) estimate 2333 billion USD of money laundering flows worldwide.

As Chapter 12 shows, the amounts estimated diverge widely. This depends on what is estimated (stocks, flows, money laundering, tax evasion, tax avoidance), how is it estimated, and which data are used. Nevertheless, even if estimates diverge widely, they have one thing in common: tax avoidance, tax evasion, and money laundering are sizeable, so sizeable that only a small part of them could solve major global problems such as stopping world hunger, eliminating the education gap and maintaining biodiversity. The most serious problems of the world, stopping famine is estimated between 7 billion and 265 billion USD; filling the education gap would cost 39 billion USD (see Cobham and Klees 2016); and maintaining biodiversity (100 billion USD)[3] could be solved when recuperating even only parts of the illicit financial flows.

[3] See:https://m.economictimes.com/news/science/earth-day-saving-the-planet-may-cost-usd-100-billion-per-year/articleshow/68991339.cms).

Table 15.1 Selected estimations of Illicit Financial Flows

Study	Estimation (billion USD)	Countries included	What is estimated?
Cobham and Janský (2017)	50–80	US	Tax gain US multinationals with profit shifting
Clausing (2016)	77–111	US	Tax gain US multinationals with profit shifting
Janský and Palanský (2019)	125	Global estimate	Lost tax revenues from FDI related profit shifting
Crivelli et al. (2015)	>200	developing countries	Revenue loss from tax avoidance
Crivelli et al. (2015)	>400	OECD countries	Revenue loss from tax avoidance
Cobham and Janský (2018)	500	Global estimate	Revenue loss from tax avoidance
Tørsløv et al. (2018)	>600	Global estimate	Shifted profits
Janský and Palanský (2019)	420	Global estimate	Shifted profits
Murphy (2019)	852–1,023[4]	EU-28	Tax gap
Ferwerda et al. (2019)	2,333	Global estimate	Money laundering
Walker (1999)	2,850	Global estimate	Money laundering
Zucman (2013)	5,878	Global estimate	Hidden wealth offshore
Van Koningsveld (2015)	5,900	Global estimate	Offshore financial assets
Zucman (2015)	7,600	Global estimate	Hidden wealth
Cobham et al. (2019)	9,561	Global estimate	Trade reporting gap
Damgaard et al. (2019)	15,000	Global estimate	Phantom FDI
Henry (2012)	>21,000–32,000	Global estimate	Private wealth invested virtually tax-free through offshore

Source: Made by the authors based on the reported studies. > indicates that the authors mentioned the estimate as a minimum. – indicates a range.

The contribution of Richard Murphy (Chapter 4) on Reappraising Tax Gaps shows that the amount and reasons for tax gaps—potential tax revenues which are not collected—should be defined more broadly and be explored more systematically. In the literature, the tax gap is defined as the difference between the amount

[4] The estimate in Murphy (2019) is in Euro, namely 750–900 billion Euro per year. For consistency the estimate is converted to USD using the exchange rate in January 2019 (when the paper was published): 1 USD = 0.88 Euro.

of tax that a revenue authority should collect within a jurisdiction based upon the laws it has in operation in an annual accounting period and the actual amount of tax paid during that same period. The IMF (2013, p. 11) distinguishes firstly the 'compliance gap' caused by non-payment that results from noncompliance with tax rules and, secondly, the 'policy gap', which refers to tax laws granting exemptions, tax liability deferrals or preferential tax rates. Murphy suggests that the definition of the 'tax gap' should be broadened. First, it should include policy choices, such as the tax base through a 'tax base gap' stemming from tax bases not taxed, such as wealth or inheritance taxes. This would help to make taxes that are not levied due to political choices, transparent. Second, policy choices regarding existing taxes, such as tax relief grants, should be included through a 'tax rate gap'. Third, the cost of bad tax debt (declared sums owed but not actually paid) should be included, in order to include too lax tax administration efforts. In addition, a fourth and fifth inclusion should be that of 'non-compliance' factors such as tax evasion and the cost of tax avoidance, respectively. All countries should measure the tax gap resulting from these five tiers in order to allow for using the tax gap for policy choices.

15.8 Assessing the Tax Regime for Companies: Loopholes for Tax Avoidance

International tax regulations aimed at reducing tax avoidance and tax evasion. This book evaluates major policy reforms which constituted a shock in the tax ecosystem. BEPS, Automatic Exchange of Information, Legal Entity Identifiers and Anti Money Laundering Regulations. In the following, we assess first the measures aimed at reducing tax avoidance of corporations, then measures aimed at reducing tax evasion of individuals.

After the financial crisis, the OECD and the EU have made significant efforts to reduce tax avoidance by big companies. The Base Erosion and Profit Shifting programme of the OECD in 2013 consisted of 15 action plans that included *taxing the digital economy* (Action 1) and *neutralizing the effect of hybrid mismatch arrangements* (Action 2), both tools or methods that are used in aggressive tax planning in order to exploit differences in the tax treatment of two countries to achieve double non-taxation. Additionally, Action 3 *Controlled Foreign Company (CFC) rules* should reduce the risk that taxpayers can strip the tax base of their country of residence by shifting profits into a foreign company that is controlled by the taxpayers. *Limiting base erosion involving interest deductions and other financial payments* (Action 4) should prevent profit shifting from accumulating debts in the high tax country and benefiting from interest deductions for debts. Under BEPS Action 13, all large multinational enterprises (MNEs) are required to prepare *a country-by-country report* (CbCR) with aggregate data on the global

allocation of income, profit, taxes paid, and economic activity among tax jurisdictions in which they operate. This CbC report is shared with tax administrations in these jurisdictions, for use in high-level transfer pricing and BEPS risk assessments.

Thus far, Chapter 6 of this book argues, the Base Erosion and Profit Shifting (BEPS) initiative, which ran from 2013 to 2015, seems to have failed in reducing the misalignment between the location of multinationals' real economic activity and where they declare their resulting profits for tax purposes. One crucial point is that not all countries exchange this information, especially those who want to provide secrecy. For example, Czechia receives CbCR information from 73 countries and thereby covers 91 per cent of the secrecy it faces, Luxembourg, having activated the same amount of treaties, only covers 73.5 per cent. If Luxembourg would establish Information Exchange with just five more countries—Taiwan, Thailand, British Virgin Islands, Turkey, and the Bahamas—it would increase the share of secrecy covered to 83 per cent. The Bilateral Financial Secrecy Index, developed by Tax Justice Network, allows us to identify, for each country, the jurisdictions that are not yet covered by information exchange treaties and at the same time supply large amounts of secrecy.

The OECD is currently engaged in further reform of international tax rules at the bequest of the G-20 group of countries. The premise of the new process, sometimes referred to as BEPS 2.0, is to have an even more radical change in international tax regulation. Palan and Nesvetailova (Chapter 3) argue that the European Commission was exceptional regarding initiatives to reduce Aggressive Tax Planning: The Taxation and Customs Unit of the European Commission, TAXUD, launched a series of in-depth investigations into aggressive tax planning practices (TAXUD, 2017). The European Commission introduced two powerful measures, the Common Consolidated Corporate Tax Base Directive, and an Anti-Tax Avoidance Directive, a powerful suite of measures that aims to curb aggressive tax avoidance.

Another regulation that followed from the financial crisis is the Legal Entity Identifier (LEI), an initiative led by the market authorities of the US and channelled by the G-20 and then the Financial Stability Board in 2011. As Chapter 9 shows, the collapse of Lehman Brothers during the 2008 crisis revealed a critical blind spot in the ability of financial markets regulators to foresee a potentially risky concentration of liabilities by a small number of systemically important financial institutions. There was a need to see how legal entities are identified and how they relate to one another. Regulators could not foresee any concentration of liabilities via subsidiaries that a consolidating entity might be accumulating. The idea behind the Legal Entity Identifier was to give companies a trusted 20-digit code that could indicate the origin and ultimate beneficial owner of a company. Together with governance arrangements around an executive body, the Global Legal Entity Identifier Foundation (GLEIF) and a Regulatory Oversight

Committee (ROC) would collectively form the Global Legal Entity Identifier System (GLEIS). The authors identify two essential prerequisites for this data-driven regulation: accurate and reliable identification of entities engaged in market activities and the ability to trace the transactional and corporate relations of these entities. In 2017, data about the ultimate and immediate owners of entities identified was to be included.

Nonetheless, as many of the regulations analysed throughout this book, LEI also faces significant challenges. That is why Chapter 9 also discusses the problems of data quality related to this initiative. With many financial organizations controlling a bewildering number of entities (e.g. one of the banks researched maintains more than 25,000 such entities), it is difficult for an organization to know who knows what about the identification data it must report. Furthermore, it is expensive to update both this organizational knowledge and the data itself in order to report it. Consequently, the authors point at the importance of the development of a complex data-driven regulatory system for information on beneficial ownership relations among different actors in the financial ecosystem. Contrary to all other regulatory measures taken for companies, the LEI certification is not done by the public sector but by the private sector (GLEIF). Whether this will work or not still remains to be fully explored.

As we can see throughout the book, the efforts to curve the noxious effects of tax avoidance and tax evasion have been manifold. However, the question remains how successful all these international efforts are. Indeed, some loopholes have been closed, such as the now infamous Double Irish Dutch Sandwich, used by many multinationals such as Apple, Google, Amazon, and Starbucks.

15.9 Creating New Tax Avoidance Structures

But as some loopholes close, others seem to rise. Chapter 2 uses the analogy of a squeezed balloon—where the shape changes, but the volume stays the same. Similarly, van Waarden (2002) talks about communicating vessels—when one closes one side, the liquid pops up at the other side. Another metaphor used is that of Unger and den Hertog (2012) when talking about how 'water always finds its ways'. What these three have in common is that they all refer to the same phenomenon: that when regulators try to close one loophole, another one emerges.

The increasing complexity of corporate groups that allow for tax arbitrage (i.e. to exploit gaps, loopholes or blind spots in national rules and regulations to transfer profits from high to low tax jurisdictions) is a vessel for new loopholes to emerge. An important element in tax arbitration is to register some of the corporate entities of complex company structures in offshore jurisdictions. In Chapter 3, Palan and Nesvetailova distinguish between two types of holdings.

Type 1 holdings happen when an offshore subsidiary is controlled by a parent that does not control any other subsidiary. Type 2 holdings, are offshore subsidiaries placed 'in-between' other subsidiaries on the chain. They analyse one hundred non-financial firms and identify these 'in-betweeners' in offshore centres (OFC) as typical instruments of tax avoidance arrangements that generate hybrid mismatches. A key finding is that every fourth EU held subsidiary of the one hundred largest nonfinancial firms in the world was controlled through a Type 2 holding patterns, which points out the crucial role of the US in the tax ecosystem since non-Europeans firms have used these structures far more intensely in Europe than European firms.

Chapter 2 proposes that Europe seems to have become an attractive OFC for US holdings. Though the EU has—globally seen—the best regulatory regime, corporations can profit from multiple entry possibilities within the single market, such as the Netherlands, Ireland, Luxembourg, and the UK, which are among the most critical entry points for corporate tax avoidance worldwide. The fact that Europe has many entry points for the US, with different tax laws and avoidance opportunities, while the US has a unique entry point, also creates an asymmetry between the US and Europe and puts Europe in a weaker position. Apart from the company group structure, another understudied area for tax avoidance lies in the asset management of companies, their financial engineering. Chapter 2 shows that different tax mitigation techniques involve the use of derivatives. They allow either to change the taxes owed post hoc or to change profits in the balance sheets using options, swaps, or other derivatives. For example, if the taxpayer buys an option instead of buying an asset, he obtains the economic gain from changes in the value of the asset but does not pay capital gain tax because he is holding only the financial derivative on the asset, and not the asset itself. Balance sheet techniques of tax avoidance using derivatives seem to be more used than post hoc tax avoidance structures.

15.10 Digital Platforms

In an increasingly globalized world that is powered by the rise of technology, it is no surprise that an important loophole in the international tax system concerns digital platforms. Firms such as Amazon, Airbnb, Facebook, Google, and Uber operate platforms to host services, enabling consumers and businesses to connect and exchange. In this line Chapter 11, analyses the case of digital platform provider Uber whose business model is essentially a 'legal artefact'. It does not own cars (the drivers provide the cars), it purports not to provide transport services (the drivers do the ride), and it does not have employees (all drivers are self-employed). Uber only provides a matching service through an app, bringing together customers in search of a ride with drivers. On top of this, it is a company

that makes heavy losses. As Wigan shows, losses translate into tax assets. ‘Loss carry forward’ is an accounting technique whereby operating losses accrued in one year are set against taxes on gains and income in the following years. The author states that ‘severe mismatch between the rise of a “knowledge economy” with firms composed of large volumes of intangible assets and tax systems designed for an earlier era where capital was less liquid and less internationalised’. Treating digital services as real services—hence perceiving Uber as a taxi company and not as a platform only—would be a way out of this type of tax avoidance.

As it happens in nature the entry of these new species in the ecosystem, or in this case, the market, generates diverse responses from other ‘species’. Some countries rejected the presence of Uber—the app is banned in Hungary and Bulgaria and is limited in many other European cities. The Danes asked Uber cars to have a taximeter—which is an expensive investment for private car drivers. The Austrians asked Uber to have a licence and to charge the same salaries and ask the same fares as other taxi drivers do in order not to underbid local taxi drivers, to give some examples.

An important finding, regarding taxing the digital economy is to either adjust the tax system to deal with twenty-first-century issues or to make digital services tangible. Uber services are taxi services, and online gambling is gambling. A similar problem occurs to law enforcement when it has to deal with virtual currencies. No law allows confiscating bitcoins. However, some laws allow for confiscating money. So, why not treat intangible virtual currencies, like Bitcoins, as tangible money? Make the digital world a real world.

15.11 Assessing the Tax Regime: Loopholes for Individuals

There is a difference in the effectiveness of policies to combat (illegal) tax evasion of (mostly personal) portfolio capital and measures to curb (legal, but undesirable) tax avoidance by multinational corporations (for a very brief overview of the history of initiatives and why the former were more successful than the latter see Chapter 7). COFFERS research concludes that regulations aimed at reducing individual tax behaviour have been more successful than regulations aimed at reducing corporate tax avoidance (see Chapters 3, 6, 7, and 10).

In 2019, 109 countries adopted the so-called common reporting standard CRS by multilateral agreement (Chapter 8). ‘The standard provides for annual automatic exchange between governments of financial account information, including balances, interest, dividends, and sales proceeds from financial assets reported to governments by financial institutions and covering accounts held by individuals and entities, including trusts and foundations’ (OECD 2014). This agreement was widely seen as a breakthrough in the fight against international tax evasion. The authors estimate that investments in tax havens are 67 per cent below where

they would have been without FATCA and CRS (Ahrens and Bothner 2020). Automatic exchange of information also allowed countries to raise dividend taxes, as taxpayers dividend income abroad would be reported to the country of residence. According to Chapter 7 the average tax rate on dividends in OECD countries was 4.5 per cent points higher in 2017 than it would have been without international tax cooperation.

Nevertheless, individuals can become creative when it comes to finding new loopholes. Confirming the 'squeezed balloon', 'communicating vessels', or 'water always finds its ways' hypothesis, Chapter 10 explores the use of freeports by wealthy individuals to hide their wealth in. She shows that the stricter regulation of the financial sector and automatic exchange of information resulted in the rise of luxury freeports, which are not covered by these regulations. Luxury freeports pop up like mushrooms, e.g., in Switzerland. Freeports were initially meant as a transit zone for goods and therefore were not explicitly regulated. Nowadays, they have become a permanent wealth storage place. They look from the outside like art museums and not like storage halls any more. Freeports are an exciting example of 'policy success as a failure': these freeports grew as an effect of financial secrecy measures. Instead of increasing transparency, crime was just displaced, displaced to art: wealth was stored elsewhere as art, stacked into boxes where no one will ever have the chance to appreciate it. These freeports can be used for tax evasion and money laundering because they allow circumventing the stricter rules of the financial sector.

15.12 Assessing BEPS versus Automatic Exchange of Information

In Chapter 7 the impact of AEI on international investment and capital tax rates is measured. The authors conclude that the international cooperation against tax evasion by individuals in the form of AEI was successful. Governments regained manoeuvring room to democratically set domestic tax policies that had previously been lost to the constraints of tax competition.

Finally Chapter 14 provides a micro foundation for tax compliance and assesses tax policy reforms, by modelling the tax ecosystem for all 27 EU Member States and five additional European countries. The agent-based simulation model allows corporate and human agents to interact with and influence each other. It allows for both tax avoidance and tax evasion. Actors perceive the beliefs and behaviours of other actors nearby and compare their situation with that in another country. Therefore, the model allows foreign policy to affect the results of domestic policy. In an agent-based model, actors do not have to be rational, their observations may be incorrect, and coincidence and chance play an important role. Tax compliance depends on the interaction of taxpayers in this complex adaptive

system. The model estimates the European corporate tax losses in 2019 to be €104.9 billion, which will increase to an annual loss of €135.8 billion in 2029 under the current policy regime. Fully implementing CbCR and AEoI decreases the expected tax gap of 2029 by 16.4 per cent to €113.5 billion. The seemingly small effect of CbCR is not so small in the long run, because CbCR affects eventually tax morale of individuals positively.

15.13 Policy Recommendations

The book shows that there is a paradigm shift in the international taxation regime. International regulations such as Automatic Exchange of Information show some impact. The regulation of corporate tax avoidance, like BEPS, was less successful until today. The COFFERS group sees transparency and reducing secrecy as the most important tools to solve impending problems. As many authors of this book stress, increasing transparency and reducing secrecy is the magic tool for combating tax avoidance, tax evasion, and money laundering. For this, the following is needed:

- Establish and improve Ultimate Beneficial Ownership Registers for all types of financial vehicles (companies, domestic and foreign trusts, partnerships, and foundations) and of land ownership. These registers must be up-to-date, and electronically easily accessible, at low or no cost. These registers should not only be obligatory if an entity is registered as a company in EU Member States, but also if it owns assets (real estate, freeports) in the EU.
- A withholding tax policy against non-participating (US) banks that fail to provide financial account data at the level of beneficial ownership via automatic information exchange, in order to reach reciprocity. Similar to what the US is doing, there should be a 30 per cent withholding tax policy for non-reciprocating financial institutions. Charging this tax to the US would already be a first important step.
- Automatic exchange relations between countries monitored visibly. Here the Bilateral Financial Secrecy Index of Tax Justice Network is of great help. It allows monitoring which country provides major secrecy opportunities to which country. One should also consider EU-pooled negotiation mandates versus some partners (e.g. Turkey, Taiwan).
- Europe should be learning from the US (FATCA): Using EU market access as leverage to require standards by international economic actors (banks, multinational companies, offshore investors).
- Abandon blacklists or at least let them be made by independent non-profit organizations which are neither diplomatically nor financially dependent on governments trying to prevent getting on these lists. Better develop white

lists of best practices and benchmark standards and policies implemented by EU Member States and others.

- Regulate digital platforms by insisting that they provide real services and use real assets. Particularly investigate and regulate new luxury freeports. Enlarge anti-tax evasion and money laundering regulations to non-financial in order to avoid that 'water always finds it ways' and that tax evaders find new niches to hide their assets.
- Regulate derivates as they provide many ways to avoid taxation through balance sheet and post hoc tax manipulation.
- Reduce grey zones between what is tax avoidance and what is tax evasion and money laundering by providing clear legal definitions. More international harmonization of definitions such as tax crime is needed. There needs to be more cross-country research on how tax and money laundering laws are used in practice. Information across the EU needs to be easier to find and to collect.
- Improve cooperation among stakeholders. Do not leave tax policy design to technical tax experts alone. Involve all stakeholders, including third world countries, as tax policy is a highly political and not only a technical issue. For this, translations are important. Both proper translations of tax laws into English (e.g. Swedish translation of tax breaks can be misleading), but also translating technical tax issues for non-specialists in order to involve them in the discussion can have a significant impact on knowledge creation and cooperation across Europe.

15.14 References

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