The Essential Elements of Global Corporate Standards for Responsible Tax Conduct

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About the Fair Tax Mark

The Fair Tax Mark certification scheme was launched in 2014, and seeks to encourage and recognise organisations that pay the right amount of corporation tax at the right time and in the right place. Tax contributions are a key part of the wider social and economic contribution made by business, helping the communities in which they operate to deliver valuable public services and build the infrastructure that paves the way for growth.

More than fifty businesses have now been certified in the UK, including FTSE-listed PLCs, co-operatives, social enterprises and large private business – which between them have over 7,000 offices and outlets. We operate as a not-for-profit social enterprise and believe that companies paying tax responsibly should be celebrated, and any race to the bottom resisted.

To date, the Fair Tax Mark's activities have been focused on the UK; however, a new suite of international standards is now under development. These would enable the Fair Tax certification of businesses that have their ultimate holding company situated outside of the UK. There is a pressing need for this given:

- the Fair Tax Mark is now approached by businesses from around the world seeking accreditation;
- regulators, investors and municipalities across the globe have expressed a desire to support Fair Tax Mark accreditation (or equivalent) in their jurisdictions;
- there is in many parts of the world an ongoing international race to the bottom on tax, and this creates a downward pressure on standards everywhere; and
- if no action is taken by civil society, unscrupulous accounting and auditing entities will step into the vacuum and propagate low-bar tax kitemarks.

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1. Introduction and Executive Summary

Tax contributions are a key part of the wider social and economic contribution made by business, helping the communities in which they operate to deliver valuable public services and to build the infrastructure that allows business to thrive. However, the issue of widespread and systematic corporate tax avoidance has become a prominent and mainstream political concern. This has prompted a range of responses from national governments, multilateral agencies, campaign groups, investors and corporate social responsibility specialists. Mapping these responses and suggesting a way forward is the primary purpose of this Report: i.e., what are 'The Essential Elements of Global Corporate Standards for Responsible Tax Conduct

This Report will influence and guide the Fair Tax Mark's consideration of a new suite of international standards that is now under development. These would enable the Fair Tax certification of businesses that have their ultimate holding company situated outside of the UK. This 'internationalisation' is considered to be desirable given:

- the Fair Tax Mark is now approached by businesses from around the world seeking accreditation;
- civil society, regulators, investors and municipalities across the globe have expressed a desire to support Fair Tax Mark accreditation (or equivalent) in their jurisdictions;
- there is in many parts of the world an ongoing international race to the bottom on tax, and this creates a downward pressure on standards everywhere; and
- if no action is taken by civil society, unscrupulous accounting and auditing entities will step into the vacuum and propagate low-bar tax kitemarks.

The focus of our analysis is corporate income tax, and related measures that are designed to tackle the avoidance of this (such as digital services taxes). Businesses are subjected to many different types of tax, but Corporation Tax has an importance way beyond the revenues it raises. As argued by the Tax Justice Network: "It holds the whole tax system together. It curbs political and economic inequalities and helps rebalance distorted economies."[i]

Note: this Report was substantially completed April 2020, when much of the world was just beginning to wrestle with the Covid-19 pandemic and the need for social distancing. Substantive economic and fiscal change was underway in many countries, with matters developing on an almost daily basis. Radical tax reforms are being rapidly progressed, on a declared 'temporary' basis. The longer-term impact of this upheaval is difficult to determine at this juncture and has not been significantly factored into the deliberations detailed in this Report. It is, however, likely that tax policy will play a central role in both the short-term response of governments to support individuals and businesses, and the longer-term subsequent need to rebuild economies across the globe.

Section 2: History and background

Global tax rules are rooted in the historical nature of business, which is now changing and presenting fundamental challenges with the rise of digital enterprise. The consensus that has dominated international tax law for a century is over. The rise of tax havens, tax avoidance and a race to the bottom have seen to that. Public discontent (fuelled by a chain of scandals, data leaks and brave whistle-blowers) has grown to such a level that politicians the world over have

been forced to take action. Civil society campaign groups have made political headway on the keys asks of public country-by-country reporting (pCbCR) and unitary taxation in recent years, but these have yet to be enacted in a systematic fashion across the world.

Section 3: Response from national governments and multilateral agencies

An unprecedented re-consideration of the world's one-hundred-year approach to international tax rules is underway. At the heart of the reforms are the G20 and OECD, and the Base Erosion and Profit Shifting (BEPS) project. Much has been achieved, but tackling issues such as profit shifting remain outstanding. Realising consensus on the way forward will be very difficult, and there has been a mixed reaction to the partial incorporation of unitary taxation and formulary apportionment in the BEPS 2.0 proposals for allocation of profits and new nexus rules. Mandatory pCbCR is in place in some countries for a small number of industry sectors, but no country has yet enforced pCbCR for all large businesses. Unilateral measures are emerging: in particular, digital services taxes.

Section 4: Review of 'voluntary' responsible tax initiatives

Voluntary responsible tax programmes have been developed around the world in recent years. They seek to address the question of: 'what does responsible tax conduct look like at the level of the individual firm, given the existing legislative context'. These are broadly welcome and will help realise much-needed legislative change. These include initiatives from corporate responsibility activists, NGO activists, investors and tax professionals. Some initiatives are viewed cynically by civil society campaigners. The UK, the European Union and North America stand out as hotbeds of activity. A number of corporate commitments emerge as key to responsible tax conduct, as set out in 'Section 5: Conclusions'.

Section 5: Conclusions

A tax justice 'norm cascade' is now well underway, however, 'norm internalisation' has not yet progressed and is still deeply contested. Several voluntary responsible tax programmes have been developed around the world in recent years. These are broadly welcomed, not least as they help to create a platform for much-needed legislative change. These include initiatives from corporate responsibility activists, NGO activists and investors.

Four corporate commitments emerge as being key to responsible tax conduct:

- public country-by-country reporting of sales, profits and taxes;
- a public policy undertaking not to use tax havens artificially or pursue tax avoidance;
- disclosure of beneficial owners and persons of significant control;
- independent assurance from outside of the big accountancy firms.

Concepts such as unitary taxation and formulary apportionment are vital at an international level, but are not something that a business can be expected to progress unilaterally. It would, however, be desirable for progressive businesses to support this shift, and at the very least not block international progress via lobbying (either directly or indirectly, via trade bodies).

2. Corporate taxation over the 20th and 21st centuries

In order to consider the reforming initiatives that are a focus of this Report (sections 3 and 4), it is first necessary to establish a context for how the need for reform arose and the key issues at play.

2.1. History and background

2.1.1. Early drive to establish consensus and prevent double taxation

The formation and sustainability of nation states is intrinsically linked to their capacity to collect customs and taxes.

Current international and national tax rules were mostly conceived in the early 20th century. In the 1920s, under the legitimate pressure to avoid the double taxation of corporate profits, the League of Nations successfully advanced three key tenets of international tax law:

- the right to tax should be divided between source (site of economic activity) and residence (home of ultimate control) countries;
- each subsidiary should be treated as a separate legal entity whose liability would (in theory) be assessed by national tax authorities as a stand-alone company;
- broad conventions should underpin states' negotiations on bilateral treaties.[ii]

This was followed by consensus on the desirability of transfer pricing and the use of the 'arm's length principle' – whereby the amount of profit on transactions between connected parties should for tax purposes be the amount of profit that would have arisen if the same transactions had been executed by unconnected parties.

In parallel, as the global economy proceeded to become more globally integrated, so did many corporations. Multinational enterprises (MNEs) emerged as major players, and now represent a large proportion of global GDP. In addition, intra-firm trade grew to represent a growing proportion of overall trade (and to generate scope from a range of transfer mispricing abuses[1]). More recently, digital products have emerged, and this has made it much easier for businesses to 'locate' activities in geographic locations that are distant from the physical location of their customers. The G24 group of developing nations has observed that this has: "rendered the existing international rules that allocate taxing rights among countries largely ineffective, if not obsolete."[iii]

Moreover, as pointed out by the OECD, these developments have been accompanied by: "the increasing sophistication of tax planners in identifying and exploiting the legal arbitrage opportunities and the boundaries of acceptable tax planning, thus providing MNEs with more confidence in taking aggressive tax positions… These developments have opened up

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[1] Over the last decade, tax authorities the world over have become much more questioning of transfer pricing arrangements, especially in relation to cost-sharing agreements, holding companies, inter-company loans and intellectual property. Transfer pricing is at the heart of the debate on international tax reform and BEPS 2.0, not least the proposed changes to profit allocation (see (c) BEPS 2.0).

opportunities for MNEs to greatly minimise their tax burden. This has led to a tense situation in which citizens have become more sensitive to tax fairness issues. It has become a critical issue for all parties."[iv]

The bilateral paradigm that has dominated the past one hundred years does not reflect the reality of much MNE tax planning today, which involves the use of intermediary entities located in tax favourable countries.[2]

2.1.2. The rise of tax havens

Corporate behaviour is just one side of the tax conduct coin. Profit shifting and base erosion can only take place if they are facilitated by countries who are willing to 'beggar thy neighbour' and enable low (or even zero) corporation tax rates. Jurisdictions facilitating harmful tax competition are commonly referred to as 'tax havens'. It has been estimated that 40% of multinational profits ($600bn) are shifted through tax havens.[v] Sometimes a business will use a combination of tax havens to shuffle money around the globe and exploit loopholes in the bilateral tax treaties between particular countries. So, for example, Google has in the past combined a 'Double Irish' and a 'Dutch Sandwich', with a zero-tax haven such as Bermuda as the final destination. There have even been instances of corporate profits becoming 'stateless' from a tax perspective: as was revealed in the Paradise Papers and with Apple's income flowing through Ireland.[vi]

The use and growth of tax havens began to take off in the 1970s, with profit shifting becoming an epidemic by the 1990s.[vii]

Tax havens are usually pictured as sun-drenched tropical islands, however, they extend to all corners of the world. Arguably, the US-states of New Jersey and Delaware created the template for the modern tax haven at the back end of the 19th century.[viii] The UK may not be a tax haven, but many of its Overseas Territories and Crown Dependencies certainly are.[ix]

A variety of attempts have been made to define who is and is not a tax haven at a given moment in time. The work of the Tax Justice Network is regarded by many as being the most credible. They produce both a Financial Secrecy Index[3] and Corporate Tax Haven Index[4] – and these are overtly utilised by, for example, the Fair Tax Mark. Since 2017, the European Union has produced a blacklist of 'non-cooperative jurisdictions for tax purposes', but this is compromised by its omission of consideration of any EU Member State.[5]

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[2] Based on the historical consensus that the source country has the primary right to tax income from that country and generally will tax profits and impose a withholding tax on interest, dividends and royalties. The residence country would mitigate double taxation through allowing a credit for source country tax or by exempting the income. The source country would also not treat foreign-owned businesses worse than a source country business.

[3] Most recently in February 2020. The top five were: Cayman Islands, USA, Switzerland, Hong Kong and Singapore. See https://fsi.taxjustice.net/en/

[4] Most recently in May 2019. The top five were: British Virgin Islands, Bermuda, Cayman Islands, Netherlands, Switzerland. See https://www.corporatetaxhavenindex.org/

[5] At February 2020, the listing was: American Samoa, Cayman Islands, Fiji, Guam, Oman, Palau, Panama, Samoa, Trinidad and Tobago, US Virgin Islands, Vanuatu and Seychelles. See https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/

2.1.3. Tax competition and the race to the bottom

Since 1985, the global average statutory corporate tax rate has fallen by more than half, from 49%.[x]

The OECD Database shows that the average statutory corporate tax rate[6] fell from 28.6% in 2000 to 21.4% in 2018. It wrote that: "more than 60% of the 94 jurisdictions for which tax rate data is available in the database had statutory tax rates greater than or equal to 30% in 2000, compared to less than 20% of jurisdictions in 2018."[xi] Comparing statutory corporate tax rates between 2000 and 2018, 76 jurisdictions had lower tax rates in 2018, while 12 jurisdictions had the same tax rate, and only six had higher tax rates. In 2018, 12 jurisdictions had no corporate tax regime or a corporate income tax rate of zero.

Angel Gurria, Secretary-General of the OECD, said the increase in corporate tax competition: "raises challenging questions for governments seeking to strike the right balance between maintaining a competitive tax system and ensuring they continue to raise the revenues necessary to fund vital public services, social programmes and infrastructure".[xii]

Having said that, corporate income tax remains a significant source of tax revenues for governments across the globe. In 2016, corporate tax revenues accounted for 13.3% of total tax revenues on average across the 88 jurisdictions for which data is available. This figure has increased from 12% in 2000. Corporate taxation is even more important in developing countries, comprising on average 15.3% of all tax revenues in Africa and 15.4% in Latin America & the Caribbean, compared to 9% in the OECD.

2.1.4. The rise of public discontent

Following the global financial crisis of 2008 and the subsequent cuts to public services across many parts of the world, there ensued a greater public interest in sources of government revenue. With an already well-established tax justice movement now able to explain the extreme tax avoidance taking place within high profile companies, there was an explosion of activity from journalists, politicians and protesters circa 2012. Bloomberg has noted 2011 as the year tax avoidance became a "hot-button issue" in the US[xiii]; whereas the BBC reported on the rise in "tax shaming" in 2013.[xiv]

A stream of data leaks and brave whistle-blowers ensured that the issues of tax evasion and avoidance remained headline issues year after year (see table 2.1).[7] For example, the Panama Papers was one of the biggest leaks of documents and largest collaborations of journalists in history. It revealed how politicians, celebrities, drug dealers, alleged arms traffickers, and the global elite, obscured their wealth (legally and illegally) and undertook questionable business deals through hard-to-trace companies and tax havens. Within days of publication, protesters hit the streets, politicians resigned, police raided offices and prosecutors launched investigations.[xv]

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[6] The effective tax rate would be lower still given the availability of tax incentives; for example, in connection with research and development expenditures and intellectual property income.

[7] With the International Consortium of Investigative Journalists at the centre of many of these ground-breaking investigations.

Table 2.1: Timeline of tax leaks scandals

Offshore Leaks	April 2013	2.5mn records from 170 countries
Lux Leaks	November 2014	28,000 documents from PwC Luxembourg
Swiss Leaks	February 2015	60,000 files from HSBC Switzerland
Panama Papers	April 2016	11.5mn files from law firm Mossack Fonseca
Bahamas Leaks	September 2016	1.5mn documents from the Bahamas Corporate Registry
Paradise Papers	November 2017	13.4mn files from offshore law firm Appleby
Mauritius Leaks	July 2019	200,000 records from Mauritius office of law firm Conyers Dill & Pearman
Luanda Leaks	January 2020	Business practices of Isabel dos Santos and Angolan losses

The provision of specific information on how particular companies, celebrities and politicians had been dodging taxes fuelled public anger and, in turn, enabled and pressured politicians across the world to take action. In 2013, the G20 tasked the OECD with leading a Base Erosion and Profit Shifting Project to tackle corporate tax planning strategies that exploit gaps in international rules to make profits 'disappear' or that shift profits to tax havens (as detailed in 3.1.1). This included a mandate for the OECD to produce a country-by-country reporting standard, and marked a crucial turning point in the work of tax justice campaigners, some ten years after the Tax Justice Network published the first model accounting standard.[xvi]

2.1.5. Civil society contributions and positioning

An understanding of the impact of corporate tax avoidance on countries in the Global South led development charities to be the first civil society organisations to develop formal critiques of corporate tax behaviour.[8] Oxfam International's June 2000 report 'Tax Havens: Releasing the Hidden Billions for Poverty Eradication' was one of the first of such reports in this area. Commentators have also pointed out that Oxfam was the only NGO to respond to the OECD's Harmful Tax Competition report, which was released in 1998 (see 3.1.1(a)).[xvii]

The launch of the Tax Justice Network (TJN) in 2003 was a seminal moment.[9] Its 2005 manifesto, 'Tax Us If You Can', laid the foundation for many of the tax campaigns that have since followed.[xviii] The work of TJN has since been augmented by regional bodies such as Tax Justice Africa, Tax Justice Europe and the FACT Coalition in the US, and new global bodies such as the Financial Transparency Coalition (who work on illicit financial flows), the international Commission for the Reform of International Corporate Taxation and the Global Alliance for Tax Justice.

In 2005, Christian Aid released 'The Shirts Off Their Backs: How Tax Policies Fleece the Poor' and in 2008 began campaigning for pCbCR.[xix] A 2011 discussion paper from Action Aid, 'Tax responsibility, the business case for making tax a corporate responsibility issue', is noteworthy as one of the first reports from campaigners to look at this issue through the lens of corporate social responsibility.[xx]

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[8] One notable exception was the emergence of Citizens for Tax Justice in the US in 1979.

[9] The Tax Justice Network is still a key actor on tax justice issues and strongly influential in defining campaign issues, targets, and policy content for the wider NGO community.

In 2015, Oxfam, Action Aid, and Christian Aid collaborated on the production of 'Getting to Good – Towards Responsible Corporate Tax Behaviour', in which their current positions on what corporate standards should be were codified. The Getting to Good report noted that there was "some very significant differences of opinion about what good corporate practice looks like", and that "two of these issue areas currently dominate the recommendations generated by all actor groups": tax planning practices, and public transparency and reporting.[xxi] The Getting to Good report's detailed recommendations are summarised below (table 2.2).

Table 2.2: Getting to Good recommendations

Tax planning practices	Business will make incremental changes to its structures and tax-related transactions to book less of its income, profits and gains in jurisdictions and legal entities where they attract low or no tax and in which related assets and activities are not located.
Public transparency and reporting	Business will seek to publish, in an open data format, information that enables stakeholders in every jurisdiction where it has a subsidiary, branch or tax residence to see how its taxable income, profits and gains are calculated and internationally distributed; and to understand all significant determinants of the tax charge on those profits.
Non-public disclosure	Business agrees that, in principle, it will make available any information within the group to revenue, judicial or law enforcement authorities in any jurisdiction where it operates.
Relationships with tax authorities	Business will progressively increase the transparency of its relations with the tax authority in every jurisdiction where it operates. It will seek to be treated as a taxpayer like any other, putting in place clear boundaries in any tax negotiation or dispute resolution to ensure that it does not use its economic or political power to obtain preferential or extra-statutory treatment in tax rulings or settlements.
Tax function management and governance	A business' tax operations will become a mechanism not simply for reducing tax liabilities while managing tax risk, but also for implementing responsible tax behaviours. This broader function will be implemented through tax policy, and the performance objectives and incentives of tax staff, governance and oversight measures.
Impact evaluation of tax policy and practice	Business will work to design and build internal systems to assess the impact of any significant tax-advantageous transaction or structure: on the tax charge to the company or group; on the revenue due to different governments; and, in line with the corporate responsibility to respect human rights, on the human rights of employees, customers and other stakeholders.
Tax lobbying/advocacy	A tax-responsible business is transparent in its advocacy to tax lawmakers and policy makers, and does not seek special access to tax policy making or law-making that is not accorded to other groups of taxpayers.
Tax incentives	A tax-responsible business seeks a tax-level playing field, and to be treated under a country's tax regime like any other, similar corporate taxpayer.

The Financial Accountability and Corporate Transparency (FACT) Coalition is a US-based alliance of more than 100 state, national, and international organizations working toward a "fair tax system that addresses the challenges of a global economy and promoting policies to combat the harmful impacts of corrupt financial practices". It was founded in 2011 and members include Friends of the Earth US, Global Witness, Oxfam America and Transparency International. Its stated goals are to:

- End the use of anonymous shell companies as vehicles for illicit activity.
- Strengthen, standardize and enforce anti-money laundering laws.

- Require greater transparency from multinational corporations to promote informed tax policy.
- Ensure that the US constructively engages in global financial transparency initiatives.
- Eliminate loopholes that allow corporations and individuals to offshore income and avoid paying their fair share of taxes.[xxii]

In April 2019, the FACT Coalition published 'Trending Towards Transparency: The Rise of Country-by-Country Reporting'. This noted: "the growing chorus of individuals and organizations speaking out on the value of tax transparency and, in particular, the public country-by-country reporting of certain financial information for multinational companies."[xxiii] Detailed recommendations were made on the data elements that should be disclosed, such as number of employees, total revenues, tangible assets, etc. Vodafone was singled out for praise (for publishing CbCR information in a yearly tax report from 2016); as were, to a lesser degree: BHP Billiton, Rio Tinto (which is said to have begun publishing tax and payment information in yearly reports from 2010) and Unilever.

Over the past two decades, civil society has rightly succeeded in broadening the debate around responsible tax conduct from one focused on a narrow legalistic view (is it possible within the boundaries of the law?) towards a discussion on ethical and moral behaviour (does it fall within the spirit of the law?). In much the same way that considerations of corporate environmental conduct have been extended. In consequence, institutional investors and asset managers are increasingly factoring in 'tax conduct' to their deliberations (see 4.2.1).

(a) Public country-by-country reporting

Civil society advocates, Richard Murphy and the Tax Justice Network, were key early proponents of the need for public CbC reporting.[xxiv] This is now a central ask of civil society organisations, as witnessed by the recent joint response to the OECD consultation on the review of country-by-country Reporting (BEPS Action 13).[xxv] It is considered that comprehensively implemented pCbCR would significantly increase corporate tax transparency and enable citizens worldwide to better establish if a business is paying the right amount of tax in the right place at the right time. It is proposed that requirements should apply to all large corporations[10], not just those with a minimum turnover of €750mn (the threshold for OECD tax authority private reporting) given 85-90% of the world's multinational corporations would not meet this threshold.[xxvi]

The European Parliament TAX3 Committee Public Scrutiny has commented that pCbCR is also useful for researchers, investigative journalists, investors and other stakeholders to properly assess risks, liabilities and opportunities to stimulate fair entrepreneurship.[xxvii] Furthermore, it was noted that the absence of pCbCR has a disproportionate impact on poorer countries, given their more limited capacity to participate in information exchange agreements (see 3.1.1).

(b) Unitary taxation and formulary apportionment

Tax justice campaigners have also long called for a unitary taxation system – whereby a multinational group would be approached as a single taxable unit, rather than the individual subsidiaries in different countries being treated as separate taxable entities. The G24 group of

[10] It is suggested that a better match would be the European Union's definition of "large undertaking" – i.e., exceed at least two of three criteria: balance sheet total €20mn; net turnover €40mn; 250 average number of employees.

developing countries are also increasingly in favour of the concept (see 3.1.1). 'Formulary apportionment' (see 2.2.3) would be used to allocate global profits between the different countries where the multinational has real economic activity, on the basis of formulas that seek to identify the location of the underlying drivers of profit. A Public Services International report argues unitary taxation would: "remove the incentive under the current rules for MNEs to create complex structures aiming to minimise tax by fragmenting their functions and assigning key activities such as management of risk, finance, and R&D to low-taxed entities".[xxviii]

There has been a mixed reaction to the partial incorporation of unitary taxation and formulary apportionment in the BEPS 2.0 Pillar One proposals for allocation of profits and new nexus rule (see 3.1.1(c)).

2.2. Differential approaches to corporate taxation across the world

Each country of the world has its own approach to tax. However, some broad, differential approaches have emerged over the last century.

2.2.1. The 'territorial' and 'worldwide' approaches

The 'territorial' approach to tax has grown to become the basis of most of the world's tax systems. It involves the taxation of domestic profit, but not foreign profit. So, for example, France would not tax profits earned overseas by France-resident corporations (on the basis that such foreign income would be taxed abroad, and to avoid double taxation).

By contrast, under a 'worldwide' approach, all profits (both domestic and foreign) are taxed by the host nation, albeit with tax reliefs in place to offset any foreign taxes paid. Typically, resident companies can defer tax on active profits earned by controlled foreign corporations until such a time that those profits are repatriated to the parent company. Excluding the US (see below), the eight largest economies that applied a worldwide tax system in 2017 were China, India, Brazil, South Korea, Mexico, Indonesia, Argentina, and Taiwan.[xxix]

Territorial and worldwide systems would produce similar outcomes if all countries had the same tax rates, and there was no time lag in the recognition of profits remitted from one jurisdiction to another. However, in a world where different countries have widely different corporate tax rates, the territorial system encourages multinational enterprises to shift real investment and reported profits from resident countries to low-tax jurisdictions.[xxx] The IMF has noted that: "The move toward territorial taxation in almost all advanced economies strengthens the case for some form of minimum taxation on foreign earnings."[xxxi]

The US previously operated a worldwide approach, but now has a hybrid territorial and worldwide system (see 3.2.5(f)). A recent analysis of 27 European OECD countries found that 19 employed a fully territorial tax system and exempted all foreign-sourced dividend and capital gains income from domestic taxation (e.g., Denmark, Netherlands, Spain and the UK), with the remaining eight countries only partially exempting such income from domestic taxation (e.g., France, Germany, Ireland and Italy). No European OECD country now operates a worldwide tax system.[xxxii] The UK did until 2009.

2.2.2. International accounting and reporting standards

There are two major approaches to financial accounting and reporting in operation across the world.

International Financial Reporting Standards (IFRS) are issued by the International Accounting Standards Board (IASB). They are the dominant global standard, and are used in more than 140 countries, including the majority of Europe, Sub-Saharan Africa and South America. IFRS standards state how particular types of transactions and other events should be reported in financial statements.[xxxiii] Noteworthy is IFRS 8, which sets out the stipulations on 'operating segments', which can be by line of business and/or broad geographical area (e.g., Asia-Pacific region).[11]

Some major economies use an alternative approach, based on bespoke generally accepted accounting principles (GAAP). These include China, India and the United States. In the United States, financial reporting practices are established by the Financial Accounting Standards Board (FASB). US GAAP refers to a common set of accepted accounting principles, standards, and procedures that companies and their accountants must follow when they compile US financial statements. In December 2019, FASB issued an update on Income Taxes reporting (Topic 740), and this includes a welcome proposal for business to disaggregate their income taxes cash paid (as well as their income tax accounting expense) between federal, state and foreign taxes. Less welcome is the failure to advance public CbC reporting of 'foreign' activity.[xxxiv]

There are many differences between these accounting approaches. One is that GAAP systems (e.g., US GAAP) are rules-based, whilst IFRS is principles-based.[12] Another is that some GAAPs are still based on historical cost accounting, whilst IFRS and most GAAPs are based on what are called 'mark-to-market' principles that provide considerably more subjectivity to companies in their corporate reporting.[13]

With regards to tax disclosures, there can be significant differences between the two approaches. For example, since 2007, SEC registrants in the United States have been required to disclose estimates of their uncertain tax benefits, which are essentially estimates of tax positions that a business has taken with tax authorities that might suffer a better than evens chance of being overturned if and when they are audited. Analogous IFRS requirements (under IFRIC 23) are only now being implemented, for fiscal years beginning after January 2019, in countries such as the UK.[xxxv]

2.2.3. Formulary Apportionment

Under formulary apportionment, the accounts of all company affiliates within a recognised group are consolidated to generate a unitary tax base, which can then be apportioned across jurisdictions on a formulaic basis (hence the name). This is most commonly used at present in subnational situations to allocate income between sub-federal states: most notably in Canada, Germany, Japan, and the US.[xxxvi]

In Canada, the unitary base is apportioned across provinces using a formula based on payroll and sales, with special weights or formulae applying to certain sectors (such as insurance, banking,

[11] Note: this does not stipulate individual country-by-country reporting; with the IASB still opposed to the idea.

[12] There are pros and cons to each. The broad guidelines of principles-based accounting can be practical in a variety of circumstances and encourage narrative explanations. Conversely, rules-based accounting standardises financial reporting (useful for investors) and can reduce the possibility of lawsuits.

[13] The shift away from historical accounting is not without its critics. The 'fair value' process allows managers to pull forward anticipated profits and unrealised gains, and write them up as current surpluses. It is behind a string of accounting scandals involving overstatements of profit, such as with the UK supermarket chain Tesco.

and transportation). Provinces retain autonomy to apply their own credits to the apportioned tax base.

In the US, states can choose different weights for assets, payroll, and sales; and these may vary by sector; Alaska, for instance, uses an origin-based sales factor for extractive industries. A first common formula apportionment, known as the Massachusetts formula, was introduced in 1933. It was based on three equally weighted factors, namely payroll, sales and tangible assets. However, in recent years several states have adopted formulas with a larger proportion of sales in an effort to promote higher employment.[xxxvii]

Many civil society campaign groups would like to see formulary apportionment used much more, especially at a regional and global level (see 2.2.3).[14] This has been embraced, to a limited degree, by the BEPS project (see 3.1.1) in relation to residual profit allocation (as opposed to routine profits). The EU sought to embrace the idea with a proposal for a Common Consolidated Corporate Tax Base (CCCTB)[15] in 2016; however, this did not progress as unanimity was needed across all Member States for it to advance.[xxxviii] It was envisaged that EU-wide taxable profit would be apportioned across Member States by three equally-weighted factors: assets, sales by destination and labour (in turn equally weighting payroll and employees).

[14] For example, Worldwide formula apportionment has also been proposed by the Independent Commission for the Reform of International Corporate Taxation (2018)

[15] Companies would file one tax return for all their EU activities. The consolidated taxable profits would be shared between the Member States in which the group is active, using an apportionment formula. Each Member State would then tax its share of the profits at its own national tax rate.

3. Response from multilateral agencies and national governments

3.1. Multilateral responses

The key multilateral institutions driving tax reform have been the European Union, the Organisation for Economic Co-operation and Development (OECD) and the G20, supplemented by the UN and others – as described below.

However, it should be noted that legitimacy of the OECD and G20 to lead is questioned in many quarters. For example, in 2016, Ecuador proposed the creation of a new UN-led global tax regulator.[xxxix] A position that is now shared by the Group of 77, a negotiating body representing over 130 developing countries.[xl]

3.1.1. OECD / G20 and BEPS Project

(a) Early years

For much of its early history, the OECD and other multilateral agencies concentrated their effort on ensuring relief from double taxation was in place (as opposed to making sure that double non-taxation does not take place). But in April 1998, the OECD published 'Harmful Tax Competition: An Emerging Global Issue'.[xli] The report was a radical departure (in terms of tone and substance) from anything the OECD had previously advocated in terms of challenging tax abuses. It contained 19 recommendations, including the threat of sanctions against tax havens if they failed to collect and share information upon request about individuals and corporations attempting to evade or avoid income taxes. It also set criteria for the legitimacy of claims about corporate location. A firm could claim location in a tax haven only if it had 'substantial' activity there.[xlii]

However, the proposals met significant resistance (most particularly from the US) and the project was neutered by vested interests within a few short years. It took the global financial crisis of 2008 and the following public uproar over offshore tax evasion and corporate aggressive tax planning scandals to give rise to the conditions for unprecedented international cooperation on tax information exchange and co-ordination on corporate tax reforms.

(b) BEPS 1.0

In 2012, the G20 agreed that co-ordinated international action was required to tackle corporate tax planning strategies that exploit gaps and mismatches in tax rules to make profits 'disappear' for tax purposes or that shift profits to locations where there is little or no real activity but the taxes are low. The OCED[16] was subsequently tasked with leading a Base Erosion and Profit Shifting Project (BEPS).[xliii] In September 2013, a BEPS Action Plan[xliv] was endorsed at the G20 meeting of heads of government: this set out 15 "action" items that had varying degrees of output

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[16] Note: the OECD has 36 member countries and has been central to managing the international architecture and rules around tax since its inception in 1961. Questions of legitimacy have rightly been posed. For example, in 2014, India stated that: "the United Nations needs to take a position that protects the sovereign taxation rights of the developing countries and LICs and prevent the international taxation rules from getting unjustly skewed in favour of the developed countries." See https://www.un.org/esa/ffd/wp-content/uploads/2014/10/ta-BEPS-CommentsIndia.pdf

specificity and an aggressive time line for completion. The action items can be very generally grouped as follows[xlv]:

- rules for the digital economy (Action 1)
- prevention of double non-taxation (Actions 2, 3, 4, 5, 6)
- alignment of economic activity and taxation (Actions 7, 8, 9, 10)
- tax transparency and dispute resolution (Actions 11, 12, 13, 14)
- efficient and effective implementation (Action 15)

In 2015, the OECD presented the final package of measures for a "comprehensive, coherent and co-ordinated reform of the international tax rules" to the G20 Finance Ministers[xlvi]. The BEPS 2015 Final Reports Actions are summarised in table 3.1.[xlvii]

Table 3.1: BEPS 2015 Final Reports Actions

Action 1	Addressing the tax challenges of the digital economy
Action 2	Neutralising the effects of hybrid mismatch arrangements
Action 3	Designing effective Controlled Foreign Company rules
Action 4	Limiting base erosion involving interest deductions and other financial payments
Action 5	Countering harmful tax practices more effectively, taking into account transparency and substance
Action 6	Preventing the granting of treaty benefits in inappropriate circumstances
Action 7	Preventing the artificial avoidance of Permanent Establishment status
Action 8-10	Aligning transfer pricing outcomes with value creation
Action 11	Measuring and monitoring BEPS
Action 12	Mandatory disclosure rules
Action 13	Guidance on transfer pricing documentation and country-by-country reporting
Action 14	Making dispute resolution mechanisms more effective
Action 15	Developing a multilateral instrument to modify bilateral tax treaties

From 2016, under the umbrella of the Inclusive Framework for BEPS, participation was extended to all countries willing to accept the minimum commitments. As of February 2020, there were 137 members, including a large majority of non-OECD and non-G20 countries (although many lacked the resources to participate effectively).[xlviii]

The core elements of the BEPS package are the four minimum standards, with progress reported in February 2020 as follows[xlix]:

- Combating harmful tax practices. Over 285 tax regimes reviewed – virtually all harmful regimes amended or abolished.
- Countering tax treaty abuse. BEPS Multilateral Instrument signed by 94 jurisdictions and covering over 1,600 tax treaties.

- Country-by-country reporting17. Almost 85 jurisdictions introduced country-by-country reporting filing requirements, and there are now almost 2,500 bilateral relationships in place for the exchange of CbCRs among jurisdictions, with the first automatic exchanges of CbC reports taking place in June 2018. [18]
- Improving dispute resolution. 60 jurisdictions have been reviewed and 1,315 recommendation have been made.

However, it needs to be noted that the OECD has separately reported (in January 2020) that many jurisdictions are not meaningfully part of the CbC information exchange system, with many 'participants' having no access to CbC reports via the system. Of the 119 UN Member States participating in the CBC exchange system, only 57 have such access.[l] Significantly, only three African states can currently receive CBC reports: Mauritius, Seychelles and South Africa. This is one reason why so many NGOs continue with calls for public CbCR.

(c) BEPS 2.0

Notwithstanding the considerable progress advanced by the BEPS Project, much base erosion and profit shifting remained untouched. For example, a recent Fair Tax Mark analysis of the Silicon Six[19] concluded that there is a significant difference between the cash taxes paid and both the expected headline rate of tax and, more significantly, the reported current tax provisions. Over the period 2010 to 2019, the gap between the current tax provisions and the cash taxes actually paid was $100.2bn.[li]

In 2018, in response to a proliferation of digital services tax measures and increased developing country influence, a potentially radical new phase was initiated (sometimes referred to as 'BEPS 2.0').

In June 2019, the G20 endorsed[lii] a Programme of Work that sought to make fresh progress under the following two pillars:

- Pillar One focuses on the allocation of taxing rights, and seeks to undertake a coherent and concurrent review of the profit allocation[20] and nexus rules.
- Pillar Two focuses on the remaining BEPS issues and seeks to develop rules that would provide jurisdictions with a right to 'tax back' where other jurisdictions have not exercised their primary taxing rights or the payment is otherwise subject to low levels of effective taxation.

The work programme is being undertaken under the umbrella of BEPS Project Action 1 (Addressing the Tax Challenges of Digitalisation of the Economy). However, the emerging proposals could potentially have a much wider and deeper impact by capturing businesses beyond those with a highly digitalized business model. As such, the political challenges are at

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[17] Note: the public disclosure of CbCR is a requirement of many 'voluntary' responsible tax initiatives and a key demand of civil society campaign groups such as the Tax Justice Network.

[18] The IMF has noted (2019) that the automatic exchange of information is proving to be a key tool in the tackling of both tax avoidance and evasion, citing evidence that it has reduced country-specific deposits in low-tax jurisdictions by 30-40 percent. See https://www.imf.org/en/Publications/Policy-Papers/Issues/2019/03/08/Corporate-Taxation-in-the-Global-Economy-46650

[19] Facebook, Apple, Amazon, Netflix, Google and Microsoft

[20] Note: loss allocation has not been afforded any real attention to date, and this may become a highly material issue in connection with the year 2020 given the impact of the Covid-19 crisis.

least as great as the technical questions that need to be addressed, especially given the desire to reach a consensual solution by the end of 2020. For example, the international law firm Clifford Chance has observed: "The almost inevitable consequence of the proposals is a redistribution of taxing rights from the home of large corporations (particularly the US) to the "market" jurisdictions where they make their sales (the rest of the world). It is not obvious why the US would agree to this."[liii] The OECD suggests that the combined effect of Pillars One and Two would lead to a significant increase in global tax revenues (up to $100bn annually[21]) as well as a redistribution of taxing rights to market jurisdictions.[liv] Ireland, a major recipient of profit shifting, has estimated the measures could cost it €2bn per annum in lost corporation tax revenue.[lv] However, developing countries (via the G24 Working Group on tax policy and international tax cooperation[22]) have persuasively asserted that the OECD's proposals do not go far enough, especially in connection with the attribution of profit to where value is created.[lvi] The international Commission for the Reform of International Corporate Taxation (ICRICT) has pointed out that the $100bn of revenue gains are at the lower end of the OECD's own estimate of corporate tax avoidance, of $100 - 240bn.[lvii]

Pillar One – allocation of profits and new nexus rule. In October 2019, the OECD Secretariat issued a proposal for a 'Unified Approach' under Pillar One.[lviii] The reallocation of taxing rights was advocated over 'certain defined business activities', with more profit for the 'market jurisdiction' where customers and users are located. Previous proposals from the OECD, EU and others had focused on the concepts of 'user participation', 'marketing intangibles' and 'significant economic presence'. Those were now being drawn together in a single 'Unified Approach'. The Director of the Tax Justice Network initially hailed it as: "a historic day for unitary taxation"[lix]; although the positivity had softened considerably by January, when the latest proposals were described as: "a pyrrhic victory for the OECD".[lx]

The proposal for the reallocation of taxing rights to apply to "non-routine" profits alone is regarded by civil society campaign groups as being problematic, as is the focus on sales in the approach to 'market jurisdiction' (which neglects the import of the situation of employees).[lxi] Three amounts of taxable profit are identified that should be allocated to the market jurisdiction:

- Amount A. This reallocation recognises that the profits from sustained and remote participation of a business in the economy of a market jurisdiction needs to be taxed in that jurisdiction. The amount of this reallocation of profits would be determined through a formula and based on the consolidated financial accounts of MNE groups, with no connection to the current transfer pricing principles. This focuses on the 'non-routine' profit of large MNEs[23] that provide automated digital services (e.g., search engines, social media platforms and cloud computing services) and/or sell goods or services to consumers (e.g., online retailers of everything from personal computing products to

[21] Revenue gains would be broadly similar across high, middle and low-income economies, as a share of corporate tax revenues.

[22] G24 work led by India, Colombia and Ghana. Calls for significant economic presence to be incorporated in the existing nexus rule contained in Article 5. They are also supportive of more advanced unitary taxation propose a 'fractional apportionment' approach.

[23] Suggested that could, for instance, be the same as for CbCR reporting to tax authorities and c.€750m of gross revenue.

clothes, foods and automobiles). Extractive industries and the financial services sector are likely to be exempted.[24]

- Amount B. A fixed remuneration based on the ALP for defined baseline distribution and marketing functions that take place in the market jurisdiction.
- Amount C. Any additional profit where in-country functions exceed the baseline activity compensated under Amount B.

It needs to be noted, however, that several critical policy issues remain unresolved and these could negate the realisation of a consensus-based solution. These include the United States demand for an alternative global 'safe harbour' system, where taxpayers would elect whether to be subject to the requirements of Pillar One (ie, effectively a tax opt-out for MNEs)[25]; as well as the scope of any binding dispute prevention and resolution mechanisms.

Pillar Two – GLoBE. In November 2019, the OECD released the Pillar Two Global Anti-Base Erosion proposal (or 'GLoBE' proposal), which focuses on the remaining BEPS risks and seeks to develop rules that would provide jurisdictions with a right to 'tax back' where other jurisdictions have not exercised their primary taxing rights or the payment is otherwise subject to low levels of effective taxation.[lxii] An income inclusion rule would operate as a minimum tax by requiring a shareholder in a corporation to bring into account a proportionate share of the income of that corporation if that income was not subject to an effective rate of tax above a minimum rate. Its effect would be to protect the tax base of the parent jurisdiction as well as other jurisdictions where the group operates by reducing the incentive to put in place intra-group financing, such as thin capitalisation, or other planning structures that shift profit to those group entities that are taxed at an effective rate of tax below the minimum rate. The actual rate to be applied under the GloBE proposal has not yet been specified[26], but indications have been provided that it might align to the US' global intangible low taxed income (GILTI) provisions. This would prove problematic for many civil society campaign groups given the US top-rate can be as low as 12.5%.

(d) 2020 and beyond

Further iterations of the Pillar One and Two proposals were expected in July 2020 (but now delayed to October 2020 because of the Covid-19 crisis), with a view to realising a consensus-based solution by end 2020. The legitimacy of the OECD to lead considerations remains contentious. Several possible outcomes present themselves:

- OECD talks break down completely and unilateral measures (such as digital services taxes) proliferate and trade disputes ensue.
- OECD proposals generally agreed, without the approval of the US (with the question as to whether US corporations are captured abroad, or protected by existing bilateral treaties, open to test)

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[24] And many other sectors are lobbying for additional exemptions, such as retail estate investment trusts, the shipping industry and the universities sector.

[25] As set out in a letter (3.12.2019) from the US Treasury Secretary to the OECD Secretary-General. See http://www.oecd.org/tax/Letter-from-OECD-Secretary-General-Angel-Gurria-for-the-attention-of-The-Honorable-Steven-T-Mnuchin-Secretary-of-the-Treasury-United-States.pdf

[26] Neither has the crucial issue of the tax base.

- OECD proposals realise consensus, but takes a number of years for treaties to be amended and implemented.

3.1.2. The UN Committee of Experts on International Cooperation in Tax Matters

The UN Committee of Experts on International Cooperation in Tax Matters is a subsidiary body of the Economic and Social Council. It provides a framework for dialogue to enhance and promote international tax cooperation, and gives special attention to developing countries and countries with economies in transition.[lxiii]

Throughout 2019, the G77 (a coalition of 134 developing nations) has continued to call for the UN expert committee to be upgraded to an intergovernmental UN tax body, with statements such as:

"We recognize with concern that there is still no single global inclusive forum for international tax cooperation at the intergovernmental level, and in that regard, we reiterate the need to fully upgrade the Committee of Experts in Tax Matters to an intergovernmental body with experts representing their respective governments."[lxiv] There have been calls for: "greater public availability of aggregate data on offshore financial assets and the taxation of Multinational enterprises to strengthen tax transparency".

3.1.3. The Platform for Collaboration on Tax

The Platform is a joint initiative of the IMF, the OECD, the UN and the World Bank Group. It was launched in April 2016 and is designed to intensify co-operation on tax issues. Amid the growing importance of taxation in the debate to achieve the UN Sustainable Development Goals, a major aim of the Platform is to better frame technical advice to developing countries as they seek both more capacity support and greater influence in designing international rules.[lxv] It is managed by the OECD. The B Team Responsible Tax Principles (see 4.1.7) were launched ahead of the first global conference of the Platform in 2018.

3.1.4. The Financial Action Task Force

The Financial Action Task Force (FATF) was established by the G7 group of nations in 1989, initially to examine and develop measures to combat money laundering. It has since expanded its mandate and now seeks to: "set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system." The FATF currently comprises 37 member jurisdictions and 2 regional organisations, representing most major financial centres in all parts of the globe.[lxvi]

The FATF does not "address at all issues related to low tax jurisdiction or tax competition", however, in 2012 its standards were upgraded to include tax crimes as predicate offenses to money laundering. This arose from concerns that 'voluntary' tax compliance programmes (that sought to increase tax honesty and compliance, and/or facilitate asset repatriation), could potentially have a negative impact on the effectiveness of Anti-Money Laundering measures. For example, programmes that exempted financial institutions from the requirements to conduct full customer due diligence on taxpayers and to verify that the assets come from a legitimate source.[lxvii]

3.1.5. The Addis Tax Initiative

The Addis Tax Initiative (ATI) was initiated in 2015 by the governments of Germany, the Netherlands, the United Kingdom and the United States during the Third International Conference on Financing for Development in Addis Ababa, Ethiopia. The ATI is a multi-stakeholder partnership that aims to enhance tax collection in developing countries. Committing to the Addis Tax Initiative "fosters partner countries' efforts to increase reliance on domestic revenue to fund their development agenda and meet the Sustainable Development Goals by 2030."[lxviii]

Members and commitments include:

- 25 'ATI Partner Countries', such as Afghanistan, Indonesia, Nepal and Uganda – who commit to stepping up domestic revenue mobilisation as a key requirement for attaining the SDGs and spurring inclusive development, and commit to working together to tackle complex cross-border tax issues and to improving taxation and management of revenue from natural resources.
- 20 'ATI development partners', such as Canada, Denmark, France and South Korea – who commit to collectively doubling technical development cooperation to domestic revenue mobilisation by 2020.
- 16 'Supporting organisations', such as the Asian Development Bank (ADB), Bill and Melinda Gates Foundation (BMGF), Oxfam International and the World Bank.

An evaluation released in 2019, reported that it is:" still too early to measure many of the ATI's potential impacts. Furthermore, many observed changes, such as increases in ODA or improvements in domestic revenue mobilisation, cannot be directly attributed to ATI activities."[lxix]

3.2. National and Regional developments

The emergence of the BEPS Action Plan in 2015 has been a significant driver of legislative change in recent years, albeit whilst leaving big problematic areas unattended (as evidenced by the need for BEPS 2.0 to address issues such as continued profit shifting to low tax jurisdictions).

In parallel, over the last decade, national governments and tax authorities the world over have become generally much less accepting of aggressive tax avoidance. The EU has deployed arguments of illegal state aid (for example Ireland's treatment of Apple, Luxembourg's treatment of Fiat and Spain's treatment of Banco Santander)[27], while the US courts are processing significant cases brought to them by the Internal Revenue Service (for example, the Altera case and the treatment of stock options).

Outside of the OECD's work, several significant national initiatives have emerged to encourage more responsible tax conduct by corporations, as described below. The Extractive Industries Transparency Initiative (EITI) was an early positive influencer of legislation the world over (including for tax transparency and beneficial ownership disclosure) and is the start point for considerations.

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[27] The EU is not uniformly successful when it brings these State Aid cases. For example, in September 2019, the Court of Justice of the European Union ruled in favour of the Netherlands and its treatment of Starbucks.

3.2.1. Extractive Industries Transparency Initiative

The EITI (Extractive Industries Transparency Initiative) describes itself as: "the global standard to promote the open and accountable management of oil, gas and mineral resources."[lxx] It emerged from the activities of civil society organisations such as Global Witness, Human Rights Watch, Oxfam America and Publish What You Pay, with the EITI Principles launched in 2003 at a meeting convened by the UK Government.[lxxi] A Standard was formalised in 2013, and reviewed in 2016 (when it began requiring public CbCR by corporations) and 2019.

The Standard requires: "the disclosure of information along the extractive industry value chain from the point of extraction, to how revenues make their way through the government, and how they benefit the public." Countries who want to improve the way they manage their natural resources can apply to become an implementing country. Such countries must then report on:

- Revenues from the extractive industry, and
- Extractive companies involved in the exploration and production of oil, natural gas and minerals must disclose payments to governments (with corporate disclosure inclusive of profit, taxes, production entitlement, dividends, bonuses, licence fees and other significant payments).

As at February 2020, 53 countries had committed to implement the standard[lxxii] and over 60 companies are listed as being 'Supporting Companies'.[lxxiii] Among the 'expectations' of supporting companies are to:

- Publicly disclose taxes and payments. Where companies choose not to, they should state why.
- Ensure comprehensive disclosure of taxes and payments made to all EITI implementing countries.
- In accordance with EITI beneficial ownership requirements[lxxiv], publicly disclose beneficial owners.

The fact that these disclosures have not brought about the problems that some companies previously claimed has played an important role in advancing transparency arguments more widely. The EITI noted in 2017 how 22 countries had already decided to establish public beneficial ownership registries with EITI assistance.[lxxv] The academics Van Astine and Smith (2018) contend that: "while the EITI was not originally designed or intended to be a tax integrity initiative, there are a number of areas of synergy between the EITI's evolving mandate and debates on fair taxation, including changing regulatory regimes, country-by-country reporting, unitary taxation and registers of beneficial ownership."[lxxvi]

It needs to be noted, however, that not all EITI Supporting Companies are without blemish. For example, Glencore has the distinction of being the first company to face a court battle over the Paradise Papers leaks. Moreover, the Australian Taxation Office is challenging Glencore on its international structure, and the manner in which Cobar Management sold the copper concentrate produced in New South Wales to its Swiss parent company Glencore International AG, which it contends was not in line with the arm's length principle.[lxxvii]

3.2.2. General anti-avoidance rule (GAAR)

A general anti-avoidance rule (GAAR) gives a country's taxing authority a broad power to target transactions that have no substantial purpose other than achieving a tax benefit. GAAR rules are increasingly common the world over and its presence and impact is often overlooked.

This includes Australia, Canada, China, India, New Zealand, South Africa and the UK. The European Union's Anti-Tax Avoidance Directive (see 3.2.3(e)) requires Member States to adopt a common GAAR.

Research has found that the enactment of a GAAR within a country leads to an economically significant increase in aggregate tax collections and an economically significant decrease in firm-level tax avoidance. This is particularly the case for firms with higher levels of tax avoidance, and for countries with lower levels of tax enforcement prior to the implementation of a GAAR, and for countries where the burden of proof lies, at least partially, with the taxpayer.[lxxviii]

3.2.3. European Union

The European Commission and European Parliament are generally regarded as being progressive on tax justice, although the European Union is often held back by Members States that are low tax jurisdictions (such as Luxembourg and Ireland). Crucially, there is no qualified majority voting on tax issues (with unanimity required), which makes the progression of more radical proposals all but impossible.

(a) EU Accounting and Transparency Directives

In 2013, an update to the EU Accounting and Transparency Directives saw country-by-country reporting mandated for large firms in the oil, gas, mining and forestry[28] sectors, where payments to governments exceeded €100,000.[29] This applies to all limited liability companies registered in the European Economic Area.[30] These came into force in 2016, with the first reports lodged in that year. It was later amended to expand the scope of these requirements to all extractive or logging companies that are listed on stock exchanges within the EU, whether or not they are incorporated in the EU. Payments that must be reported, on both a country-by-country basis, include: taxes on income, production or profits; royalties, dividends, licence fees and rental fees; other payments, such as discovery and production bonuses.

A 2018 EU-commissioned review of CbC reporting requirements for extractive and logging industries found: "there is no evidence of widespread non-compliance". However, it also found that: "there is limited monitoring and oversight of the different national authorities on the compliance with the reporting requirements. Therefore, issues with the reporting requirements were identified mostly through the efforts of civil society organisations, focused on transparency and accountability, and of academics."[lxxix] It is noteworthy that whilst EITI reports are usually published two years after connected payments, EU CbCR reports are published annually.

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[28] Note: is focused on primary forests and does not capture sub-contracting, which is common in this sector. As a consequence, the rate of reporting is very low.

[29] Directive 2013/34/EU1 ('the Accounting Directive') introduced in 2013 country-by-country reporting requirements for logging and extractive industries of their payments to governments. Directive 2013/50/EU2 ('the Transparency Directive') introduced similar reporting requirements for companies from logging and extractive industries with securities admitted to trading on a regulated market.

[30] European Union (EU) plus Iceland, Liechtenstein and Norway.

Crucially, it noted that: "There is no evidence that competitors from third countries benefit from substantial competitive advantages by not being required to report on payments to governments."

It went on to note: "The UK centralised repository for disclosures established by Companies House is a best practice example as it provides central free access to all the CbCR reports of UK-registered companies within the scope of the legislation, and the payments data are provided in XML format that outputs as a CSV spreadsheet, allowing the extraction and use of data. Some companies also provide additional methodological and contextual information in a separate PDF file." The EU's requirements are said to have influenced the EITI with the adoption of project-by-project reporting.

(b) EU Capital Requirements Directive IV

High levels of banking activity in a country with low levels of real economic activity underscore the disconnect between the weight of financial activities and real economic activities. An overview of the places where financial institutions are generating financial flows and those where taxpayers are undertaking real activities can provide an indication of tax avoidance and tax evasion activities.

In the EU, Article 89 of the Capital Requirements Directive (Directive 2013/36/EU or 'CRD IV') provides for country-by-country reporting by financial institutions, such as banks, building societies, other credit institutions and certain investment firms. CRD IV became law in 2013, with implementation by Member States required by 1 January 2014, and the first reporting from 30 June 2014.[lxxx]

Article 89 requires institutions to disclose (by Member State and by third country in which it has an establishment[31]): turnover, profit, corporate income tax, public subsidies, number of employees, and the geographical location of activities. Information is to be audited annually, as standard. With reference to tax, there is no guidance as to whether it should be disclosed on the basis of cash tax paid or on an accounting basis (or whether inclusive of deferred tax). The UK requires the former, and Germany the latter.[lxxxi] Other areas are also open to interpretation by Member States, such as the threshold for reporting.[32]

Significantly, research has found that public CbC reporting can discourage large-scale corporate tax avoidance by multinational corporations and that it has not negatively impacted upon the competitiveness of reporting entities. More specifically, multinational banks increased their tax expense (effective tax rate) relative to other banks unaffected by the public CbC reporting mandate, and the response was stronger for those banks that had previously undertaken significant activity in tax havens.[lxxxii]

This legislation captures businesses such as BBVA (listed as an exemplar of public CbC reporting in CSR Europe's blueprint, see 4.1.6) and Leeds Building Society (a Fair Tax Mark accredited business, see 4.1.1) – although both have gone further than the disclosures required in the Directive.

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[31] Taken to mean subsidiaries and branches.

[32] This may in part be due to the transparency provisions being added to the Directive very late on in the development process. So much so that they came into effect ahead of the EU's requirements for the extractive industries.

(c) All sector public country-by-country reporting

The European Union is currently considering a proposal for public CbC reporting for all sectors.[lxxxiii] This proposal would introduce pCbCR to all sectors, by requiring the largest MNCs to publish such reports for all EU countries as well as third country jurisdictions which do not live up to criteria regarding good tax governance. The European Commission tabled the proposal in 2016 and the European Parliament adopted it (with amendments) in 2017, calling for full disaggregation of data for all jurisdictions[lxxxiv]. However, a lack of majority support among EU Member States has stalled the adoption of a final position and prevented the advancement of final rules.

Most recently in November 2019, when Austria, Croatia, Cyprus, Czech Republic, Estonia, Hungary, Ireland, Latvia, Luxembourg, Malta, Slovenia and Sweden voted against the advancement of pCbCR proposals at the EU Competitiveness Council (COMPET).[33] Belgium, Bulgaria, Denmark, France, Greece, Italy, Lithuania, Netherlands, Poland, Portugal, Romania, Slovakia and Spain voted in support. Germany[34], Finland (as presidency holder) and the UK abstained.[lxxxv]

(d) Directive on Administrative Cooperation in the Field of Taxation

The Directive (2011/16/EU) exists "to protect the financial interests of the Member States and the EU, to strengthen the fight against cross-border tax fraud, evasion and avoidance and to ensure that profits are taxed where they are made" by establishing rules and procedures for cross-border exchange of information.[lxxxvi]

The Directive has been amended five times since its introduction in 2011. Significantly, on 25 May 2016, the EU Economic and Financial Affairs Council adopted amendments that required Member States to implement CbCR in accordance with BEPS Action 13 and which facilitate the automatic exchange of CbCR information between the Member States.

The cross-border tax arrangements requirements (known as DAC6) have been in force since 25 June 2018, with the rules becoming fully applicable on 1 July 2020.

(e) Anti-Tax Avoidance Directive

The Anti-Tax Avoidance Directive sets out five key anti-avoidance measures, which all Member States should apply, to counteract some of the most common types of aggressive tax planning. Three of the agreed measures came into force on 1st January 2019.[lxxxvii] These are:

- A Controlled Foreign Company (CFC) rule. To deter profit shifting to no or low tax countries.
- Interest limitation. To limit the amount of net interest that a company can deduct from its taxable income, based on a fixed ratio of its earnings.
- A General Anti-Abuse Rule. To counter-act aggressive tax planning when other rules do not apply.

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[33] Currently, consideration of pCbCR is a matter for COMPET. Many of the Member States opposing pCbCR wish to see it considered at ECOFIN Council instead, along with other measures of tax law. Here, proposals require unanimous approval, not a qualified majority.

[34] The abstention of Germany was viewed positively by many tax justice civil society groups given its recent opposition.

The last two rules came into force on 1st January 2020[lxxxviii]:

- Hybrid mismatch rules. To prevent companies from exploiting mismatches in the tax laws of two different EU countries.
- Exit taxation rules. To ensure that gains on assets such as intellectual property moved from a Member State's territory become taxable in that country.

Looking ahead, in April 2020, the European Commission closed consultation on an 'Action Plan to fight tax evasion and make taxation simple and easy', with a view to adoption in the second quarter 2020. This action plan will present key initiatives to: tackle tax fraud; make compliance easier; and, take advantage of the latest developments in technology and digitalisation.[lxxxix]

(f) Anti-Money Laundering Directive

The EU's fifth Anti-Money Laundering (AML) Directive[35] requires all Member States to set up a centralised register of the beneficial owners of companies, and to make this information available to the public. Countries were given more than two years to implement these changes, with a deadline of 10th January 2020. However, in March 2020, Global Witness analysis found that:

- 17 of 27 Member States do not yet have a centralised register of the beneficial owners of companies which is available to the public.
- 5 of 27 Member States have a centralised register of the beneficial owners of companies which is available to the public but with significant restrictions, such as setting up a paywall (Austria, Estonia, Germany, Ireland and Poland).
- 5 of 27 Member States have implemented a public register which is free to access (Bulgaria, Denmark, Latvia, Luxembourg and Slovenia – together with the UK).[xc]

With the 17 laggards, they noted that:

- Czechia, Finland, France, Portugal, Romania and Spain have a register but only make it available to people that can demonstrate legitimate interest or purpose of use.
- Belgium, Croatia, Portugal and Sweden make the register available only to citizens or residents of a few European countries.
- Cyprus, Greece, Hungary, Italy, Lithuania, Malta, Netherlands and Slovakia either do not appear to have any beneficial ownership register as yet or have one, but not one that is available to members of the public with a legitimate interest.

Unless such data can be readily accessed, together with the accounts of the entities to which the ownership refers, progress towards accountability on tax issues will be limited. Resource-rich Africa, for example, is the world's second fastest-growing regional economy; yet secrecy jurisdictions contribute to as much as US$50 billion in national assets being drained every year.[xci]

(g) Proposed actions to address avoidance in the digital economy

In March 2018, the European Commission proposed a new pan-EU Digital Services Tax, that would apply a 3% tax on the gross revenues of a wide range of digital activity.[36] It also introduced

[35] The fifth update was a response to the revelations contained in the Panama Papers leak of 2016.

[36] The focus on income and not profit was deliberate, as it would arguably not breach (and require the re-negotiation of) the many bilateral tax treaties in place between Member States and other countries (for example, the US).

the idea of a virtual 'permanent establishment' whereby companies become taxable in jurisdictions where they have users – even if there is no significant employment or tangible assets. However, within the year, the proposal was 'blocked' by countries such as Ireland and Sweden.[xcii] This led several Member States to progress their own digital services taxes (see 3.2.4(a)).

3.2.4. Unilateral action by European states

(a) Digital Services Taxes

Because the 2015 BEPS Action Plan failed to deal with systematic tax avoidance by big technology companies such as Facebook and Google, a number of countries have introduced new digital revenue taxes unilaterally to try to capture some of the anticipated lost revenue (and to placate public anger). These measures are usually said to be temporary and will end as and when the OECD's BEPS 2.0 solutions lead to a more effective taxation of digital income and profits. There is strong public demand for such measures, with surveys showing that 80% of citizens from Germany, France, Austria, the Netherlands, Sweden and Denmark are supportive of digital services taxes.[xciii]

In July 2019, France announced a 3% tax on revenues deemed to have been generated in France by digital companies and which make annual supplies of taxable services of more than €25mn in France and €750mn worldwide.[xciv] About 30, mostly US-based, companies are expected to be hit with the new tax, which is expected to raise between €400-500mn per annum. However, under the threat of sanctions from the US, in January 2020, France announced that it would not collect any due monies in 2020. Instead, bills would accrue and if there was no deal at the OECD, companies would then have to pay. If there was a global agreement, and companies had been charged too much either in 2019 or in 2020, the French government would offer tax credits to make up the difference.[xcv]

Italy's 3% Digital Services Tax progressed in January 2020, and will look to raise c. €750mn per annum.[xcvi] Austria (5% tax on digital advertising revenue) and Turkey (7.5% tax on online services) implemented taxes from March 2020.[xcvii] The UK's 2% Digital Services Tax went into effect in April 2020, and applies to search engines, social media services and online marketplaces. It will raise some £300-400mn per annum.[xcviii] As at March 2020, digital taxes are also reported to be progressing in Belgium (3%), the Czech Republic (7%) and Spain (3%).[xcix]

(b) Tax Strategy disclosure

The UK Finance Act (2016) requires all UK companies with a UK turnover in excess of £200mn and/or a balance sheet total of over £2bn, and UK companies that are part of multinational groups with annual global consolidated turnover of more than €750mn, to publish a UK tax strategy. The aim of the legislation is to increase transparency around taxation by making it mandatory for businesses to explain their tax arrangements in relation to four prescribed areas:

- Approach to risk management and governance arrangements in relation to UK taxation;
- Attitude towards tax planning (so far as affecting UK taxation);
- Level of risk in relation to UK taxation that the business is prepared to accept; and
- Approach towards dealing with HMRC.[c]

The Fair Tax Mark published a review[37] of the emerging first suite of tax strategies in December 2017.[ci] The Tax Justice Network observed, in February 2019, that one in nine US multinationals fail to comply with UK tax transparency law.[cii]

In September 2016, an amendment to the Finance Bill was agreed by Parliament, giving the Government the power to require public country-by-country reporting as part of a group's published Tax Strategy, but these powers have yet to be enacted.[ciii]

(c) Diverted Profits Tax

The UK's Diverted Profits Tax (DPT) was introduced in 2015 and amended in 2018. It targets multinational companies that shift profits outside the UK. The tax is charged at 25% on 'diverted profits' (which is six percentage points higher than the current standard UK corporation tax rate). In January 2020, UK tax authorities announced that under the new transfer pricing and DPT regimes a significant £5bn[38] of additional corporation tax had been secured.[civ] Australia is the only other country to have introduced a DPT, in 2017 (see 3.2.7).

(d) Other

The following initiatives are also worthy of note:

- The Danish tax Agency operates an online system whereby anyone can: "find tax information for the last five years for companies, associations and foundations that pay tax in Denmark",[cv]
- In Norway, since 2001[39], a citizen may search the digitised tax records of any individual or corporation, and ascertain income and assessed taxes[cvi];
- Similar access to information exists in Finland (via the internet) and Sweden (upon request).[cvii]

3.2.5. North America

(a) Extractive sector transparency measures

Canada brought into force the Extractive Sector Transparency Measures Act (ESTMA) in June 2015, based largely on the EU laws.[cviii] The Act captures entities that have a place of business in Canada, do business in Canada, or have assets in Canada, and meet two of the three following minimum thresholds in one of its two most recent financial years:

- has at least C$20mn in assets;
- generated at least C$40mn in revenue;
- employs an average of at least 250 employees.

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[37] As well as rating basic legislative compliance, the review assessed the degree to which FTSE 50 companies also provided clarity on their approach to (and use of) tax havens, the provision of public country-by-country reporting of economic activity and the listing of subsidiaries with their location. These additional areas of disclosure are integral to the Fair Tax Mark certification system.

[38] Note: £2bn of this relates to additional value-added tax being reported from businesses restructuring following investigations or the introduction of the DPT regime.

[39] Note: tax records have been public in Norway since the 19th century, but previously an individual would need to make a formal request in person at a tax agency to see these. In 2014, Norway banned anonymous searches (media excepted), and the number of searches dropped dramatically.

The EU and the Canadian reporting requirements are equivalent and fully substitutable with each other. The extractive industry welcomed this equivalence because it will avoid double reporting for companies operating in Canada and the EU. Note: ESTMA does not cover the logging sector.[cix]

In the US, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) was signed into law on 21 July 2010 and primarily focuses on financial regulatory reform. However, Section 1504 of the Act concerns the reporting of financial payments to governments and government agencies made for the purpose of the commercial development of oil, natural gas and minerals. Any company that is engaged in the commercial development of oil, natural gas, or minerals, is required to file annual reports with the Securities and Exchange Commission (SEC), including a subsidiary of that company, or an entity under the control of the company. The categories of payments to be reported should be consistent with the EITI guidelines. The SEC adopted a rule on 22 August 2012 to implement Section 1504 of the Dodd-Frank Act, but it was subsequently vacated by the U.S. District Court for the District of Columbia, following a lawsuit filed by US oil, gas and mining companies. The SEC adopted new implementing rules effective on 26 September 2016, close in content to the previous rules but with a better explanation of the rationale and giving equivalence to the equivalent EU directives. However, these new rules were invalidated on 14 February 2017 by a joint resolution of disapproval enacted pursuant to the Congressional Review Act. The SEC is now working on a third rule and US companies are currently not under reporting obligations until the rule is adopted.[cx]

(b) US FATCA and TCJA

In recent decades, the US operated a 'worldwide tax system', not a 'territorial system', as operates in most of the world (see 2.2.1). As a result, a corporation headquartered in the US in theory paid corporate income tax on all its income at a federal rate of 35%, regardless of whether it was earned there or overseas. However, the overseas element of this tax was only paid when the foreign earnings were 'repatriated' to the US (and this was avoided by many businesses). To prevent double taxation, corporations could claim tax credits to offset their foreign income taxes, if and when, they were repatriated.

In 2010, the US made a significant extraterritorial move to tackle tax evasion with the Foreign Account Tax Compliance Act (FATCA), which requires foreign financial institutions (under pain of exclusion from US capital markets) to report to the Inland Revenue Service information about financial accounts held by US taxpayers, or by foreign entities in which US taxpayers hold a substantial ownership interest.[cxi]

In December 2017, the US signed into law the 'Tax Cuts and Jobs Act' (TCJA), which progressed a number of significant benefits to multinational corporations. From 2018, the US operates a reduced headline tax rate of 21% (reduced from 35%) and a taxation system that is a hybrid between territorial and worldwide. Repatriated dividends will no longer be taxed, but there is a one-off transition tax on accumulated foreign earnings of 15.5% for cash (and equivalents) and 8% for illiquid assets. There will be expanded taxation of income accrued within Controlled

Foreign Corporations (CFCs) and the introduction of a tax on global intangible low-taxed income (GILTI).[40]

Supporters of the TCJA argued that the influx of repatriated cash would lead to a surge in employee recruitment and remuneration, together with markedly increased capital expenditure. Neither has happened.[cxii] Instead there has been an unprecedented explosion in share buybacks: with, for example, Apple, progressing $172.5bn of stock repurchases over 2017-19.[cxiii]

(c) Digital Services Taxes

The Canadian provinces of Quebec and Saskatchewan tax the cross-border supply of digital services by non-resident businesses. A federal digital services tax for Canada is planned from 2021, but awaits the outcome of OECD BEPS 2.0 discussions.[cxiv]

The US remains hostile to such taxes, both at home and abroad. It has threatened retaliatory tariffs on France, Italy and the UK if they introduce digital services taxes.[cxv]

3.2.6. India

In addition to the European Union, India has been at the forefront of challenging tax avoidance, especially as it relates to profit shifting. India has been a major instigator of the BEPS 2.0 processes, whilst at the same time questioning the legitimacy of the OECD to lead such deliberations (see 3.1.1). It led the G24 Working Group on tax policy and international tax cooperation, which has asserted that the OECD's latest proposals do not go far enough, especially in connection with the attribution of profit to where value is created.

India has progressed a right to tax even when the multinational group has no resident entity or permanent establishment, and has introduced a test of 'significant economic presence' enabling the taxation of non-residents without physical presence (by virtue of sales made to/interactions with Indian consumers).[cxvi] In April 2020, it introduced a 2% tax on all foreign billings for digital services provided in the country.[cxvii] Mobile telephone operators in the country are also required to share a percentage of their adjusted gross revenue with the government as part of their license agreements. The way in which this is calculated has been the subject of a protracted dispute with Vodafone Idea, which in February 2020 was ordered to pay $13bn in back tax to the government.[cxviii]

In April 2019, the country issued a public consultation paper that explored taxing companies partly on where they have economic activity, rather than just where they locate their headquarters or intellectual property.[cxix]

Following a change in company law in April 2014, businesses with annual revenues of more than 10bn rupees are required to donate 2% of their net profit to charity. Areas they can invest this money in include education, poverty, gender equality and hunger. Although this is not strictly an anti-avoidance initiative, it is worthy of note given the links to notions of corporate social responsibility discussed in Part 4 below. It is also interesting to observe that the measure is subject to both avoidance and evasion.[cxx]

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[40] Note: The worldwide global intangible low-taxed income (GILTI) rate is 10.5% when foreign income tax rates are zero and increases by 0.8 percent for each percentage point increase in the foreign effective tax rate. The effective tax rate on GILTI maxes out at 13.125%. See https://taxfoundation.org/treatment-foreign-profits-tax-cuts-jobs-act/

3.2.7. Rest of the world

In addition to the aforementioned developments in Europe and India, a recent IMF Policy Paper has noted the rapid emergence of digital services taxes across the world:

- Chile and Uruguay have progressed withholding or 'equalization' taxes on payments for advertising and other specified digital services made by residents to non-resident companies.
- Benin, Tanzania, Uganda, and Zambia have recently introduced taxes on the use of certain digital services, though these are taxes not on the revenues of service providers but on access to digital services, such as social media.[cxxi]

Other noteworthy developments include:

- Australia has had a 40% diverted profits tax since 2017 (which is similar to UK's, see 3.2.4(c)).[cxxii]
- Australia operates a Tax Transparency Code that encourages large and medium sized businesses to publish statements on their approaches to tax strategy and governance, with the Australian Taxation Office hosting a list of these voluntary disclosures.[cxxiii]
- Ecuador and Costa Rica are considered to lead the way in Latin America on beneficial ownership registration (although the latter could be curtailing recent improvements[cxxiv]), with Argentina indicating that significant progress may proceed.[cxxv]

4. Review of responsible tax initiatives

A number of voluntary responsible tax programmes have been developed around the world in recent years. These include initiatives from corporate responsibility activists, NGO campaigners, investors and tax professionals. They seek to address the question of: 'what does responsible tax conduct look like at the level of the individual firm, given the existing legislative context'. The demand for an answer to this question is partly driven by a growing number of progressive businesses that are proud to shun tax avoidance and want to communicate this to their stakeholders.

Compared with other areas of corporate responsibility, responsible tax conduct has emerged only recently. It has only now been added to long established programmes such as the Global Reporting Initiative (see 4.1.8), and is still noticeably absent from the primary issue listings of United Nations (UN) Sustainable Development Goals and the UN Global Compact.

The UK would appear to be a focus of activity in this area, both good[41] and bad[42]. This may be a consequence of a number of factors:

- The UK has one of the world's strongest 'voluntary' corporate responsibility movements
- Many of the world's largest accountancy firms have their roots in the UK.
- 'London' is one of the world's three principal financial centres, and has a strong socially responsible investment community.
- First mover civil society organisations, such as the Tax Justice Network, began in the UK.

The European Union and North America also stand out as hotbeds of activity. It is, however, likely that this research report has omitted significant activity elsewhere and we whole-heartedly welcome feedback in such areas.

The first substantive contribution to the area came in 2006, with SustainAbility's 'Taxing Issues – Responsible Business and Tax', which argued that the subject needed to be a core concern of the corporate responsibility world.[cxxvi] The foreword noted: "Tax is unquestionably a material issue, yet at times, CR teams seem to wish it away: like some drunken uncle at a party whom no-one wishes to acknowledge." Two of the founders of the Fair Tax Mark were key contributors to this flagship publication (Richard Murphy and Paul Monaghan). Unfortunately, it would take another ten years before tax really started to be integrated into voluntary corporate responsibility frameworks in a major way.

Before looking at each responsible tax initiative in turn, it is worth noting the general rise of corporate responsibility programmes over recent decades. The globalisation of markets has thrown up many challenges for societies concerned with regulating or managing the impacts of businesses, not just around tax avoidance. Initiatives addressing environmental and workers' rights impacts particularly have proliferated – with many of the key solutions centred on transparency, stakeholder representation and third-party accreditation. Initiatives include transparency and reporting standards like the carbon disclosure project, certifications schemes

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[41] The UK was a first mover on a public register of beneficial ownership disclosure and the requirement for large corporations to publish a tax strategy annually.

[42] At 19%, the UK's headline Corporation Tax rate is the lowest in the G20.

like the Fairtrade label, socially responsible investment collaborations like the MSCI Index, and ranking initiatives like the Corporate Human Rights Benchmark.

There is a host of academic literature which looks at this activity through notions of 'global private governance' (for example, Cashore et al. 2004; Pattberg 2008; Gale and Haward 2011; Auld 2014; Green 2014).[cxxvii] Actors across a wide range of social issues (not just tax) are facing analogous difficulties in securing agreement on much needed advances on legislation, at both a national and (in particular) international level. This has led a wide range of organisations to support the development of voluntary standards, especially where these contribute to the case for legislative intervention. At the same time, civil society is rightly wary of the emergence of business-as-usual initiatives that are cynically designed to curtail change and maintain the status quo (such as KPMG's Responsible Tax Project).

Table 4.1 provides an overview of the most substantial identified initiatives and the elements that each unambiguously recognises as being a core component of their scheme.

Table 4.1: Responsible Tax Initiatives and substantive elements

	Public tax policy	Anti-avoidance statement	Public Country – by-Country Reporting	Level of tax paid	More detailed tax notes, with narrative	Responsible advocacy embraced	Stakeholder policy including tax authorities	Beneficial ownership disclosure	Third-party verification
Fair Tax Mark accreditation	x	x	x	x	x	x		x	x
Good Business Charter certification	x	x					x		
BITC Resp. Business Tracker	x	x	x		x			x	
B Corp certification		x				x		x	x
Future-Fit benchmark	x	x	x		x			x	
CSR Europe blueprint	x				x			x	
The B Team responsible tax principles	x	x	x		x	x	x	x	
GRI 207: Tax reporting	x		x		x	x	x	x	
VBDO benchmark	x	x	x		x		x		
Accountancy Europe reporting template			x						
UN PRI investor guide	x		x			x			
EITI Standard			x					x	

4.1. Voluntary standards for accreditation or public alignment

4.1.1. Fair Tax Mark accreditation

The Fair Tax Mark certification scheme was launched in the UK in February 2014 and seeks to encourage and recognise organisations that pay the right amount of corporation tax at the right time and in the right place. Unashamedly drawing on the experience of other social certification schemes like the Fairtrade Mark, it seeks to use third-party certification to provide assurance on responsible tax conduct. The origins of the Fair Tax Mark are rooted in civil society and the tax justice movement, with whom it remains well connected. It is the only accreditation scheme that focuses solely on responsible tax assurance. At launch it was welcomed by a range of bodies, including the UK Public Accounts Committee and the Institute of Chartered Accountants in England and Wales (ICAEW).[cxxviii]

Certified businesses include FTSE-listed Plcs, co-operatives, social enterprises and large private businesses, such as: Lush, SSE, Marshalls, Pennon, Richer Sounds, Timpson Group, Leeds Building Society and the Co-op. Over 50 companies had been certified as aligned to its standards by February 2020. Between them, these businesses had over 7,000 offices and outlets.[cxxix] It operates as a not-for-profit social enterprise and believes that companies paying tax responsibly should be celebrated, and any race to the bottom resisted.

With the help of an independent committee of technical advisers (drawn from academia, campaign groups and the professions), three accreditation standards have been developed to date:

- Small Business, with a turnover of £1m or less
- Solely UK-based business
- UK-owned Multinational business

They operate a two-stage annual certification process;

- Assessment. Review recent accounts (last four years figures) and connected communications. From this, produce a detailed, confidential report that highlights how the assessee would perform against the Fair Tax Mark criteria and suggested areas of improvement.
- Certification. As and when reporting, policies and practice pass the Fair Tax Mark threshold, the assessee will be able to use the Fair Tax Mark in public communications for a qualifying period of usually 12 months.

In September 2019, the Fair Tax Mark announced its intention to extend beyond UK-incorporated business and develop a suite of global standards.

Table 4.2 shows the 20 key areas that the Fair Tax Mark looks at for UK-based multinational businesses.[43] It also shows the relative weighting given to each element.

[43] A score of 29 and over can be awarded a Fair Tax Mark.

Table 4.2: Fair Tax Mark assessment criteria (UK-based Multinationals Standard)

Part 1: Transparency	[points available]
Question 1: Availability of full report and accounts	[one]
Question 2: Clarity as to what activities business undertakes	[one]
Question 3: Clarity on trading locations	[one]
Question 4. Beneficial ownership disclosure	[one]
Question 5: Clarity on who directors are	[one]
Part 2: Country-by-country reporting	
Question 6: Details of all subsidiaries, including tax residency	[three]
Question 7: Net asset/equity value and income, by subsidiary or by country	[two]
Question 8: Disaggregated tax data, by subsidiary or by country	[one]
Question 9: Disaggregated employment data, by subsidiary or by country	[two]
Question 10: UK segment data	[two]
Question 11: Consolidated and reconciled country-by-country data	[two]
Part 3: Tax policy, implementation and compliance	
Question 12: Public statement of tax policy	[one]
Question 13: Named director responsible for tax policy	[one]
Question 14: Confirmation of tax policy compliance	[one]
Question 15: Policy shuns artificial use of tax havens and avoidance	[five]
Question 16: Use (or not) of tax havens	[four]
Part 4: Tax rate and disclosure	
Question 17: Average current tax charge over preceding years	[six]
Question 18: Numerical reconciliation of current tax charge cf headline rate	[six]
Question 19: Narrative explanation of deviations from headline rate	[two]
Question 20: Detailed deferred tax notes	[two]

The Fair Tax Mark's broader activity programme includes:

- Co-ordinating Fair Tax Week, an annual UK-wide celebration of the companies and organisations that are proud to pay their fair share of corporation tax, and an exploration of the positive contribution this makes to society.
- A Councils for Fair Tax Declaration, which commits cities, towns and districts to pursuing exemplary tax conduct in their affairs and calls on the EU and UK Governments to review legislation and support greater powers for the exclusion of 'tax dodgers' from public procurement.

The Fair Tax Mark also engages in advocacy around improving regulations and publishes occasional research on the state of play in corporate tax behaviour. For example: in 2015, Fair Tax Mark businesses signed a letter supporting proposed anti-tax avoidance measures in the European Parliament;[cxxx] and, in December 2019, it published a widely-shared report on the tax gap of six of the world's largest technology companies over the preceding decade.[cxxxi] It also supports certified businesses in the consideration of tax conduct in their supply chain. This is not a formal part of the certification, but ad hoc work has progressed with Richer Sounds, Leeds Building Society, SSE and Pennon Group.

4.1.2. Good Business Charter self-certification

The Good Business Charter was launched by the UK-based Good Business Foundation in February 2020.[cxxxii] The Charter is open to UK businesses, and the Foundation counts the CBI (Confederation of British Industry) and the TUC (Trades Union Congress) among its trustees.

The Charter is a self-certification standard that: "will take less than one hour to complete". A whistle-blowing email facility is designed to provide a check against false declaration. There are ten components: Real living wage; Fairer hours and contracts; No penalties for sickness; Employee representation; Diversity and inclusion; Environmental responsibility; Pay fair tax; Commitment to customers; Ethical sourcing; and Prompt payment.[cxxxiii]

With regard to 'fair tax', they accept Fair Tax Mark certification (see 4.1.1) as a proxy for good practice and say: "we will ask if you are accredited by the Fair Tax Mark which we recognise and recommend as a reputable organisation." In the absence of Fair Tax Mark accreditation, they ask the following questions:

- Do you commit to pay your taxes and not engage in tax avoidance, and to publish your tax policy in the public domain?
- Do you provide information on your website or in your company accounts about your company's approach to paying corporation tax or do you commit to this going forwards?
- Do you commit to be transparent in your relationship with HMRC, providing all relevant information to them and to cooperate in resolving any disputes? [cxxxiv]

They note: "For smaller companies, the tax policy referred to in question two could be as simple a statement as saying: 'we pay full corporation tax calculated on our profits each year.'" Tax avoidance is defined as: "a deliberate attempt to get out of an obligation to pay tax by entering into a set of artificial arrangements which have little or no commercial purpose other than the reduction of a tax bill".

4.1.3. BITC Responsible Business Tracker

Business in the Community (BITC) was established in the UK in 1982, and describe themselves as "the oldest and largest business-led membership organisation dedicated to responsible business" and as having "have a vibrant membership of hundreds of businesses, large and small, connected by the conviction their success is inextricably linked to society's prosperity."[cxxxv]

In October 2019, they launched a measurement tool for their members, the Responsible Business Tracker. The Tracker "offers gap analysis, benchmarking against sector peers and the overall cohort and, through a scoring mechanism, the opportunity for recognition of leading practice, improvement and innovation."[cxxxvi] No public ranking is undertaken. The tool is underpinned by the UN Global Goals, and was built following a pilot involving 64 member organisations from 24 business sectors.[cxxxvii]

Tax conduct is assessed under the 'governance and transparency' section, with questions that the Fair Tax Mark has helped shape (including guidance notes). The questions focus on 'tax policy' (including commitments to forgo tax avoidance and the artificial use of tax havens) and 'tax transparency' (including disclosure of beneficial ownership and country-by-country reporting). The weighting of the questions is confidential, but likely to be small given the number of other issues covered. Businesses with Fair Tax Mark accreditation score full marks. BITC

anticipates around 100 organisations utilising the Business Tracker in 2019-20; and to help drive take-up, has aligned its well-regarded business award scheme with the Tracker.[cxxxviii]

4.1.4. B Corporation tax avoidance framework

The B Corporation movement began in the United States in 2006, and is led by B Lab: a not-for-profit organisation which certifies that B Corporations "meet the highest standards of verified social and environmental performance, public transparency, and legal accountability to balance profit and purpose."[cxxxix] It uses a long and detailed self-declaration questionnaire to reveal performance in five areas: environment, workers, customers, community and governance – with the responses verified by B Lab. In early 2020, there were more than three thousand certified B Corporations across 64 countries.[cxl]

B Lab does not currently ask bespoke scored questions about responsible tax conduct in its main evaluation questionnaire (i.e. of all businesses, regardless of size).[44] However, larger businesses (1,000+ employees) can secure points in the governance section if they display positive tax practices: such as country-by-country repotting and/or complying with third party schemes such as the Fair Tax Mark or The B-Team Responsible Tax Principles. In addition, any business with a turnover of greater than $5bn is required to meet a set of minimum baseline standards which includes: "A disclosure statement on the company's tax philosophy/approach and government affairs (lobbying/advocacy), including the company's overall effective tax rate, that is overseen by the Board of Directors."

It also deems 'tax' to be a 'controversial issue', and lists 'tax avoidance' among 14 such matters (alongside issues such as cannabis-related products, the marketing of breastmilk substitutes and Swiss private banking).[cxli] A 'framework' has been developed for each controversial issue, with that for 'tax avoidance' focusing on 'tax strategy', and an "invitation for public conversation to further refine this framework over time". The framework is stated as follows: "The evaluation of a tax strategy for B Corp Certification should include whether 1) the amount of overall taxes paid over time appropriately reflects the actual amount of income generated by the business; and, 2) the amount of taxes paid over time in each jurisdiction appropriately reflects the actual operations of the business in that jurisdiction."[cxlii]

The 'guidance for applying the framework' indicates that blatant and extreme tax avoidance strategies would render a company ineligible for certification, per the judgement of its independent Standards Advisory Council. Controversy surrounded the certification of Etsy, as witnessed by the issuance of an open letter from Americans for Tax Fairness to the founders of B Lab.[cxliii] The business subsequently 'gave up' its B Corp status.[cxliv]

4.1.5. Future-Fit Business Benchmark

The Future-Fit Foundation is a UK registered charity whose mission is to create a society which is more "environmentally restorative, socially just and economically inclusive". It does this by "collating and curating the most credible and robust third-party resources into one unified self-

[44] Although 'tax' is listed among the dozen and more items raised as part of legal compliance questions, which ask about fines, sanctions and formal complaints to regulatory agencies. And a non-scored question is listed that asks for re-assurance that 'corporate shells' are not utilized to 'minimise tax'.

assessment tool – the Future-Fit Business Benchmark – that any business can use to guide, measure and report on real progress."[cxlv]

It provides a series of standards or 'progress indicators' covering numerous aspects of ethical business behaviour; from 'employee health and safety' to 'energy use'. Progress indicators are expressed as simple percentages (rather than pass or fail) and "reflect how far a company is on its journey toward reaching a specific goal". Companies may choose to work with these benchmarks privately, or may choose to align with them publicly. The first (and possibly only) global company to have completed a Future-Fit self-assessment and to have the results independently assured was Novo Nordisk, in 2018.[cxlvi] The Body Shop is also listed as using the tools, but other large companies are not named.[cxlvii] Both Novo Nordisk and The Body Shop are members of the Future-Fit 'development council'.[cxlviii] Grant Thornton, an international auditor and tax adviser, is an 'accredited partner' to Future-Fit.[cxlix]

Goal 'BE21' is that 'the right amount of tax is paid in the right place at the right time' and acknowledges "the guidance of the Fair Tax Mark and the Base Erosion and Profit Shifting project".[cl] The questions put forward draw heavily on those used in the Fair Tax Mark's standards, and are grouped under the Fair Tax Mark criteria's four main headings:

- Tax policy, implementation and compliance.
- Transparency.
- Country-by-country reporting (for multi-national enterprises only).
- Tax rate and disclosure.

It then allocates a score using the same detailed numbering system as that used by the Fair Tax Mark. One prominent deviation is that no questions are asked (or points awarded) in connection with declared current tax charges. Additionally, BE21 says that companies "operating in multiple tax jurisdictions must commit to the following principles from the BEPS framework":

- Limit use of tax jurisdictions that offer a zero or low rate of taxation.
- Eliminate superficial use of hybrid mismatches.
- Avoid abusing controlled foreign company rules.
- Do not manipulate debt levels or abuse tax treatment of interest deductions
- Do not participate in treaty abuse or 'treaty shopping'.
- Do not artificially avoid permanent establishment status.
- Align transfer pricing rules with value creation.

It should be noted that Future-Fit's use of the Fair Tax Mark's criteria and standards was not undertaken with prior approval and should not be seen to have been endorsed by the Fair Tax Mark.

4.1.6. CSR Europe blueprint

CSR Europe describes itself as "the leading European business network for corporate sustainability and responsibility". In March 2019 it issued an advice and position paper: 'Blueprint for Responsible and Transparent Tax Behaviour'. PwC Netherlands are credited for "their advice and support in putting this report together" and received co-branding.[cli]

The report identified the following five emerging trends among progressive business:

- Publication of Tax Strategy or Tax Policy documents.
- Enhanced collaboration between the CSR and tax departments.
- A growing preparedness for enhanced transparency and tax reporting requirements.
- Building co-operative compliance relations with tax authorities.
- A more open and "pedagogical" approach towards many stakeholders.

It went on to identify five other areas which "remain more challenging":

- Role of the tax function within a company.
- Implementing the tax strategy and monitoring its execution.
- Use of technology for tax governance and management.
- Digital transformation of tax administrations.
- Assessing the impact of tax incentives.

CSR Europe lists the following as exemplars of responsible tax conduct: BBVA and Vodafone (for reporting); Iberdrola (tax strategy); Unilever (management and governance); and Naspers (relationship with tax authorities). The report breaks 'responsible and transparent tax behaviour' into six themed areas and details general advice under each section. It also presents a questionnaire-based 'Self-Assessment Tool on tax transparency and responsibility' based on the same thematic areas. The areas are summarised in table 4.3.

Table 4.3: CSR Europe themes and key elements

Theme	Key element
Tax planning strategies	Aligning taxation with value creation
Tax function management and governance	Developing the right processes to manage tax
Public transparency and reporting	Disclosing relevant tax related information to the public
Interaction with tax authorities	Managing relationships with tax authorities & digital transformation of tax administrations
Tax incentives	The impact on public finances
Building a narrative to accompany a tax strategy	How to engage stakeholders with a company's approach to tax

4.1.7. The B Team Responsible Tax Principles

Co-founded by Sir Richard Branson and Jochen Zeitz, The B Team launched in June 2013 as a global non-profit organisation. According to the organisation's website: "Plan A – where business has been motivated primarily by profit – is no longer an option…we imagined a 'Plan B' – for concerted, positive action to ensure business becomes a driving force for social, environmental and economic benefit."[clii] Since then, The B Team has been engaged in a range of activities, including partnering with Global Witness to launch a Beneficial Ownership Transparency Working Group in 2014.

In 2018, The B Team launched its 'Responsible Tax Principles', which "represent a new blueprint, designed to raise the bar on how businesses approach tax. They are the first consolidated effort from a group of cross sector, cross regional companies to articulate best practice in seven key

areas of tax, from corporate governance to relationships with authorities to transparency."[cliii] The seven principles are reproduced in edited form in the table below.

At launch, the framework was endorsed by a founding group of nine companies: Allianz, BHP, A.P. Moller – Maersk, Natura Cosméticos, Repsol, Royal Dutch Shell Plc, Safaricom, Unilever and Vodafone Group Plc. The companies were described as: "working to reflect these principles in their practice (including where possible entities where they have over 50% ownership or control)."[cliv] In a news release of 20th June 2019, The B Team announced another six companies had endorsed the principles: KCB Group PLC, Rio Tinto, Anglo American, Pearson, RELX and Total.[clv] Followed by Fortum Oyi, later in the same year.[clvi] The B Team elsewhere "acknowledges that not every company will be able to practice every aspect of The B Team Responsible Tax Principles straight away and some areas may be challenging for companies to implement."[clvii] In July 2019, The B Team published "Eight Key Lessons from a year of greater transparency among its participant companies."[clviii] In this, they are keen to emphasise the need for an explanatory narrative to be provided alongside tax data.

Since launch, the principles have had a mixed response from civil society groups. Winnie Byanyima, Executive Director of Oxfam International, said they have "raised the bar" and invited all companies to meet these standards, adding that "truly forward-looking" companies should do even more.[clix] Alex Cobham, Chief Executive of the Tax Justice Network, argued that the principles actually lowered the bar for tax transparency, because they lacked "any hard criteria against which to evaluate progress."[clx] In particular, the Principles do not specify how country-level information should be reported. A number of signatories to the principles have gone on to take leadership positions (such as Shell and Anglo American, on pCbCR), but others have become mired in financial reporting and tax scandals (such as Rio Tinto[clxi] and BHP[clxii]).

Table 4.4: The B Team Responsible Tax Principles

The B Team Responsible Tax Principles
Principle 1 Accountability & Governance - We have a tax strategy and set of principles approved by the Board - The Board is accountable for the tax strategy - We put mechanisms in place to ensure awareness of and adherence to our strategy and principles - We have clear procedures in relation to tax risk management and carry out risk assessments - We report at least annually to the Board - Our tax strategy and principles apply to all our local tax practices in all jurisdictions - We employ appropriately qualified and trained tax professionals
Principle 2 Compliance - We prepare and file all tax returns required - Our tax planning is based on reasonable interpretations of applicable law and is aligned with the substance of the economic and commercial activity - We will not undertake transactions whose sole purpose is to create a tax benefit which is in excess of a reasonable interpretation of relevant tax rules - We aim for certainty on tax positions - We use the arm's length principle
Principle 3 Business Structure - The Group is transparent about the entities that it owns around the world - We do not use so-called 'tax havens' in order to avoid taxes on activities which take place elsewhere - We pay tax on profits according to where value is created within the normal course of commercial activity - Our tax principles extend to our relationships with employees, customers and contractors

Principle 4 Relationships with Authorities – We follow established procedures and channels – We are open and transparent with tax authorities, responding to relevant tax authority enquiries – We endeavour to build relationships of cooperative compliance – Where there are misunderstandings of fact or law, we will seek to work with tax authorities, – If we seek rulings from tax authorities to confirm an applicable tax treatment – We will seek to enter into an early dialogue with tax authorities – We will not bribe or otherwise induce tax officials, government officials or ministers
Principle 5 Seeking & Accepting Tax Incentives – Where we claim tax incentives offered by government authorities, we seek to ensure that they are transparent and consistent with statutory or regulatory frameworks – We will only use tax incentives where they are aligned with our business – Ideally, tax exemptions and reliefs should be specified by law and generally available – We will make data available for governments to assess the revenue and economic impacts
Principle 6 Supporting Effective Tax Systems – We give constructive input to industry groups, governments and other external bodies – We support initiatives to help develop the capability of tax authorities – We promote responsible tax practices which are in line with The B Team Responsible Tax Principles through our involvement in industry associations and other governmental or external bodies
Principle 7 Transparency We will publish: – A tax strategy or policy – A regular update on our progress and key issues related to our tax strategy and principles – An overview of our group structure and a list of all entities – An explanation of why we have subsidiaries, branches and joint ventures operating in low tax jurisdictions – Annual information that explains our overall effective tax rate and gives information on the taxes we pay at a country level – Information on financially-material tax incentives – An outline of the advocacy approach we take on tax issues

4.1.8. GRI 207: Tax reporting standard

GRI (Global Reporting Initiative) is an independent international organization based in Amsterdam that has pioneered sustainability reporting since 1997. GRI reports are now produced by large and small companies in more than 100 countries and, according to KPMG, 75% of the Global Fortune 250 used the GRI reporting framework in 2017.[clxiii]

GRI's core product are its Sustainability Reporting Standards, which "represent global best practice" for CSR reporting.[clxiv] They provide a framework for publicly reporting information in three broad areas:

- Economic
- Environmental
- Social

The multi-stakeholder consultation process that the GRI uses to develop its standards is well documented and transparent. In 2017, GRI initiated a project to develop 'new disclosures related to tax and payments to governments', aiming to help promote greater transparency and to help build stakeholder trust. In September 2019, the GRI approved a new Standard called GRI 207: Tax, which is effective for reports published on or after 1st January 2021 (or earlier).[clxv]

GRI: 207 was well received on launch, with complimentary support provided by the likes of UN PRI (see 4.2.1(a)), Accountancy Europe (see 4.1.10), the FACT Coalition (see 2.1.5), VBDO (see

4.1.9) and the Tax Justice Network.[clxvi] The Standard requires disclosures on a company's management approach to tax as well as detailed country-by-country reporting. More information on elements within the standard appear in the table below.

GRI 207 is not a 'Universal Standard' which all companies using the framework must adhere to, but a 'topic-specific GRI Standard in the 200 series (Economic topics)'. There is a framework in the Universal Standard (103) for deciding what constitutes a material topic. It remains to be seen how many companies will choose to identify tax as 'material' and report using GRI 207, although the evident support of several prominent institutional investors will likely bring pressure.

Table 4.5: GRI 207: Tax assessment criteria

GRI 207: Tax
1. Management approach disclosures
Disclosure 207-1 Approach to tax a. A description of the approach to tax, including: i. whether the organization has a tax strategy; ii. the governance body where tax strategy is reviewed; iii. the approach to regulatory compliance; iv. how the approach to tax is linked to the CSR strategies of the organization.
Disclosure 207-2 Tax governance, control, and risk management a. A description of the tax governance and control framework, including: i. the governance body accountable; ii. how the approach to tax is embedded within the organization; iii. the approach to tax risks; iv. how compliance is evaluated; b. A description of the mechanisms for reporting concerns about unethical behaviour; c. A description of the assurance process for disclosures on tax.
Disclosure 207-3 Stakeholder engagement and management of concerns related to tax a. A description of the approach to stakeholder engagement and management of stakeholder concerns related to tax, including: i. the approach to engagement with tax authorities; ii. the approach to public policy advocacy on tax; iii. the processes for collecting the views of stakeholders.
2. Topic-specific disclosures
Disclosure 207-4 Country-by-country reporting The reporting organization shall report the following information: a. All tax jurisdictions where the entities included in the organization's audited consolidated financial statements, or in the financial information filed on public record, are resident for tax purposes. b. For each tax jurisdiction reported in Disclosure 207-4-a: i. Names of the resident entities; ii. Primary activities of the organization; iii. Number of employees, and the basis of calculation of this number; iv. Revenues from third-party sales; v. Revenues from intra-group transactions with other tax jurisdictions; vi. Profit/loss before tax; vii. Tangible assets other than cash and cash equivalents; viii. Corporate income tax paid on a cash basis; ix. Corporate income tax accrued on profit/loss; x. Reasons for the difference between corporate income tax accrued on profit/loss and the tax due if the statutory tax rate is applied to profit/loss before tax. c. The time period covered by the information reported in Disclosure 207-4.

In addition to the aforementioned reporting requirements (assuming a business deems 'tax' to be material topic for disclosure), the following reporting recommendations are put forward:

The reporting organization should report the following additional information for each tax jurisdiction reported in Disclosure 207-4-a:
- Total employee remuneration;
- Taxes withheld and paid on behalf of employees;
- Taxes collected from customers on behalf of a tax authority;
- Industry-related and other taxes or payments to governments;
- Significant uncertain tax positions;
- Balance of intra-company debt held by entities in the tax jurisdiction.

4.1.9. VBDO Benchmark

VBDO is the Dutch Association of Investors for Sustainable Development. It began life in 1995 and its mission is to create a sustainable capital market.[clxvii] It has evolved a program for measuring companies' approaches to good tax conduct. In 2014, VBDO published a report called 'Good Tax Governance in Transition, Transcending the tax debate to CSR', in conjunction with PwC Netherlands and Oikos. It looked at how tax was becoming regarded as a necessary part of a company's corporate social responsibility strategy and at the tax transparency performance of Dutch companies.

It proposed six principles of good tax governance, which became the basis of an annual ranking programme:[clxviii]

- Companies should define and communicate a clear strategy on tax governance.
- Tax must be aligned with the business and it is not a profit centre by itself.
- Respect the spirit of the law (with tax compliant behaviour as the norm).
- Know and manage tax risks.
- Monitor and test tax controls.
- Provide tax assurance.

In September 2019, VBDO (in association with PwC Netherlands) published its fifth Annual Tax Transparency Benchmark, and ranked 77 Dutch companies against its best practice criteria. The report noted improved scores across the board, but also that there remains 'considerable room for improvement'.[clxix] Worthy of note is that the benchmark rates public country-by-country reporting[45], albeit with just two possible points of the thirty that are available (cf. nine points available for tax governance matters).

4.1.10. Accountancy Europe reporting template

Accountancy Europe is a federation of national associations of qualified accountants, auditors and advisers from 35 countries. It represents one million qualified accountants from 51 associations. The Federation was originally formed in 1987.

In 2016, it noted how "global transparency requirements and initiatives for corporate tax are increasing" and that "key amongst these transparency initiatives is country-by-country reporting of corporate tax information". It developed a template that "outlines the basic information for

[45] Does the company provide information like current corporate income tax payments, accrued corporate income tax, profit before income tax, accumulated earnings and FTE's on a country-by-country basis? (In case the company is domiciled in only one jurisdiction, this question refers to this jurisdiction). Two points.

such companies to disclose when issuing a public country-by-country report. Our proposed template aims for companies to provide useful information required by stakeholders whilst minimising the costs of preparation and the risk of disclosing economically sensitive information".[clxx]

The specifications included:

- Total revenue
- Expenses
- Profit before tax
- Corporate tax at a nominal rate of X%
- Corporate tax paid
- Corporate tax accrued
- Effective tax rate (see note)
- Non-deductible expenses/incentives
- Non-taxation based fees and levies or investments to the public finances
- Number of legal entities, business activities
- It also provided two other areas 'for optional additional disclosure':
- Sector specific explanations (free text)
- Taxes paid other than corporation tax

Noticeably absent from this list are either number of employees or assets in a particular jurisdiction.

4.2. Significant sectoral contributions

4.2.1. Asset management and institutional investment

The investment community have circled around the issue of 'tax conduct' for some time. Meaningful action has been slow to emerge but is now taking place, albeit in a less systematic and material manner than for climate change and human rights violations.

The following have been offered as concrete reasons as to why tax conduct should be considered a material issue by investors[clxxi]:

- The amount of corporate income tax a company pays is material to its profitability.
- Corporate tax avoidance activities may suggest underlying legal, operational, reputational, financial and/or governance risks.
- Investors want reassurance that the tax practices of their portfolio companies can withstand stakeholder scrutiny and potential regulatory changes.
- Investors recognise that corporate taxes support society's tangible (i.e. infrastructure) and intangible (i.e. education, governance/legal, etc.) needs.

In February 2020, the OECD consulted on the country-by-country reporting standard that they first issued in 2015.[clxxii] Investors responsible for trillions of dollars of assets took the opportunity to call for the CbC reporting of multinational companies to be made public – this was despite the question of public disclosure being absent from the consultation document.[clxxiii]

(a) UN Principles for Responsible Investment (PRI)

The Principles for Responsible Investment (PRI) is an organisation founded in 2006 and supported by the United Nations.[clxxiv] It seeks to promote responsible investment strategies by encouraging institutional investors to sign up to its six principles (for example, 'incorporating ethical issues into decision-making processes' and 'being active owners'). It has over 1,800 signatories, who have more than US$70 trillion in assets under management.[clxxv] These include large institutional investors such as: ABN AMRO Asset Management, BNP Paribas Asset Management, Mitsubishi UFJ Trust and Banking Corporation, CalPERS and BlackRock.

In 2015, PRI issued 'Engagement guidance on corporate tax responsibility', which detailed fifty and more questions that could be posed to investees.[clxxvi] In 2017, they went further and supplemented the engagement guidance with the 'Investors' recommendations on corporate income tax disclosure'[clxxvii], which can be summarised as follows:

- Policy. Disclosure of a tax policy signed by a board-level representative outlining the company's approach to taxation and how this approach is aligned with its business and sustainability strategy.
- Governance and risk management. Information on tax governance and management of the tax policy and related risks.
- Performance. Transparency on tax strategies, tax-related risks and country-by-country activities.

To put the guidance and recommendations into practice, a group of 35 institutional investors, representing US$2.9 trillion in assets under management, joined a PRI-led collaborative engagement on corporate tax transparency, focusing on the healthcare and technology sectors. To help investors start a dialogue with their portfolio companies, the PRI commissioned a benchmark study on corporate tax disclosures by 50 companies from the two sectors. Based on this research, in 2018, the PRI also published 'Evaluating and engaging on corporate tax transparency: an investor guide'.[clxxviii] The report details the following findings and suggestions for future engagement:

- Policy. A clear majority of companies in the research set had not yet published a tax policy that applies to the entire organisation. Investors can therefore encourage companies to formulise their approach on tax.
- Governance and risk management. Although a relatively large number of companies had published information on tax risks, corporate reporting could be more detailed and organisation specific. Investors can encourage companies to articulate the process of identification and management of tax risks.
- Reporting. None of the companies surveyed had published a country-by-country report.[46] Investors could request more meaningful data that substantiates companies' commitments to avoiding aggressive tax planning.

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[46] What's more, nearly 20% of the target companies in the engagement were unresponsive, including: Align Technology, Alphabet, Amazon.com, Cisco Systems, Danaher Corporation, Facebook, Sage Group, and Intuitive Surgical. See https://www.barrons.com/articles/companies-dont-want-to-talk-taxes-investors-can-change-that-51583514792

PRI's engagement work in this area is now said to be concluded, with outcomes published in 2020.[clxxix]

(b) Sovereign wealth and pension funds

Norges Bank Investment Management (NBIM) is the asset management unit of the Norwegian[47] central bank.[clxxx] It is responsible for managing the Norwegian sovereign wealth fund, which was valued at $1.09 trillion in October 2019.[clxxxi] In 2017, NBIM published 'Tax and Transparency: Expectations towards companies' and announced that henceforward NBIM would have nine expectations as follows:[clxxxii]

- Boards should manage local and cross-border tax affairs carefully.
- Boards should disclose their policy on tax.
- Boards should integrate and align their chosen tax policy with their core business.
- Boards should routinely assess their exposure to tax risk.
- Corporate culture around tax should address training, pay incentives and advisers.
- Multinational enterprises should publish country-by-country breakdowns of how and where their business model generates economic value, where that value is taxed and the amount of tax paid as a result. Or publicly state why not.
- Multinational enterprises should provide appropriate economic context for their activities when reporting to tax authorities.
- Multinational enterprises should be ready publicly to explain the business case for locating subsidiaries in "closed" jurisdictions or significantly low-tax environments.
- Multinational enterprises should present the tax contributions that they make beyond taxation of their corporate income.

In 2019, it was announced that four of Denmark's biggest pension funds had agreed on a set of common principles on responsible tax behaviour by external managers. ATP, Industriens Pension, PensionDanmark and PFA said in a joint statement that the newly forged principles would influence tax behaviour both in Denmark and internationally.[clxxxiii]

In April 2020, Finland announced that all state-owned companies are: "expected to file country-by-country reports on their tax footprint in a way that permits a reliable assessment of their tax responsibility. Basically, taxes are to be paid to the country to which they are due based on the business carried out."[clxxxiv]

In the UK, LGPS Central, which manages the pooled assets of eight local government pension schemes with combined assets of approximately £45bn, began engaging with investees on 'fair tax payment and tax transparency' in 2019. They are doing this directly and via a recently established investor collaboration. This includes pressing a multinational pharmaceutical to "consider if and how it might attain the Fair Tax Mark."[clxxxv]

(c) The Chartered Financial Analyst Institute

The Chartered Financial Analyst Institute (CFA Institute) is a worldwide non-profit professional association with more than 137,000 members from over 150 countries.[clxxxvi] The membership includes investment analysts, portfolio managers, and financial advisers. In 2016, the CFA

[47] The authors of this Report believe that KLP, Norway's largest pension company, is similarly active in this area.

Institute responded to the Financial Accounting Standards Board (FASB) proposals to make changes to the way in which firms disclose income tax information. They wrote: "tax information is a topic of great interest to financial analysts, but current tax disclosures do not always provide sufficient information about a business entity's tax practices, liabilities, and risks."

The letter contained detailed comments on transparency including (summarised):

- Disaggregation of domestic and foreign components on a country-by-country basis for any country whose taxable income is material to the entity's total.
- Enhanced disclosures around 'indefinitely reinvested foreign earnings'
- Enhanced deferred tax disclosures.

(d) ESG data providers

The collation and provision of environmental, social and governance (ESG) data to asset managers and financial institutions is a growing area of business. Detailed questionnaires and connected methodologies are not usually in the public domain; however, details have emerged to indicate that 'tax conduct' is increasingly on the radar of this sector and its clients.

- RobecoSAM is a Swiss company that describes itself as "an investment specialist focused exclusively on Sustainable Investing". As well as asset management, it also offers research and sustainability indices to third parties such as the Dow Jones Sustainability Index.[clxxxvii] In 2014, it created a new criterion, Tax Strategy, to "address the growing risks relating to aggressive taxation policies." It has three new questions which ask: whether or not companies have clearly defined tax policies that guide their approach to taxation how detailed companies report on taxes in the countries and regions in which they operate, and whether or not companies are aware of potential business and financial risks related to taxes.[clxxxviii]
- Sustainalytics describes itself as 'a global leader in ESG research and ratings', and as part of this assesses corporate tax disclosure and transparency.[clxxxix] They describe "weak transparency as meaning companies' tax reporting meets minimum regulatory compliance and does not provide insights on, for example, taxes paid on a country-by-country basis".[cxc]
- MSCI (Morgan Stanley Capital International) produces ESG indices against which $67bn of assets are benchmarked. In 2016, the Financial Times reported that from January 2017, "MSCI will significantly reduce the ESG ratings of companies that are embroiled in legal battles over tax issues, pay effective rates of tax that are much lower than their predicted rates based on revenues, or those with opaque tax structures."[cxci]
- Vigeo Eiris is a Paris-based provider of ESG research, data, and assessments for major commercial investors, and was bought by Ratings Agency company Moody's.[cxcii] The Danish pension fund – which has used Vigeo Eiris for several years to screen its company portfolio – "has had requirements and expectations on corporate tax reporting in place since 2014".[cxciii] Questions asked of companies include everything from 'does the company have a commitment to implement a responsible tax strategy' through to 'where in your public reporting can we find information on revenues, profit, income taxes and royalties paid per country/region of operation'.
- UK-based Ethical Screening provides services to individuals, charities, investment managers and financial advisers. It was Fair Tax Mark certified in 2018 and 'taxation' is now one of the research areas in their ESG company assessments.[cxciv]

4.2.2. Municipalities and regulators

(a) Consideration of tax conduct in public procurement

In recent years, there has been much consideration of how tax conduct could be factored into public procurement, both at a national and local level. A number of civil society campaign groups have been active in Europe: for example, Christian Aid in the UK, Oxfam in Denmark and Spain and national tax justice bodies in Sweden, Finland and Norway.

According to research from Datlab: "tax haven-based companies won 5% of the value of public tenders throughout EU countries over the period 2006-2017", which equates to c. €100bn being awarded annually to such companies.[cxcv] A related Datlab study (commissioned by the Fair Tax Mark), found that 17.5% of UK public procurement (with a combined value of £37.5bn) over the period 2014-2019 was won by businesses with connections to a tax haven.

The 'Tax Havens Free Zones' initiative in Spain has made significant headway. Oxfam Intermon has worked on this initiative since 2015[48], with the aim of encouraging public procurement policies that prioritize responsible tax behaviour and end the use of tax havens. More than 90 municipalities in Spain have now declared themselves in support of 'Tax Havens Free Zones', including major cities such as Barcelona and Valencia; with four seeking to progress substantive changes to procurement criteria.[cxcvi]

Similar work has been progressed in Denmark, with several municipalities passing progressive political resolutions, including Copenhagen and Albertslund[cxcvii]; but with real advancement stymied by legal regulations (see below).

Polling commissioned by the Fair Tax Mark in the UK found that almost two-thirds of the public agree that national government and local municipalities should consider a company's ethics and how they pay their tax, as well as value for money and quality of service provided.[cxcviii] The Fair Tax Mark now operate a Councils for Fair Tax Declaration in the UK, and this has so far been signed by six municipalities.[cxcix] By approving the Declaration, local municipalities demonstrate that they:

- Lead by example on their own tax conduct.
- Demand greater transparency from suppliers.
- Call for more meaningful powers to tackle tax avoidance amongst suppliers when buying goods and services.

However, right across Europe, the EU Procurement Directive of 2014[cc] has constrained action and meant that 'poor' tax conduct is rarely, if ever, a meaningful factor in European public procurement (given the extremely narrow scope for consideration allowable). This is despite the European Parliament calling for further progressive action in this area in 2017[cci] and 2019.[ccii] Including: "if necessary, propose an update of the Directive that does not prohibit the application of tax-related considerations as criteria for exclusion or even as selection criteria in public procurement".

In the meantime, the Fair Tax Mark argue that 'good' tax conduct could and should be a core public procurement consideration. Not only on the grounds that it helps level the playing field for competing suppliers and bolsters the national corporate tax take, but because it enables better

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[48] Together with *La Plataforma per una fiscalitat justa.*

identification and mitigation of financial and corruption risks by contracting public authorities. It is suggested[cciii] that new 'social value' evaluation metrics might include:

- Clear public disclosure of the ultimate beneficial owners of suppliers.
- Suppliers providing a publicly available tax policy that explicitly shuns tax avoidance and the artificial use of tax havens and low-tax jurisdictions.
- The consolidated annual profit/loss of the parent company being publicly available, together with details of associated corporation tax payments. Multinational businesses should disclose this on a country-by-country basis.

(b) Consideration of tax conduct in licencing

In the UK, gas and electricity network provision has been largely privatised, but these are still essentially monopolistic closed markets and therefore correctly subject to tight regulation.

In 2018, the UK energy regulator, Ofgem, progressed reconsideration of the next round of eight-year supply arrangements that private service providers would be asked to meet – known as the RIIO-2 Price Control Settlement. A consultation was issued in December 2018, and this included questions on whether:

- companies should be required to seek Fair Tax Mark certification, or
- Fair Tax Mark like provisions should be a condition of contract.[cciv]

It went on to say in a Finance Annex that: "We recognise that at present the Fair Tax Mark is not available to companies owned outside the UK, however we understand that Fair Tax Mark Ltd intends to issue (within the next two years) accreditation to companies that are non-UK owned, and therefore, we expect network companies to work with Fair Tax Mark Ltd towards obtaining accreditation."[ccv]

This consideration of 'good tax conduct' by a regulator is significant and welcome, albeit the final decisions as to incorporation have yet to be taken (and are likely to conclude end 2020). The FTSE 100 listed, and Fair Tax Mark certified, SSE plc has been supportive of the incorporation of these new tax transparency requirements.[ccvi] As have, according to Ofgem, three other network supply companies – with a further seven companies opposing the measures. The consumer champion, Citizens Advice, are reported to have been strongly supportive of the accreditation proposal and consider that Ofgem should publicly name network companies who do not sign up ahead of RIIO-2.[ccvii]

In 2018, it looked like robust action might possibly emerge in another monopolistic closed market, water supply. The UK Government Environment Secretary was reported to be offering the regulator Ofwat new powers to tackle the aggressive financing structures of certain private companies.[ccviii] However, this seemed to fall on deaf ears.

4.2.3. Large accountancy firms

The history of large accounting firms is intertwined with that of multinational enterprises: the former expanding abroad to serve (and influence) the needs of the latter, with an extended range of audit and tax services.[ccix]

It has previously been noted that Accountancy Europe (see 4.1.10) has produced a reporting template for country-by-country reporting, and that PwC Netherlands was involved in both the

VBDO Benchmark (see 4.1.9) and the CSR Europe blueprint (see 4.1.6). Moreover, Grant Thornton (see 4.1.5), an international auditor and tax adviser, is an accredited partner to Future-Fit. Detailed below are other notable contributions from accountancy and tax professionals.

However, it is first worth noting that the accountancy and tax professions have, rightly, come in for much criticism in recent years as enablers of tax avoidance and evasion. Numerous tax avoidance schemes designed by the likes of KPMG and PwC have subsequently been deemed to be unlawful by the courts. Professor Prem Sikka has done much to highlight the systematic involvement of the 'Big Four' accountancy firms in this area.[ccx] Richard Brooks, in his book 'Bean Counters – the Triumph of the Accountants and How They Broke Capitalism', and has also detailed a catalogue of abuse. [ccxi] PwC was at the centre of the Lux Leaks[ccxii] and Luanda Leaks[ccxiii] scandals, both of which realised global press coverage. Emmanuel Saez and Gabriel Zucman recently suggested that 250,000 people worked in transfer pricing alone, and it has been reported that revenues of global tax advisory services are at least $20bn per annum.[ccxiv] Saez and Zucman went on to write that: "it would be naive to think that they are passive bystanders when it comes to the policies that condition the existence of their livelihoods. The tax dodging industry also has a vested interest in ensuring as little international co-ordination as possible."

In addition, accountants and auditors have been involved in an increasing number of high-profile accounting scandals (includes Carillion the UK, Satyam Computer Services in India, Colonial Bank in the US). This had led to legislative change (for example, in the UK there are now prohibitions on public companies being audited and advised by the same business[ccxv]) and the prospect of even more significant change to follow. The regulation of the profession has itself been found to be wanting (for example, in the UK the audit regime is to be transformed, with the Financial Reporting Council being replaced by the Auditing, Reporting and Governance Authority[ccxvi]).

Against this backdrop, the contributions of the 'Big Four' accountants on matters such as 'responsible tax conduct' are treated with scepticism by most civil society organisations; and this will likely continue until they shun the enablement of tax avoidance and their lobbying activities cease to be hostile to the likes of pCbCR and beneficial ownership disclosure.

(a) KPMG Responsible Tax Project

The KPMG Responsible Tax Project was initiated in the UK in 2014, and is now presented as a 'global' project that invites "the full range of stakeholders, including taxpayers, academia, media, government, global bodies, politicians, NGOs and tax professionals, to inform thinking on what responsible tax behaviour looks like in a global context."[ccxvii]

The Project became progressively ill-received by UK civil society, who saw it as a crude attempt to corral and curtail the emerging drive for beneficial ownership disclosure and public country-by-country reporting that were being driven by the likes of the Fair Tax Mark.[49] Their 'Developing a Common Framework for Disclosing Tax Information' and sponsorship of 'Responsible Tax for the Common Good project' fell away, and the emphasis of the Project became global. A recent

[49] For example, this December 2015 blog post from Richard Murphy, titled "It's time for KPMG to answer questions on Tax Reporting Standards" summarises the emerging concerns of the time. https://www.taxresearch.org.uk/Blog/2015/12/09/its-time-for-kpmg-to-answer-questions-on-tax-reporting-standards/

attempt in the UK to rekindle proceedings via a conference was met with a partial civil society boycott, as reported by the Financial Times in September 2018.[ccxviii]

(b) PwC Total Tax Contribution Framework

The PwC Total Tax Contribution Framework was launched in 2005 as a discussion paper, which pointed out that (at the time) there was little information in the public domain about what taxes companies pay and what taxes they pay in total. The Framework "looks at all of the taxes a company pays with a view to helping companies to communicate more fully the total contribution that they make to the government tax revenues."[ccxix] The methodology has gone on to be used around the world by both individual companies (e.g., Legal and General), industry sectors (e.g., UK banking sector[ccxx]) and for cross industry analysis (e.g., the 100 Group in the UK[ccxxi] and the Business Roundtable commission in the US[ccxxii]).

The Framework distinguishes between taxes borne and taxes collected, and identifies five categories: profit, people, product, property and planet (environmental). It also captures 'other payments' to government (such as payments for rights to explore or extract oil and gas from a mineral area) and the cost of tax compliance. Corporation taxes are captured as 'cash taxes paid', not accounting accruals. PwC encourage businesses to make a 'Total Tax Rate' calculation, based on taxes borne over the profit before borne taxes; and also a 'Taxes borne and collected as a percentage of turnover' calculation.

PwC's Framework is a welcome contribution to the drive to encourage tax transparency; however, total tax contribution calculations can sometimes be used to divert attention from how little corporation tax is being paid. For example, Amazon, in response to criticism that little corporation tax was being paid in the UK, recently released 'Amazon's Economic Impact in the UK' and referenced PwC's Framework[ccxxiii] The headline claim was that: "Amazon invests heavily in the UK – more than £18bn since 2010. The company employs 29,500 people across the country, contributed a total of £793m in UK tax in 2018, and pays its associates industry-leading pay." But the company continued to refuse to disclose exactly how much profit is made, and corporation tax paid, in the UK.

(c) Other

EY and Deloitte have made smaller contributions, with the release of simple reports that ask readers to consider the ongoing external drivers toward more tax transparency and what a corporate response might look like. For example

- EY's 'Tax Transparency – seizing the initiative'.[ccxxiv]
- Deloitte's 'Responsible Tax – Sustainable tax strategy'.[ccxxv]

5. Conclusions

This Report has sought to track and analyse the many responsible tax initiatives that are now in play across the world, with a view to influencing and guiding the Fair Tax Mark's consideration of a new suite of international standards that is now under development. These would enable the Fair Tax certification of businesses that have their ultimate holding company situated outside of the UK.

We invite comment on our analysis and conclusions. In particular, if we have omitted consideration of workstreams of which we were ignorant. We have previously shared an earlier version of this Report with a range of civil society organisations, and incorporated feedback as warranted. We are now eager to receive a broader suite of feedback, not least from the business sector.

Note: this Report was substantially completed in April 2020, when much of the world was just beginning to wrestle with the Covid-19 pandemic and the need for social distancing. Substantive economic and fiscal change was underway in many countries, with matters developing on an almost daily basis. Radical tax reforms are being rapidly progressed, on a declared 'temporary' basis. The longer-term impact of this upheaval is difficult to determine at this juncture and has not been significantly factored into the deliberations detailed in this Report. It is, however, likely that tax policy will play a central role in both the short-term response of governments to support individuals and businesses, and the longer-term subsequent need to rebuild economies across the globe.

In the late 1990s, Finnemore and Sikkink developed a now well-established theory for how ideas develop into norms that shape world politics; for example, the advance of women's suffrage, opposition to apartheid and landmine bans.[ccxxvi] They argue that norms evolve in a patterned 'life cycle' composed of three stages, as outlined below.

- Norm emergence. New norms are actively built by activists having strong notions about appropriate or desirable behaviour in their community. These activists call attention to issues and often 'frame' issues by using language that names, interprets, and dramatizes them. With regard to tax justice, it has been argued that tax avoidance is not clever and harmless, but rather immoral and incredibly impactful on the public purse and fair competition. Polling indicates that large numbers of the public agree. The concepts of pCbCR and unitary taxation are now well developed.
- Norm cascade. A critical mass builds in support of the change advocated by the new norms. A 'tipping point' is reached, and the norm begins to 'cascade' throughout society (or societies). There is an active process of socialisation, which induces norm breakers to become norm followers. This might involve emulation (of heroes), praise (for behaviour that conforms to the norm) and criticism (for deviation). With regard to tax justice, norm cascade is well underway with everyone from G8 to G77 world leaders calling for action to tackle tax dodging. OECD undertakes BEPS 1.0 and then 2.0. The process of socialisation is evidenced by the growing trend of corporate tax shaming (e.g., Facebook). In parallel, progressive businesses stand up, take leadership on tax transparency and responsibility and garner praise and legitimacy (e.g., via the Fair Tax Mark). Institutional investors begin to factor tax conduct into decision making.

- Norm internalisation. Norms become widely accepted, internalized and achieve a 'taken-for granted' quality. Internalized norms can be both extremely powerful (because behaviour according to the norm is not questioned) and hard to discern (because actors do not seriously consider or discuss whether to conform). Precisely because they are not controversial, the norms are now the centrepiece of political debate. With regard to tax justice, norm internalisation progress is evident, but piecemeal. pCbCR is now mandated in certain countries for certain sectors (e.g., extractives), but as yet no country mandates pCbCR for all large businesses. Unitary taxation has entered into the OECD BEPS 2.0 discussions, but as yet, not for core income. The 'Big Four' accountancy firms remain generally oppositional to change.

It has been argued, and this Report's authors agree, that whilst a tax justice 'norm cascade' is certainly well underway, 'norm internalisation' has not yet progressed and is still deeply contested.[ccxxvii]

This Report has described (section 2) how consensus that has dominated international tax law for a century is over. The rise of digital enterprise, tax havens, tax avoidance and a race to the bottom have seen to that. Public discontent (fuelled by a chain of scandals, data leaks and brave whistle-blowers) has grown to such a level that politicians the world over have been forced to take action. Civil society campaign groups have made headway on the keys asks of public country-by-country reporting and unitary taxation in recent years.

It is also apparent (section 3) that the OECD's BEPS project has achieved much, but big issues such as profit shifting remain outstanding. Realising consensus on the way forward will be very difficult, and there has been a mixed reaction to the partial incorporation of unitary taxation and formulary apportionment in the BEPS 2.0 proposals. Even if the OECD is successful and a deal is reached by the end of 2020, it would likely take several years before countries change their tax laws and implement new rules. Mandatory pCbCR is in place in some countries for a small number of industry sectors, but no country has yet enforced pCbCR for all large businesses. Unilateral measures are emerging (in particular, digital services taxes).

A number of voluntary responsible tax programmes have been developed around the world in recent years (as described in section 4). These are broadly welcomed, not least as they help to create a platform for much-needed legislative change. These include initiatives from corporate responsibility activists, NGO activists, investors and tax professionals.

Four corporate commitments emerge as being key to responsible tax conduct:

- public country-by-country reporting of sales, profits and taxes;
- a public policy undertaking not to use tax havens artificially or pursue tax avoidance;
- disclosure of beneficial owners and persons of significant control;
- independent assurance from outside of the big accountancy firms.

Concepts such as unitary taxation and formulary apportionment are vital at an international level, but are not something that a business can be expected to progress unilaterally. It would, however, be desirable for progressive businesses to support this shift, and at the very least not block international progress via lobbying (either directly or indirectly, via trade bodies).

5.1. Business should: embrace public CbC reporting and related reporting transparency

Multinational businesses should be required to report on revenue, profit, tax and employee investment, on a public country-by-country basis.[50] Ideally, this information would be provided in an open data format and be machine readable.

Comprehensively implemented pCbCR would significantly increase corporate tax transparency and enable citizens worldwide to see if a business is paying the right amount of tax in the right place at the right time. Public scrutiny is useful for researchers, investigative journalists, investors and other stakeholders to properly assess risks, liabilities and opportunities to stimulate fair entrepreneurship. Such transparency is also essential for determining whether a business is complying with commitments detailed in their public tax policy or strategy (see 5.2).

This would be a business-friendly measure. The OECD and European Commission have both identified the competitive advantage certain multinational companies have over domestic rivals and SMEs, given that the latter frequently only operate in one country and are not able to engage in profit shifting between tax jurisdictions to reduce their taxes, and as a consequence face a higher tax bill compared to their competitor multinationals. pCbCR has been shown to drive increased tax revenues.

A survey of more 1,300 Chief Executive Officers around the world, conducted by PwC in 2014, found that 59% agreed that multinational corporations should be required to disclose basic financial information, such as revenue, taxes paid, and number of employees on a country-by-country basis.[ccxxviii] During European Parliament hearings to discuss the introduction of public CbCR across all sectors in the EU, executives from HSBC and Barclays voiced their support for legislation that would increase reporting to all multinational enterprises.[ccxxix]

In addition, companies should publicly disclose a full list of their subsidiaries (together with tax residency). Subsidiary disclosure is already a requirement in places such as the UK; but in the US, the SEC only requires that "significant" subsidiaries be disclosed.

The disclosure of the fullest possible profit and loss report, together with detailed tax notes and a narrative explanation, is desirable for businesses of all sizes. In large parts of the world, smaller businesses are exempt from such reporting requirements (for example, in the UK). As are large, unlisted businesses elsewhere (for example in the US). However, tax avoidance and evasion are pervasive in businesses of all sizes and types, and so the need for exemplar tax conduct and transparency is relevant to all businesses.

5.2. Business should: publish a binding Policy undertaking not to use tax havens artificially or pursue tax avoidance

The 'Big Four' accountancy firms have sought to use their considerable influence to dampen down considerations of morality and fairness in tax conduct. First, by directing debates toward the narrow silo of 'legality' (i.e., tax avoidance is legal and therefore not inappropriate); and more

[50] More specifically (but not limited to): the number of employees; net turnover (including related party turnover); profit or loss before tax; taxes paid (total, deferred, current and cash taxes).

recently, under external pressure to be more progressive, to the slightly broader consideration of 'reputational risk management'.

Such a 'lowest common denominator' approach would be unthinkable in other areas of corporate responsibility, such as environmental protection or human rights. This is not just the case for business in general, but also the 'Big Four': for example, KPMG has proudly committed to 'eradicating single use plastics' and the purchase of renewable energy for its operations.[ccxxx]

The UK requires all large companies that operate there to publish a tax strategy, with baseline matters such as the approach to risk management and governance arrangements explained (see 3.2.4(b)). Australia operates a similar, albeit voluntary, Tax Transparency Code (see 3.2.7).

All businesses should be encouraged to publish such a tax policy, and to additionally embrace moral considerations. In particular, they should explicitly shun tax avoidance and the artificial use of tax havens, and commit to the declaration of profits in the place where their economic substance arises.

Recent analysis from the UN Principles for Responsible Investment (PRI) found that just 23 of 41 multinational companies published their "global positions on tax", with only five explaining their "approach to tax havens".[ccxxxi]

Any policy should be subject to annual affirmation, via compliance checks. The policy should be owned by a named board director. Accompanying pCbCR (see 5.1) would further demonstrate responsible tax conduct and build trust.

5.3. Business should: disclose their beneficial owners and persons of significant control

All businesses should disclose their beneficial owners and persons with significant control (if different). The threshold for disclosure should be at least at the level of 10% of shareholdings or voting rights (as currently required by the Fair Tax Mark), but preferably lower.[51] A beneficial owner in respect of a company means the person(s) who directly or indirectly ultimately owns or controls a corporate entity.[52] This includes ownership via trusts.

Anonymously owned companies are one of the key tools used by money launderers and tax evaders to hide illicit gains and taxable assets from law enforcement and tax inspectors. Public registers are a key means to making this more difficult. Moreover, making beneficial ownership public is good for fair competition, allowing companies to know who they are doing business with.

Several prominent business leaders have put their name to the call for company ownership transparency, including Paul Polman, the CEO of Unilever, Bob Collymore, the CEO of Safaricom and Mo Ibrahim, the founder of Celtel.[ccxxxii]

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[51] The threshold for disclosure on the UK's public register is 25%, but UK listing rules specify a 3% or more holding.

[52] For example: an individual holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of the company.

5.4. Business should: pursue independent assurance from outside of the big accountancy firms

Trust in big business has fallen in recent years in the OECD member countries that GlobeScan has tracked over time. Their Radar global public opinion poll of 2019 found that: "many view business as not having the best interests of society in mind".[ccxxxiii] It also found that fewer than half of those in the 25 countries surveyed believe that large companies pay their fair share of taxes, with people in Europe and North America less likely to agree that companies pay a fair share of taxes than those residing in Asia and Africa. People in France, Germany, and Spain are said to be: "the least likely to think that companies are paying their fair share, reflecting the very low levels of trust in business to operate in society's best interest in these countries."

Against this background, corporate claims of responsible tax conduct can benefit from independent third-party assurance – in the same way as concepts such as Fairtrade and organic standards do so.

Organisations rooted in civil society are best placed to provide this assurance, with the involvement of the big accountancy firms (especially the 'Big Four') treated with scepticism given their involvement in the enabling of tax avoidance. This scepticism extends beyond the tax justice civil society movement. For example, whilst polling of the UK public found that 75% agreed that: 'it was important to celebrate businesses who can demonstrate good tax conduct and shun the artificial use of tax havens and contrived tax avoidance practices'; just 15% said that they trusted 'company auditors' to accurately confirm whether a 'company was paying the right amount of tax', compared with 41% for the Fair Tax Mark and 57% for the HMRC tax authority.[ccxxxiv]

Independent assurance rooted in civil society is far more likely to support the emergence of much needed legislative and regulatory developments, such as pCbCR.

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