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

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The central focus of this volume is to understand and explain the evolution of the international corporate tax regime since 2008 and the role of civil society activism and increased politicisation in this process. This chapter contributes to that endeavour by outlining the failings of the international corporate tax regime which existed at the outbreak of the global financial crisis and identifying the factors that, incessant criticism notwithstanding, have made it resistant to change since its origins in the 1920s. Many of the norms and principles devised almost a century ago, including the allocation of taxation rights between source and residence countries, conventions governing relief from double taxation, and concepts such as permanent establishment still pepper contemporary tax treaties (Jogarajan 2011). This inertia is likewise reflected in the persistence of rules and decision making procedures grounded in bilateral, rather than multilateral, agreements.

Many of the regime's shortcomings and the explanations for its obstinacy obtain from the inability of global governance to subdue the pitiless truths of global politics. Every conundrum of global governance presents unique challenges. Nevertheless, as the large literature on the subject attests, irrespective of the issue those charged with governing global phenomena confront a common core of complications (Rodrik 2011; Keohane 2001; Slaughter 2004). Many of these obstacles arise from the mismatch between the territorially bounded authority of the primary governing units, nation states, and the global scale of the puzzle being addressed. Reluctant to forfeit their sovereign privileges to supranational organisations states have instead resorted to tackling these issues through a profusion of international institutions and agreements. These arrangements represent, and have helped to stimulate, some impressive episodes of international cooperation but, as creatures of state sovereignty, their effectiveness is constrained.

Nothing illustrates this better than the international corporate tax regime. During the last fifty years, the surge in the number and importance of Multinational Corporations (MNCs) has come to symbolise economic globalisation. Although the power of these corporate behemoths is sometimes exaggerated, the MNC's geographical mobility has unquestionably curtailed the capacity of individual sovereign states to regulate and tax them. This predicament is exacerbated by unilateral state actions related to corporate taxation which, deliberately or otherwise, can occasion substantial externalities for other national tax systems. Equally in the field of corporate taxation international cooperation to enable states to recapture their propensity to regulate MNC activity is beset with difficulties (Eccleston and Smith 2016).

The governance of corporate taxation is sometimes portrayed as a straightforward collective action problem. From this perspective (see Thomas 2000) states have an incentive to negotiate rules to restrict fiscal practices inimitable to their interest in optimising their tax revenues and to devise strong mechanisms to discourage defection. In fact the state's desire to raise revenue is tempered by other considerations, not least to exploit the tax system to boost their economic competitiveness. Lower corporate tax rates and the lenient treatment of foreign investment are indispensible weapons in the armoury of states eager to attract and retain mobile capital. Similarly, governments keen to stimulate the outward expansion of their own domestic firms or bolster the competitiveness of 'home' MNCs are unlikely to curtail their ability to profit from equivalently indulgent opportunities elsewhere. Unsurprisingly the decentralised system of bilateral tax treaties on which the international tax regime has been built contain subtle provisions which help powerful states and MNCs they promote to protect their interests (Buttner and Thiemann 2017). The outcome is a self-defeating race to the bottom with governments offering incentives that harm not only domestic tax revenues but those of other states.

More aggressive attempts to curb tax excessive or 'harmful' (OECD 1998) tax competition have collided headlong with state sovereignty. Taxation is "the pre-eminent prerogative of the sovereign state" (Sharman 2012: 18) and is the cornerstone of the social contract. By prejudicing its ability to respond to domestic demands for welfare, security and economic competitiveness and to project its interests internationally, losing control over taxation would have profound implications for state sovereignty (Ring 2009). Unsurprisingly, despite agreeing some international norms circumscribing the reach of their tax systems, states have ardently defended the right to design and administer domestic tax law (Rixen 2008). The need to accommodate the inconsistencies of scores of divergent national tax systems and reconcile the competing preferences of states results in a laborious process of incremental change characterised by lowest common denominator agreements. Thus, rather than a comprehensive multilateral agreement overseen by a World Tax Organisation the international corporate tax regime consists of a matrix of bilateral treaties "loosely coordinated" (Eccleston 2012: 69) by standards and model treaties agreed at the Organisation for Economic Cooperation and Development (OECD).

Accounts stressing the role of states and interstate relationships provide important, if incomplete, insights into the international corporate tax regime. To fully understand the regime's trajectory and interpret its intransigence requires a complementary understanding of the role of private actors. Far from merely being the subject of the international corporate tax regime private actors have been intrinsic to its development from the beginning. Together with government revenue officials, international civil servants and academic specialists, envoys from the private sphere including business and industry associations, MNCs, tax planning professionals, and latterly civil society organisations (CSOs), have been integral parts of the community of experts whose authoritative judgements have guided the international corporate tax regime. In recent decades, private players have assumed more prominent positions and possess growing influence over the formulation and implementation of international tax rules. Several of the subsequent chapters conceptualise private actors as agents of transformation in the international corporate tax regime, but before 2008 they were agents of the status quo dominating a closed policy community dominated by tax experts and professionals (Genschel and Rixen 2015, 172). Private input was overwhelmingly dominated by transnational business interests that, as the biggest beneficiaries of a regime founded upon 'inadequate principles, outdated concepts and unsatisfactory policies' (Graetz 2001), worked to nullify proposals for paradigmatic change.

This constellation of state and private interests are the primary reasons why only cosmetic changes to the international corporate tax regime have been made over the last one-hundred years. In contrast, during the same period, the nature of corporate activity was revolutionised. The explosion of cross-border commerce left many of the regime's rules, norms and principles looking increasingly anachronistic. This was epitomised by the rise of highly integrated MNC and their apparent ability to exploit these rules to avoid taxes with impunity (Elbra and Mikler 2017).

Origins: the international corporate tax regime, 1920-1945

Intensified globalisation in the period prior to the First World War inspired the development of mechanisms to remove obstacles to, and govern the complications arising from, cross-border commerce. Often working through rudimentary forerunners of today's major organs of global governance by 1914 states, private and professional associations and powerful individuals had cultivated harmonized rules and standards for issues ranging from trade, transport and communications to intellectual property and units of measure (Murphy 1994; Davies and Woodward 2014). At this point revenue from tariffs rather than direct taxes constituted the lion's share of public budgets. Nevertheless, from the middle of the nineteenth century, states began to develop international treaties elaborating principles for the taxation of income and profits deriving from cross-border activity (Jogarajan 2011). The overriding objective was to galvanise international commerce by preventing double taxation, 'the imposition of comparable taxes in two (or more) States on the same taxpayer in respect of the same subject matter and for identical periods' (OECD 2014b: 1).

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

The report's authors were immediately confronted by the fundamental quandary bedevilling corporate tax governance, namely how to establish principles that confer states with the right to tax profits gleaned from international business and investment without encroaching excessively on their sovereign entitlement to determine their tax system. To do this, the report proposed, firstly, that the right to tax should be divided between source and residence countries. Source countries, the territory where capital was invested and a company or its subsidiary had a permanent establishment undertaking real economic activity, were allocated the primary taxing rights over the active income of business. Residence countries, the territory inhabited by the person or company with the right to receive the returns on the investment, were allocated the primary taxing rights over passive income such as dividends and royalties. Secondly, although MNCs operate as single economic units, it was recommended that each subsidiary should be treated as a separate legal entity whose tax liability would assessed by national fiscal authorities as though they were a standalone company. Thirdly, it was anticipated these broad conventions would form the basis for states to negotiate more detailed bilateral treaties.

The report and the parallel and subsequent work by a Committee of Technical Experts on Double Taxation and Tax Evasion were exercises in expediency. The quest for politically acceptable remedies narrowed the expert group's aspirations and forced them to abandon or at least compromise on solutions identified in their academic research (see for example Stamp 1921; Seligman 1921; Jogarajan 2013). The Committee's malleability kept participants on aboard with a package to tackle the primary headache of double taxation. The downside, as the members were mindful and Committee's nomenclature implicitly implies, was that this settlement would facilitate widespread tax avoidance. For instance, splitting of taxing rights between source and residence countries accommodated the competing preferences of capital importing and capital exporting countries. Whereas the former craved unbridled jurisdiction over activities undertaken within their borders this was incompatible with the latter, primarily the US and the UK, wanted to tax the global income of their residents. Under this deal, MNCs could defer residence taxation be not repatriating income made overseas.

Correspondingly the Committee of Technical Experts had lengthy discussions about whether double tax treaties should be negotiated on a bilateral or multilateral basis. The superiority of a universal multilateral pact that would taper the inconsistencies between national tax systems was generally accepted. Nevertheless, the committee eventually plumped for a bi-lateral approach recognising that the divergences amongst national fiscal systems made negotiating a collective convention 'practically impossible...........unless it were worded in such general terms as to be of no practical value' (League of Nations 1927: 8). Their report sketched out a prototype of a model convention encompassing essential principles which could then be applied as a template for the negotiation treaties between bilateral partners. This approach safeguarded state sovereignty by allowing contracting parties to tailor double tax agreements (DTAs) to the peculiarities of their respective domestic tax arrangements. The drawback of customisation was that it spawned a hotchpotch of bi-lateral treaties whose inconsistencies were a godsend for MNCs resolved to outwit the taxman.

The tax avoidance problems stemming from the unevenness of the treaty network were aggravated by norms treating each company in a corporate group as an independent entity (League of Nations 1933; Piciotto 1992). Theoretically the prices recorded for transactions between firms affiliated in the same group, so-called transfer prices, should conform to hypothetical transactions entered into at 'arms-length'. In other words, transfer prices should equate to real prices which would be charged to an unrelated company in a free market. In reality, as discussed in greater detail in Chapter 2, corporate groups manipulated this system reducing their overall tax liability by fixing artificial prices whose effect is to funnel costs (which are tax deductible) to higher tax jurisdictions and shift profits to permissive tax environments. Throughout the 1920s and 1930s alternative proposals for unitary taxation, a system that regards corporate groups as a single entity and distributes profits amongst states according to an agreed formula related to the group's sales, assets and payroll in different jurisdictions, were regularly discussed. These proposals, sometimes referred to as formula apportionment, were confounded by the elusiveness of an international consensus on a definition of the tax base or a formula for its allocation (Avi-Yonah 1995).

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

Only 60 DTA's were concluded between 1920 and 1939 but this modest tally understates the progress made by the League. The League's forays into this field installed the institutional and intellectual foundations upon which the post-war architects would erect a more formal international corporate tax regime. Regrettably the bartering necessary to attain a consensus meant the regime was already contrary to commercial realities and left a legacy of loopholes that expedited tax abuses by MNCs. These frailties would be worsened after 1945 by a rapid and sustained expansion in multinational corporate activity.

Institutionalisation, Globalisation and Emasculation - the international corporate tax regime, 1946-1996

If the foundations for the international corporate tax regime were laid during the interwar period, the edifice was constructed in the second half of the 20th century. During this time the regime became more intricate and institutionalised. The count of bilateral double tax treaties, based on refined versions of earlier model tax conventions, grew almost twentyfold to over 1700 by the mid-1990s. Many of the stipulations enshrined in these agreements, however, were rendered increasingly obsolete by the pervasiveness of MNCs and their attendant armada of tax planners. These actors, most notably what are now the Big Four professional services firms, would as time progressed, wield weightier influence in the regime's expert policy community.

After 1945, a new UN Tax Committee perpetuated the operations of the League Fiscal Committee but was swiftly paralysed by disagreements between capital exporting and capital importing states. Foreshadowing their later clout, international business representatives lobbied to confine dialogue to a narrower circle of industrialised nations. To this end, the ICC passed a resolution to sponsor the conclusion of a multilateral agreement on double taxation between Organisation for European Economic Cooperation (OEEC) countries in 1954. This led to the founding of the OEEC Fiscal Committee two years after. The Committee's work was galvanised by full US membership of the OECD, the body that superseded the OEEC in 1961. Owing to the uniquely globalised nature of their MNCs, US Treasury revenues were very vulnerable to tax avoidance, a source of intense irritation for President Kennedy who condemned the "'unjustifiable' use of tax havens by growing numbers of businesses to slash their tax liabilities at home and abroad" (Financial Times 2013). This hastened the arrival in 1963 of the OECD Model Tax Convention as a basis for the negotiation of bilateral treaties. Even within the smaller and more homogenous setting of the OECD reaching an agreement proved testing. The Convention therefore was mainly a codification of the principles developed in the interwar years and perpetuated their shortcomings.

The deficiencies of the international corporate tax regime were amplified by the changing nature and importance of MNCs. Immediately after the Second World War there were just a few hundred MNCs whose profits came principally from foreign trade and portfolio investment. Most foreign direct investment (FDI) came from MNCs with in primary industries with small numbers of affiliates looking to extract resources from specific locations. Moreover, this capital was normally raised locally or financed out of retained earnings. These companies at least approximated the image of the MNC enshrined in the international corporate tax regime as firms with a clearly defined home base and shareholders and which loosely coordinated the operations of autonomous overseas affiliate. By the 1970s things looked very different. Not only had the quantity of MNCs expanded rapidly (exceeding 9,000 by 1973 (Hood & Young 1979)) but the structure of many of these companies, especially those that had emerged in the manufacturing and services sectors, started to bear little resemblance to their predecessors. Gradually modern MNCs were taking the form of single, globally integrated companies with centralised decision making structures exerting tight control over a labyrinth of subsidiaries. These MNCs financed their FDI through borrowing on global capital markets meaning their owners, as well as their customers, are geographically dispersed. The production process, value and profitability of these firms was more reliant on intangible assets, most notably intellectual property rights like patents, trademarks and copyrights.

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

MNCs tax avoidance was aided and abetted by two interconnected developments: the intensification of tax competition and the flourishing of the transnational tax planning industry. From the late 1950s, the abundance of tax havens, jurisdictions that specialise in financial transactions for non-resident investors whom they attract by offering indulgent fiscal, regulatory, and legal frameworks, grew rapidly as many small states seized on financial services as a strategy to develop and diversify their economies. Small states may be the most notorious tax havens but similar enticements were also being offered by, and were intrinsic to, the economic strategies of virtually all OECD countries (Woodward 2018a). This is indicated by the nomenclature of the now notorious 'double Irish with a Dutch sandwich' which first made an appearance in the 1970s (Clyne 1977). Likewise, many OECD countries cement their competitive position by tacitly endorsing the use of tax havens by their 'home' MNCs. Escalating tax competition enhanced tax planning opportunities for MNCs. Precipitated by the systematic selling of fiendishly complex tax avoidance schemes by advanced business services firms, aggressive tax planning became a staple component of contemporary corporate strategy from the 1970s. Tax was regarded as just another cost to be minimised.

In conjunction with the nature of the OECD as an institutional setting, these developments also stymied the appetite for thoroughgoing reform to the international corporate tax regime. Reservations about the regime resulted in a series of OECD working groups on double taxation, tax avoidance and transfer pricing abuses. Alongside the OECD Committee on Fiscal Affairs, these working groups helped to achieve piecemeal alterations to the Model Convention and rules on transfer pricing and fleshed out guidelines for their application. That these groups confined their activities to system tending partly reflected the conservative bias injected into outcomes at the OECD by its reliance on consensus decision making (Carroll & Kellow 2011). This tendency is magnified in policy arenas like taxation which trespass directly on state sovereignty and where antipathy to sweeping changes that might limit tax competition hailed from countries, especially the US, that make large budget contributions.

The probabilities for regime reform were further dimmed by the wholesale incorporation of the transnational tax planning industry into the underlying policy community (see Latulippe 2016 and this volume). Narratives of corporate tax avoidance typically portray a game of cat and mouse in which the nimble tax avoiding rodents habitually outsmart the clumsy feline tax inspector. The abundance of MNCs and the sophistication of their tax planning activities combined with the diminution of revenue authorities further tilted the odds in the rodent's favour. This version of events understates the extent to the cat and the mouse conspire with OECD governments, striving to maintain the attractiveness of their economies to inward investment, coming to depend on the assistance of advanced business services firms to write their corporate tax legislation. The revolving door between the tax planning industry and bureaucracy meant swathes of the corporate tax code was being written in cahoots with the firms who would then market schemes to clients designed to circumvent these selfsame laws (Brooks 2013; Sikka 2015). In other words, far from being 'the passive victim of provisions to shrink tax liabilities the state has, through its connivance with the tax planning industry, been their primary architect' (Woodward 2018b). These domestic trends reinforced the privileged position of private business interests at the international level. From its inception, the OECD, mainly through the Business and Industry Advisory Committee (BIAC), systematically organised private sector interests into its tax deliberations. These interests regularly mobilised against efforts to suppress tax avoidance by rationalising the international corporate tax regime. In the late 1980s, tax advisors and bankers orchestrated a energetic campaign against the joint OECD-Council of Europe Convention on Mutual Administrative Assistance in Tax Matters (Piciotto 1992).

By the 1990s, the international corporate tax regime was widely regarded as anachronistic. The assumptions and principles underpinning the regime correlated less and less with multinational business enterprises which machinated to reduce their corporate tax rates to a fraction of the headline rate. Moreover, the system encouraged unfettered tax competition which seemed to have locked states into a race to the fiscal bottom. With the growing appreciation amongst OECD (1987) countries about the tax revenues being haemorrhaged as a consequence of the estimated $5.1 trillion assets of assets stashed offshore (Diamond and Diamond 1997), the scene was set for a fresh foray into the promotion of international tax transparency.

Phoney war and strategic retreat– the international corporate tax regime, 1996-2008

Commencing in 1996 at the behest of the G7, the OECD's Harmful Tax Competition (HTC) initiative marked the first serious attempt to overhaul the international corporate tax regime. In many respects, HTC was a pre-emptive strike by states alarmed about the impact of untrammelled tax competition in an era of mobile capital. The impetus came from a fortuitous confluence of ideational and material circumstances. Ideationally the tax policy community was in thrall to liberal economic theories portending a gloomy outlook for capital taxation (OECD 1991; Tanzi 1995). These theories believed that economic openness would witness money escaping to more lenient fiscal climates. This would unleash a race to the bottom amongst states seeking to attract and retain investment whose material impact, to borrow the phrase used in the G7 (1996) Communiqué, would be the 'erosion of national tax bases'. The OECD's (1998) preliminary report was greeted with considerable fanfare and forecasts of the 'end of offshore' (Piciotto 1999; Hampton and Levi 1999). Yet, just three years later the initiative was moribund, its fate sealed by the refusal of states to countenance an international agreement that would impinge upon their freedom to determine their tax system and unrelenting animosity from the transnational tax planning industry and a coterie of free-market think tanks (see Webb 2004; Eden and Kurdle 2005; Sharman 2006).

Broadly speaking the report dubbed tax practices or tax competition 'harmful' if their consequence was to 'poach' the tax base of other countries by driving the tax rate on income from mobile activities significantly below that of other countries (OECD 1998: 30). Two categories of harmful tax practices were identified. The perpetrators of harmful tax practices were pinpointed as tax havens and preferential tax regimes. Tax havens were defined as jurisdictions with low or no rates of tax. These were deemed harmful if they were accompanied by a lack of transparency, refusal to exchange information with overseas tax authorities or did not mandate investors to maintain substantial economic activities.In the late 1990s an agenda of identifying and sanctioning so called tax havens was controversial but the related goal of identifying what the

OECD called 'Preferential Tax Regimes' (PTRs) which met transparency standards, but sought to attract international investment by offering generous tax inducements, was even more arduous because it directly threatened the interests of MNCs and national government's capacity to compete for their investment (OECD 1998). The report threatened unspecified countermeasures against jurisdictions that refused to pledge to purge harmful tax practices.

Calls to reduce international tax competition through harmonisation have always raised a host of theoretical and normative concerns and this was certainly the case in relation to the HTC initiative. A major risk with trying to implement multilateral measures against PTRs is there was not broad-based support for tax harmonisation across the OECD's membership. While France had long been apprehensive that countries such as Ireland, who at the time offered a 10% corporate tax rate on foreign firms who relocated (which was later replaced with a general 12.5% corporate rate) were precipitating a destructive 'race to the bottom' so far as corporate taxation was concerned, the United States and British governments had long opposed the agenda arguing that it threatened the sovereign right national governments to set budget priorities according to domestic political imperatives (Weschler 2001; Sharman 2006: 61).

Given this lack of consensus, the OECD crusade started to unravel. Switzerland and Luxembourg had signalled their unhappiness by abstaining from the 1998 report meaning that they were not bound by its contents. This led to accusations of double standards from the 41 jurisdictions identified by the OECD as tax havens. None of these territories were OECD members, yet they were expected to make commitments to a project from which some OECD countries were exempted. The transnational tax planning industry and a caucus of pro-market pressure groups rallied to their aid (Webb 2004: Easson 2004), helping to delegitimise the initiative by showing it to be inconsistent with deeply embedded norms about the value of tax competition, not least those propagated and upheld by the OECD. Some ephemeral interest aside (see Oxfam 2000) international tax transparency was not on the radar of civil society actors devoted to the promotion of social justice whilst the tax planning industry had the financial wherewithal and expert prowess to be a continuing factor in OECD deliberations. The death knell however was the withdrawal in May 2001 of

United States support (US Department of the Treasury 2001) for precepts of the scheme. The OECD was forced to renounce provisions that would otherwise have obliged countries to enact rules to ensure that only firms with substantial business operations could claim residency. Concomitantly the HTC "would pose little threat to the aggressive, legal, international tax planning strategies pursued by so many of the world's MNC's" (Eccleston 2013: 67).

The defanging of the HTC killed the idea of tackling corporate tax avoidance stone dead. After 2001, OECD reports generally endorsing broad-based tax competition and those practices which allowed corporations to separate the legal and physical locations of their investments (OECD 2001). Vestiges of the project, focussed on a less gruelling agenda of promoting tax transparency and information exchange designed to make it harder for high wealth individuals to illegally evade tax by investing in offshore tax havens, were resurrected in 2009. Surveys in the interim exposed the magnitude and cost of MNC tax avoidance (see Avi-Yonah 2009; Gravelle 2009; Sullivan 2004, 2008; US GAO 2008; Zucman 2015) but there was scarce political will to tackle it. However, as the next two chapters divulge, the financial crisis strikingly altered the political calculus and by 2012 it as an issue whose time had come.

Conclusion – the international corporate tax regime post-2008 - the revenge of history?

Since the global financial crisis of 2008 there has been unprecedented interest in, and political momentum behind, reform to the international corporate tax regime (see for example Eccleston 2013; Graetz 2016; Pogge & Mehta 2016). As we have noted, in the context of austerity supplied oxygen to issues surrounding corporate tax avoidance. At a juncture when many citizens were suffering hardships inflicted by tax rises linked to austerity, the seemingly endless stream of stories documenting egregious cases of corporate tax avoidance have aroused considerable public anger. For states needing to placate public opinion and close yawning budget deficits, a clampdown on corporate tax avoidance was both fiscally and electorally alluring. The temptation was reinforced by the mobilisation of private actors campaigning under the broad banner of tax justice (see Eccleston, this volume). In addition to the consolidation of specialist organisations such as the Tax Justice Network (TJN), corporate tax avoidance now intruded on the mainstream agendas of broader CSOs including Oxfam, Christian Aid and Transparency International. Trading on their professional reputations, these bodies were able to contest the ideas and infiltrate the institutions that were previously the exclusive preserve of a narrow cadre of tax professionals. Their newfound standing pointed to the emergence of a more open and complex expert policy community for international corporate taxation and hence the possibility of meaningful revisions to the underlying regime.

Superficially the developments in the sphere of corporate tax governance since 2008, culminating with the endorsement of the OECD's (2015) final report on Base Erosion and Profit Shifting (BEPS) by the leaders of the Group of 20 (G20 2015), appear to confirm this. As will be discussed in greater detail in the following chapter, the BEPS recommendations certainly represent the most dramatic amendments to the international tax rules since the 1920s. Closer inspection reveals however that BEPS, along with comparable developments elsewhere, does not denote a radical break with the past. Commentaries on the modifications to the international corporate tax regime assert that the proposals are much more modest than the 'change of paradigm' (quoted in Economist 2015) trumpeted by the likes of Pascal Saint-Amans', the Director of the OECD's Centre for Tax Policy and Administration (CTPA). The grandfathering into the revamped regime of supposedly obsolete concepts such as source and residence and the dysfunctional regulations such as arms length lends credence to Avi-Yonah and Hu's (2016: 208) observation that "the legal reform of international tax look[s] more like the patch-up of existing rules and principles" (see also Devereux and Vella 2014).

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

BEPS has also encountered steadfast opposition from private actors in the transnational tax planning industry. The guarded public support for BEPS amongst the business community contrasts with fears expressed behind-the-scenes that the initiative would lead amongst other things to double taxation, spiralling compliance costs and the publication of commercially sensitive data. As one insider put it, the "gameplan" of many corporations remains "to be positive but hope as little as possible happens" (Financial Times 2014). Business interests also maintained their stranglehold on the policy process. For instance, 87% of the submissions to the OECD's public consultations on the BEPS country-by-country (CbC) reporting requirements were from business stakeholders (Oxfam 2014) and the revolving door between the Big 4 accountancy firms and the upper echelons of the OECD's tax bureaucracy still whirls (see Piciotto 2015). In July 2016, the OECD appointed Ernst and Young's Jefferson VanderWolk to replace Andrew Hickman, himself recruited from KPMG in 2014, as head of the CTPA's Tax Treaty, Transfer Pricing and Financial Transactions Division. Regardless of their ascent, bodies lobbying for the transnational tax planning industry and their clients vastly outnumber and outgun those agitating for action to tame tax abuses by modernising the international corporate tax regime (Woodward 2018a). Predictably these advocates have not overthrown the prevailing regime, nonetheless their interventions have made some important contributions and achieved some significant victories. The inclusion of CbC in the BEPS action plan is a case in point. Conceived by Richard Murphy and John

Christensen of the TJN its elevation is the consequence of a coalition of CSOs championed its case in both domestic and international forums. CSOs have also been the watchdogs of the process, exposing flagrant examples of impropriety (see Christians 2013) and using tools such as the TJN's Financial Secrecy Index to shame corporations and states into action.

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

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