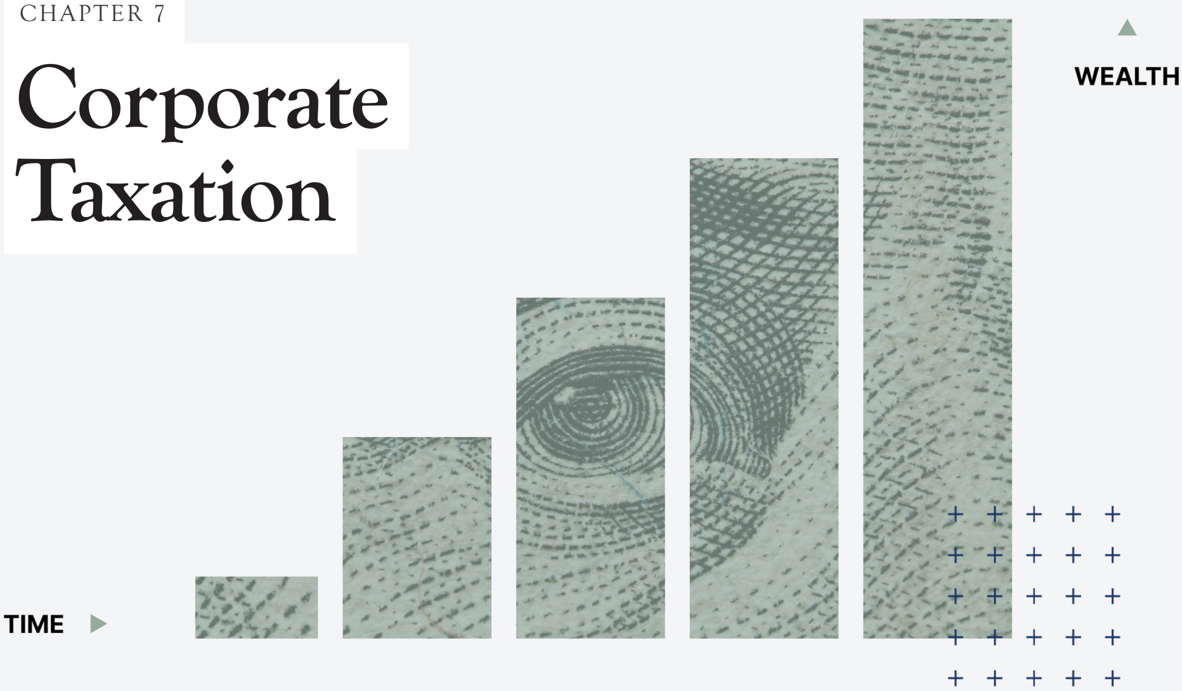
CHAPTER 7

Corporate Taxation



> **The G20/OECD-led tax agenda is revolutionizing tax arrangements. Tax transparency, in the form of effective exchange of information between tax administrations, country-by-country reporting by MNEs to tax administrations, mandatory disclosure of advance pricing agreements and tax rulings, and aggressive tax schemes—all require that corporations learn to operate in an environment where their tax arrangements are subject to unprecedented scrutiny and where cooperation between tax administrations has intensified.**
>
> *Jeffery Owens and James Zhan (2018:5)*

Introduction

The issue of income inequality involves not only patterns of distribution within corporate structures and value chains, but also distribution involving other stakeholders, not least governments and citizens affected by taxation. A secular trend under globalization has been the shift from progressive to regressive forms of taxation, reflected, for example, in lower rates of corporate tax and income tax paid by the rich, as well as higher rates of consumption tax.[177] Corporations often engage in so-called aggressive tax strategies and planning which foster tax dodging. And in a context of increased geographical mobility of capital, many governments engage in tax competition that offers investors both lower statutory rates[178] and tax holidays or other incentives (Owens and Zhan 2018).[179] The growth of intra-firm trade within complex global value chains, as well as digitalization and tax havens, have facilitated both illegal tax evasion and various forms of tax avoidance associated with transfer pricing and profit shifting—activities that can be positioned at diverse points along the spectrum of ethicality and legality (Shaxson 2019).

[177] As Faccio and Fitzgerald (2018:83) note: "Corporation tax is, in essence, a withholding tax on dividends and is thus strongly progressive, reducing income inequality; sales taxes on the other hand are usually regressive".

[178] There has been an almost continuous decline in the average corporate tax rate in the OECD countries, from about 43 percent in the mid-1980s to 32.5 percent in 2000 and 23.9 percent in 2018 (Clausing 2018; OECD 2018b).

[179] Tørsløv et al. (2018) report that the global average statutory corporate tax rate halved from 49 to 24 percent due to tax competition between 1985 and 2018.

As Christian Aid, Oxfam and ActionAid point out:

> the core of public and government concern over corporate tax behaviour is fairly straightforward, i.e. the perception that some corporate taxpayers may be taking steps to ensure that taxable income, profits or gains do not arise in jurisdictions where business operations are actually located, but elsewhere, particularly in jurisdictions where they will be subject to low or no tax (2015:15).

While the international development community has long been concerned about corporate strategies to minimize tax revenues via such means as transfer pricing and the use of tax havens, the issue has often flown under the radar within corporate sustainability accounting.[180] When addressed, it tended to be on a sectoral basis, notably in relation to the extractives industries where multistakeholder regulation and pressure have resulted in standards that a number of corporations have adopted. This has begun to change in recent years as more attention has focused on the issue of responsible tax behaviour within the field of corporate social responsibility (Stephenson and Vracheva 2015).

The Sustainable Development Goals, notably SDG 17, have reinforced interest and concerns related to corporate taxation, which is seen as a key mechanism for achieving the level of domestic resource mobilization required to implement the SDGs via, for example, investment in public infrastructure and services.[181] Clearly, it is also relevant for achieving SDG 10—reducing inequality both within and between countries.

While the primary responsibility for reconfiguring tax regimes, of course, lies with governments, there is much that corporations can do to facilitate fiscal restructuring in a progressive and transformative sense. This chapter examines how corporate disclosure and reporting related to tax matters can be part of this process. It begins by recalling why tax justice should be regarded as a key performance issue within corporate sustainability disclosure. The discussion then turns to metrics and indicators that are key for gauging aspects of (ir)responsible tax behaviour, namely, the tax gap and the misalignment of profit allocation with real economic activity. This is followed by a brief review of recent normative and regulatory initiatives to improve corporate fiscal disclosure.

Why tax justice is a key performance issue

As Brock and Pogge point out, issues of tax justice intersect with those of global justice not least because "practices of international taxation sustain a substantial headwind against which developing countries must struggle and failure to pay or collect taxes greatly reduces revenues available to address poverty, which is among the most pressing global injustices humanity is currently facing" (2014:2).

Regressive and aggressive features of contemporary fiscal regimes risk reducing the scope for domestic resource mobilization. Estimates of revenues losses from base erosion and profit shifting (BEPS)[182] vary significantly. BEPS refers to tax avoidance strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations.[183]

According to Tørsløv et al. (2018), 36 percent of multinational profits were shifted from affiliates outside of headquarter countries to tax havens in 2015 (55 percent in the case of affiliates of US TNCs). This amounted to approximately USD 600 billion dollars. The OECD suggests that losses to tax authorities could have amounted to up to USD 2.1 trillion over 2005–2014, and are "conservatively estimated at between USD 100 billion and 240 billion annually. This is equivalent to between 4% and 10% of global revenues from corporate income tax" (OECD 2015:1). Studies employing different methodologies, and including more countries, cite annual figures of USD 500 to USD 647 billion (see Table 7.1).[184] Furthermore, Cobham and Janský find that "... intensity of losses is substantially greater in low- and lower middle-income countries; and in sub-Saharan Africa, Latin America and the Caribbean, and in South Asia compared to other regions" (2018).

[180] PRI 2018a; Sikka 2010; Muller and Kolk 2012.

[181] See Committee of Experts on International Cooperation in Tax Matters 2018.

[182] As defined by the OECD, base erosion refers to efforts to reduce tax bases through deductible payments such as interest or royalties. Profit shifting refers to artificially shifting profits to low or no-tax locations where the company has little or no economic activity. Accessed 30 November 2019. http://www.oecd.org/tax/beps/about/

[183] How to separate BEPS from real economic activity is one of the major challenges in measuring BEPS. The mere fact that an MNE or its affiliates take advantage of different countries' tax rates does not, in itself, amount to BEPS, notably in contexts where such a criterion underpins investment in physical plant or a factory.

[184] As Bradbury et al. note: "One final shortcoming of almost all available data sources is the underrepresentation of developing countries. This may lead to underestimates of global profit shifting, especially given the significance of BEPS in developing countries found by some recent studies" (2018:96).

Table 7.1. Estimates of the fiscal effects of BEPS

Author, fiscal estimate approach (date)	Range (USD billions)	Year (level)
UNCTAD, offshore investment matrix (2015)	200*	2012
OECD, aggregate tax rate differential (2015)	100–240	2014
Crivelli et al., tax haven spillover (2016)	123	2013 short-term
Crivelli et al., tax haven spillover (2016)	647	2013 long-term
Clausing, excess income in low-tax countries (2016)	280	2012
Cobham and Janský, tax haven spillover (2018)	500	2013 long-term
Janský and Palanský, offshore investment matrix (2018)	80+*	2015

* Includes only FDI-related BEPS
Source: Adapted from Bradbury et al. 2018:101

There is a risk that the topical issue of BEPS may divert attention from many other ways of reforming or overhauling tax regimes in developing countries (Forstater 2018; Moore and Prichard 2015). Potential fiscal revenues lost through subsidies associated with tax credits, exemptions and rate reductions, for example, are significant. Forstater notes that: "While data is patchy overall they appear to be non-trivial amounts of money, estimated at 2 percent of GDP in Ghana, 2.5 percent of GDP in Kenya and Tanzania, and 5 percent of GDP in Brazil" (2018:24). As for revenue foregone through corporate tax incentives, one estimate for 20 developing countries found a simple average of 0.6 percent of GDP (Hearson 2013).

But non-realizable revenues are only one part of the reason why tax justice is necessary. Political economy analysis reveals other reasons. First, as Piketty points out, higher levels of corporate and wealth tax are key for correcting a structural fault in the market economy, whereby the rate of return on capital exceeds the rate of economic growth. As noted earlier, this sets us on a path to a new Gilded Age (a return to the gross inequalities of the late 19th century) with extremely high concentrations of capital that are "potentially incompatible with the meritocratic values and principles of justice fundamental to modern democratic societies" (Piketty 2014:26). Only by taxing corporations and the wealthy can sufficient revenues be generated to enable national and supranational governments (for example, the EU) both to realign the rate of return on capital and the rate of growth, and to mobilize the resources needed to deal with crucial 21st century infrastructural, social and climate issues. A proposal introduced by Piketty in 2018 called on the EU to quadruple the EU budget via fiscal reforms that would generate approximately 800 billion euros (4 percent of GDP). Apart from wealth taxes, this proposal contemplated raising corporate profit taxes across the EU to a unified rate of 37 percent, thereby raising an estimated 300 billion euros.[185]

Second, in the current and future context of climate change, ageing societies and fiscal deficits, it is likely that governments will turn to carbon and other taxes, or regressive pension and social policy reforms, that will impact the working and middle classes and other social groups. As seen in 2019 in France (with the *Gilets Jaunes*) and Chile, social and political movements can quickly mobilize against such taxes and are likely to do so in contexts where societal perceptions of gross inequality exist: "Why should we be paying more when the rich are getting richer?!" Similarly, why should small and medium-sized enterprises (SMEs) feel inclined to pay more in taxes if the perception or reality is that large corporations are aggressively minimizing their taxes and that governments are facilitating this process. As Tørsløv et al. point out, SMEs are already at a competitive disadvantage as a result of profit shifting as it "reduces the effective rates paid by multinationals corporations compared to what local firms pay …" (2018:33).

Third, as the economic power of elites increases, so too does their capacity to shape public policy. Often, this policy influence favours narrow

[185] *The Guardian*. 9 December 2018.

interests and rent seeking. But corporate policy influence can also be enlightened and work towards compromises or social pacts that can raise all boats, as was notable, for example, in the decades following the Second World War in Western and Northern Europe. Forstater (2018) makes the case that multinational enterprises can potentially be allies in relation to tax justice. Key elements in this reasoning include the following:

- MNEs, and the private sector more generally, are not a homogenous category; different multinationals have different levels of appetite for engaging in corrupt practices.
- More efficient firms tend to do better in investment and operating environments where more of the transfers to and from the business (including taxation) are through official "rules-based" channels.
- Leveraging political, consumer and investor influence on multinational corporations has often been used as a strategy by governments, civil society organizations and pension funds seeking to break vicious cycles. Companies may then become advocates for legal reforms and better enforcement, and for international cooperation.
- Multinationals have an interest in securing public confidence in the tax system to prevent toxic uncertainty and risk. There are, however, notable barriers to private sector involvement in tax system reform, including lack of mutual understanding, miscommunication and real or perceived conflicts of interest.

Such factors suggest that some MNEs may be in a position to not only be more transparent and facilitate technical solutions but also be part of a social contract promoting accountability and distributive justice through formal institutions. In reality, however, many MNEs engage in the types of corporate political interventions discussed in Chapter 9 that exert pressure on public policy in favour of regressive and aggressive approaches to fiscal "reform".

The tax gap and misallocation of profits

Aggressive tax planning by corporations and tax competition by governments can give rise to a significant gap between the statutory and effective tax rates, that is, between what companies are expected to pay according to official fiscal policy and what they actually pay.

Research carried out by MSCI ESG Research on 2,160 companies in the MSCI ACWI Index[186] compared each company's reported tax payments between 2011 and 2015 to the average corporate tax rate of the countries in which it generated revenues. Among the findings were the following (Sayani 2017):

- About a quarter, 531 companies, were found to have a "high tax gap" of 10 percent or more below the average statutory rate. Their average effective tax rate was about 14.3 percent, less than half of the average "expected" statutory rate of 31.8 percent.
- Among these companies, 381 (71 percent) were MNEs that may face higher regulatory risks given that the global tax reform movement is largely focused on cross-border tax avoidance.
- Tax gap size was not uniform across sectors. Information technology leads the pack followed by health care. Approximately 40 percent and 35 percent of the companies in these sectors had a tax gap greater than 10 percentage points, respectively. In contrast, less than 10 percent of real estate, utilities, energy and telecom companies had a gap of 10 percentage points or more.
- Were regulators to close the tax gap completely, it could mean additional aggregate tax payouts of around USD 220 billion for MSCI ACWI Index constituent companies with a tax gap. The bulk of the burden (USD 150 billion) would be borne by MNEs.

The MSCI study also points out how conventional disclosure impedes accurately estimating a company's tax gap, given

[186] The All Country World Index (ACWI), maintained by Morgan Stanley Capital International (MSCI), comprises stocks from approximately 50 countries.

the lack of granular disclosure of relevant financial metrics. Typically, companies tend to lump their geographical segments into larger regions as opposed to providing a country-by-country (CbC) breakdown. For this reason, regulators' initial focus is on improving the transparency around cross-border transactions. Several countries have already enacted or are in the process of enacting laws mandating CbC disclosure of financial metrics (Sayani 2017:8).

Among the multinational companies in the MSCI ACWI Index in 2016, only 45 percent disclosed more than three quarters of their revenue using the CbC format. "Moreover, CbC disclosure beyond revenue and assets on metrics such as profits, taxes, etc., as required by the impending regulations, is seldom observed among companies (Sayani 2017: 8).

A study by the Institute on Taxation and Economic Policy (ITEP) of large profitable corporations in the United States found that even following the significant 40 percent tax cut introduced by the Trump administration in 2017 they still paid an average federal income tax rate of 11.3 percent on their 2018 income—approximately half the 21 percent statutory rate. The study also notes that:

> Determining the tax rates paid by the nation's biggest and most profitable corporations shouldn't be hard. Lawmakers, the media and the general public should all have a straightforward way of knowing whether our tax system requires the biggest and most profitable companies to pay their fair share. But in fact, it's an incredibly difficult enterprise. The fact that a report such as this takes several months to complete illustrates the need for clearer and more detailed public information about companies' federal income taxes (Gardner et al. 2019:19).[187]

This analysis has several implications for corporate disclosure and reporting related to sustainability performance. It suggests the need for high levels of transparency of disclosure both in relation to BEPS and CbC reporting, as well as corporate lobbying, a topic discussed in Chapter 9 of this report.

Much of the responsibility for fixing this situation falls, of course, on governments and public policy. Particularly important in this regard is work on BEPS and CbC reporting, which is key for assessing "if taxes paid match business substance" (PRI 2018b), as well as for facilitating public scrutiny (ActionAid 2015) and risk assessment by investors (PRI 2018b).[188]

Transparency associated with CbC reporting sheds light not only on effective tax rates and amounts paid by jurisdiction and affiliate, but also on corporate revenues, employment and assets by country—the "denominator", in other words, for metrics needed to gauge what a fair profit and tax allocation would look like. Within the field of voluntary reporting, Vodafone has taken the lead in disclosing such data.[189] This is key for assessing the extent of alignment among such variables as taxes paid, profits and revenues or employment (see Table 7.2). Faccio and Fitzgerald note that:

> The...data...clearly shows the mis-alignment between the current taxable profit allocation and indicators of the Group's real economic activities (sales, employees and assets) in the countries where Vodafone operates and thus the potential for BEPS activities by the Group through the use of low-tax 'conduit' countries (2018:75).

Enhanced fiscal disclosure could also shed light on another trend that has often been overlooked, namely what has been happening to companies' total tax contribution (TTC) and the share of TTC accounted for by corporate income tax. Companies generally pay far more to (local, state and federal) governments via other taxes such as payroll, property, dividend and value added taxes. Over time, however, the percentage share of corporate income tax has tended to decline. A UK survey showed that (i) for every GBP 1 of corporation tax there were GBP 4.46 in other taxes, (ii) TTC tended to trend downwards between 2007 and 2015, with increased rates reported in recent years, and (iii) there was a significant change in the relative weight of different components between 2005 and 2018, with the share of total tax contribution represented by corporate income tax falling

[187] Like the MSCI study, ITEP recommends that companies be required to publicly disclose data on a country-by-country basis. "Ideally, this would include the disclosure of total revenues, profit, income tax paid, tax cash expenses, stated capital, accumulated earnings, number of employees on a full-time basis, and book value of tangible assets" (Gardner et al. 2019:19).

[188] In 2013, the OECD Action Plan on BEPS was launched, setting out 15 specific action points. Guidance on domestic legislative and administrative changes followed in 2015. Various EU countries subsequently adopted CbC reporting regulations. The United Kingdom, for example, introduced CbC reporting regulations that came into effect in 2016 for large MNEs headquartered in the UK, and some UK sub-groups of non-UK MNEs, which must report revenues, profits, taxes and other information by jurisdiction in which they operate on an annual basis. See: https://www.gov.uk/government/publications/country-by-country-reporting-updated. Accessed 30 November 2019.

[189] Vodafone Group Plc. Taxation and our total economic contribution to public finances 2016-2017. Accessed 30 November 2019. https://www.vodafone.com/content/dam/sustainability/pdfs/vodafone_2017_tax.pdf

Table 7.2. Vodafone Group countries of operations
(Top three countries by economic activity and by profits, millions of euros, 2016-2017)

	Revenues	Profits*	Employees	Assets	Corporation Tax
Countries with most economic activity					
Germany	**10,619**	-636	15,714	1,925	89
UK	**7,536**	-504	17,951	1,491	-89
India	**6,847**	-338	23,836	1,313	340
Countries with most profits					
Luxembourg	187	**1,450**	325	17	5
South Africa	4,187	**1,077**	5,213	544	359
Italy	6,249	**686**	7,339	881	87

* Profits before tax
Source: Derived from Faccio and Fitzgerald 2018:75-76, 88-89, based on Vodafone 2018.

significantly while several other components, such as national insurance contributions, increased significantly (PwC 2016, 2018).

Normative and regulatory drivers of tax-related sustainability accounting

A rapidly rising tide of regulatory pressure bodes well for the possibility that corporate taxation will become a key performance issue for assessing corporate sustainability performance. As RobecoSAM points out:

> In the context of the OECD's initiatives against corporate base erosion and profit shifting (BEPS) the topic of tax is becoming increasingly material, and is a perfect example of a topic with important implications for sustainability broadly construed. In light of increasing awareness of companies' roles and responsibilities towards society, shared value creation and reputational and financial risks, transparent reporting on the topic of taxation has become best practice (2018b:16).[190]

Normative pressures are building, particularly for corporations that explicitly identify with concepts of CSR and sustainability, as well as with the SDGs and the UN Guiding Principles on Business and Human Rights. As Brock and Pogge observe:

> there are at least two powerful ways to argue for these responsibilities from normative perspectives that cut across diverse ideological positions and so should be compelling to a wide audience. [These include] (i) [d]uties not to harm: … Whatever the merits of taking actions to benefit or assist others, one should be especially vigilant to avoid doing harm to others (2014:8).

not least in relation to reinforcing deprivation and undermining poverty reduction; and

> (ii) [d]uties to respect human rights: Inadequately funded governments are also unable to secure and provide what people need to realize their human rights. … When tax abuse endangers the fulfillment of human rights, it is primarily the responsibility of states to effect the necessary revisions to their tax laws and tax practices. Yet, there are also obligations not to impede, and to assist, states in such efforts, which fall upon accountants, lawyers, transnational organizations and citizens (2014:8).

Companies adhering to the core principles of CSR should know that responsible behaviour means going beyond compliance with the law. An important aspect here relates to public

[190] While corporate fiscal responsibility moved rapidly up the ESG issue ladder, particularly since the OECD/G20 BEPS initiative, many corporations were slow to take action. A global survey conducted by Deloitte showed "that nearly half of the respondent organisations have no formal corporate tax governance policy in place and that only a third of those organisations that have a formal written policy have these signed off by the Board. Anecdotal evidence further suggests that those organisations that have formal written policies have not reviewed these policies since they were put in place and may have limited to no processes in place for identifying, controlling or reporting tax risk" (Maclean and Dixon 2015).

disclosure of tax data. The OECD initiative to promote CbC reporting, for example, is fairly comprehensive in terms of the type of information required but it does not insist on public disclosure (Cobham et al. 2017; TUAC 2016). Adherence to CSR principles should also mean to err on the side of social responsibility in contexts—as in tax strategy—where MNEs have options; for example, where the pursuit of one option may help poorer countries while another may hinder development (Christian Aid et al. 2015). Furthermore, it means being part of coalitions advocating for progressive fiscal reform.

In the wake of the global financial crisis in 2008-2009, both political and public awareness of tax justice issues rose sharply. As inequality and poverty have moved up the ladder of international development priorities, so too have the expectations of citizens and policy makers about corporate tax behaviour. Several controversies, such as the 2016 Panama Papers leak,[191] catapulted money laundering and tax evasion into the media and political spotlight, and provoked alarm about the lack of due diligence within the financial sector. Research by Sustainalytics revealed in 2017 that just 9 of 130 assessed banks and other financial firms (7 percent) had high levels of risk preparedness associated with money laundering and tax evasion (Sustainalytics 2017).[192]

Various think tanks and research and advocacy organizations and networks[193] have been actively involved in exposing bad practices. Just as the naming and shaming associated with the sweatshop and oil and chemical spill scandals of the 1980s and 1990s propelled some corporations to improve disclosure and reporting of working conditions and the environment, tax scandals may well do the same today in relation to fiscal responsibility (see Box 7.1).

Beyond naming and shaming, civil society organizations and networks are also advancing normative and technical proposals to inform the process of policy reform. A number of international NGOs have provided useful guidance about the overall trends needed to ensure that changes in corporate culture and tax governance move in a transformative direction. This is not only to address an important blind spot within corporate sustainability accounting, but also to shift from a "do less harm" approach to one outlining what good performance might actually look like.[194]

Christian Aid et al. (2015) highlight the need for: (i) realignment of the geography of a corporation's economic activities with that of its tax liabilities; (ii) transparency, with the publication of a wide set of data associated with tax rates, actual payments, accounting and taxable profits, incentives, relations with tax authorities, advocacy and so forth; and (iii) the development of an internally coherent responsible tax strategy and implementation procedure, as well as the use of tax impact assessments to effectively gauge developmental and other impacts.

According to Christian Aid et al., a "tax-responsible company" is one that:

- is radically and proactively **transparent** about its business structure and operations, its tax affairs and tax decision-making;
- **assesses** and publicly reports the fiscal, economic and social impacts (positive and negative) of its tax-related decisions and practices in a manner that is accessible and comprehensive; and
- takes steps—**progressively, measurably** and in dialogue with its stakeholders—to improve the impact of its tax behaviour on sustainable development and on the human rights of employees, customers and citizens in the places where it does business (Christian Aid et al. 2015).

Regulatory pressures related to tax disclosure are building. These include guidance by intergovernmental bodies such as the OECD and the G20; legally binding rules governing disclosure and reporting associated with BEPS and CbC reporting, which have been introduced in recent years by the European Commission and various governments; and new guidance provided by standard-setting entities like the GRI and PRI, as well as ratings and ranking agencies.

[191] The Panama Papers implicated over 214,000 offshore entities and 500 banks (Sustainalytics 2017).

[192] According to Sustainalytics (2017:5): "these include DNB, the largest financial services company in Norway, Van Lanschot, the Netherlands-based private bank, and Svenska Handelsbanken. ... These firms are certainly not immune to money laundering or tax evasion controversies but they tend to have advanced policies and programmes and lesser risk exposure. At the other end of the spectrum, 16 percent of examined firms (21 of 130) stand out as poorly prepared. These companies include Wells Fargo, Credit Suisse and Société Générale. Firms in this category are typically distinguished by significant exposure to money laundering and tax evasion risk and inadequate policies."

[193] Particularly significant in this regard are the Tax Justice Network, the Global Alliance for Tax Justice, and Oxfam.

[194] See, for example, Christian Aid et al. 2015, ActionAid 2015, and numerous reports and briefs published by the Tax Justice Network (https://www.taxjustice.net/reports-2/).

Box 7.1. Recent tax investigations and rulings in the European Union

Amazon agreed to pay the French government EUR 200 million and to disclose all of its earnings.[a] In 2017, the European Commission ordered Luxembourg to collect EUR 250 million in back taxes from the company, citing a 2003 arrangement that, without any valid justification, permitted the firm to ascribe its profits to a holding company not required to pay taxes.[b] The EC stated in the tax ruling that Amazon EU had made royalty payments to Amazon Europe Holding Technologies, thereby significantly reducing the former's taxable profit.[c]

Nike Group was charged in 2017 with using a subsidiary in Bermuda to hold its trademark logo for non-United States markets. This enabled the subsidiary to charge Nike's headquarters in the Netherlands royalty fees, hence diverting billions in profits from tax payments in Europe.[d] The EU is currently investigating whether the Netherlands' tax rulings between 2006 and 2015 led to an unfair reduction in the tax payments by Nike. At issue is the tax treatment of two Nike group companies based there.[e] The EU claims that since the Dutch government taxes the two smaller corporate units based "on a limited operating margin based on sales", royalty payments look greater than typical market terms. Further, the EU argues that while the units get royalties, they have neither employees nor real economic activities.[f]

Starbucks caused a political and public uproar in 2017 when it revealed that its UK arm earned a GBP 162 million profit and paid GBP 4 million in tax—indicating a tax rate of just 2.8 percent when the corporate tax rate in the UK is 19 percent.[g] An EC investigation into a Dutch tax ruling extended to the company was under litigation in EU court at the time of writing.[h] In 2015, the EU ordered the firm to pay back EUR 30 million to the Irish government.

Apple Inc. reached a confidential settlement with the French government in 2019 to pay a decade's worth of back taxes following a multiyear audit by the national tax authority.[i] In 2016, the EC stated that Ireland had given Apple undue tax benefits up to EUR 13 billion, which meant that the company paid an effective corporate tax rate of just 1 percent—compared to the normal corporate tax rate of 12.5 percent[j]—on its 2003 European profits, falling to 0.005 percent in 2014. This ruling resulted in a payment of EUR 14.3 billion (including interest) to the country.[k]

[a] See https://www.theguardian.com/technology/2019/feb/05/apple-to-pay-10-years-of-back-taxes-to-france

[b] See https://www.forbes.com/sites/jwebb/2017/12/18/ikea-follows-apple-and-amazon-in-facing-a-eu-tax-avoidance-investigation/#1d7a0dadb268

[c] See http://europa.eu/rapid/press-release_IP-17-3701_en.htm

[d] See https://www.cbc.ca/news/business/nike-tax-avoidance-tax-loophole-netherlands-bermuda-1.4380596

[e] http://europa.eu/rapid/press-release_IP-19-322_en.htm

[f] See https://www.bloomberg.com/news/articles/2019-01-10/nike-s-dutch-tax-deals-probed-by-eu-in-latest-fiscal-crackdown

[g] See https://www.express.co.uk/news/uk/1020131/starbucks-accused-corporation-tax-avoidance

[h] See https://mnetax.com/eu-commission-publishes-decision-to-investigate-ikeas-dutch-tax-rulings-26896

[i] In March 2019, France released draft legislation on a 3 percent tax on the largest technology companies. The government believes this new levy would be a "step...towards a fairer and more efficient taxation for the 21st century." The Economy Minister noted that "digital giants pay 14 percent less tax than small- and medium-sized European companies." The legislation is referred to by the acronym GAFA, referring to tech giants Google, Apple, Facebook and Amazon. See https://www.theguardian.com/technology/2019/feb/05/apple-to-pay-10-years-of-back-taxes-to-france. The proposed tax will be on digital advertising, personal data sales and other revenue generated by technology firms operating in France and earning over EUR 750 million (USD 840 million) per year globally. See https://www.france24.com/en/20190409-france-lawmakers-back-gafa-digital-tax-tech-giants.

[j] See https://www.theguardian.com/business/2016/aug/30/apple-pay-back-taxes-eu-ruling-ireland-state-aid

[k] http://europa.eu/rapid/press-release_IP-16-2923_en.htm

As normative and regulatory pressures grow, so too does the business case for responsible tax disclosure and performance. It centres on risk management associated with reputation and liability, and building or strengthening the enabling environment for business through, for example, infrastructural development and good governance practices. The annual surveys conducted by Deloitte to gauge corporate reactions to BEPS show that 76 percent of corporate respondents "are concerned about the media, political and activist group interest in corporate taxation [and] are more aware about reputational risk" (Deloitte 2018).

In short, growing public and governmental concern with tax dodging is translating into an institutional environment that is promoting greater transparency in disclosure and reporting related to corporate taxation. Box 7.2 highlights examples of several recent tax-related standard-setting, ratings and certification initiatives.

Box 7.2. Recent tax-related sustainability reporting initiatives

GRI: In 2017 the GRI Global Sustainability Standards Board (GSSB) appointed a multistakeholder Technical Committee to create the first worldwide standard for disclosures of taxes and payments to governments. Approved by the GSSB in September 2019, the standard will become a requirement for reporting purposes from January 2021. It contains four sets of indicators, three of which involve management approach disclosures, including (i) the organization's approach to tax or tax strategy, including how it relates to its sustainable development strategy; (ii) tax governance, control, and risk management; and (iii) stakeholder engagement and management of concerns related to tax. The fourth set relates to CbC reporting, requiring disclosure of all tax jurisdictions where the organization operates and, for each jurisdiction, information on entities, activities, employment, revenues, assets, profit/loss before tax, corporate tax accrued, and "reasons for the difference between corporate income tax accrued on profit/loss and the tax due".[a]

MSCI: From January 2017, the ratings agency MSCI announced it would 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.[b] It has set both qualitative and quantitative indicators to rank companies. Among the attributes of a top-ranking company is a tax gap of less than 5 percent, while a bottom-ranking company is one with an estimated tax gap of more than 25 percent.[c]

PRI: The PRI is currently working with global institutional investors to improve corporate tax transparency in the technology and health care industries, and recently published an investor guide to assessing and engaging in tax reporting.[d] This work builds on the PRI's earlier tax-related reporting guidance that encouraged firms to provide quantitative data on key tax data points to back up policies, including by providing public CbC reporting data on revenue, pre-tax profits, employee numbers, corporate income tax paid as well as other taxes and "tangible assests that can help investors understand if taxes paid match business substance". Reporting guidance provided by the PRI asks firms to report "the difference between the weighted average statutory tax rate based on the sales mix and the effective tax rate" and to explain this tax gap.[e]

SAM[f] (RobecoSAM): In 2018, the Corporate Sustainability Assessment's specific Tax Strategy criterion was made completely public. The criterion is designed to identify potentially deleterious tax optimization in order to assess the sustainability of corporate tax policies and strategies. It is made up of three questions on firms' tax strategy, tax reporting and, as of 2018, average effective tax rate. The new indicator assesses an organization's average effective tax rate compared with other firms in the same industry group. The tax rate question assesses reported tax rates and average cash tax rates for the last two years to reveal differences between reported and expected tax rates, since significant discrepancies can suggest aggressive tax optimization and hence risk.[g]

Fair Tax Mark: Started in early 2014, the Fair Tax Mark[h] (FTM) certification scheme enables "businesses that are paying tax in a responsible way to demonstrate this commitment to their customers, contractors and associates". FTM standards and criteria cover company structure and ownership transparency; publicly available full accounts; an understanding of taxes paid and the reasons why; good practice tax policy; and public CbC reporting.

Extractive Industries Transparency Initiative (EITI): The 2016 EITI Standard "encourages countries to make use of existing reporting systems for EITI data collection and make the results transparent at source, rather than duplicating this exercise through EITI reporting".[i] EITI Indicator 4.1 on "Comprehensive disclosure of taxes and revenues" stipulates that before reporting, the multistakeholder group must agree on material payments and revenues: "A description of each revenue stream, related materiality definition and thresholds should be disclosed".[j]

The B Team Responsible Tax Principles were launched in 2018 to "offer a framework that details what good tax practice should look like and sets a new benchmark for businesses to work towards practicing. They cover key areas such as tax management strategy, interactions with authorities, and reporting." Principle 7 on transparency states that signatories report annual information on their overall tax rate and the taxes paid at country level as well as information on financially material tax incentives such as tax holidays. Instead of committing to a specific reporting format, the Principles ask firms to provide "meaningful and understandable information on the taxes they pay in the countries where they operate and how this relates to their business model and activities around the world".[k] They are endorsed by a founding group of companies including Allianz, BHP, A.P. Moller, Maersk, Natura Cosméticos, Repsol, Safaricom, Royal Dutch Shell Plc, Unilever and Vodafone Group Plc.

[a] See GRI 2019:10. GRI 207: Tax 2019. Accessed 10 December 2019. https://www.globalreporting.org/standards/gri-standards-download-center/gri-207-tax-2019/?g=f90c409c-b5a8-494f-a6d9-a0a784f1c0be

[b] https://www.ft.com/content/b12b120c-a80b-11e6-8b69-02899e8bd9d1

[c] Sayani 2017:11.

[d] https://www.unpri.org/Uploads/t/r/l/PRI_Evaluating-and-engaging-on-corporate-tax-transparency_Investor-guide.pdf

[e] See https://www.unpri.org/download?ac=4655. See also https://www.unpri.org/Uploads/w/c/g/pri_taxguidance2015_550023.pdf andhttps://www.unpri.org/download?ac=1877

[f] RobecoSAM recently rebranded as SAM for its ESG-related work.

[g] See https://www.robecosam.com/csa/insights/2018/assessing-the-sustainability-of-companies-tax-strategies.html

[h] See www.fairtaxmark.net.

[i] See https://eiti.org/news/2016-eiti-standard-from-reports-to-results

[j] See https://eiti.org/document/eiti-standard-requirements-2016#r4-1

[k] See https://issuu.com/the-bteam/docs/bteam_responsible_tax_pagespreads/1?ff&e=15214291/58204607

Concluding remarks

The discussion regarding tax justice suggests that the transformative challenge here involves transitioning from aggressive tax strategies that promote tax dodging to progressive strategies that ensure that corporations pay their fair share of taxes. This requires a closer alignment of not only effective and statutory tax rates but also the geographical distribution of profit allocation and real economic activity. It also requires a new approach to lobbying and the ways in which corporations and their business and trade associations attempt to influence fiscal policy—an issue discussed in Chapter 9. Useful indicators suggested by various sources noted above include:

- effective tax as a percentage of pre-tax profits by group, affiliate and country;[195]
- pre-tax profit as a percentage of revenues (three-year average, given possible wide fluctuations in annual figures);
  profit attributed to recognized tax havens and low tax jurisdictions;[196]
- volume and percentage of group profits;
- tax gap: effective tax rate as a percentage of statutory tax rate;
- effective tax rate as a percentage of the industry rate; and
- the ratio of pre-tax profits to wages by affiliate.[197]

The above analysis also suggests that the first step must be transparent CbC reporting which (i) shows whether taxes paid reflect real business activity, and (ii) is publicly disclosed. In the case of transnational corporations with operations in multiple countries, a user-friendly form of disclosure coud be, for example, to present data on the effective tax rate in, say, the top three to five countries by revenues, employment and profits.

While tax justice has recently climbed up the corporate sustainability issue ladder, assessment of progress tends to rely on qualitative indicators associated with policies and processes of corporate responsibility or ESG principles and due diligence, such as formulation and disclosure related to a company's tax strategy and tax policy, board buy-in, training, monitoring and review, responsible lobbying and stakeholder engagement.[198]

Like the early history of other issue areas associated with ESG reporting, disclosure related to corporate taxation runs the risk of generating qualitative information and narratives that may confuse as much as clarify, and which are not particularly user-friendly. Furthermore, the information provided may make comparisons with other corporations difficult.[199]

This chapter has identified a number of quantitative indicators that regulators, standard setters, ratings agencies, think tanks, and research and advocacy organizations have adopted or promoted. Establishing thresholds and targets to assess good or bad corporate tax performance over time is difficult not only because of differing opinions as to what is legitimate in terms of commercial practice and tax planning,[200] but also because so much depends on public policy and regulation. What should corporations on their own be expected to do?

At a general level, it seems clear that they should be facilitating, rather than resisting, the reform agenda aiming for tax justice and enhanced disclosure and transparency. From the perspective of sustainability accounting and transformative change, corporations can no longer be part and parcel of the aggressive and regressive international taxation agenda alluded to above, where their practices undermine people-centred and equitable development.

Benchmarks could be used for certain indicators, for example, in relation to the tax gap where a range between, say, 0 to 5 percent might be considered legitimate. An alternative approach to benchmarking has been adopted by the Fair Tax Monitor when assessing government performance. In this case, they score the trend rather than set a fixed time-bound benchmark.[201] Progressivity, then, would be reflected in convergence of effective tax rates with statutory and industry norms; regressivity/aggressivity would be reflected in divergence. For corporations operating in multiple countries, fairness would be reflected in trends indicating a reduction of misalignment between taxes paid and economic activity by country.

195 When reconciling or explaining the relationship between effective tax and profits, PRI guidance notes that it is important for multinationals to go beyond the usual practice of using the statutory rate of the home country and use instead the weighted average statutory rate (PRI 2018a:16).

196 The guidance that accompanies the Responsible 100 Scorecard, organized by Profit Through Ethics Ltd, states that "large and multinational corporations must...explain their use of tax havens and low tax jurisdictions and how much profit is attributable to their use". See: "Tracking changes in questions and scorecards." Accessed 30 November 2019. https://www.responsible100.com/questions/diff/tax-transparency/3/4/

197 The ratio of pre-tax profits to wages is to some extent indicative not only of the fairness of the worker share of economic returns over time but also of where economic activity is misaligned with tax liability. Zucman reports that in tax haven affiliates the ratio of pre-tax profits to wages (approximately 350 to 1) vastly exceeds that of non-haven affiliates (less than 50 to 1). See Zucman 2019.

198 See, for example, Responsible 100 criteria for scoring "excellent". Accessed 15 June 2020. http://www.profitthroughethics.com/about/faq/

199 Critiquing aspects of the B Team Principle related to transparency (see Box 7.2), Cobham makes the point that it not only "stops well short of requiring any kind of consistent reporting [but Principle 7 E in particular] sidesteps the need for any kind of comparable data that could be used objectively to evaluate one multinational against another—to ascertain whether any or all of the other principles have actually given rise to any specific outcome in terms of tax behaviour. Or to evaluate any given multinational's performance over time. Or the performance of multinationals in one country against their performance in another" (Cobham 2018). This type of comparison, he argues, is possible with the current public reporting by extractive firms or financial firms in the European Union, as well as with the OECD BEPS standards for aligning taxes paid with declared profits with "real economic activity" by country.

200 See Faccio and Fitzgerald 2018:76, in relation to Vodafone.

201 Make Tax Fair, Oxfam Novib, Tax Justice Network-Africa 2015. https://maketaxfair.net/ftm/about-fair-tax-monitor/