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The Globalization of Corporate Tax Reform

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I. INTRODUCTION

Traditionally, corporations have been linked primarily to their respective home countries.[1] Firms have operated abroad as long as transportation has permitted relatively easy travel across national boundaries,[2] but the fixed location of tangible property tended to restrict corporate wealth and identity to fairly defined boundaries.[3] In the early days of the U.S. income tax, when corporations were only offered a deduction rather than a credit for taxes paid to foreign governments,[4] firms may have been tempted to move at least some operations overseas to reduce their tax burden amidst the rising rates of World War I, but this was soon remedied.[5] Indeed, the adoption of the foreign tax credit in 1918 was supported as a means "to prevent revenue loss

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1. *See* STEVEN A. BANK, FROM SWORD TO SHIELD 261 (2010).

2. *See generally* Ron Harris, *Law, Finance, and the First Corporations*, *in* GLOBAL PERSPECTIVES ON THE RULE OF LAW 145 (James J. Heckman et al. eds., 2009).

3. This was particularly evident in the analogous situation of antebellum state property tax regimes. *See* C.K. YEARLEY, THE MONEY MACHINES: THE BREAKDOWN AND REFORM OF GOVERNMENTAL AND PARTY FINANCE IN THE NORTH, 1860–1920, at 218 (1970).

4. Michael J. Graetz & Michael M. O'Hear, *The "Original Intent" of U.S. International Taxation*, 46 DUKE L.J. 1021, 1041 (1997).

5. *See id*. at 1044–45.

through incorporation of foreign subsidiaries or expatriation."[6] As the mobility of capital, labor, and property further increased and political barriers continued to decline, however, the true multinational corporation inevitably began to emerge.

This development of the multinational corporation has accelerated in recent years due in part to an increase in cross-border mergers and acquisitions. A dramatic rise in cross-border activity accompanied the success of the U.S. stock market in the 1990s.[7] Despite some fluctuation in the wake of the most recent economic recession, corporate globalization continues to grow.[8] According to the *Factset Mergerstat Review*, the number of U.S. firms that acquired foreign entities increased to 1,736 in 2007, as compared to 1,708 in 2006 and 1,107 in 1997.[9] Mirroring this trend, U.S. firms acquired by foreign entities increased from 1,490 in 2005 and a mere 167 in 1992 to 1,526 in 2006.[10]

Even where corporations continue to be nominally located in the U.S., the major growth in corporate profits, although not necessarily sales, has occurred outside the U.S.[11] From 2006 through 2011, corporate profits grew by approximately $219 billion, but only $36.6 billion of that was from domestic activities and the remaining $182 billion of growth occurred in the rest of the world.[12] According to the Congressional Budget Office's recently released report, *Options for Taxing U.S. Multinational Corporations*, approximately half of all revenues from the corporate income tax came from multinational corporations with income earned in foreign countries.[13] Effectively, firms have found ways to "redomicile themselves" outside of the formal incorporation mechanism.[14]

Professor Mihir Desai of Harvard Business School, characterizing this globalization process as the "decentering" of the modern business

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6. Roswell Magill & William C. Schaab, *American Taxation of Income Earned Abroad*, 13 TAX L. REV. 115, 118 (1958) (citing 56 CONG. REC. 677–78 (1918)).

7. Julian di Giovanni, *What Drives Capital Flows? The Case of Cross-Border M&A Activity and Financial Deepening*, 65 J. INT'L ECON. 127, 131 (2005); *see* BANK, *supra* note 1, at 262.

8. Di Giovanni, *supra* note 7, at 128; *see* BANK, *supra* note 1, at 262.

9. FACTSET, MERGERSTAT REVIEW 2007, at 50 (2007); *see* BANK, *supra* note 1, at 262.

10. FACTSET, *supra* note 9, at 94; *see* BANK, *supra* note 1, at 262.

11. Harry Grubert, *Foreign Taxes and the Growing Share of U.S. Multinational Company Income Abroad: Profits, Not Sales, are Being Globalized*, 65 NAT'L TAX J. 247 (2012).

12. *National Income and Product Accounts*, *Table 6.16.D, Corporate Profits by Industry*, U.S. DEP'T OF COMMERCE, BUREAU OF ECON. ANALYSIS, http://www.bea.gov/iTable/iTable.cfm?reqid=9&step=3&isuri=1&910=X&911=0&903=239&904=2006&905=1000&906=A (last updated Feb. 28, 2013).

13. CONG. BUDGET OFFICE, OPTIONS FOR TAXING U.S. MULTINATIONAL CORPORATIONS 1 (Jan. 2013), *available at* http://www.cbo.gov/publication/43764.

14. Mihir A. Desai, *A Better Way to Tax U.S. Businesses*, 90 HARV. BUS. REV. 134, 137–38 (2012) [hereinafter Desai, *A Better Way to Tax*].

corporation, noted that "[t]he archetypal multinational firm with a particular national identity and a corporate headquarters fixed in one country is becoming obsolete as firms continue to maximise the opportunities created by global markets. National identities can mutate with remarkable ease and firms are unbundling critical headquarters functions and reallocating them worldwide."[15] According to Desai, "[t]he defining characteristics of what made a firm belong to a country—where it was incorporated, where it was listed, the nationality of its investor base, the location of its headquarters functions—are no longer unified nor are they bound to one country."[16]

Partially due to this decentering of the firm, U.S. corporate tax revenues as a percentage of gross domestic product have declined precipitously, both as compared with the U.S. in the 1970s and as compared with other Organisation for Economic Co-operation and Development (OECD) nations.[17] In fact, "[c]orporate tax receipts as a share of profits are at their lowest level in at least 40 years," amounting to a mere 12.1% in fiscal year 2011, as compared with 25.6% on average between 1987 and 2008.[18] As these rates rise and it becomes increasingly difficult to pin down a corporation's true location, firms will have greater opportunities to reap the benefits of international differences in the corporate tax system.[19]

With the breakdown of national affiliation and its effect on corporate tax revenues, it is not surprising that international tax reform is a major part of President Obama's Framework for Business Tax Reform as he begins his second term.[20] Congressional leaders have already started investigating structural reform and the Congressional Budget Office released a report in January of 2013 examining legislative options for moving the U.S. scheme closer to either a purer worldwide system of taxing multinational corporations than it currently has or instead converting to a territorial system.[21] As Senate Finance Committee Chair Max Baucus remarked in support of considering structural reforms to the U.S. international tax

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15. Mihir A. Desai, *The Decentering of the Global Firm*, *in* THE WORLD ECONOMY 1271, 1271–72 (2009).

16. *Id*. at 1272.

17. Desai, *A Better Way to Tax*, *supra* note 14, at 138.

18. Damian Paletta, *With Tax Break, Corporate Rate Is Lowest in Decades*, WALL ST. J. (Feb. 3, 2012), http://online.wsj.com/article/SB10001424052970204662204577199492233215330.html.

19. *See* BANK, *supra* note 1, at 262.

20. WHITE HOUSE AND DEP'T OF TREASURY, THE PRESIDENT'S FRAMEWORK FOR BUSINESS TAX REFORM 13–15 (Feb. 2012), *available at* http://www.treasury.gov/resource-center/tax-policy/Documents/The-Presidents-Framework-for-Business-Tax-Reform-02-22-2012.pdf.

21. CONG. BUDGET OFFICE, *supra* note 13, at 1.

scheme, "In the past two decades, the number of U.S.-based companies on the *Fortune* Global 500 list has declined by 20 percent. . . . When it comes to international tax rules, we seem to have the worst of all worlds."[22]

Part of the difficulty with legislative measures to address the corporate tax evasion problem, however, is that U.S. multinational corporations already easily sidestep them. As Lee Sheppard of Tax Analysts explains:

> International corporate income taxation is in crisis. U.S. multinationals are paying little or no tax to any government, including the U.S. government. . . .
>
> Yet American tax policymakers are arguing about whether to convert to a territorial system that stands to make all of the existing problems worse, ignoring the do-it-yourself territorial system that U.S. multinationals already enjoy. It would be a terrible cliché to say that the territorial argument is tantamount to rearranging the deck chairs while the boat is taking on water, but it is.[23]

According to economist Kimberly Clausing, multinational corporations avoid approximately $90 billion a year in taxes as a result of income shifting.[24] Desai concludes that the current system is dysfunctional, noting that "[t]he complexity of the current system and the proliferation of tax avoidance techniques have made the corporate tax optional for many global corporations."[25]

The problem is highlighted in the case of global technology companies, where the primary asset and source of income is intellectual property that may be easily shifted to tax-friendly locations. Many of these global technology companies have transferred income-producing assets such as intellectual property to Ireland, whose low 12.5% corporate income tax rate allowed it to attract major corporations and become a center of high technology jobs in Europe.[26] At the same time, however, the ability to manipulate the legal definition of home, especially in light of differing national standards, plus lax transfer pricing rules, has led to the rise of the "Double Irish" or "Dutch Sandwich" scheme that helps companies avoid even Ireland's low corporate tax rate.[27] Reportedly used or contemplated by

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22. Diana Fuchtgott-Roth, *Corporate Tax Reform Should Come First*, 137 TAX NOTES 901, 901 (Nov. 19, 2012) (quoting Senator Max Baucus, Chairman, S. Fin. Comm., Keynote Address at the Bipartisan Policy Center Special Presentation: The Tax Piece of the Debt Puzzle (June 11, 2012)).

23. Lee A. Sheppard, *News Analysis: Why Do We Need Treaties?*, 137 TAX NOTES 825, 825–26 (2012).

24. Kimberly A. Clausing, *A Challenging Time for International Tax Policy*, 136 TAX NOTES 281, 281 (2012).

25. Desai, *A Better Way to Tax*, *supra* note 14, at 136.

26. Frank Barry, *Tax Policy, FDI and the Irish Economic Boom of the 1990s*, 33 ECON. ANALYSIS & POL'Y 221, 222–23 (2003).

27. For a fuller description of the "Double Irish" scheme, see Joseph B. Darby III & Kelsey Lemaster, *Double Irish More Than Doubles the Tax Saving: Hybrid Structure Reduces Irish, U.S.*

a number of American-identified companies such as Apple, Google, Facebook, and Microsoft, the "Double Irish" involves the creation of two Irish companies, one of which has its "effective centre of management" in Bermuda or some other tax haven jurisdiction.[28] The Bermuda-based company pays a relatively low fee for a license to the parent company for the right to sublicense its intellectual property to the Irish-based subsidiary, which uses it in the sale of products outside the U.S.[29] The Bermuda-based company is an Irish company for U.S. purposes, which presumably aids in the approval of the transfer pricing arrangement because of the presence of a U.S.–Ireland tax treaty, but is a Bermuda company for Irish purposes, which allows it to avoid Irish taxes.[30] This arrangement leaves the American parent with little income in the U.S. because of the low transfer fee and the Irish-based subsidiary with no net income in Ireland because the royalty payment cancels out its income.[31] To avoid Irish withholding taxes on the payment from the Irish subsidiary to the Bermuda-based Irish subsidiary, the money is funneled through a Dutch firm that qualifies for the exemption available to payments to companies within the European Union.[32] The result is that there is no revenue in Ireland and virtually all of the income is sourced to Bermuda, which has no corporate tax.[33] The parent company is headquartered in the United States, the work is largely performed in Ireland,

and Worldwide Taxation, PRACTICAL US/INT'L TAX STRATEGIES, May 15, 2007, at 2, 12–14; Edward D. Kleinbard, *Stateless Income*, 11 FLA. TAX REV. 699, 706–13 (2011); Jesse Drucker, *Google 2.4% Rate Shows How $60 Billion Lost to Tax Loopholes*, BLOOMBERG (Oct. 21, 2010), http://www.bloomberg.com/news/2010-10-21/google-2-4-rate-shows-how-60-billion-u-s-revenue-lost-to-tax-loopholes.html [hereinafter Drucker, *Google*].

28. *See* Drucker, *Google*, *supra* note 27. The recent revelation that Facebook only paid £2.9 million in tax in Ireland on £840 million in total non-U.S. profit, and only £238,000 in tax in the U.K. on an estimated £175 million in total profits on ads sold in the U.K. has led to calls for increased enforcement efforts in the U.K. *See* Rupert Neate, *Facebook Paid £2.9m Tax on £840m Profits Made Outside U.S., Figures Show*, GUARDIAN (U.K.), Dec. 23, 2012, http://www.guardian.co.uk/technology/2012/dec/23/facebook-tax-profits-outside-us/print. Similarly, Australian tax authorities claim that Facebook, Google, Apple, and eBay have collectively avoided as much as $1 billion in revenues. Phil Jacob, *Big Firms Play 'Double Dutch' to Skip on Tax*, TELEGRAPH (London), Dec. 27, 2012, http://www.dailytelegraph.com.au/news/big-firms-play-double-dutch-to-skip-on-tax/story-e6freuy9-1226543763777.

29. J. Bryan Lowder, *The Double Irish and the Dutch Sandwich: The Explainer's Field Guide to Exotic Tax Dodges*, SLATE (Apr. 14, 2011), http://www.slate.com/articles/news_and_politics/explainer/2011/04/the_double_irish_and_the_dutch_sandwich.html.

30. *Id*. While the U.S. uses legal incorporation as the standard, Ireland bases tax residency on where a corporation is managed and controlled. Darby & Lemaster, *supra* note 27, at 13.

31. *See* Lowder, *supra* note 29.

32. *See* Darby & Lemaster, *supra* note 27, at 14; Drucker, *Google*, *supra* note 27.

33. *See* Darby & Lemaster, *supra* note 27, at 14; Drucker, *Google*, *supra* note 27

the license is owned in Bermuda by a company incorporated in Ireland, and the income is taxed nowhere until repatriated to the U.S.[34]

Although the U.S. is not without tools to try to unilaterally target a transaction like the "Double Irish" or "Dutch Sandwich,"[35] it demonstrates the multinational nature of the corporate tax evasion problem. The scheme relies on the U.S.–Ireland tax treaty and the lower corporate tax rate in Ireland, the distinction between the incorporation-based definition of tax home in the U.S. and the "managed and controlled" definition in Ireland,[36] the presence of an exemption from the Irish withholding tax for royalty payments to a European Union (EU) member state such as the Netherlands,[37] the ability to move money from the Netherlands to Bermuda without a Dutch withholding tax through the use of Dutch "special financial units,"[38] and the absence of a corporate income tax in a jurisdiction like Bermuda.[39] Effectively, the ease in moving corporate assets and the malleability in the definition of legal home, combined with a few tax-friendly jurisdictions, makes it increasingly difficult for countries to unilaterally maintain the integrity of their separate corporate tax systems except in the case of purely domestic corporations.[40]

Noticeably missing from Obama's Framework for Business Tax Reform, from the Congressional Budget Office's (CBO) report on the Options for Taxing U.S. Multinational Corporations, and from most discussion of the major structural reform proposals, is any mention of the influence and importance of international reform efforts.[41] Although the concern over corporate tax evasion is especially pronounced in the U.S., this decentering phenomenon and its effect on corporate tax revenues is by no

34. *See* Darby & Lemaster, *supra* note 27, at 14; Drucker, *Google*, *supra* note 27.

35. For example, the scheme appears to rely on the U.S. having approved the transfer pricing agreement for the transfer of licensing rights from the U.S. corporation to the Irish holding company at favorable rates and it relies on the Dutch and second Irish company (which is considered a Bermuda company for Irish purposes) being classified as disregarded entities under the U.S. check-the-box regulations. Kleinbard, *supra* note 27, at 708, 710; *see also* Stephen C. Loomis, *Recent Development, The Double Irish Sandwich: Reforming Overseas Tax Havens*, 43 ST. MARY'S L.J. 825, 845–52 (2012) (discussing possible solutions such as utilizing Section 482 to reallocate income, promulgating new anti-abuse regulations under the Controlled Foreign Corporation rules, reducing tax rates to decrease incentives for evasion, or adopting an international minimum tax).

36. *See supra* note 30 and accompanying text.

37. *See supra* note 31 and accompanying text.

38. *See* Jesse Drucker, *Yahoo, Dell Swell Netherlands' $13 Trillion Tax Haven*, BLOOMBERG (Jan. 22, 2013), http://www.bloomberg.com/news/2013-01-23/yahoo-dell-swell-netherlands-13-trillion-tax-haven.html.

39. Drucker, *Google*, *supra* note 27 ("The earnings wind up in island havens that levy no corporate income taxes at all.").

40. WHITE HOUSE & DEP'T OF TREASURY, *supra* note 20, at 15.

41. *See* WHITE HOUSE & DEP'T OF TREASURY, *supra* note 20, at 13–15; CONG. BUDGET OFFICE, *supra* note 13, at 1.

means an exclusively American problem. As Edward Kleinbard, former Chief of Staff of Congress's Joint Committee on Taxation, pointed out in referring to the "Double Irish" transaction: "This tax avoidance strategy used by Apple and other multinationals doesn't just minimize the companies' U.S. taxes . . . . It's German tax and French tax and tax in the U.K. and elsewhere."[42] Consequently, around the world, nations are under direct and indirect pressure to reform their corporate tax laws.[43] Not only will this have an effect on U.S. tax laws and on the tax burdens of U.S. multinational corporations regardless of whether the U.S. actually decides to reform its own laws, it will have an effect on the success of corporate tax reform initiated in the U.S.[44] This essay argues that any attempt to reform corporate taxation inevitably has to be undertaken as part of, or at least in light of, the already-existing global effort in this area—rather than operating purely as a domestic legislative matter.

II. THE GLOBAL CORPORATE TAX REFORM MOVEMENT

Given the multinational nature of the corporate income tax problem, it is not surprising that the search for a solution has taken place on a multinational level. In Europe, where the EU has used a variety of mechanisms at its disposal to force changes in the tax policies of its member states, this effort has been more top-down than collaborative.[45] No treaty specifically provides the EU the authority to interfere with individual member states' domestic corporate tax schemes, but a variety of directives have been advanced "to minimise corporate tax factors as an obstacle to doing business in the Single Market."[46] For example, prompted by the European Community Treaty's guarantee of "free movement of goods, persons, services and capital," and the provision for nondiscrimination based on nationality,[47] the European Court of Justice (ECJ) prohibited providing domestic individuals and products with more favorable tax treatment than foreign individuals and taxpayers.[48] This same principle was applied in the

42. Charles Duhigg & David Kocieniewski, *How Apple Sidesteps Billions in Taxes*, N.Y. TIMES, Apr. 28, 2012, http://www.nytimes.com/2012/04/29/business/apples-tax-strategy-aims-at-low-tax-states-and-nations.html?pagewanted=all.

43. *See id*.

44. *See id*.

45. *See* ALISTAIR CRAIG, EU LAW AND BRITISH TAX: WHICH COMES FIRST? (2003).

46. CRAIG, *supra* note 45, at 11.

47. Single European Act, arts. 12–13, Feb. 17, 1986, 1987 O.J. (L 169) 1.

48. Michael J. Graetz & Alvin C. Warren, Jr., *Income Tax Discrimination and the Political and*

EU's so-called "Parent/Subsidiary Directive," which focused on outlawing the double taxation of dividends paid by a subsidiary of one member state to its parent company located in another member state.[49] Indeed, the ECJ had "decided more than a hundred cases involving Member States' income tax systems" as of 2007.[50] As a result, Michael Graetz and Alvin Warren concluded that "the Court has become deeply enmeshed in fashioning the Member States' income tax policies."[51]

The power of these multilateral efforts is evident in changes that have already occurred. In large part, the United Kingdom's 1997 and 1999 reforms to the shareholder dividend credit under the imputation system were instigated by the growing influence of the ECJ. The U.K. had systematically discriminated against foreign individuals through its imputation scheme and had institutionalized that arrangement as far back as the 1975 United Kingdom–United States Double Taxation Convention, in which it agreed to grant the shareholder credit to U.S. investors, less a fifteen percent deduction of the dividend and tax credit.[52] Although no specific ruling addressed the U.K. system, government officials saw the writing on the wall. Within a few years, in *Verkooijen*, the ECJ struck down a Dutch imputation arrangement similar to the one in place in the U.K.[53] As Peter Harris and David Oliver observed, "it was the nail in the coffin of the standard European imputation system, which usually provided relief from economic double taxation of domestic dividends but not foreign dividends."[54]

Some have predicted that the ECJ's formal intervention in member state corporate tax policies will ultimately lead to the development of a European corporate income tax. In 2003, *The Times* reported that "Britain is losing control of its corporate tax base as tracts of company tax law are overturned by the European Court of Justice"[55] and a study by the Centre for Policy Studies concluded that "Britain, and the other Member States of the EU, have lost effective control over how they set their corporation tax laws."[56] In subsequent years, the ECJ has continued to issue a number of rulings that

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Economic Integration of Europe, 115 YALE L.J. 1186, 1198–99 (2006).

49. CRAIG, *supra* note 45, at 13.

50. Michael J. Graetz & Alvin C. Warren, Jr., *Dividend Taxation in Europe: When the ECJ Makes Tax Policy*, 44 COMMON MKT. L. REV. 1577, 1577 (2007).

51. *Id.* at 1578.

52. Malcolm Gammie, *UK Imputation, Past, Present and Future*, 52 BULL. FOR INT'L FISCAL DOCUMENTATION 429, 433 (1998).

53. Staatssecretaris van Financiën v. B.G.M. Verkooijen, 2000 E.C.R. I-4071.

54. PETER HARRIS & DAVID OLIVER, INTERNATIONAL COMMERCIAL TAX 294 (2010).

55. Gary Duncan, *Chancellor Accused of Losing Control of Corporate Tax to EU*, TIMES (London), Dec. 5, 2003, at 41.

56. CRAIG, *supra* note 45, at i.

have resulted in changes or proposals for changes to British corporate tax policy, with little sign of a slowdown.[57]

Beyond the ad hoc ECJ intrusions into the corporate tax policy of individual European nations, there have been a variety of direct efforts to more formally harmonize European corporate tax systems over the last forty years.[58] Initially, those efforts were focused on rates.[59] After a few attempts to directly legislate corporate tax harmonization, the European Commission issued a draft directive in 1970 proposing "closer alignment of corporate tax rates across the then Member States at levels between 45% and 55%."[60] A similar proposal was made in 1992 when the European Commission's Report of the Committee of Independent Experts on Company Taxation "recommended the harmonisation of corporate tax rates between 30% and 40% across the EU."[61]

Although neither effort to harmonize rates was successful,[62] the European Commission has promulgated a number of mechanisms, ostensibly designed to ensure that individual corporate tax systems do not interfere with the smooth functioning of the Single Market, but arguably operating to reduce much of the individual non-rate variation among the member states.[63] These included the Parent/Subsidiary Directive described above, the Mergers Directive,[64] which helped facilitate mergers and reorganizations, and the Arbitration Procedure Convention, in which disputes over the taxation of profits earned by related companies in different member states were settled according to EU arbitration procedures.[65] These measures are relatively modest intrusions on national sovereignty that were widely accepted as helpful to business, but indirectly they help push the member states closer to a common European corporate tax.

A much more collaborative effort to institute a direct harmonization mechanism was afoot in the creation of the Code of Conduct on Business

57. *See, e.g.*, Gabriel Rozenberg, *Corporate Tax Review Eyes Return of Pounds*, TIMES (London), June 22, 2007, at 62 (describing proposed exemption of groups with foreign operations in countries with lower corporate tax rates from a separate dividend tax upon repatriation to Britain).

58. Charles E. McLure, Jr., *Harmonizing Corporate Income Taxes in the European Community: Rationale and Implications*, 22 TAX POL'Y & ECON. 151, 152 (2008).

59. *Id.* at 153–54.

60. CRAIG, *supra* note 45, at 12.

61. *Id.* at 14.

62. *Id.*

63. *Id.*

64. Council Directive 90/434/EEC, 1990 O.J. (L 225) 1, *available at* http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31990L0434:en:HTML.

65. CRAIG, *supra* note 45, at 12–13.

Taxation in December of 1997.[66] Through intensive and prolonged negotiations, the member states agreed to abolish or limit a number of harmful tax incentives or benefits offered by individual member states. Some have called this an example of the "Open Method of Coordination," which involves the use of voluntary and non-binding guidelines as "a means of spreading best practice and achieving convergence towards the EU goals."[67]

Although the Code was a product of a more collaborative effort than individual ECJ decisions, individual nations still are concerned that it could expand to cover more controversial domestic tax issues than originally contemplated.[68] A House of Lords Select Committee Report cited just this risk when it noted:

> We remain unclear about the implications for the United Kingdom of having agreed to this Code, in particular in relation to national sovereignty and to the principle of unanimity in tax matters. . . . [T]here remains the risk that the process could lead to the UK being obliged—in practice if not in law—to adopt tax measures damaging to the interests of the economy or of citizens.[69]

One particular concern, expressed by Conservative commentator Alistair Craig, is that the Code could interfere with a British government interested in cutting taxes in a way to induce investment, although there is no precedent for this in other countries.[70]

The European Commission went one step further than the more voluntary Code when it proposed to create a "common consolidated corporate tax base" in Europe.[71] The proposal emerged from concerns that multinational corporations could evade taxes by shifting profits to lower tax countries and countries are ill-equipped to combat this through transfer pricing conventions.[72] The common consolidated corporate tax base would use a formulary apportionment system to allocate income from multinational corporations to member states based on the employees, payroll, sales, and/or assets in the jurisdiction.[73] Such a system is already in place in the U.S. and

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66. *See Harmful Tax Competition*, EUROPEAN COMM'N, http://ec.europa.eu/taxation_customs/taxation/company_tax/harmful_tax_practices/index_en.htm (last updated Mar. 14, 2013).

67. Claudio M. Radaelli, *The Code of Conduct Against Harmful Tax Competition: Open Method of Coordination in Disguise?*, 81 PUB. ADMIN. 513, 513 (2003).

68. CRAIG, *supra* note 45, at 15–16.

69. SELECT COMMITTEE ON EUROPEAN COMMUNITIES, TAXES IN THE EU: CAN CO-ORDINATION AND COMPETITION CO-EXIST?, 1998-99, H.L. 92, ¶ 19 (U.K.), *available at* http://www.publications.parliament.uk/pa/ld199899/ldselect/ldeucom/92/9203.htm.

70. *Id.* ¶ 16.

71. Leon Betterndorf et al., *Corporate Tax Harmonization in the EU*, 25 ECON. POL'Y 539, 540 (2010).

72. *Id.* at 539.

73. *Id.*

Canada to deal with allocating corporate income among the various states and provinces, respectively.[74] The problem, however, is agreeing upon a common corporate tax base for such a system, which would mean each member state would have to relinquish a measure of autonomy over the creation of its corporate tax provisions. This also requires each member state to agree to such a base under the unanimity principle, which is difficult and has delayed the process considerably. One British study warned that business "would face a higher tax burden, as part of the harmonisation of corporate business," costing them as much as £4 billion per year.[75] *The Times* advised that:

> If Britain really wants to resist a common tax policy, it would need to take an alternative initiative. One might be to encourage EU tax experts to draw up unofficial model rules that evolve with time and that member states can use as a default where they have no different national priority. Otherwise, the Commission's siege engines will roll on.[76]

The European Commission and the EU have used several of these mechanisms to pressure member states when their corporate tax systems deviate too substantially from the norm. This is particularly evidenced by the experience with Ireland. The country has a long experience with reducing its corporate tax rate in an attempt to attract foreign direct investment, dating back to the late 1950s.[77] At one point, the country completely exempted from tax income from manufactured exports, but this was phased out starting in 1978 and ultimately replaced in 1980 with a 10% rate for the manufacturing industry.[78] This special rate was later extended to cover activities at the International Financial Services Centre in Dublin and in a tax-free zone surrounding Shannon airport, but the prevailing rate for companies not covered by any of those exceptions remained at 32%.[79] Eventually, this special rate came under scrutiny by the European Commission, which pressured Ireland to raise it to a rate "much closer to the

74. *Id*. at 540.

75. Elizabeth Judge, *Single European Tax Could Cost UK Business £4bn, Academics Warn*, TIMES (London), May 3, 2007, at 55.

76. Graham Searjeant, *EU Has Company Tax in Its Sights*, TIMES (London), Dec. 16, 2005, at 61.

77. Barry, *supra* note 26, at 223.

78. *Id*.

79. *Id*.; Sheila Killian, *Where's the Harm in Tax Competition? Lessons from US Multinationals in Ireland*, 17 CRITICAL PERSP. ON ACC'T 1067, 1075 (2006).

EU average."[80] Moreover, the EU alleged that the disparate treatment of domestic and foreign manufacturers violated the Code of Conduct on Business Taxation and the OECD's "Guidelines on Harmful Preferential Tax Regimes."[81] In response to this EU pressure, both on the level of its rates and on its non-uniform application, Ireland eventually agreed in 1998 to raise its manufacturing rate to 12.5% and to extend for all corporations, effective starting in 2003.[82] The 2010 EU bailout of the Irish government led to renewed calls for an increase in Ireland's corporate tax rate.[83] While that has not happened, EU rules have thus far stymied efforts by Northern Ireland to secure the right to reduce its corporate tax rate to 12.5% as well.[84]

More recently, there has been a push for more cooperative efforts to address the global problem of corporate tax evasion exemplified in the "Double Irish" or "Dutch Sandwich" transaction described earlier.[85] In November of 2012, the OECD announced a project to "prevent base erosion and profit shifting."[86] According to the OECD briefing on this project:

> Domestic rules for international taxation and internationally agreed standards are still grounded in an economic environment characterised by a lower degree of economic integration across borders, rather than today's environment of global taxpayers, characterised by the increasing importance of intellectual property as a value-driver and by constant developments of information and communication technologies. For example, some rules and their underlying policy were built on the assumption that one country would forgo taxation because another country would be imposing tax. In the modern global economy, this assumption is not always correct, as planning opportunities may result in profits ending up untaxed anywhere.[87]

80. Barry, *supra* note 26, at 223.

81. Killian, *supra* note 79, at 1075.

82. Barry, *supra* note 26, at 223.

83. Paul Taylor, *Analysis: Ireland's Corporate Tax in Dispute in EU Rescue*, REUTERS (Nov. 19, 2010), http://www.reuters.com/article/idUSTRE6AI3HN20101119.

84. Jamie Smyth, *Treasury Resists N Ireland Corporation Tax Cuts Plan*, FINANCIAL TIMES (London), June 25, 2012, http://www.ft.com/intl/cms/s/0/0d5f38d8-bee0-11e1-bebe-00144feabdc0.html#axzz2NkpZ9tff ("Under European Union rules any reduction in corporation tax in Northern Ireland would have to be accompanied by a reduction in the block grant from Westminster. The Treasury currently predicts the costs of a tax cut to the block grant could reach £500m.").

85. *See supra* notes 27–34 and accompanying text.

86. *See* Org. for Econ. Coop. and Dev., *Base Erosion and Profit Shifting*, OECD, http://www.oecd.org/ctp/beps.htm (last visited Jan. 2, 2013) (quoting G20 Leaders Declaration of June 19, 2012).

87. OECD, THE OECD WORK ON BASE EROSION AND PROFIT SHIFTING 1 (2013), *available at*

The OECD identified several "key pressure areas" that created an environment in which corporate base erosion flourished:

> • International mismatches in entity and instrument characterisation including hybrid mismatch arrangements and arbitrage;
>
> • application of treaty concepts to profits derived from the delivery of digital goods and services;
>
> • the tax treatment of related party debt-financing, captive insurance and other inter-group financial transactions;
>
> • transfer pricing, in particular in relation to the shifting of risks and intangibles, the artificial splitting of ownership of assets between legal entities within a group, and transactions between such entities that would rarely take place between independents;
>
> • the effectiveness of anti-avoidance measures, in particular GAARs, CFC regimes and thin capitalisation rules; and
>
> • the availability of preferential regimes for certain activities.[88]

The OECD recommended coordinated efforts to alleviate the divergent domestic rules and regulations that contributed to this base-erosion environment.[89]

Motivated by similar concerns, the European Commission introduced a plan in December of 2012 "to strengthen the fight against tax fraud and tax evasion."[90] A Communication from the European Commission to the European Parliament and Council proposed a variety of specific measures, including recommendations that member states adopt minimum standards for good governance in tax matters that they could directly and indirectly pressure third-party nations to adopt.[91] It also proposed adopting a "common

http://www.oecd.org/ctp/TheOECDworkonBEPS.pdf.

88. *Id*. at 2.

89. *Id*. at 2–3.

90. *Communication from the Commission to the European Parliament and the Council*, at 1, COM (2012) 722 final (Dec. 6, 2012), *available at* http://ec.europa.eu/taxation_customs/resources/documents/taxation/tax_fraud_evasion/com_2012_722_en.pdf.

91. *Id*. at 6.

general anti-abuse rule" that it could encourage or require member states to include in all bilateral treaties.[92]

III. THE INFLUENCE OF GLOBAL CORPORATE TAX REFORM

Although the U.S. is not subject to the jurisdiction of many of these international or regional groups, the European Commission's above-described proposals to push for the adoption of its standards by third parties reveals one mechanism by which the U.S. and other non-member states could be influenced directly by global corporate tax reform. It would not be unprecedented for the U.S. system of business taxation to arouse the scrutiny and displeasure of international groups. An example of this is the World Trade Organization's (WTO) intervention regarding the U.S.'s extraterritorial income exclusion and foreign sales corporation provisions.[93] The foreign sales corporation provision, which was enacted in 1984, exempted from U.S. tax part of the income earned from products sold abroad by foreign subsidiaries of U.S. manufacturers.[94] These provisions were enacted to resolve a prior dispute under the General Agreement on Tariffs and Trade (GATT) regarding the EU's protest of the U.S.' domestic international sales corporation provisions.[95] A little over a decade later, the EU levied a similar challenge against the foreign sales corporation before a dispute resolution panel of the successor to GATT, the WTO, and the WTO upheld the challenge.[96] To respond to this ruling, the U.S. enacted the FSC Repeal and Extraterritorial Income Exclusion Act in 2000.[97] Adopting the extraterritorial income exclusion as a replacement for the foreign sales corporation, this provision applied to all sales and leases by foreign subsidiaries, regardless of where the products were manufactured, so long as the manufacturer agreed to be subject to the taxing authority of the U.S.[98] The EU challenged this again in 2001 as an illegal export subsidy, leading the WTO rule against the U.S.[99] After a protracted battle, the U.S. repealed the exclusion of income for exporters and adopted a deduction for domestic

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92. *Id.*

93. For more description of the background of these provisions and the WTO and preceding interventions, see *Hearing on the WTO's Extraterritorial Income Decision Before the H. Comm. on Ways & Means*, 107th Cong. (2002) (statement of Barbara Angus, International Tax Counsel, U.S. Dep't of the Treasury), *available at* http://waysandmeans.house.gov/legacy/fullcomm/107cong/2-27-02/2-27angu.htm [hereinafter Testimony of Barbara Angus]; Charles I. Kingson, *The Great American Jobs Act Caper*, 58 TAX L. REV. 327, 329–31 (2005).

94. Testimony of Barbara Angus, *supra* note 93.

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

manufacturers under the American Jobs Creation Act of 2004.[100] As "compensation" for the loss of the export subsidy, Congress "slightly reduced the corporate tax rate on *all* goods manufactured in the United States."[101]

More directly, the U.S. may be pressured to collaborate in reform efforts through its membership in the Group of Eight, or the "G8." British Prime Minister David Cameron announced that he was going to use his presidency of the G8 in 2013 to "drive a more serious debate" on corporate tax evasion by multinational firms.[102] Cameron signaled that this would be a multilateral effort among G8 member states: "In the UK we've already committed hundreds of millions into this effort—but acting alone has its limits. Clamp down in one country and the travelling caravan of lawyers, accountants and financial gurus just moves on elsewhere. We need to act together at the G8."[103]

Even outside of the formal involvement of international trade organizations, there is evidence that global corporate tax reform is increasingly pressuring countries to reform their corporate tax systems. This is most apparent in the pressure to reduce corporate tax rates. Although the U.K. corporate tax rate had dropped two percentage points as part of the late 1990s reforms, there was soon agitation to lower it even further. In 2006, the British Chambers of Commerce cited the fact that the U.K.'s corporate tax rate, which was once the ninth lowest among OECD countries, had dropped to the sixteenth lowest, claiming that "[o]ur current rate threatens to harm business competitiveness."[104] The British Institute of Directors "called for the main rate of corporation tax to be cut to 28 per cent," noting that "[i]f we are to remain competitive, we must act now,"[105] while the Confederation of British Industries (CBI) claimed that "the present corporation tax rate was 'unsustainable' because it was much higher than those of European competitors" and that "[a] trickle of companies is relocating and our worry is

100. *Id*.
101. Kingson, *supra* note 93, at 330.
102. Mark Thompson, *UK to Tax Cheats: 'Wake Up and Smell the Coffee'*, CNN MONEY (Jan. 24, 2013), http://money.cnn.com/2013/01/24/news/economy/cameron-tax-trade/.
103. Larry Elliott & Heather Stewart, *David Cameron Makes Swipe at Starbucks as He Promises Focus on Tax*, GUARDIAN (U.K.), Jan. 24, 2013, http://www.guardian.co.uk/politics/2013/jan/24/david-cameron-starbucks-focus-tax.
104. Gary Duncan, *Chancellor Told to Cut Corporation Tax*, TIMES (London), Mar. 10, 2006, at 56.
105. *Id*.

that it might turn into a flood."[106] Even after the rate was cut to 28%, the CBI pushed for an additional drop in rates to 18% by 2016.[107] With the change to a Conservative government in 2010, new Chancellor George Osborne already reduced the corporate tax rate to 24% as of April 2012 and has announced plans to reduce it to 22% percent in 2014.[108] This would be the lowest rate since 1965.[109]

Not only has the nominal U.K. corporate tax rate declined in recent years, but the effective rate has dropped as well. In October 2010, the Trades Union Congress (TUC) released a report describing several "worrying trends,"[110] including a decline in the corporate effective tax rate from just below 28% in 2000 when the statutory rate was 30% to 23% in 2009 when the statutory rate had only dropped to 28%.[111] Based upon the expectation that the statutory rate would drop from 28% to 24% by 2015, the TUC predicted that large companies would pay an effective corporate tax rate of only 17% by 2014, which would be lower than the rate paid by small companies and the majority of U.K. households.[112] With both the pace and the amount of rate reduction accelerating since the TUC report was released, the effective rate will drop even further. According to the TUC, this will mean that for the first time there will be "a regressive UK corporation tax system."[113]

The competitive pressure to harmonize corporate tax rates extends well beyond Europe to include both the U.S. and Japan. Up until recently, these two countries had the highest corporate tax rate among OECD countries, with the U.S.'s combined federal and state effective rate of 39.2% placing it 13.7 percentage points ahead of the OECD average.[114] Japan's effective corporate tax rate of 41% was even higher than the American rate, reportedly contributing to the departure of many Japanese manufacturing

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106. Christine Buckley, *Cut Tax or Lose More Business, Says CBI*, TIMES (London), Oct. 10, 2006, at 52.

107. Christine Buckley, *Employers and Unions Lobby Over Corporate Tax Rate and Non Doms*, TIMES (London), Mar. 10, 2008, at 44.

108. Svenja O'Donnell, *Osborne Cuts U.K. Corporation Tax Rate to 24% From April*, BLOOMBERG (Mar. 21, 2012), http://www.bloomberg.com/news/2012-03-21/osborne-cuts-u-k-corporation-tax-rate-to-24-from-april.html; *Budget 2012: Mixed Business Reaction to Budget*, BBC NEWS (Mar. 21, 2012), http://www.bbc.co.uk/news/business-17460262.

109. Suzy Jagger, *Corporate Tax Will Be the Lowest in G20, Osborne Promises CBI*, TIMES (London), May 20, 2010, at 39.

110. RICHARD MURPHY, TRADES UNION CONGRESS, THE CORPORATE TAX GAP 2 (2010), *available at* http://www.tuc.org.uk/extras/corporatetaxgap.pdf.

111. *Id*. at 12.

112. *Id*. at 13–14.

113. *Id*. at 14.

114. Peter R. Merrill, *Corporate Tax Policy for the 21st Century*, 63 NAT'L TAX J. 623, 624 (2010).

corporations to lower tax jurisdictions.[115] The gap between these two countries and the rest of the pack has widened with rate reductions in Germany, Italy, Spain, and twenty-five other developed nations since 2001.[116] In just the last two years alone, countries such as Canada, Finland, Greece, India, New Zealand, and Slovenia have enacted corporate rate cuts, and other countries such as Sweden are considering similar cuts in response.[117]

To counter such corporate tax rate cuts and increase the general competitiveness of business, the Japanese government announced plans in late 2010 to reduce its corporate tax rate by five percentage points.[118] Concern about growing revenue needs after the 2011 tsunami and ensuing nuclear reactor issues delayed this plan, but it was revived and enacted in 2012.[119] Although the rate reduction was not as momentous as it first appeared because of a three-year "Special Reconstruction Corporation Surtax" aimed at helping the country rebuild after the tsunami, it still reduced the statutory rate to approximately 38% until 2015, when it drops to 35.64%.[120] Moreover, given the reduction of South Korea's main corporate tax rate to 20% in 2012,[121] the pressure will continue for further rate cuts in Japan.

Japan's move could accelerate the already-existing efforts to reduce corporate tax rates in the U.S. The effective tax rates for American corporations are much lower than the combined federal–state statutory rate, but it was still estimated to be 27.9% in 2009, which was then the third

115. *Japanese Manufacturers: Leaving Home*, THE ECONOMIST (Nov. 18, 2010), http://www.economist.com/node/17527225.

116. *We're Number One, Alas*, WALL ST. J. (July 13, 2007), at A12, http://online.wsj.com/article/SB118428874152665452.html.

117. KATARZYNA BILICKA & MICHAEL DEVEREUX, CBT CORPORATE TAX RANKING 2012, at 16, tbl. 4 (2012); Johan Nylander, *Sweden Plans to Cut Corporate Tax*, THE SWEDISH WIRE (June 5, 2012), http://www.swedishwire.com/economy/14043-sweden-plans-to-cut-corporate-tax.

118. Hiroko Tabuchi, *Its Recovery Sputtering, Japan Will Cut Corporate Income Tax Rate*, N.Y. TIMES, Dec. 14, 2010, at B4.

119. Richard Rubin, *Japan's Rate Drop Puts U.S. at Top of Corporate Tax Rankings*, BLOOMBERG (Apr. 2, 2012), http://www.bloomberg.com/news/print/2012-04-02/japan-s-rate-drop-puts-u-s-at-top-of-corporate-tax-rankings.html.

120. Taichi Haraguchi, *Japan's Corporate Tax Rate Cut: Given With One Hand, Taken Away with the Other?*, 2012 TAX POL'Y & CONTROVERSY BRIEFING 1, 84, *available at* http://tmagazine.ey.com/insights/japans-corporate-tax-rate-cut-given-with-one-hand-taken-away-with-the-other/.

121. BILICKA & DEVEREUX, *supra* note 117, at 16; Cho Jin-seo, *Tax Cut Initiative to Reveal MB's True Colors*, KOREA TIMES, Nov. 16, 2010, http://www.koreatimes.co.kr/www/news/biz/2011/04/123_76454.html.

highest among OECD countries.[122] A more recent estimate set the effective average tax rate at 34.9% and the effective marginal tax rate at 23.3%, which, when combined with Japan's 2012 reform, leaves the U.S. with the highest average rates among OECD countries.[123] Although the differential with the effective rates of other OECD nations is still considered to be reasonably small,[124] a number of U.S. government reports have been released that have highlighted this problem.[125] During the 2012 election campaign, President Barack Obama proposed lowering the corporate tax rate to 28%, albeit as part of a broader reform that would eliminate some deductions and broaden the corporate tax base.[126] Given a competing proposal from Republican candidate Mitt Romney to lower the rate to 25%, the *Washington Post* described it as "one of the few areas of real common ground in American tax policy."[127]

Even if the global pressure does not result in U.S. corporate tax reform, the changes in corporate tax laws in other countries and regions have a direct impact on U.S. multinational firms doing business in those countries. Manal Corwin, Deputy Assistant Secretary for International Tax Affairs, speaking about the OECD's base erosion and profit shifting project, recently opined that "[w]hether tax reform [in the U.S.] will or will not happen, and when it will happen if it does happen, in some ways becomes less relevant because things are already happening at the OECD that are going to affect U.S. multinationals."[128]

The chance for individual firms to exit a given tax scheme will continue to shrink as the effective corporate tax rates of the industrialized world converge, and as alternate forms of corporate structure remain unavailable to

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122. Merrill, *supra* note 114, at 624.

123. BILICKA & DEVEREUX, *supra* note 117, at 14, tbl. 3; *US Displacing Japan as No 1 for Highest Corp Taxes*, REUTERS (Mar. 30, 2012), http://www.reuters.com/assets/print?aid=USL2E8EU5VV20120330.

124. JANE G. GRAVELLE & THOMAS L. HUNGERFORD, CONG. RESEARCH SERV., RL 34229, CORPORATE TAX REFORM: ISSUES FOR CONGRESS 15 (2007).

125. *Id.* at 1–35; CONG. BUDGET OFFICE, CORPORATE INCOME TAX RATES: INTERNATIONAL COMPARISONS (Nov. 2005); U.S. DEP'T OF THE TREASURY, TREASURY CONFERENCE ON BUSINESS TAXATION AND GLOBAL COMPETITIVENESS (2007); John D. McKinnon, *Obama: Corporate Tax Rate Cut Could Be "Win–Win"*, WALL ST. J. (Oct. 4, 2010), http://blogs.wsj.com/washwire/2010/10/04/obama-corporate-tax-rate-cut-could-be-win-win/.

126. Zachary A. Goldfarb, *Obama Proposes Lowering Corporate Tax Rate to 28 Percent*, WASH. POST, Feb. 21, 2012, http://www.washingtonpost.com/business/economy/obama-to-propose-lowering-corporate-tax-rate-to-28-percent/2012/02/22/gIQA1sjdSR_story.html.

127. Dylan Matthews, *Everyone Wants to Lower Corporate Tax Rates. Here's How You Do It.*, WASH. POST (Sept. 26, 2012), http://www.washingtonpost.com/blogs/wonkblog/wp/2012/09/26/everyone-wants-to-lower-corporate-tax-rates-heres-how-you-do-it/.

128. *Treasury Official: U.S. Tax Reform Efforts Must Be Informed by International Fight Against Base Erosion*, ITPF, (Dec. 11, 2012), http://www.itpf.org/itpf_blog?article_id=18 (quoting Manal Corwin, Treasury Deputy Assistant Secretary for International Tax Affairs).

certain firms and in certain industries.[129] Economists Jane Gravelle and Thomas Hungerford, in a congressional report expanding on the work of UCLA Professor Arnold Harbarger, concluded that "as long as countries tend to choose tax rates similar to each other, which appears to be the case, the world becomes like the original closed economy."[130] Although a truly closed global economy might bring much needed stability to international corporate rates, individual nations could find it difficult to use the corporate tax in satisfying their particular domestic needs.[131]

IV. CONNECTING GLOBAL REFORM WITH U.S. INITIATIVES

Given the formal and informal pressures toward convergence of national corporate tax systems and rates, the notion that corporate tax reform in the United States can proceed in a purely unilateral fashion seems increasingly unlikely. Indeed, as the OECD points out, while the business community has been vocal throughout the last century about the need for bilateral or multilateral efforts to avoid double taxation, they have been noticeably quiet on the subject of such cooperative efforts in the context of reining in corporate profits shifting and tax evasion.[132] This may be because they know that any unilateral efforts may be thwarted to the extent that they create further distinctions between U.S. and global law that companies can leverage for their own benefit. According to the OECD, part of the problem is that "corporations often exploit differences in domestic tax rules and international standards that provide opportunities to eliminate or significantly reduce taxation."[133] As a result, the OECD concludes a collaborative global effort is critical:

> [I]t may be impossible for any single country, acting alone, to fully address the issue. . . . Failure to collaborate in addressing BEPS [base erosion and profit shifting] issues could result in unilateral actions that would risk undermining the consensus-based framework for establishing jurisdiction to tax and addressing double taxation which exists today. The consequences could be damaging in terms of increased possibilities for mismatches, additional

129. *See* BANK, *supra* note 1, at 264.
130. GRAVELLE & HUNGERFORD, *supra* note 124, at 15; *see* BANK, *supra* note 1, at 264.
131. *See* BANK, *supra* note 1, at 264.
132. OECD, *supra* note 87, at 1–2.
133. *Id*. at 2.

disputes, increased uncertainty for business, a battle to be the first to grab taxable income through purported anti-avoidance measures, or a race to the bottom with respect to corporate income taxes. In contrast, collaboration to address BEPS concerns will enhance and support individual governments' domestic policy efforts to protect their tax base while protecting multinationals from uncertainty or double taxation.[134]

The European Commission has sounded a similar message, concluding that "[t]ax fraud and tax evasion is a multi-facetted [sic] problem which requires a coordinated and multi-pronged response. Aggressive tax planning is also a problem which requires urgent attention. These are global challenges which no single Member State can face alone."[135]

Tax officials have already embraced multilateralism in the context of enforcement efforts. As one commentator observes, "[g]iven that the big four accounting firms also operate world-wide, and tax administrations do not, the latter have worked to seek out and share 'best practice,' often accomplished with the assistance of international agencies such as the OECD, IMF and World Bank."[136] The European Commission has pushed to encourage and formalize such cooperation, noting: "Tax fraud and tax evasion have an important cross-border dimension. Member States can only address this problem effectively if they work together. Improving administrative cooperation between Member States' tax administrations is therefore a key objective of the Commission's strategy in this area."[137]

This paper should not be construed as stating a normative case either for international cooperation or against acting in a country's self-interest at the expense of other countries.[138] It does not mean that individual nations should not act domestically. Indeed, many of the tax reform proposals in Europe and elsewhere contemplate domestic action and acknowledge the continued existence of legitimate differences in domestic policies on particular issues.[139] Nevertheless, to be successful, any attempt at domestic corporate tax reform must be informed by and in some respects reflect

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134. *Id.* at 3.

135. *See Communication from the Commission*, *supra* note 90, at 15.

136. John Hasseldine et al., *Companies and Taxes in the UK: Actors, Actions, Consequences and Responses*, 10 ATAX EJOURNAL OF TAX RES. 532, 535 (2012).

137. *Communication from the Commission*, *supra* note 90, at 3.

138. For a discussion of such issues, see Allison Christians, *Putting the Reign Back in Sovereign: Advice for the Second Obama Administration*, 40 PEPP. L. REV. 1373 (2013); Peggy B. Musgrave, *Sovereignty, Entitlement, and Cooperation in International Taxation*, 26 BROOK. J. INT'L L. 1335, 1336 (2001).

139. *Cf.* Omri Y. Marian, *Meaningless Comparisons: Corporate Tax Reform Discourse in the United States*, 32 VA. TAX REV. 133, 173–82 (2012) (noting that local differences may make it difficult to compare tax reforms in seemingly similar countries).

international standards and developments in the global corporate tax reform movement.

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