# eJournal of Tax Research

Volume 22, Number 3 December 2024
(Special Edition: Environmental, Social, Governance and Taxation)

**CONTENTS**

417 Guest editorial
**Vincent Ooi and Amy Lawton**

420 T for Taxation: the fourth pillar in the ESG framework
**Vasiliki Koukoulioti**

444 ESG(T)? Should and can tax performance be a factor in evaluating the ethical, moral and social performance of corporations?
**Christina Allen and Richard Krever**

462 The concept of sustainable taxation and its impact on tax policy
**Kasem Zotkaj and Flurim Aliu**

492 Sustainable tax governance: a shared responsibility
**Hans Gribnau**

518 The function(s) of taxation: the impacts of regulatory taxes on taxation
**Amy Lawton**

Atax UNSW

© School of Accounting, Auditing & Taxation, UNSW Business School
UNSW Sydney
ISSN 1448-2398

# eJournal of Tax Research


## EDITORS

| | |
|---|---|
| **Associate Professor Youngdeok Lim** | School of Accounting, Auditing & Taxation, UNSW Sydney |
| **Scientia Associate Professor Yan Xu** | School of Accounting, Auditing & Taxation, UNSW Sydney |

## PRODUCTION EDITOR

| | |
|---|---|
| **Dr Peter Mellor** | School of Accounting, Auditing & Taxation, UNSW Sydney |

## EDITORIAL BOARD

| | |
|---|---|
| **Professor Robin Boadway** | Department of Economics, Queen's University |
| **Emeritus Professor Cynthia Coleman** | University of Sydney Business School |
| **Emeritus Professor Graeme Cooper** | Faculty of Law, University of Sydney |
| **Professor Robert Deutsch** | School of Accounting, Auditing & Taxation, UNSW Sydney |
| **Emeritus Professor Chris Evans** | School of Accounting, Auditing & Taxation, UNSW Sydney |
| **Emeritus Professor Judith Freedman** | Faculty of Law, University of Oxford |
| **Professor Malcolm Gammie** | Chambers of Lord Grabiner QC, London |
| **Professor Jennie Granger** | School of Accounting, Auditing & Taxation, UNSW Sydney |
| **Professor John Hasseldine** | Paul College of Business and Economics, University of New Hampshire |
| **Professor Helen Hodgson** | Curtin Law School, Curtin University |
| **Emeritus Professor Jeyapalan Kasipillai** | School of Business, Monash University Malaysia Campus |
| **Professor Rick Krever** | UWA Law School, University of Western Australia |
| **Professor Lisa Marriott** | Wellington School of Business and Government, Victoria University of Wellington |
| **Emeritus Professor Fiona Martin** | School of Accounting, Auditing & Taxation, UNSW Sydney |
| **Professor Charles McLure Jr** | Hoover Institution, Stanford University |
| **Professor Dale Pinto** | Curtin Law School, Curtin University |
| **Emeritus Professor John Prebble** | Faculty of Law, Victoria University of Wellington |
| **Professor Adrian Sawyer** | UC Business School, University of Canterbury |
| **Professor Joel Slemrod** | Stephen M. Ross School of Business, University of Michigan |
| **Professor Natalie Stoianoff** | Faculty of Law, University of Technology Sydney |
| **Emeritus Professor Jeffrey Waincymer** | Faculty of Law, Monash University |
| **Emeritus Professor Neil Warren** | School of Accounting, Auditing & Taxation, UNSW Sydney |
| **Professor Robin Woellner** | School of Accounting, Auditing & Taxation, UNSW Sydney |

# eJournal of Tax Research


### PUBLISHER

The School of Accounting, Auditing & Taxation is part of the UNSW Business School at UNSW Sydney. The tax group in our school brings together a team of expert academic staff with backgrounds in law, tax and economics. At the School of Accounting, Auditing & Taxation, we're working towards building excellence in the tax profession, looking at tax from both a theoretical and practical perspective.


### EDITORS' NOTE

The *eJournal of Tax Research* is a refereed journal that publishes original, scholarly works on all aspects of taxation. It aims to promote timely dissemination of research and public discussion of tax-related issues, from both theoretical and practical perspectives. It provides a channel for academics, researchers, practitioners, administrators, judges and policy makers to enhance their understanding and knowledge of taxation. The journal emphasises the interdisciplinary nature of taxation.

### SUBMISSION OF ORIGINAL MATERIAL

Submission of original contributions on any topic of tax interest is welcomed, and should be sent through ScholarOne (https://mc04.manuscriptcentral.com/ejtr). Submission of a manuscript is taken to imply that it is an unpublished work and has not already been submitted for publication elsewhere. Potential authors are requested to follow the "Notes to Authors", which is available from the journal's website.

### WEBPAGE

Current and past issues of the *eJournal of Tax Research* are available via the journal's website: https://www.unsw.edu.au/business/our-research/research-environment/ejournal-tax-research.

*eJournal of Tax Research (2024) vol. 22, no. 3, pp. 417-419*

# Guest editorial

**Special Issue: Environmental, Social, Governance and Taxation**

This special issue of the *eJournal of Tax Research* comprises five articles that are a selection of papers that were originally presented at the SMU–Edinburgh Environmental, Social, Governance and Taxation Conference hosted by the Yong Pung How School of Law, Singapore Management University in April 2024. The conference was opened by the Honourable Judicial Commissioner Alex Wong Li Kok of the Supreme Court of Singapore, who assured attendees that the importance of environmental, social, governance (ESG) aspirations was not lost on the judiciary.

The conference focused on important issues such as whether taxation should form a fourth pillar (ESG(T)), or whether taxation already has an existing home in the existing ESG pillars. It also explored the role that taxation plays in sustainability and environmental protection more generally. The articles in this special issue expand on these core themes, incorporating the rich discussion and feedback provided over the course of the conference.

Koukoulioti outlines the difficulty in defining ESG as a starting point, which only compounds the difficulty of identifying where 'corporate taxation fits' when exploring ESG.[1] In a thorough review of the three existing pillars, the author identifies multiple places where taxation could fit into the ESG framework: from environmental taxation being in a symbiotic relation with ESG, to the importance of tax revenues in providing for our communities.

Despite this, Koukoulioti argues that there is value in taxation forming a fourth pillar to create an 'ESGT' framework. In its current form, taxation is 'underrepresented' in the ESG framework. While scholarly work exists that has proposed the alteration of the letters in ESG (or, indeed, its abolition altogether), this article argues that there remain many benefits to adopting the ESGT framework, including that '[u]ltimately, greater emphasis on tax matters by institutional investors and ESG rating agencies would influence corporate tax behaviour'.[2] Koukoulioti therefore proposes ESGT as a way to improve the existing ESG framework.

Allen and Krever explore what the 'T' in ESG(T) might entail for those who are calling for its addition to the ESG framework. This taxation pillar is, primarily, 'the tax that would have been paid had profits not been shifted abroad to low- or no-tax jurisdictions before taxable income is calculated'.[3] This approach to ESG(T) brings its own

---

[1] Vasiliki Koukoulioti, 'T for Taxation: the fourth pillar in the ESG framework' (2024) 22(3) *eJournal of Tax Research* 420.
[2] Ibid 439.
[3] Christina Allen and Richard Krever, 'ESG(T)? Should and can tax performance be a factor in evaluating the ethical, moral and social performance of corporations?' (2024) 22(3) *eJournal of Tax Research* 444.

challenges: being able to identify and calculate (and therefore measure) the extent of tax avoidance.

Existing scholarship relies heavily on the 'effective tax rate' to calculate levels of tax avoidance, but Allen and Krever argue that there is 'no simple way' to measure tax avoidance; it therefore follows that it would be 'impossible' to measure tax behaviour in an ESG context.[4] Likewise, it is difficult to understand the precise driving factors behind why a company might engage in tax avoidance, making a fourth ESG pillar even more difficult to engage with. Ultimately, Allen and Krever highlight that a new approach is needed to identify the source of profits first: one such way could be the allocation system proposed in a League of Nations expert report in the 1920s.

Zotkaj and Aliu seek to identify a clearer, more tangible concept of sustainable taxation as our current understanding of 'sustainable taxation' is 'largely vague'.[5] Definitions can be slippery, difficult things – what do we mean by taxation? sustainability? sustainable taxation? – but they can bring clarity to a subject by drawing boundaries on what is and is not sustainable taxation. The authors of this article embark on the important journey of better defining sustainable taxation.

To do so, they conduct a comprehensive concept analysis to explore the relationship between taxation and sustainability, resulting in a definition of sustainable taxation that is as follows: sustainable taxation is 'the alignment of tax reforms with the SDGs' [the United Nations Sustainable Development Goals].[6] This is an important contribution in an emerging field of scholarship.

Gribnau seeks to respond to the following research question: how does corporate tax governance reflect companies' shared responsibility for sustainable development? This article argues that governments and corporations are partners and share a responsibility when it comes to sustainability.[7] Tax is also important for sustainability, providing the funds, redistribution, and regulatory power to help states align with the UN's SDGs.[8]

Gribnau's article ultimately argues that both governments and businesses are 'major actors' in sustainability. Tax is 'fundamental' in our work towards sustainability; and good corporate tax governance should integrate tax values and principles into corporate social responsibility (CSR). For ESG, tax transparency is key to enabling a 'proper analysis' of a company's tax performance.[9]

Finally, Lawton explores the functions of taxation more generally. Discussions of ESG tend to go hand in hand with environmental taxation; yet there has been little consideration of whether taxation with the objective of changing behaviour (regulatory taxation) has any impacts on a tax system. This article explores how the prioritisation of the regulatory function of taxation pushes its other functions to the background.

---

[4] Ibid 451.
[5] Kasem Zotkaj and Flurim Aliu, 'The concept of sustainable taxation and its impact on tax policy' (2024) 22(3) *eJournal of Tax Research* 462.
[6] Ibid 463.
[7] Hans Gribnau, 'Sustainable tax governance: a shared responsibility' (2024) 22(3) *eJournal of Tax Research* 492.
[8] Ibid 496-497.
[9] Ibid 516-517.

By using the UK landfill taxes as a case study, Lawton identifies two inherent paradoxes of regulatory taxes. First, these taxes encourage behavioural shifts to *avoid paying the tax*. As regulatory taxes are introduced by the state, regulatory taxes could therefore introduce an element of 'permissive tax avoidance' in an anti-avoidance era. Second, whilst regulatory taxes often purport to improve our societies (by tackling environmental or social harms) they are almost always regressive in nature. This, alongside their often more limited revenue-raising power, means that it is those who can least afford it who bear the burdens of mitigating environmental and social harms.

This special issue on ESG(T) contains a rich variety of articles on the subject. All these articles make an important contribution on the intersectionality of taxation, the environment, and governance.

Vincent Ooi[*] and Amy Lawton[**]

Guest editors

---

[*] Assistant Professor of Law, Yong Pung How School of Law, Singapore Management University.
[**] Senior Lecturer in Tax Law, University of Edinburgh.

eJournal of Tax Research (2024) vol. 22, no. 3, pp. 420-443

# T for Taxation: the fourth pillar in the ESG framework

Vasiliki Koukoulioti*

### *Abstract*

This article is concerned with the question of whether an additional pillar dedicated to taxes should be added to the three pillars – environmental, social, governance – of the ESG framework. Reporting on tax matters, including environmental taxes (E), approach to tax (S) and tax strategy (G), can already be performed within the existing framework. However, the inclusion of a tax pillar can bring some distinct benefits. This is due to, first, the inadequacy of the current regulatory landscape on ESG reporting characterised by lack of standardisation and the peripheral role of tax, and second, the importance of taxes to achieve sustainable development. Corporate taxes are an important instrument for wealth redistribution and financing of public spending to support sustainability policies. Conversely, corporate tax avoidance is linked to wealth and income inequality both intra- and inter-nationally, with developing countries being more negatively impacted. A tax pillar will improve the uniformity in tax reporting and provide more clarity to all stakeholders. More importantly, it will reflect the expectation that companies should go beyond the tax law and encompass ethical aspects in their corporate tax behaviour. The article concludes with some observations on the intricacies of taxation that would need to be taken into account when designing this new pillar.

**Keywords**: ESG, sustainability, CSR, corporate taxes, tax pillar

* Lecturer in Tax Law at Queen Mary, University of London. The author is grateful for the valuable inputs received from the participants in the SMU–Edinburgh ESGT Conference (April 2024), and for the comments of the two anonymous reviewers.

## 1. INTRODUCTION

Environmental, social, governance – ESG – is a widely used term in corporate governance, management, and investment. Despite being one of the most notable trends that has fostered a multi-billion dollar industry, there is no agreement on the definition of this acronym. These are some examples: ESG 'refers to business processes, customs, policies, and laws that define expectations for environmental protection, social norms, and good governance';[1] ESG comprises 'three criteria to evaluate a company's sustainability performance',[2] and ESG is 'a standard and strategy used by investors to evaluate corporate behavior and future financial performance'.[3] Additionally, ESG is usually treated as a synonym or subset of corporate social responsibility (CSR) or sustainability.

The foundations for the initiative that coined the term ESG were laid in the late 1990s.[4] In a speech at the World Economic Forum, Kofi Annan, then-Secretary-General of the United Nations, proposed a Global Compact calling on business leaders 'to embrace, support and enact a set of core values in the areas of human rights, labour standards, and environmental practices' necessary for a sustainable global economy.[5] Under the auspices of the Global Compact, chief executive officers of the world's leading financing institutions were later invited to join the 'Who Cares Wins' initiative on how to better integrate environmental, social and corporate governance (ESG) issues in investment decisions.[6] The *Who Cares Wins* report included a list of examples on each of the E, S and G factors that functioned as guideposts for the development of ESG risk criteria and their inclusion in business practices.[7]

ESG functions as a reporting platform. Depending on the jurisdiction, ESG reporting might be mandatory, such as in the United Kingdom,[8] or voluntary, such as in the United

---

[1] Nancy Cleveland, 'Lexicon of ESG and Sustainability' in Katayun I Jaffari and Stephen A Pike (eds), *ESG in the Boardroom: A Guidebook for Directors* (ABA Publishing, 2022) xiii.
[2] Catherine Brock, 'What is ESG Investing and What Are ESG Stocks?', *The Motley Fool* (12 January 2024) <https://www.fool.com/investing/stock-market/types-of-stocks/esg-investing/> (accessed 17 October 2024).
[3] Ting-Ting Li, Kai Wang, Toshiyuki Sueyoshi and Derek D Wang, 'ESG: Research Progress and Future Prospects' (2021) 13(21) *Sustainability* 11663.
[4] Georg Kell, 'Relations with the Private Sector' in Jacob Katz Cogan, Ian Hurd and Ian Johnstone (eds), *The Oxford Handbook of International Organizations* (Oxford University Press, 2016) 730.
[5] United Nations, 'Secretary-General Proposes Global Compact on Human Rights, Labour, Environment, in Address to World Economic Forum in Davos' (Press Release SG/SM/6881, 1 February 1999).
[6] The Global Compact, *Who Cares Wins: Connecting Financial Markets to a Changing World* (2004) ('*Who Cares Wins*').
[7] Ibid 6.
[8] In the United Kingdom, there are several regulations that mandate ESG reporting, including *The Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013*, the Non-Financial Reporting Directive, or NFRD, (European Parliament and European Council, *Directive 2014/95/EU of 22 October 2014 Amending Directive 2013/34/EU as Regards Disclosure of Non-Financial and Diversity Information by Certain Large Undertakings and Groups* [2014] OJ L 330/1), *The UK Stewardship Code* (Financial Reporting Council, 2020), and *The Limited Liability Partnerships (Climate-related Financial Disclosure) Regulations 2022*. Though EU Directives ceased to apply in the UK with effect from the end of the Brexit transition period, ie, 31 December 2020, the Directives that had already been implemented through national legislation were retained (retained EU law, now renamed to assimilated law). (Note that all acronyms used in this article are listed in the Appendix.)

States.[9] However, the most important debate is over what information should be considered material, and thus be disclosed.[10] The traditional view supports the position that material information is whatever impacts the company's economic valuation, while under the double materiality concept, followed in the European Union, companies need to report on the impact of their activities, not only on investors, but also on the environment and society.[11] ESG also functions as a strategy. Again, the approaches vary: from treating it as a strategy with marginal impact viewed with cynicism by employees to treating it as a strategy that permeates the organisation and enhances the long-term value of the company.[12]

ESG factors increasingly become an element determining investment decisions. Individual and institutional investors are using ESG metrics to decide which companies to invest in or divest from adopting a longer-term approach.[13] This movement away from shareholder primacy was also enabled by a shift in stock ownership to large institutional investors and index funds that increasingly associated a company's long-term prosperity with its contribution to society, along with its financial performance.[14] ESG investment has, as a result, emerged as a rapidly growing segment in the asset management industry, with ESG products being worth approximately USD 34 trillion.[15]

In this landscape, it is not clear how corporate taxation fits into the ESG framework. Taxes are an important instrument for wealth redistribution and financing of public spending to support sustainability policies and influence behaviour. Taxes are therefore already expressed through the existing three pillars. Nevertheless, are there reasons that would justify the creation of an additional pillar dedicated to taxes?

This article attempts to address this question. Before an assessment is made as to whether a fourth pillar on taxation is warranted, it is crucial to first examine how corporate taxation fits into and interacts with the existing three pillars (section 2.1) and then map the regulatory landscape on ESG reporting and assess the role of corporate taxation reporting therein (section 2.2). After evaluating the role of tax matters in the current landscape, the article will make a series of arguments on why introducing a tax pillar is warranted, and what benefits a tax pillar can bring (section 3). The article concludes with some observations on the intricacies of taxation that would need to be taken into account when designing this new pillar.

---

[9] In the United States, ESG reporting has historically been voluntary. Nevertheless, there have lately been various regulatory initiatives on environmental and social matters led by the US Securities and Exchange Commission (SEC), other federal agencies, as well as state-level regulations.

[10] David Lopez, Jared Gerber and Jonathan Povilonis, 'The Materiality Debate and ESG Disclosure: Investors May Have the Last Word', *Harvard Law School Forum on Corporate Governance* (31 January 2022) <https://corpgov.law.harvard.edu/2022/01/31/the-materiality-debate-and-esg-disclosure-investors-may-have-the-last-word/>.

[11] Ibid.

[12] George Serafeim, 'Social-Impact Efforts That Create Real Value' (2020) 98(5) *Harvard Business Review* 38.

[13] Dan Etsy, Todd Cort, Diane Strauss, Kristina Wyatt and Tyler Yeargain, *Toward Enhanced Sustainability Disclosure: Identifying Obstacles to Broader and More Actionable ESG Reporting* (White Paper, Yale Initiative on Sustainable Finance, September 2020).

[14] Larry Fink, 'A Sense of Purpose', *Larry Fink's Annual Letter to CEOs* (Blackrock, 2018).

[15] PwC, 'ESG-Focused Institutional Investment Seen Soaring 84% to US $33.9 Trillion in 2026, Making up 21.5% of Assets Under Management: PwC Report' (Press Release, 10 October 2022), citing PwC, *Asset and Wealth Management Revolution 2022: Exponential Expectations for ESG* (2022).

## 2. CORPORATE TAXES AND THEIR INTERACTION WITH THE ESG FRAMEWORK

This section will first identify how corporate tax matters can fit into and be expressed through each one of the three pillars of the ESG framework. The focus is on the theoretical meaning that each ESG factor encompasses, and the specific assessment and risk target that it represents, and on identifying ways in which corporate tax considerations can be accommodated by this framework (section 2.1). The section will then examine the current regulatory framework on ESG reporting and how corporate taxes fit within it (section 2.2). This is by no means an exhaustive analysis and overview of all the relevant actors or legislative initiatives. It rather serves the purpose of positioning corporate tax matters within the existing regulatory and soft law landscape and hence potentially identifying areas of contradiction, duplication, ambiguity, or inadequacy relating to corporate tax reporting. These observations will set the foundations for the analysis on the benefits of introducing a fourth pillar on tax matters.

### 2.1 How corporate taxes fit within the E, S and G factors

While there is general agreement that ESG factors represent the main three pillars of sustainability, there is no single definition of each one of these factors in the current policy framework and hence market practices vary across industries and institutions.[16] Despite efforts to define legally sustainable activities, for example the EU Taxonomy Regulation,[17] the current policy framework still lacks common definitions of ESG factors. At the same time, increasingly studies focus on the interactive relationship between the three dimensions of ESG, rather than the analysis of each one of them in isolation.[18]

With regard to taxation, none of the three pillars is directly related to tax matters. The indicative list of examples in the *Who Cares Wins* report did not mention taxation under any of the three ESG factors.[19] Empirical studies found that some companies consider taxes as falling outside of ESG strategy – they consider taxes as substitutes rather than complements to ESG activities, or as impediments to their ability to contribute to the community, since a higher tax bill detracts resources from ESG efforts, including job creation and innovation.[20] Nevertheless, a closer look into the scope and rationale of each one of these pillars reveals different ways in which they could encompass and interact with taxes and hence ways in which tax reporting can fit within the aims these pillars aspire to attain.

The *environmental pillar* concerns the functioning of the natural environment and natural systems, and includes factors such as climate change, pollution and energy and resource consumption. It therefore evaluates a company's efforts in energy efficiency,

---

[16] See section 2.2.

[17] European Parliament and European Council, *Regulation (EU) 2020/852 of 18 June 2020 on the Establishment of a Framework to Facilitate Sustainable Investment, and Amending Regulation (EU) 2019/2088* [2020] OJ L 198/13 ('Taxonomy Regulation').

[18] On the interaction of E with G, see, eg, Caroline Flammer and Aleksandra Kacperczyk, 'Corporate Social Responsibility as a Defense Against Knowledge Spillovers: Evidence from the Inevitable Disclosure Doctrine' (2019) 40(8) *Strategic Management Journal* 1243. On the interaction of S with G, see, eg, Feng Gao, Ling Lei Lisic and Ivy Xiying Zhang, 'Commitment to Social Good and Insider Trading' (2014) 57(2-3) *Journal of Accounting and Economics* 149.

[19] The Global Compact, *Who Cares Wins*, above n 6.

[20] Angela K Davis, David A Guenther, Linda K Krull and Brian M Williams, 'Do Socially Responsible Firms Pay More Taxes?' (2016) 91(1) *The Accounting Review* 47.

greenhouse gas emissions and resource management, which have been proven to positively correlate with financial performance.[21]

Environmental taxation, also known as green taxation, is increasingly playing a critical role both in combating climate change through the promotion of green production and consumption and in regulating national economies.[22] Conversely, ESG initiatives may strengthen existing environmental taxation policies, potentially with a market-oriented approach. As a result, environmental taxation and ESG programs co-exist in a symbiotic relationship.[23] Taxes usually interact with the environmental pillar in three different ways: environmental taxes, green tax expenditures, and environmental fiscal reform more broadly.[24] Taxes can increase the cost of environmentally damaging activity by charging the polluters or by providing tax incentives for environmentally friendly activities, thus influencing behaviour.[25] Revenue collected from environmental taxes can also be used to fund infrastructure and services aimed at environmental protection.

Recently, particular attention has been paid to the role of tradable emissions allowances, such as the UK's Emissions Trading Scheme.[26] This scheme applies the 'cap-and-trade' principle by setting a cap on the total amount of emissions allowed to be released, and carbon border adjustment mechanisms (CBAM), such as the one introduced by the European Union,[27] that are used to mitigate carbon leakage risks by placing a carbon price on certain imports. Though similar, such mechanisms differ from environmental taxes, because the prices charged are not fixed but depend on the supply and demand of permitted allowances. Tax behaviour with regard to environmental taxes, including the use of green subsidies and incentives, is key to minimising climate-related risks and maximising climate-related opportunities. The growing integration of tax within the environmental pillar is highlighted by the increase in the number of UK FTSE 100 companies, 46 in 2023, up from 38 in 2021, that included tax in their climate-related (TCFD) disclosures.[28] Tax behaviour in this area can therefore be a significant indicator of a company's environmental performance.

---

[21] Jeroen Derwall, Nadja Guenster, Rob Bauer and Kees Koedijk, 'The Eco-Efficiency Premium Puzzle' (2005) 61(2) *Financial Analysts Journal* 51.

[22] See, eg, Qihang Zhang, Yalian Zhang, Qianxi Liao and Xin Guo, 'Effect of Green Taxation on Pollution Emissions Under ESG Concept' (2023) 30(21) *Environmental Science and Pollution Research* 60196 (examining the pollution reduction effect of green taxation in China).

[23] Janet E Milne, 'Environmental Taxation and ESG: Silent Partners' in Rute Saraiva and Paulo Alves Pardal (eds), *Sustainable Finances and the Law: Between Public and Private Solutions* (Springer, 2024) 253.

[24] Ibid.

[25] Taxes that are designed to capture externalities are usually called 'Pigouvian taxes', named after AC Pigou, a professor of political economy, who laid the intellectual groundwork for environmental taxation in his book *The Economics of Welfare* (1920). Later, the Organisation for Economic Co-operation and Development (OECD) introduced the polluter-pays principle into the environmental policy arena. OECD, *Recommendation of the Council on Guiding Principles Concerning International Economic Aspects of Environmental Policies*, Doc C(72)128 (26 May 1972). See, also, Janet E Milne and Mikael Skou Andersen, 'Introduction to Environmental Taxation Concepts and Research' in Janet E Milne and Mikael Skou Andersen (eds), *Handbook of Research on Environmental Taxation* (Edward Elgar, 2012) 15.

[26] See, eg, *The Greenhouse Gas Emissions Trading Scheme Order 2020* (UK).

[27] See, eg, European Parliament and European Council, *Regulation (EU) 2023/956 of 10 May 2023 Establishing a Carbon Border Adjustment Mechanism* [2023] OJ L 130/52 ('CBAM').

[28] PwC, *Laying the Foundations of the Next Round of Tax Transparency: Building Public Trust Through Tax Reporting*, Trends in Voluntary Tax Reporting (10th ed, November 2023).

The *social pillar* concerns the rights and interests of people and communities, and includes factors such as equality, social protection and inclusion, labour rights and fair working conditions, and human capital.[29] As a result, factors on which companies are assessed are inter alia workplace and product safety, gender policies, income distribution, transparency and accountability. Similarly with the E pillar, the literature has identified a positive relationship between employees' satisfaction and long-run stock return, while violations of social factors can lead to legal and reputational risks.[30] The social pillar has been traditionally expressed through a company's Corporate Social Responsibility (CSR), a term used to describe a company's ethical conduct and impact on and contribution to social welfare, while encompassing an element of voluntariness.[31]

Taxes constitute a significant source of revenue for governments to fund the provision of goods and services that are important for the community.[32] The taxes paid by a company are therefore a measure of its financial contribution to the wellbeing of the community in which it operates. Conversely, companies that avoid taxes could cause harm to these communities, since they make use of public services without contributing to the cost of their provision and, as a result, this cost ends up disproportionately burdening taxpayers that are less mobile, usually employees. Tax avoidance practices can also negatively impact a company's financial performance. They can cause reputational damage, with a consequent impact on earnings, as well as harm a business's relationship with the tax authorities and lead to time-consuming and costly tax litigation. In the context of this pillar, the question of whether CSR should guide tax behaviour becomes relevant. There is extensive literature on whether tax avoidance is consistent with CSR, and hence the social pillar.[33] Avi-Yonah constructs a compelling argument to prove that, under any of the three views of the corporation – the artificial entity view, the real entity view and the aggregate view – CSR is relevant and hence corporations have an affirmative obligation not to engage in tax minimisation practices.[34] The social pillar therefore encompasses a holistic approach to tax, which entails an understanding of tax as part of the social contract and a company's social commitment.

Finally, the *governance pillar* concerns governance practices, including leadership, board structure and independence, shareholder rights, business ethics, corruption, and the way in which companies include environmental and social factors in their policies and procedures. Again, studies establish the positive impact of stronger governance practices on companies' profitability.[35]

---

[29] The EU provides a definition of social factors by outlining 20 principles. See European Commission, Secretariat-General, *European Pillar of Social Rights* (Publications Office of the European Union, 2017).
[30] See, eg, Alex Edmans, 'Does the Stock Market Fully Value Intangibles? Employee Satisfaction and Equity Prices' (2011) 101(3) *Journal of Financial Economics* 621.
[31] Archie B Carroll, 'A Three-Dimensional Conceptual Model of Corporate Performance' (1979) 4(4) *Academy of Management Review* 497.
[32] 'Taxes are what we pay for civilized society': Justice Holmes in *Compañía General de Tabacos de Filipinas v Collector of Internal Revenue*, 275 US 87, 100 (1927) (US Supreme Court).
[33] See, eg, Christiana HJI Panayi, 'Is Aggressive Tax Planning Socially Irresponsible?' (2015) 43(10) *Intertax* 544 (providing a more critical approach towards CSR and tax).
[34] Reuven S Avi-Yonah, 'Corporate Taxation and Corporate Social Responsibility' (2014) 11(1) *New York University Journal of Law and Business* 1 ('Corporate Taxation and Corporate Social Responsibility').
[35] See, eg, Indarawati Tarmuji, Ruhanita Maelah and Nor Habibah Tarmuji, 'The Impact of Environmental, Social and Governance Practices (ESG) on Economic Performance: Evidence from ESG Score' (2016) 7(3) *International Journal of Trade, Economics and Finance* 67.

Strong corporate governance in the tax area translates into responsible tax behaviour. This is understood as encompassing three different elements. First, it entails the company's tax strategy, which describes its approach to tax, covering a broad range of topics, from tax risk appetite and relationship with tax authorities to approach to tax planning.[36] While companies usually develop their code of ethics to declare their principles and values to stakeholders, scholars are divided on whether a tax code of conduct is suitable or even acceptable.[37]

Second, responsible tax behaviour is assessed through a company's internal control framework, meaning its risk management and responsibility/accountability mechanisms.[38] The Organisation for Economic Co-operation and Development (OECD) has developed a standard of efficient control tax systems comprising six blocks for a better Tax Control Framework, which companies can refer to.[39]

Third, transparency about taxes paid and collected is crucial as it ensures not only that companies are contributing fairly to a community, but also that the community has confidence they do so. The current direction is towards more tax transparency, as proven by the regulatory landscape, which requires companies to disclose tax data to tax authorities across borders, or even publicly.[40] Some companies voluntarily disclose information beyond what is legally required, while some accreditations, for example the Fair Tax Mark, exceed legal and voluntary disclosures to better address stakeholder expectations.[41] In the case of multinational groups of companies, transparency about not only the total taxes paid, but also the location where these taxes are paid can affect the group's performance on the governance pillar, considering that some countries are more in need of resources than others. For the same reasons, and given developing countries suffer disproportionately from tax avoidance, due to structural limitations and greater reliance on corporate income taxes, a multinational's tax behaviour in these countries has a greater impact on their economic prosperity and sustainable development.[42]

---

[36] Jacob Fonseca, 'The Rise of ESG Investing: How Aggressive Tax Avoidance Affects Corporate Governance and ESG Analysis' (2020) 25 *Illinois Business Law Journal* 1.

[37] See H Gribnau, E van der Enden and K Baisalbayeva, 'Codes of Conduct as a Means to Manage Ethical Tax Governance' (2018) 46(5) *Intertax* 390 (arguing for the creation of tax codes of conduct as a way to generate more transparency and understanding between taxpayers and tax administrations); Compare with Eelco van der Enden and Bronetta Charlotte Klein, 'Good Tax Governance? …Govern Tax Good!' (1 May 2020) <https://ssrn.com/abstract=3610858> (arguing that a tax code of conduct without a proper public reporting strategy will not build trust with stakeholders).

[38] OECD, *Co-operative Compliance: A Framework, From Enhanced Relationship to Co-operative Compliance* (OECD Publishing, 2013) (highlighting the pivotal role of a good tax control framework in managing tax risks).

[39] OECD, *Co-operative Tax Compliance: Building Better Tax Control Frameworks* (OECD Publishing, 2016). The six blocks cover: (i) tax procedures; (ii) tax strategy; (iii) tax policy on how to manage tax; (iv) tax risk management framework; (v) accountabilities and responsibilities for the management of tax, and (vi) testing and assurance.

[40] See, eg, OECD, *Action 13 – 2015 Final Report: Transfer Pricing Documentation and Country-by-Country Reporting*, OECD/G20 Base Erosion and Profit Shifting Project (OECD Publishing, 2015); European Parliament and European Council, *Directive (EU) 2021/2101 of 24 November 2021 Amending Directive 2013/34/EU as Regards Disclosure of Income Tax Information by Certain Undertakings and Branches* [2021] OJ L 429/1.

[41] Fair Tax Foundation, *Fair Tax Mark Criteria Notes: UK-based Multinationals 2014-15* (2014).

[42] See, eg, Ernesto Crivelli, Ruud De Mooij and Michael Keen, *Base Erosion, Profit Shifting and Developing Countries* (International Monetary Fund Working Paper WP/15/118, 2015) (estimating that developing countries may be losing as much as USD 213 billion per year to tax avoidance).

Tax governance therefore entails both a set of principles for responsible tax conduct and a set of procedures, controls and reporting systems that are crucial in the implementation of the principles.[43] In other words, tax governance is what makes the company's environmental and social goals achievable, while preventing greenwashing.

## 2.2 How corporate taxes fit within the ESG regulatory framework

The increasing demand for sustainability information has given rise to a plethora of sustainability reporting standards on ESG-related issues. While financial reporting is intensely regulated, non-financial reporting, or better sustainability reporting, has not been standardised yet.[44] The current landscape has been commonly referred to as the 'alphabet soup' of ESG reporting standards.[45]

Taxation is, however, underrepresented. The European Financial Reporting Advisory Group, relying on information from the 2019 Alliance for Corporate Transparency report on a sample of 1,000 companies, noted 'a relatively low coverage of reporting on tax-related policies and commitments from a country-by-country perspective'.[46] Despite the growing interest in tax reporting as demonstrated by both the legal framework and stakeholder approaches, tax matters are still peripheral.

### *2.2.1 International organisations*

International organisations have advanced their own approaches to responsible corporate tax behaviour. The *OECD Guidelines for Multinational Enterprises* cover non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards. They hold two key expectations for undertakings: (a) they should comply with the letter and the spirit of tax laws and regulations of the countries in which they operate, and (b) they should treat tax governance and tax compliance as important elements of their oversight and broader risk management systems and adopt tax risk management strategies to ensure that the financial, regulatory and reputational risks associated with taxation are fully identified and evaluated.[47]

---

[43] Allison Christians, 'Tax Justice as Social Licence: The Fair Tax Mark' in Richard Eccleston and Ainsley Elbra (eds), *Business, Civil Society and the 'New' Politics of Corporate Tax Justice: Paying a Fair Share?* (Edward Elgar, 2018) 219.

[44] See, eg, European Parliament and European Council, *Directive (EU) 2022/2464 of 14 December 2022 Amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as Regards Corporate Sustainability Reporting* [2022] OJ L 322/15 ('CSRD'), recital 8, on why the term 'sustainability information' is preferable: 'Many stakeholders consider the term "non-financial" to be inaccurate, in particular because it implies that the information in question has no financial relevance. Increasingly, however, such information does have financial relevance. Many organisations, initiatives and practitioners in the field of sustainability reporting refer to "sustainability information". It is therefore preferable to use the term "sustainability information" in place of "non-financial information"'.

[45] Hilde Blomme and Jona Basha, 'Unpuzzling the Sustainability Reporting Alphabet Soup', *Accountancy Plus* (March 2021) 9 <https://www.cpaireland.ie/getattachment/Resources/CPA-Sustainability-Hub/Articles/Articles/Sustainability-Standards/Unpuzzling-the-Sustainability-Reporting-Alphabet-Soup-by-Hilde-Blomme-Jona-Basha.pdf?lang=en-IE>. See also Simon Watkins, 'The ISSB's Battle to Sort the Alphabet Soup of ESG Reporting', *Financial Times Professional* <https://professional.ft.com/en-gb/blog/the-issbs-battle-to-sort-the-alphabet-soup-of-esg-reporting> (accessed 17 October 2024).

[46] European Financial Reporting Advisory Group, *Current Non-Financial Reporting Formats and Practices* (February 2021) 30.

[47] OECD, *OECD Guidelines for Multinational Enterprises* (OECD Publishing, 2011) 60.

The United Nations Principles for Responsible Investment (UNPRI) is a voluntary framework for individual and institutional investors to incorporate ESG factors in their investment and ownership decisions.[48] The UNPRI reflect the view that investors have a duty to act in the best interests of their beneficiaries and society. In this context, these principles direct investors towards practices aligned with tax fairness and tax transparency.

Finally, the United Nations Sustainable Development Goals (SDGs) is a collection of 17 non-binding global goals designed to achieve the common vision of a better and more sustainable future. The SDGs recognise that tax is a vital source of financing for development and that, for this reason, multinationals need to pay their fair share of taxes.[49]

#### *2.2.2 European Union regulatory framework*

In May 2018, the European Commission adopted a package of measures implementing several key actions announced in its action plan on sustainable finance.[50] This package, as described in the Taxonomy Regulation, has as its main objective the creation of a classification system for what qualifies as an 'environmentally sustainable' economic activity.[51] Even though it does not directly address taxation, it introduces the notion of 'minimum safeguards', which aims at ensuring that economic activities only qualify as environmentally sustainable where they are carried out in alignment with the *OECD Guidelines for Multinational Enterprises* and UN *Guiding Principles on Business and Human Rights*.[52] The meaning and purpose of minimum safeguards is further analysed in a non-binding report issued by the Platform on Sustainable Finance.[53] This report clarifies that the purpose of the minimum safeguards is to 'prevent green investments from being labelled and regarded as "sustainable" when they […] are linked to non-compliance with letter or spirit of tax laws'.[54]

In particular, the report proposes the application of two criteria for alignment with minimum safeguards: first, that the company complies with the letter and the spirit of tax laws and regulations of the countries in which it operates, and second, that it treats tax governance and compliance as important elements of oversight and adopts tax risk management strategies.[55] It thus establishes tax behaviour as a minimum safeguard.

The Sustainable Finance Disclosure Regulation (SFDR) has put in place a transparency framework in the market for sustainable investment products by laying down

---

[48] Principles for Responsible Investment, 'Tax Fairness' (Web Page) <https://www.unpri.org/sustainability-issues/environmental-social-and-governance-issues/governance-issues/tax-fairness>.

[49] United Nations, 'Taxation and the SDGs' (Web Page) <https://financing.desa.un.org/what-we-do/ECOSOC/tax-committee/thematic-areas/taxation-and-sdgs>.

[50] European Commission, *Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions, Action Plan: Financing Sustainable Growth*, COM/2018/097 final (8 March 2018).

[51] Taxonomy Regulation, above n 17.

[52] Ibid art 18; see United Nations, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework* (2011).

[53] European Commission, Platform on Sustainable Finance, *Final Report on Minimum Safeguards* (October 2022).

[54] Ibid 6.

[55] Ibid 49-50.

sustainability disclosure obligations for manufacturers of financial products and financial advisers toward end-investors.[56] Its objective is thus to prevent greenwashing, increase transparency around sustainability claims and integrate sustainability risks in the investment decision process. The SFDR understands the term 'sustainable investment' to cover economic activities that contribute to an environmental objective or social objective, including investments that tackle inequality or are directed to economically or socially disadvantaged communities, provided that the investee companies follow good governance practices, in particular with respect to sound management structures and tax compliance.[57] Fund managers therefore need to ensure that their investee companies follow good tax governance practices and review such practices as part of their due diligence processes. Nevertheless, apart from the interaction of the SFDR with tax governance, a broader interpretation could also entail the social aspect of taxation, ie, a company's tax contribution to the communities where it operates.

The Corporate Sustainability Reporting Directive (CSRD) evolved from the Non-Financial Reporting Directive (NFRD), setting a new standard for transparency and accountability in corporate sustainability reporting.[58] It expands sustainability reporting requirements for EU and non-EU companies enhancing the consistency and comparability of sustainability information. Companies within the scope of CSRD are required to make disclosures on material sustainability topics in accordance with the European Sustainability Reporting Standards (ESRS) developed by the European Financial Reporting Advisory Group (EFRAG).[59]

The ESRS cover sustainability topics across environmental, social and governance pillars and prescribe specific disclosure requirements. Sustainability disclosures should be performed based on the double materiality principle. This involves an assessment of the company's impact on people and the environment (impact materiality) and of how a sustainability matter might affect the company's financial performance (financial materiality).[60] Aggressive strategies to minimise taxation are specifically mentioned as one of the ESRS-related matters that might negatively impact communities, in particular with respect to operations in developing countries (ESRS 2).[61] Nevertheless, a company might deem that other tax matters are also material, in which case Global Reporting Initiative (GRI) Standards can be used as a basis for such tax disclosures.[62] Such disclosures could cover a company's approach to tax, tax risk management and country-

[56] European Parliament and European Council, *Regulation (EU) 2019/2088 of 27 November 2019 on Sustainability-Related Disclosures in the Financial Services Sector* [2019] OJ L 317/1 ('SFDR').
[57] Ibid art 2(17).
[58] CSRD, above n 44.
[59] European Commission, *Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 Supplementing Directive 2013/34/EU of the European Parliament and of the Council as Regards Sustainability Reporting Standards* [2023] OJ L, 2023/2772 (Annex I, setting out ESRS 1-2, ESRS E1-E5, ESRS S1-S4 and ESRS G1).
[60] ESRS 1, above n 59, s 3.
[61] ESRS S3 ('Affected Communities'), above n 59, Appendix A.
[62] 'The ESRS allow entities to use the GRI Standards to report on additional material topics covered in GRI Standards that are not covered by the ESRS, such as tax': EFRAG and GRI, 'EFRAG-GRI Joint Statement of Interoperability' (31 August 2023).

by-country reporting.[63] The CSRD is also aligned with the requirements of related EU legislation, including the SFDR and the Taxonomy Regulation.[64]

The Corporate Sustainability Due Diligence Directive (CSDDD) mandates companies to embed responsible business conduct into due diligence policies and procedures.[65] Pursuant to the CSDDD, large companies with significant activities in the EU are required to address adverse human rights and environmental impacts in their own operations and across their value chains. The scope of due diligence is therefore limited to human rights and environmental impacts.[66] Taxation is not specifically mentioned in the CSDDD text or the Annex, though an argument can be made that corporate tax avoidance and the use of tax havens have profound consequences for the wellbeing of citizens around the world, especially those in developing countries, and hence adversely impact human rights.[67] This connection is also acknowledged by the UNPRI framework.[68]

The proposal for an EU regulation on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities (ESG Rating Regulation) signifies an attempt to regulate the ESG rating market.[69] The ESG Rating Regulation aims at addressing conflicts of interest, the lack of transparency and accuracy of ESG rating methodologies and the lack of clarity over the terminology and the operations of ESG rating providers.[70] For these reasons, ESG rating providers established within the EU will be required to obtain authorisation from the European Securities and Markets Authority (ESMA) before commencing their operations.[71] To enhance the transparency of ESG ratings, ESG rating providers will be required to disclose information on the methodologies, models and key rating assumptions they use in their ESG rating products separately for each ESG factor.[72] In particular, ESG rating providers will have to provide information on whether the rating considers the alignment with international standards on tax evasion and avoidance for the G factor.[73] The ESG Rating Regulation was proposed on 13 June 2023, and the proposal text was adopted by the European Parliament on 24 April 2024.

Finally, on 14 July 2021, the European Commission adopted the ‘Fit for 55’ package comprising a series of proposals to make the EU’s climate, energy, land use, transport

---

[63] See section 2.2.4 on tax-relevant GRI standards.
[64] ESRS E1 (‘Climate Change’), above n 59, para 2.
[65] European Parliament and European Council, *Directive (EU) 2024/1760 of 13 June 2024 on Corporate Sustainability Due Diligence and Amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859* [2024] OJ L, 2024/1760 (‘CSDDD’).
[66] Ibid art 3(b)-(c) and Annex.
[67] See, eg, Philip Alston and Nikki Reisch (eds), *Tax, Inequality, and Human Rights* (Oxford University Press, 2019).
[68] See section 2.2.1.
[69] European Parliament, *Legislative Resolution of 24 April 2024 on the Proposal for a Regulation of the European Parliament and of the Council on the Transparency and Integrity of Environmental, Social and Governance (ESG) Rating Activities* (COM(2023)0314 – C9-0203/2023 – 2023/0177(COD)) (setting out the ESG Rating Regulation).
[70] European Parliament, *ESG Rating Regulation*, above n 69, recital para 6, where reference is made to the European Commission, Directorate-General for Financial Stability, Financial Services and Capital Markets Union, *Study on Sustainability-Related Ratings, Data and Research* (Publications Office of the European Union, 2021) available at: <https://data.europa.eu/doi/10.2874/14850>.
[71] European Parliament, *ESG Rating Regulation*, above n 69, art 5(1).
[72] Ibid art 21.
[73] Ibid recital para 34.

and taxation policies fit for reducing net greenhouse gas emissions by at least 55 per cent by 2030, compared to 1990 levels.[74] Part of this package is a new CBAM, which will ensure that products imported in the EU will also pay a carbon price at the border in the sectors covered.[75]

In these legislative initiatives, tax matters are either not mentioned or remain at the periphery of sustainability considerations. Though it is acknowledged that taxation has a role to play for achieving sustainability, these initiatives provide no further guidance on which tax behaviour is considered sustainable and what should corporations report, especially when asked to comply with the spirit of the tax law.

### *2.2.3 ESG rating agencies*

Rating agencies are third-party data providers that allow investors to screen companies, states and organisations, and assess ESG performance. Addressing the exponential demand for ESG data, ESG rating agencies have emerged as the primary source of ESG-related information for market participants, including investors, analysts, and corporate managers.[76] They employ distinctive methodologies that utilise multiple factors, each one assigned different weights, whose consolidation provides a score in a numeric or letter grading system, which represents a company's ESG risk or performance and facilitates comparisons among companies.[77] ESG rating agencies are immensely influential, and so their approach to tax impacts investment decisions by individual and institutional investors, and as a result companies' tax behaviour.[78] The following constitute some of the most prominent ESG rating agencies and their approach to corporate taxes, based on publicly available information.[79]

*Morgan Stanley Capital International (MSCI)*

MSCI measures tax-related issues in the context of tax transparency, which is a key issue in the Governance pillar of the ESG Ratings model.[80] In particular, companies are evaluated on their estimated corporate tax gap (ie, difference between estimated corporate effective tax rate and estimated statutory tax rate), revenue-reporting transparency, and their involvement in tax-related allegations controversies.[81] Tax controversies are the critical metric for tax transparency purposes, since a company's

---

[74] European Commission, *Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, The European Green Deal*, COM/2019/640 final (11 December 2019).
[75] CBAM, above n 27.
[76] Christina Wong and Erika Petroy, *Rate the Raters 2020: Investor Survey and Interview Results* (ERM Group, March 2020).
[77] For example, MSCI uses a seven-point scale, ranging from AAA to CCC: MSCI, *ESG Ratings Methodology* (April 2024) 6 <https://www.msci.com/documents/1296102/34424357/MSCI+ESG+Ratings+Methodology.pdf>.
[78] See, eg, Amir Amel-Zadeh and George Serafeim, 'Why and How Investors Use ESG Information: Evidence from a Global Survey' (2018) 74(3) *Financial Analysts Journal* 87.
[79] In the case of most rating agencies, the factors and the weight assigned to them are proprietary and undisclosed. The current analysis is therefore based on publicly available data, in particular high-level overviews of methodologies and scoring systems.
[80] MSCI, *ESG Ratings Methodology* (April 2024) <https://www.msci.com/documents/1296102/34424357/MSCI+ESG+Ratings+Methodology.pdf>.
[81] MSCI, *ESG Ratings Methodology: Tax Transparency Key Issue* (July 2023) <https://www.msci.com/documents/1296102/34424357/MSCI+ESG+Ratings+Methodology+-+Tax+Transparency+Key+Issue.pdf/f5b93df6-475c-25c7-db7f-26a6da3d703a?t=1666182603072>.

estimated tax gap will impact its ESG score only when there is an ongoing tax controversy.[82]

*FTSE Russell*

FTSE Russell also measures tax-related issues in the context of tax transparency, which is part of the Governance pillar.[83] Tax transparency is used to assess a company's financial, regulatory and reputational risks associated with poor tax practices.[84] For this purpose, a company's disclosures relating to alignment of tax payments with revenue-generating activities, or use of offshore secrecy jurisdictions for tax planning purposes, are also evaluated.[85] This approach to tax, ie, a company's ability to manage tax-related risks, reflects the general viewpoint of investment risk reduction.

*Refinitiv*

Refinitiv evaluates the indicator 'tax fraud controversies', which reflects the number of controversies published in the media linked to tax fraud, parallel imports or money laundering.[86] This is the only reference to tax issues.

*Sustainalytics*

Sustainalytics does not include any score on tax behaviour.[87] Nevertheless, it is engaging with the public debate on the topic of corporate taxes by holding dialogue with information technology and pharmaceutical companies. Again, the focus is on improving transparency as it relates to corporate tax planning.[88]

*ISS ESG*

ISS ESG treats taxation as a governance topic and part of the factor 'relations with governments'.[89] In particular, it assesses among other things tax base erosion and profit shifting (BEPS) practices, transfer pricing issues, presence in tax havens and country-by-country disclosures.[90] Since its methodology is guided by established international

---

[82] MSCI, *ESG Ratings FAQs for Corporate Issuers* (October 2022) <https://www.msci.com/documents/1296102/10259127/MSCI+ESG+Ratings+Guide+for+Issuers.pdf/0b43f911-0f61-4045-8d91-d5aaef51d320>.

[83] FTSE Russell, *FTSE Russell ESG Scores and Indices FAQ* (August 2024) <https://www.lseg.com/content/dam/ftse-russell/en_us/documents/policy-documents/ftse-faq-document-ftse-russell-esg-scores-and-indices.pdf>.

[84] Edmund Bourne, Charles Dodsworth and Jaakko Kooroshy, *Global Trends in Corporate Tax Disclosure: Thematic Overview* (FTSE Russell, June 2021) <https://www.lseg.com/content/dam/ftse-russell/en_us/documents/research/global_trends_in_corporate_tax_disclosure_final_2.pdf>.

[85] Ibid 9.

[86] Refinitiv, *Environmental, Social and Governance Scores from Refinitiv* (May 2022) <https://www.lseg.com/content/dam/marketing/en_us/documents/methodology/refinitiv-esg-scores-methodology.pdf>.

[87] Sven von Münchhausen, Claudia Volk, Oana Pop, Kasey Vosburg, Clark Barr and Hendrik Garz, *The ESG Risk Ratings – Methodology Abstract: Version 3.1* (Morningstar-Sustainalytics, June 2024) <https://connect.sustainalytics.com/hubfs/INV/ESG%20Risk%20Ratings/ESG%20Risk%20Ratings%20Methodology%20Abstract.pdf>.

[88] David Frazer, 'Two Sides of the Corporate Taxation Debate', *Sustainalytics* (27 November 2020) <https://www.sustainalytics.com/esg-research/resource/investors-esg-blog/two-sides-of-the-corporate-taxation-debate>.

[89] Peter Hongler, Thomas Berndt and Alexander Sigg, *Tax and Sustainability Study 2022/2023* (University of St Gallen, December 2023).

[90] Ibid 8-9.

guidelines, such as the UN Global Compact, the United Nations SDGs, the *OECD Guidelines for Multinational Enterprises* and the UNPRI, it could be argued that taxation is also evaluated in the context of the social component of the ESG framework.[91]

*S&P Global Ratings*

S&P Global Ratings (previously Standard & Poor's) assesses tax strategy as a category of the governance and economic dimension, which further comprises tax strategy and governance, tax reporting, and effective tax rate.[92] The agency acknowledges that, though tax optimisation has a positive impact on profitability, an aggressive tax strategy is not sustainable long term. It adds some risk to long-term profits, caused by reputational risk and, in the case of multinationals, negative impact on relationship with host countries and economic development risk due to host governments not receiving adequate tax revenue to fund infrastructure.[93] Companies are asked to respond to three questions: (i) the tax strategy and governance question, which relates to a company's commitment to comply with the letter and spirit of the law, not use tax havens, undertake transfer pricing and seek approval of this tax policy by the board of directors; (ii) the tax reporting question, for which companies need to report key information about their tax contributions in all tax jurisdictions where their entities operate, and (iii) the effective tax rate question, which assesses whether a company's tax rate is unsustainable in a global context, based on the reported tax rate and cash tax rate for the last two years, and if lower than the industry group averages explanations need to be provided.[94]

This overview of some ESG rating agencies reveals that tax metrics are surprisingly underrepresented in ESG ratings. This is supported by a study that found that 50 per cent of major agencies did not include a tax indicator in their ESG rating system.[95] Even when tax metrics are used, they have inconsequential influence on a company's ESG profile, while there is significant divergence in their scope, measurement, and weight among different agencies.[96] Also, usually tax metrics are limited in the context of tax transparency, placed within the G, rather than the S, component of the ESG framework. However, most agencies do not account for the risk of tax avoidance practices. Problematic tax practices are considered risk factors jeopardising a company's financial position, an approach which prioritises shareholder value, contrary to the idea of a stakeholder-focused framework. Most importantly, recent studies have proven a weak correlation between effective tax rates and ESG scores. A study documented an inverse relationship between a company's ESG score and its effective tax rate.[97] Oher scholars found that three of the four examined rating providers – MSCI, Sustainalytics and Refinitiv – assigned a notably high ESG score to S&P 500 companies that paid no US

---

[91] ISS ESG, *ESG Corporate Rating: Methodology and Research Process* (September 2023) <https://www.issgovernance.com/file/products/iss-esg-corporate-rating-methodology.pdf>.

[92] S&P Global, *CSA Handbook 2024: Corporate Sustainability Assessment* (2024) <https://portal.s1.spglobal.com/survey/documents/CSA_Handbook.pdf>.

[93] Ibid 101.

[94] Ibid 101-110.

[95] Florian Berg, Julian F Kölbel and Roberto Rigobon, 'Aggregate Confusion: The Divergence of ESG Ratings' (2022) 26(6) *Review of Finance* 1315, 1325.

[96] Ibid 1329.

[97] Vincent Deluard, 'The ESG Bubble: Saving the Planet, Destroying Societies' (StoneX Flow Report, February 2021) <https://www.politico.com/f/?id=00000177-adf8-d713-a777-edfe93f90000>.

federal income tax in 2020.[98] These observations demonstrate that corporate taxes have minimal effect on ESG ratings.

### *2.2.4 Sustainability standard-setters*

Non-governmental organisations and advocacy groups have recently started developing tax standards covering various tax topics, including tax governance, tax planning, tax transparency, and relationships with tax authorities.[99]

The first ESG standard for tax was developed by the Global Reporting Initiative (GRI), the GRI 207 standard, or GRI tax standard, with effect from 1 January 2021.[100] The GRI tax standard comprises four elements: (i) an approach to tax; (ii) tax governance, control, and risk management; (iii) stakeholder engagement and management of concerns related to tax, and (iv) country-by-country reporting (CbCR).[101]

It constitutes the first comprehensive cross-sectoral reporting standard on corporate tax disclosures. Apart from quantitative data on taxes paid, companies are asked to report on their tax strategy, tax governance and approach to tax, which demonstrates how they manage to strike a balance between tax compliance and business activities that meet ethical, societal and sustainable development expectations. This can be achieved by, for example, explaining how their approach to tax is aligned with commitments to sustainable development in the jurisdictions in which they operate.

In 2020, the World Economic Forum (WEF) published a White Paper on *Measuring Stakeholder Capitalism* outlining three different tax metrics: total tax paid, tax collected by the company on behalf of other taxpayers, and total tax paid by country for significant locations.[102] The tax metrics are placed under the prosperity pillar, thus providing a clear statement on the importance of corporate taxes in achieving prosperity and macroeconomic stability in a society. The 'total tax paid' metric, the only core tax metric, covers the total taxes born by the company, by category of taxes. The 'additional tax remitted' and 'total tax paid by country for significant locations' metrics are both classified as expanded metrics with which companies may choose to supplement their tax reporting. This last metric combined with other policy initiatives to combat profit shifting practices could provide valuable information to assess whether the taxes paid by multinationals accurately reflect their economic presence in and the benefits they derive from the jurisdictions where they operate.

Despite their contribution to the standardisation of tax reporting, these initiatives do not suggest against which criteria this information should be assessed to evaluate the sustainability performance of corporations in the tax field. Acknowledging a rising demand from stakeholders, the Fair Tax Foundation, a not-for-profit social enterprise, introduced the Fair Tax Mark (FTM) accreditation scheme initially only available to

---

[98] Danielle A Chaim and Gideon Parchomovsky, 'The Missing "T" in ESG' (2024) 77(3) *Vanderbilt Law Review* 789.

[99] Peter Hongler, Florian Regli and Thomas Berndt, 'Tax Reporting and Sustainability' (IFF-HSG Working Paper No 2021-6, June 2021) <https://ile.unisg.ch/wp-content/uploads/2021/06/WP-06-Hongler-Regli-Berndt.pdf>.

[100] GRI, *GRI-207: Tax 2019* (1 January 2021) <https://www.globalreporting.org/pdf.ashx?id=12434>.

[101] Ibid.

[102] World Economic Forum, *Measuring Stakeholder Capitalism: Towards Common Metrics and Consistent Reporting of Sustainable Value Creation* (White Paper, September 2020) <https://www3.weforum.org/docs/WEF_IBC_Measuring_Stakeholder_Capitalism_Report_2020.pdf>.

businesses headquartered in the UK. Since 2021 this has been extended internationally to multinational enterprises, with the launch of the 'Global Multinational Business Standard'.[103] The FTM standard departs from pure reporting and aspires to exceed the expectations of both legal requirements and common corporate practices by introducing a formula measuring responsible tax conduct. Based on this standard, businesses should commit to two principles: (i) that they pay the right amount of tax (but no more) in the right place at the right time, according to both the letter and the spirit of the law, and (ii) that they are transparent to the public about their beneficial ownership, tax conduct and financial presence and impact across the world.

What is unique about the FTM accreditation is that it attempts to objectivise responsible tax conduct, based on its conception of tax justice. It introduces a scoring system, the Scorecard, under which businesses' commitment to the principles is assessed based on how many points they accumulate in a list of criteria divided into five categories: (i) general transparency; (ii) tax policy, implementation and compliance; (iii) CbCR; (iv) tax notes disclosures, and (v) tax rate.[104] This scoring system introduces a quantitative measure for acceptable tax planning and compliance behaviour.[105]

These initiatives represent steps towards the standardisation of information relating to how a business contributes to a society through its tax strategy. Apart from reporting how social issues impact their financial performance and value (accounting and tax disclosure), companies are expected to also report on how their tax behaviour impacts society (sustainability disclosure). The World Economic Forum tax metrics constitute a comprehensive tax reporting framework, without however suggesting how the information reported should be assessed against a business's sustainability performance. This gap is partially filled by the GRI tax standard, which asks companies to also explain how their approach to tax corresponds with their sustainability commitments, and mainly by the FTM accreditation, which establishes the first scoring system to measure companies' responsible tax conduct as defined by a comprehensive list of criteria. These criteria are assessing companies' actions not only on their legality, but also on their alignment with the tax strategy they have devised, thus introducing a type of self-regulation. As a result, such initiatives are expected to influence tax interpretation, tax policy-making and corporate tax behaviour going forward.

This section has attempted to provide an accurate mapping of the ESG landscape and the position of taxation in it. It is revealed that taxation, despite its importance in achieving ESG objectives, has a peripheral role as a measure of corporate sustainability. It is either inferred or confined to a test of compliance with the tax law. The following section will therefore explore whether the addition of a tax pillar to the ESG acronym is warranted.

## 3. THE BENEFITS OF ADDING A TAX PILLAR IN THE ESG FRAMEWORK

The 'ESG' framework, though now mainstream, is still widely contested. Proposals to add or subtract words in the acronym or creating taxonomies of more precise terms are not rare, while there have also been those that push for a deconstruction or even scrapping of the term altogether. Strine has proposed the addition of a further 'E' to the

---

[103] Fair Tax Foundation, *Global Multinational Business Standard: Guidance Notes* (2021) <https://fairtaxmark.net/wp-content/uploads/2022/10/Global-MNC-standard-criteria-print-version.pdf>.
[104] Ibid.
[105] Christians, above n 43.

ESG acronym to increase the salience of employees in ESG discussions.[106] Larcker, Tayan and Watts have suggested that the G be taken out of ESG to achieve a more effective and honest assessment of a company's commitment to stakeholders.[107] Some have singled out the S, asserting that '[t]he S invokes issues which are often hard to quantify, not so clearly linked to the risk/reward analysis in investment decision-making, and may touch on culturally specific norms that do not so easily translate into guidance for (often globally focused) investment decision-makers';[108] while others have proposed the separation of climate change from ESG as 'our era's defining issue'.[109] Lastly, there are proponents of the death of ESG, who think that it does not do enough good for the world but instead is 'just capitalism at its slickest: ingenious marketing in the service of profits'.[110] In this context, and following the previous analysis on the place of taxation in the ESG landscape, the question arises as to whether adding tax as a new pillar in the ESG framework would bring any benefits.

Taxes, including corporate taxes, constitute the necessary 'fuel' to support essential government functions beneficial to society, such as public welfare, infrastructure, and education.[111] Additionally, tax revenues finance domestic resource mobilisation directed towards sustainable governmental initiatives, such as environmentally friendly projects, and are therefore key in achieving the demands of the United Nations SDGs.[112] For these reasons, Bird and Davis-Nozemack have defined tax avoidance, not just as a financial problem for tax authorities, but as a 'sustainability problem' with 'organizational and societal consequences', proposing that dealing with it as a sustainability problem could better help in mitigating it.[113]

Corporate tax avoidance is also linked to wealth and income inequality both intra- and inter-nationally. To retain the size of their budget, governments have to offset the lost tax revenue either by borrowing, lowering expenditure, broadening their tax base or shifting the tax burden to other, less mobile, factors, usually labour and consumption, which are hence burdened disproportionately. Tax minimisation practices therefore

---

[106] See Leo E Strine, Jr, *Toward Fair and Sustainable Capitalism* (Roosevelt Institute, 2020).

[107] David F Larcker, Brian Tayan and Edward M Watts, 'Seven Myths of ESG' (Stanford Closer Look Series, 4 November 2021) <https://www.gsb.stanford.edu/faculty-research/publications/seven-myths-esg>.

[108] David Wood, 'What Do We Mean by the S in ESG? Society as a Stakeholder in Responsible Investment' in Tessa Hebb, James P Hawley, Andreas GF Hoepner, Agnes L Neher and David Wood (eds), *The Routledge Handbook of Responsible Investment* (Routledge, 2016) 553, 555.

[109] Swasti Gupta-Mukherjee, 'Climate Action Is Too Big for ESG Mandates', *Stanford Social Innovation Review* (29 September 2020) <https://ssir.org/articles/entry/climate_action_is_too_big_for_esg_mandates>.

[110] Hans Taparia, 'One of the Hottest Trends in the World of Investing Is a Sham', *New York Times* (29 September 2022) <https://www.nytimes.com/2022/09/29/opinion/esg-investing-responsibility.html>; see also The Economist, 'Measure Less, But Better' (21 July 2022) <https://www.economist.com/specialreport/2022/07/21/measure-less-but-better>; Gillian Tett, 'ESG Exposed in a World of Changing Priorities', *Financial Times* (3 June 2022) <https://www.ft.com/content/6356cc05-93a5-4f56-9d18-85218bc8bb0c>.

[111] See, eg, Reuven S Avi-Yonah, 'The Three Goals of Taxation' (2006) 60(1) *Tax Law Review* 1, 3.

[112] United Nations, *Transforming Our World: The 2030 Agenda for Sustainable Development* (2015); United Nations, *Addis Ababa Action Agenda: Monitoring Commitments and Actions* (2016); World Bank, *Conference Report: Taxation and the Sustainable Development Goals* (14-16 February 2018); International Monetary Fund (IMF), OECD, UN and World Bank Group, *Taxation and SDGs: First Global Conference of the Platform for Collaboration on Tax, February 14-16, 2018, Conference Report* (2018) 9 ('taxes generate the funds that finance government activities in support of the SDGs').

[113] Robert Bird and Karie Davis-Nozemack, 'Tax Avoidance as a Sustainability Problem' (2018) 151(4) *Journal of Business Ethics* 1009.

allow companies to increase their accumulated wealth at the expense of other, less mobile, taxpayers. In particular, multinationals can secure an unfair competitive advantage over their smaller, domestic, competitors, which are not able to exploit the same tax loopholes.

Additionally, not all countries are impacted at the same level. Developing countries are not able to offset reductions in taxes with base broadening or shifting similarly to developed countries.[114] They usually have agricultural and less urbanised economies, with large informal sectors, and lack transparent and capable institutions.[115] Additionally, they rely more heavily on corporate income taxes, due to the relative ease in administration and collection. This reliance, coupled with their limited tax collection capacity, can hamper developing countries' ability to mobilise resources domestically.

Corporate tax behaviour can also have significant compliance implications. The uneven distribution of tax burdens in society might create a perception of unfairness and a general lack of trust in the legitimacy of the tax system, with repercussions on tax compliance.[116] In that way, companies not only endanger the sustainability of the tax systems of the countries where they operate and generate profits, but also the social cohesion of these countries, manifested through limited institutional trust, and hence tax compliance, and lack of sense of community, due to economic and societal inequalities.

Corporate taxes therefore play a special role, distinct from the one represented by the environmental, social and governance aspects of the ESG framework, and not fully expressed by any of these pillars or a combination thereof. As a result, the addition of a tax pillar seems to be warranted as corporate tax behaviour requires special attention, due to its importance and unique role in achieving sustainable development and social cohesion.

Corporate taxes are also increasingly attracting the public interest. Following the 2008 global financial crisis, tax matters emerged from obscurity to occupy a prominent role in political agendas. Governments needed revenue, but not everyone was contributing their fair share to it. Public investigations against multinationals, tax haven data leaks, such as LuxLeaks, and other revelations of corporate tax dodging triggered a public backlash that exerted pressure on politicians to act.[117] In light of these developments, the OECD mandated by the G20 initiated in 2013 the BEPS project identifying 15 areas where corporate tax needed reform to combat tax avoidance practices.[118]

---

[114] Allison Christians and Laurens van Apeldoorn, *Tax Cooperation in an Unjust World* (Oxford University Press, 2021) 57-58, citing M Shahe Emran and Joseph E Stiglitz, 'On Selective Indirect Tax Reform in Developing Countries' (2005) 89(4) *Journal of Public Economics* 599, who found that the adoption of value added tax (VAT) produced few or no gains in revenue coupled by losses in distributional equity.

[115] The IMF has estimated that up to 60 per cent of the gross domestic product (GDP) of low-income states is located in the informal economy: IMF, 'Revenue Mobilization in Developing Countries' (2011) 8; Mick Moore, 'Obstacles to Increasing Tax Revenues in Low Income Countries' (International Centre For Tax and Development Working Paper 13/15, 2013) 14-15.

[116] See, eg, Diana Onu and Lynne Oats, 'The Role of Social Norms in Tax Compliance: Theoretical Overview and Practical Implications' (2015) 1(1) *Journal of Tax Administration* 113.

[117] See, eg, Committee of Public Accounts (UK), *HM Revenue and Customs: Annual Report and Accounts 2011-12* (House of Commons HC 716, Nineteenth Report of Session 2012-13). See also Shu-Yi Oei and Diane M Ring, 'Leak-Driven Law' (2018) 65(3) *UCLA Law Review* 532 (detailing the disclosure and media attention).

[118] OECD, *Action Plan on Base Erosion and Profit Shifting* (OECD Publishing, 2013).

Given the importance of taxes for sustainable development and the increased public scrutiny over corporate tax behaviour, it might be expected that corporations would address their tax policies in their sustainability reports. Nevertheless, companies underreport on tax matters. A 2021 global analysis using a dataset of 1,300 large, listed companies across both developed and emerging markets found that only a third (34 per cent) of these companies had commitments or policies on tax transparency in place, compared to 87 per cent for climate change and 98 per cent for health and safety.[119] Another study that focused on S&P 500 companies found that, of the 328 companies analysed, only 47 substantially addressed tax matters, and another 45 referenced taxes in the context of financial results, while the majority of them did not include any reference to taxes.[120] Establishing a separate pillar dedicated to tax would therefore increase the number of companies reporting on tax matters.

Additionally, a tax pillar would force institutional investors to introduce corporate tax behaviour parameters in their investment decisions. At present, asset managers adopt a passive approach towards tax-related guidelines. Despite extensive coverage of numerous ESG concerns, including board composition, human capital and climate risk, the 'Big Three' guidelines, issued by Vanguard, BlackRock and State Street Global Advisors, on proxy voting and stewardship principles do not contain any significant reference to corporate taxation.[121] Indicative of this stance is the recent asset manager reaction to shareholder proposals for more tax transparency, especially public disclosure of country-by-country reporting.[122] In 2022, BlackRock and Vanguard voted against tax transparency shareholder proposals at Amazon, Microsoft and Cisco Systems, which was pivotal in the ultimate rejection of such proposals, signifying the institutional investor failure to consider the importance of tax and shareholders' role in shaping corporate tax behaviour.[123]

A tax pillar would also provide ESG rating agencies with the required framework to better incorporate tax matters in their scoring systems. As previously analysed (see section 2.2.3), tax metrics are either omitted from ESG ratings or when included there is significant divergence in their scope, measurement, and weight among different agencies, while studies have found an inverse relationship between a company's ESG score and its effective tax rate.[124] The inclusion of a pillar dedicated to tax matters would ensure that tax metrics are a core value in ESG scores and that significant weight is accorded to aspects of corporate tax behaviour. Additionally, in the context of

---

[119] Bourne et al, above n 84.
[120] Sara Reiter, 'Tax Disclosures in Sustainability Reports' (2020) 20(7) *Journal of Accounting and Finance* 51.
[121] See, eg, Vanguard, *Global Proxy Voting Policy for Vanguard-Advised Funds* (February 2024) <https://corporate.vanguard.com/content/dam/corp/advocate/investment-stewardship/pdf/policies-and-reports/global_proxy_voting_policy_2024.pdf>; Blackrock, *BlackRock Investment Stewardship: Global Principles, Effective as of January 2024* (2024) <https://www.blackrock.com/corporate/literature/fact-sheet/blk-responsible-investment-engprinciples-global.pdf>; State Street Global Advisors, *Global Proxy Voting and Engagement Policy* (March 2024) <https://www.ssga.com/library-content/assets/pdf/global/asset-stewardship/proxy-voting-and-engagement-policy.pdf>.
[122] Nana Ama Sarfo, 'Microsoft and Cisco Face Shareholder Pressure Over Public Disclosures', *Forbes* (28 June 2022) <https://www.forbes.com/sites/taxnotes/2022/06/28/microsoft-and-cisco-face-shareholder-pressure-over-public-disclosures/?sh=4a6669315d39> (accessed 18 October 2024).
[123] Stephen Foley and Patrick Temple-West, 'Companies Pressed to Reveal More About the Taxes They Pay', *Financial Times* (10 April 2023) <https://www.ft.com/content/7a3e5a4b-2025-4f42-834b-22dfa8bc281e>.
[124] See section 2.2.3.

increasing regulation of ESG rating agencies, including greater transparency and standardisation of their methodologies, the separate inclusion of tax matters in the ESG framework would unavoidably lead to extensive elaboration of the specific tax information that companies need to share and the weight of tax metrics in their overall ESG performance.

Ultimately, greater emphasis on tax matters by institutional investors and ESG rating agencies would influence corporate tax behaviour. Recent studies on 'Big Three' initiatives with respect to climate change and board diversity have documented the role of asset managers as regulatory players, which has emerged as a response to increasing deregulation, and the influence they exert on company behaviour.[125] The inclusion of clear references and measurable metrics of responsible tax behaviour by these influential quasi-regulatory players, especially the introduction of 'sanctions' in case such behaviour is not followed, would produce positive outcomes with regard to corporate tax transparency.

A tax pillar could also achieve greater standardisation and uniformity in the current patchwork of tax sustainability reporting. The proliferation of sustainability disclosure standards, and the consequent plethora of uncoordinated sustainability information, has created confusion and underlined the urgency of creating a comprehensive, standardised and common system to measure and disclose corporate sustainability performance. The lack of a generally accepted methodology has important implications for most stakeholders.

Investors are unable to take sufficient account of sustainability-related risks and opportunities in their investment decisions potentially creating inefficiencies in global capital markets and imposing a threat on financial stability.[126] At the EU level, such divergent measures and approaches in reporting standards could undermine the internal market and distort competition.[127] The confusion and lack of sustainability information creates an accountability deficit and damages citizen trust in corporations. Additionally, there is increased risk of 'greenwashing' practices from corporations and investors. Such practices include misleading or fraudulent disclosures about an entity's ESG performance or empty public statements about responsible tax strategies, for the purpose of influencing customers, capital inflows and investment choices.[128] A tax pillar would eliminate confusion as to whether and how tax matters need to be reported, hence improving the understanding of a corporation's contribution to funding public benefits.

Taxation is a prerequisite for the other pillars since no account for tax matters ultimately harms ESG policies overall. The fewer resources a government has, the less capable it is to advance policies beneficial for the environment and society and to regulate effective corporate behaviour, including through enforcement. At the same time,

---

[125] See, eg, Dorothy S Lund, 'Asset Managers as Regulators' (2022) 171(1) *University of Pennsylvania Law Review* 77, 90-92; Amil Dasgupta, Vyacheslav Fos and Zacharias Sautner, 'Institutional Investors and Corporate Governance' (2021) 12(4) *Foundations and Trends in Finance* 276.

[126] CSRD, above n 44, preamble, para 14; Aaron K Chatterji, Rodolphe Durand, David I Levine and Samuel Touboul, 'Do Ratings of Firms Converge? Implications for Managers, Investors and Strategy Researchers' (2016) 37(8) *Strategic Management Journal* 1597, 1598.

[127] CSRD, above n 44, preamble, para 16.

[128] World Economic Forum, 'ESG: ESG Regulation and Policy-Making' (Web Page) <https://intelligence.weforum.org/topics/a1G680000004EI1EAM/key-issues/a1G680000004EYTEA2> (accessed 16 January 2024).

introducing a tax pillar could help counterbalance the transfer of excessive power to the hands of asset managers and rating agencies when operating as quasi-regulators, since better tax reporting would allow governments to collect more taxes and promote ESG goals hence decreasing the reliance on private actors to regulate ESG matters.

Finally, the inclusion of a tax pillar would reflect the expectation that companies should go beyond the tax law. Under the current framework, tax reporting, when present in sustainability reports, is usually confined to informing stakeholders that the company has been compliant with the spirit and the letter of tax law. However, the rationale behind the ESG framework is to reward those companies that promote important environmental and societal goals, not those that do not break the law. Though companies' tax obligations remain within the confines of the letter and the spirit of the law, tax regulation is inevitably imperfect and ambiguous and thus should not be exclusively relied upon to achieve better tax governance.[129] The prioritisation of stakeholder interests calls for companies to act beyond mere shareholder value maximisation and compliance with the law, and instead actively engage in socially responsible activities.[130] This would entail not only refraining from tax planning activities that undermine the sustainability of the tax systems where they operate, but also undertaking investment decisions that are guided by sustainability considerations, instead of exclusively by regulatory obligations.

The expectation that companies go beyond the law relates to the interaction of corporate taxation with CSR. There is no single view about this interaction, and different views depend on the theory of the corporation that is adopted. Avi-Yonah explains that historically three theories of the corporation have emerged: the artificial entity theory, the real entity theory, and the aggregate (nexus of contracts) theory.[131] Under the artificial entity theory, the corporation is a creature of the state and, as such, it should pay taxes to fulfil its obligation to the state. Under the real entity theory, the corporation is an entity separate from both the state and its shareholders and has a legal responsibility to pay taxes and not engage in tax minimisation practices. Lastly, under the aggregate theory, the corporation is the mere aggregate of its individual members or shareholders, and therefore taxes, being a detriment to shareholder value, should be minimised. Under this theory, which is the dominant one among contemporary corporate scholars,[132] corporate taxation is not a CSR function, but rather a legal matter.[133] This view is clearly expressed in Friedman's infamous statement that corporations should focus on profit maximisation, while taxes are the responsibility of the government.[134] However, Avi-Yonah considers that this view, taken to its logical

---

[129] Hans Gribnau, 'Why Social Responsible Corporations Should Take Tax Seriously' in Karina Kim Egholm Elgaard, Rasmus Kristian Feldthusen, Axel Hilling and Matti Kukkonen (eds), *Fair Taxation and Corporate Social Responsibility* (Ex Tuto Publishing, 2019) 103.

[130] Asaf Raz, 'The Legal Primacy Norm' (2022) 74(6) *Florida Law Review* 933, 935.

[131] Avi-Yonah, 'Corporate Taxation and Corporate Social Responsibility', above n 34.

[132] See, eg, Henry G Manne and Henry C Wallich, *The Modern Corporation and Social Responsibility* (American Enterprise Institute for Public Policy Research, 1972); Bernard Black and Reinier Kraakman, 'A Self-Enforcing Model of Corporate Law' (1996) 109(8) *Harvard Law Review* 1911.

[133] See, eg, Grahame R Dowling, 'The Curious Case of Corporate Tax Avoidance: Is It Socially Irresponsible?' (2014) 124(1) *Journal of Business Ethics* 173.

[134] '[T]here is […] only one social responsibility of business – to use its resources and engage in activities designed to increase its profits…': Milton Friedman, 'A Friedman Doctrine – The Social Responsibility of Business Is to Increase Its Profits', *New York Times* (13 September 1970) <https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html>.

extreme, is self-defeating, because it could mean that the state is deprived of adequate resources to fulfil the social responsibility functions borne exclusively by it.[135] Other scholars have also argued that a corporation's tax aggressive policies may be socially irresponsible.[136] Also, recent developments, including civil society backlash against aggressive corporate tax practices and the OECD/G20 BEPS project, have established the undeniable legitimacy of CSR in corporate tax behaviour. Lastly, studies on the implementation of voluntary disclosure codes, such as the one that is applicable in Australia, provide evidence of a progressive change in corporate attitudes towards tax and a transition from the aggregate view to the real entity view of a corporation.[137]

The ethical dimension of reporting on socially responsible tax behaviour should also not be disregarded. This approach requires a transition from compliant companies to those that embrace morality, that makes 'them better citizens, and … their political participation less problematic'.[138] Socially responsible behaviour is therefore not a mere technical exercise, but a normative one that sets out what companies ought to be responsible for in society.[139] The ethical dimension is even more prominent when it comes to tax planning practices. In this context, asserting a role of responsible citizens but avoiding taxes has been equated to 'organized hypocrisy'.[140] The way tax law is interpreted and applied is a moral choice, especially because it concerns the distribution of tax burdens in society, and thus socially responsible companies are expected to go beyond strictly complying with the letter of the law.[141] A tax pillar would therefore satisfy the ethical aspect entrenched in tax compliance and invite a new definition of corporate responsibility, one that encompasses both legal and moral considerations.[142]

However, given the peripheral role of taxation in the current landscape, demand for corporate tax behaviour that goes beyond what is legally required, though justified under the S pillar, seems difficult to frame and implement. The inclusion of a tax pillar in the ESG framework would therefore shift the focus from pure tax compliance to the benefits companies can bring by proactively devising tax strategies that enable the accomplishment of sustainability aims in the countries where they operate.

## 4. CONCLUSION AND FUTURE RESEARCH

The inclusion of taxation in the ESG framework would significantly improve the current landscape of corporate sustainability reporting. Nevertheless, careful consideration

---

[135] Reuven S Avi-Yonah, 'The Cyclical Transformations of the Corporate Form: A Historical Perspective on Corporate Social Responsibility' (2005) 30(3) *Delaware Journal of Corporate Law* 767.

[136] See, eg, Urs Landolf, 'Tax and Corporate Responsibility', *International Tax Review* (30 June 2006); Bernd Erle, 'Tax Risk Management and Board Responsibility' in Wolfgang Schön (ed), *Tax and Corporate Governance* (Springer, 2008) 205.

[137] Bronwyn McCredie and Kerrie Sadiq, 'CSR and Tax: A Study in the Transition from an "Aggregate" to "Real Entity" View of Corporations' (2019) 31(4) *Pacific Accounting Review* 553.

[138] Kent Greenfield, 'In Defense of Corporate Persons' (2015) 30(2) *Constitutional Commentary* 309, 312.

[139] Andrew Crane, Abagail McWilliams, Dirk Matten, Jeremy Moon and Donald Siegel, 'The Corporate Social Responsibility Agenda' in Andrew Crane, Abagail McWilliams, Dirk Matten, Jeremy Moon and Donald S Siegel (eds), *The Oxford Handbook of Corporate Social Responsibility* (Oxford University Press, 2008) 3.

[140] Nils Brunsson, *The Organization of Hypocrisy: Talk, Decisions and Actions in Organizations* (John Wiley, 1989).

[141] Hans Gribnau, 'Corporate Social Responsibility and Tax Planning: Not by Rules Alone' (2015) 24(2) *Social and Legal Studies* 225.

[142] Doron Narotzki, 'Corporate Social Responsibility and Taxation: The Next Step of the Evolution' (2016) 16(2) *Houston Business and Tax Law Journal* 167.

should be paid to the design of this pillar to avoid reporting on mere tax compliance matters and to minimise the risk of 'greenwashing'. Though this is a matter for future research, some ideas are presented here.

Sustainable development relies both on tax and spending policies. However, tax reporting focuses exclusively on one aspect of the fiscal account. The incorporation of spending policies in the tax pillar, for example in the form of institutional accountability and rule of law considerations in the place of investment, would provide a better understanding of a company's sustainable performance.

Additionally, tax metrics tend to adopt overly simplistic or divisive approaches, hence disregarding the multifaceted and context-specific role of taxation. There is no one-size-fits-all approach. For example, the reason for a reduced tax bill leads to different sustainable behaviour assessments, depending on whether it is due to tax incentives for green investments or aggressive tax planning activities. A tax pillar would therefore have to account for industry-, region-, sector-, etc specific characteristics and the rationale behind a specific tax behaviour.

Most importantly, tax sustainability reporting usually disregards the special assistance developing countries need to achieve sustainable development. By application of the principle of Common but Differentiated Responsibilities (CbDR) and respective capabilities,[143] tax metrics could measure whether a tax-responsible company progressively reports a larger portion of its income in poorer countries, for example by locating high-value functions or the development and management of intangibles into economies with greater fiscal needs.[144]

The proposal to add T in the ESG acronym could be understood as an idea to improve the existing framework. ESG matters, once perceived as unrelated to financial performance, or even a cost, are increasingly impacting the profitability and financial viability of firms, as a result of asset allocation processes.[145] Nevertheless, scholars have expressed concerns over the rising concentration of power in the hands of the 'Big Three' asset managers – BlackRock, Vanguard, and State Street Global Advisors – who tied their own business models to this new mantra and fostered a multi-billion dollar ESG investing industry raising issues about legitimacy and accountability. Taxation, being one of the core functions of sovereign states, could help counterbalance this concentration of power, while the quasi-regulatory functions of institutional investors could influence the direction of tax regulation. A tax pillar would hence represent this symbiotic relationship. The analysis in this article has explained the reasons why the addition of a tax pillar would bring incremental improvements to the ESG framework. Whether more radical reform should be implemented, or this framework be revisited in its entirety, is a question reserved for future research.

---

[143] *United Nations Framework Convention on Climate Change*, opened for signature 9 May 1992, 1771 UNTS 107 (entered into force 21 March 1994) art 3(1).

[144] Though narrow and widely criticised as unsuitable for measuring economic performance and social progress, GDP per capita could be an indicator to determine countries' fiscal needs. See, for the criticism, Joseph E Stiglitz, Amartya Sen and Jean-Paul Fitoussi, 'The Measurement of Economic Performance and Social Progress Revisited: Reflections and Overview' (Observatoire Français des Conjonctures Economiques (OFCE) Working Paper No 2009-33, 2009).

[145] Monica Billio, Michele Costola, Iva Hristova, Carmelo Latino and Loriana Pelizzon, 'Inside the ESG Ratings: (Dis)agreement and Performance' (2021) 28(5) *Corporate Social Responsibility and Environmental Management* 1426.

## 5. APPENDIX

| | |
|---|---|
| BEPS | Base Erosion and Profit Shifting |
| CBAM | Carbon Border Adjustment Mechanisms |
| CbCR | Country-by-Country-Reporting |
| CbDR | Common but Differentiated Responsibilities |
| CSDDD | Corporate Sustainability Due Diligence Directive |
| CSR | Corporate Social Responsibility |
| CSRD | Corporate Sustainability Reporting Directive |
| EFRAG | European Financial Reporting Advisory Group |
| ESG | Environmental, Social, Governance |
| ESMA | European Securities and Markets Authority |
| ESRS | European Sustainability Reporting Standards |
| FTM | Fair Tax Mark |
| GRI | Global Reporting Initiative |
| MSCI | Morgan Stanley Capital International |
| NFRD | Non-Financial Reporting Directive |
| OECD | Organisation for Economic Cooperation and Development |
| SDGs | Sustainable Development Goals |
| SFDR | Sustainable Finance Disclosure Regulation |
| TCFD | Task Force on Climate-related Financial Disclosures |
| UNPRI | United Nations Principles for Responsible Investment |
| WEF | World Economic Forum |

eJournal of Tax Research (2024) vol. 22, no. 3, pp. 444-461

# ESG(T)? Should and can tax performance be a factor in evaluating the ethical, moral and social performance of corporations?

Christina Allen* and Richard Krever**

**Abstract**

Advocates for greater social responsibility by corporations who support corporate social responsibility or environmental, social and governance standards accounting by large companies increasingly call for tax behaviour to be considered one indicator of desired social behaviour. This advocacy may be based on naivety or a failure to understand the basis of tax avoidance by multinational enterprises. The decision by developed nations to allocate profits of multinational enterprises on the basis of notional arm's length prices effectively endorses and invites companies to shift profits through transfer prices. Since the transactions in question would almost never take place between unrelated companies in a genuine arm's length environment, there can be no comparable for developing an arm's length price. As a result, the law effectively gives companies free rein to nominate arm's length prices that are inherently fictional given the absence of similar transactions outside multinational enterprises. It can be argued, therefore, that it is both unfair and counterproductive to judge companies poorly because they follow the law and accept the invitation inherent in the arm's length system to shift profits and avoid tax. If social responsibility advocates are concerned about tax avoidance by multinational enterprises, they should shift their attention from law-abiding companies to the legislatures and press for replacement of the system for allocating international profits to one that attributes profits to their actual sources based on objective indicators, not an allocation using fictional prices nominated by the companies shifting profits to low-tax jurisdictions.

**Keywords**: corporate social responsibility, tax avoidance, transfer pricing, environmental, social and governance standards

* Curtin Law School, Curtin University, Perth.
** Law School, University of Western Australia, Perth.

## 1. WHAT IS THE 'T' IN ESG(T)?

Debate over the intersection of moral obligations and the literal scope of income tax law is as old as the income tax itself. Proponents of narrower readings of taxpayers' obligation to share a portion of revenues with the state that enabled them to realise their profits in the first place[1] often delight in quoting the infamous dicta of leading judges in support of the most constrained responsibility to share profits possible.[2] Proponents of a generous reading of those obligations cite famous dicta supporting the contrary view.[3] Apologists for tax avoidance claim it is inherently ethical[4] while opponents argue it is inherently unethical.[5] The debate has taken new turns in recent years with consideration of the tax obligations of corporations, first in the context of corporate social responsibility (CSR) theory[6] and more recently in terms of environmental, social, and governance (ESG) standards taken into account by investors seeking what they consider to be ethical companies.[7] In particular, a question has been raised as to whether ESG standards should be extended to also include taxation performance, potentially yielding ESG(T) standards. Proponents argue it should be extended in this way to reflect the

---

[1] Liam Murphy and Thomas Nagel, *The Myth of Ownership: Taxes and Justice* (Oxford University Press, 2002).

[2] The three most often cited passages may be those of UK jurists Lord Clyde in *Ayrshire Pullman Motor Services and Ritchie v Commissioners of Inland Revenue* (1929) 14 TC 754, 763: 'No man in this country is under the smallest obligation, moral or other, so to arrange his legal relations to his business or to his property as to enable the Inland Revenue to put the largest possible shovel into his stores', Lord Tomlin in *Inland Revenue Commissioners v Duke of Westminster* [1936] AC 1, 19-20: 'Every man is entitled if he can to arrange his affairs so as that the tax attaching under the appropriate Acts is less than it otherwise would be' and US jurist Judge Learned Hand in *Helvering v Gregory* (1934) 69 F 2d 809, 810-811: 'Any one may so arrange his affairs that his taxes shall be as low as possible; he is not bound to choose that pattern which will best pay the Treasury; there is not even a patriotic duty to increase one's taxes'.

[3] The most famous of these, perhaps, is the comment by Justice Oliver Wendell Holmes, Jr, that became what is possibly the most cited phrase from a dissenting opinion in US tax jurisprudence, 'Taxes are what we pay for civilized society' in *Compañía General de Tabacos de Filipinas v Collector of Internal Revenue*, 275 US 87, 100 (1927).

[4] Lord Houghton, 'The Futility of Taxation by Menaces' in Alfred R Ilersic and Arthur Seldon (eds), *Tax Avoision: The Economic, Legal and Moral Inter-Relationships Between Avoidance and Evasion* (Institute of Economic Affairs, 1979) 89.

[5] Rebecca Prebble and John Prebble, 'Does the Use of General Anti-Avoidance Rules to Combat Tax Avoidance Breach Principles of the Rule of Law? A Comparative Study' (2010) 55(1) *Saint Louis University Law Journal* 21.

[6] The debate over the relationship between CSR and tax avoidance is reviewed in Shannon Jemiolo and Curtis Fransel, 'Complements, Substitutes or Neither? A Review of the Relation Between Corporate Social Responsibility and Corporate Tax Avoidance' (2023) 45(3) *Journal of Accounting Literature* 474; Grahame R Dowling, 'The Curious Case of Corporate Tax Avoidance: Is It Socially Irresponsible?' (2014) 124(1) *Journal of Business Ethics* 173; Doron Narotzki, 'Corporate Social Responsibility and Taxation: A Chance to Develop the Theory' (2017) 39(4) *Western New England Law Review* 539; Lutz Preuss, 'Tax Avoidance and Corporate Social Responsibility: You Can't Do Both, or Can You?' (2010) 10(4) *Corporate Governance* 365; Burcin Col and Saurin Patel, 'Going to Haven? Corporate Social Responsibility and Tax Avoidance' (2019) 154(4) *Journal of Business Ethics* 1033; Yama Temouri, Giulio Nardella, Chris Jones and Stephen Brammer, 'Haven-Sent? Tax Havens, Corporate Social Irresponsibility and the Dark Side of Family Firm Internationalization' (2022) 33(3) *British Journal of Management* 1447; Prem Sikka, 'Smoke and Mirrors: Corporate Social Responsibility and Tax Avoidance' (2020) 34(3-4) *Accounting Forum* 153; John Hasseldine and Gregory Morris, 'Corporate Social Responsibility and Tax Avoidance: A Comment and Reflection' (2013) 37(1) *Accounting Forum* 1; Prem Sikka, 'Smoke and Mirrors: Corporate Social Responsibility and Tax Avoidance – A Reply to Hasseldine and Morris' (2013) 37(1) *Accounting Forum* 15; Reuven S Avi-Yonah, 'Corporate Social Responsibility and Strategic Tax Behavior' in Wolfgang Schön (ed), *Tax and Corporate Governance* (Springer, 2008) 183.

[7] A wide range of agencies and research and analysis firms provide ESG scores, each using their own methodology to measure performance and each assigning different weightings to the factors considered.

importance of taxation to the maintenance of civil society.[8] The question implicitly rejects the view in some quarters[9] that ESG already reflects tax behaviour through both its social and governance arms.[10]

The three current ESG criteria measure performance not by reference to the legal standards imposed on companies but rather their behaviour above and beyond legal requirements.[11] Environmental consideration, for example, looks at indicators such as company policies regarding climate change, not simply whether the company breaches pollution laws. Social consideration looks at relationships with others in the supply and consumer chain, including employees, not only whether legal contracts are honoured, and governance standards look at a range of corporate management behaviours beyond the strict requirements of the corporate law. Fitting a company's tax performance into this template is challenging. Two possible parameters could be considered, tax transparency – the extent to which a company provides shareholders and the public with details of its tax strategies – and tax payment relative to apparent profitability.

There is little room for evaluation of tax performance in terms of transparency and disclosure. In jurisdictions with tax strategy disclosure systems in place, companies inevitably present their behaviour as immaculate, beginning with an assertion that the company pays all taxes required by law. No tax transparency reports include descriptions of strategies adopted to minimise taxes by way of profit shifting to move profits from parts of a multinational enterprise located in higher-tax jurisdictions to parts located in lower-tax or no-tax jurisdictions.[12]

It is equally challenging to assess companies tax performance in terms of the taxes they paid relative to revenue or apparent profitability. It is simply not possible to pay more tax than that assessed by revenue authorities based on the application of the law. If taxes are minimised by adoption of tax avoidance arrangements – legal reduction of taxes using problematic features of the tax law – the resulting tax liability is the correct tax burden. Moreover, often, a lower tax liability on declared taxable income is the result of socially desirable behaviour. Tax liabilities are lowered for companies that buy the machinery and equipment as promoted by the government and deliberately subsidised by way of accelerated depreciation, credits and other tax concessions. Alternatively, or additionally, they may be reduced again by companies undertaking designated business practices such as engaging in more research and development activities, for which they receive enhanced deductions or tax credits, or adopting better pollution and climate change mitigation practices and equipment, again qualifying for tax subsidies. In all these cases, reduced tax liabilities are likely to equate with laudatory social, environmental and corporate governance behaviour.

---

[8] Faith Harako, 'Tax: The Silent T in ESG' (Speech for the 15th International Tax Administration Conference, 5 April 2023) <https://www.ato.gov.au/media-centre/tax-the-silent-t-in-esg>.

[9] Alexander Szívós, 'Sustainability in Finance' (2022) *Regional Law Review* 255.

[10] Conklin and Ceballos consider tax avoidance in the context of 'S' in Michael Conklin and Ruben Ceballos, 'The Ethics of Investing in Cryptocurrencies' (2022) 21 *Florida State University Business Review* 69; Martinho places tax avoidance in 'G' in Sandra Martinho, 'Looking at the "Tax" in ESG through a Sustainable Investor Lens' [2022] (2) *Intergovernmental Organisations In-House Counsel Journal* 29.

[11] See Hasseldine and Morris, above n 6, distinguishing between (legal) tax avoidance and (illegal) tax evasion.

[12] Bronwyn McCredie, Kerrie Sadiq and Richard Krever, 'The Effectiveness of Voluntary Corporate Tax Disclosures: An Australian Case Study' (2021) 36(4) *Australian Tax Forum* 573.

What, then, is the (T) that many would like to see added to the ESG standard? Primarily, it is the tax that would have been paid had profits not been shifted abroad to low- or no-tax jurisdictions before taxable income is calculated. In these tax avoidance transactions, now commonly labelled 'base erosion and profit shifting' (BEPS) arrangements, subsidiaries of multinational companies located in higher-tax jurisdictions shift profits to lower-tax jurisdictions by way of inflated payments to acquire trading stock (inventory) or services (for example, marketing or management services) or to access intellectual property (for example, patents, copyright and other intangible rights) from related companies abroad. As a consequence of BEPS transactions, very large gross revenues in the higher-tax jurisdiction can yield small or even negligible net taxable income, with 'expenses' paid to related companies deducted from gross revenue when calculating taxable income. The tax paid on the amount left in the jurisdiction is likely to be very close, if not equal, to the notional statutory tax rate imposed on corporate taxpayers.

The dilemma faced by tax authorities is that profit shifting by way of transfer prices paid to related parties in low-tax jurisdictions is perfectly legal so long as the taxpayer can demonstrate the payments fall within a reasonable 'arm's length' price range, that is, they are similar to prices that would be paid by unrelated parties undertaking similar transactions. In some cases, authorities that challenge transfer prices secure small adjustments from the prices nominated by taxpayers but even in the most significant victories, companies have been allowed to shift significant profits abroad after adjustments.[13] In other cases, courts have allowed the taxpayer's nominated transfer prices to stand simply because there would never be transactions of the type used in the open market, allowing taxpayers to cherry-pick whatever comparables or transfer pricing methodology they choose to justify their prices.[14]

The inability of revenue authorities to prevent BEPS by disputing transfer prices has led to a host of attempts to stymie profit shifting by other means. One of the most notable of these is the attempt by the European Commission, the executive body for the European Union (EU), to attack competition-distorting profit shifting arrangements within the EU by invoking the prohibition of 'state aid' within the Union to dispute private rulings by complicit jurisdictions that enabled profit shifting from higher-tax jurisdictions. Appeals to the European courts by multinationals such as Apple,[15]

[13] *Chevron Australia Holdings Pty Ltd v Federal Commissioner of Taxation* (2017) 105 ATR 599.
[14] *Federal Commissioner of Taxation v Glencore Investment Pty Ltd* (2020) 112 ATR 378.
[15] *Commission Decision (EU) 2017/1283 on State Aid SA.38373 (2014/C) (ex 2014/NN) (ex 2014/CP) Implemented by Ireland to Apple* [2017] OJ L 187/1. The Commission's decision was annulled by the General Court of the EU in *Ireland and Others v European Commission* (Joined Cases T-778/16 and T-892/16, EU:T:2020:338, 15 July 2020) but the Commission ultimately prevailed before the Court of Justice of the European Union in *European Commission v Ireland and Others* (Case C-465/20 P, ECLI:EU:C:2024:724, 10 September 2024).

Starbucks,[16] Amazon,[17] Nike,[18] and IKEA[19] revealed the state aid path to be of limited assistance, with the Commission losing as often as it won. If anything, the cases showed the futility of central authority administrative efforts to combat profit shifting when the transfer prices used by the multinationals in question were accepted by the countries losing tax revenue as a result of the BEPS transactions.

The frustration of tax administrations is seemingly not shared by legislatures that have endorsed rules allowing multinationals to shift profits at will, provided they can construct a plausible arm's length argument for the prices they nominate. In the face of apparent legislative endorsement of an international tax system that seemingly allows multinational enterprises to shift profits at will, is there a convincing case for ESG-conscious investors to seek different tax performance from socially responsible companies? Put in practical terms, the question might be rephrased to ask whether ESG-conscious investors should expect multinationals not to shift profits in a manner that is accepted and arguably even endorsed by legislatures.

This article seeks to answer that question with a three-pronged investigation. An initial issue is whether ESG evaluators can actually identify the extent to which a company avoids tax. The second issue is whether it is possible to identify what element of company governance might be responsible for tax avoidance. The third issue is whether investors or any other group sees company tax avoidance as undesirable behaviour. If it is not possible for evaluators to identify with a degree of certainty whether a company is avoiding tax, what governance factors or actors facilitate or inhibit tax avoidance, or whether any possible users of ESG evaluations are concerned about the level of tax avoidance in which a company engages, the case for extending ESG to ESG(T) must be very weak.

## 2. THE CHALLENGE OF IDENTIFYING TAX AVOIDANCE

Only two entities know the true extent of tax minimisation resulting from corporate profit shifting: the companies that shift profits and local tax authorities who collect information on taxpayer payments to associated enterprises. As tax information is confidential and the secrecy is guarded carefully by these two bodies, researchers looking to study the relationship between the views of shareholders, directors and customers need to find a surrogate indicator of tax avoidance. The one settled on by the vast majority of studies is the 'effective tax rate' (ETR) of companies being studied, a measurement that can be calculated by outsiders on the basis of publicly released

---

[16] *Commission Decision (EU) 2017/502 of 21 October 2015 on State Aid SA.38374 (2014/C ex 2014/NN) Implemented by the Netherlands to Starbucks* [2017] OJ L 83/38. The General Court annulled the Commission decision in *The Netherlands v Commission* (Joined Cases T-760/15 and T-636/16, EU:T:2019:669, 24 September 2019) ('*Starbucks*').

[17] *Commission Decision (EU) 2018/859 of 4 October 2017 on State Aid SA.38944 (2014/C) (ex 2014/NN) Implemented by Luxembourg to Amazon* [2018] OJ L153/1. On appeal, the General Court annulled the Commission decision in *Luxembourg, Amazon EU Sàrl and Amazon.com, Inc v European Commission* (Joined Cases T-816/17 and T-318/18, EU:T:2021:252, 12 May 2021). The Commission contested the judgment before the ECJ where its appeal was dismissed in *Commission v Amazon.com and Others* (Case C-457/21 P, EU:C:2023:985, 14 December 2023).

[18] European Commission, 'State Aid: European Commission Opens In-Depth Investigations into Tax Treatment of Nike in the Netherlands' (Press Release, 10 January 2019).

[19] European Commission, 'State Aid: European Commission Opens In-Depth Investigations into the Netherland's Tax Treatment of Inter IKEA' (Press Release, 18 December 2017).

information, at least in the case of companies listed on a stock exchange and thus required to make some financial information available to the general public.

The financial statements used to calculate a company's ETR may yield results quite different from taxable income on which tax is levied. Financial accounting may, for example, allow deductions that are not permitted for tax purposes (for example, for payments for fines or bribes), may allow deductions for commitments not recognised as outgoings for tax periods (for example, for accrued employee leave obligations), may require amortisation and recognition over time of expenses that can be expensed immediately for tax purposes or vice versa, and, in the case of unconsolidated accounts, will allow deductions for payments to related parties in low-tax jurisdictions that are not recognised for tax purposes.

While different terminology is used by different researchers and there are some small variations in the measurement formula, all ETR measurements rely on the same basic calculation. The effective tax rate borne by a company on its actual profits is calculated as the tax paid by the company on its taxable income calculated using the tax law as a percentage of its accounting income, that is, its net profits measured using accounting principles. Where the tax rate on accounting profits is low compared to the tax as a percentage of taxable income, the company is assumed to be engaged in tax avoidance.

Variations of the ETR measurement as a proxy indicator of tax avoidance include adjustments for different financing factors and a measurement that compares the reduction from accounting profits to taxable income as a proportion of the company's assets.

The assumption that a low ETR equates with tax avoidance may be problematic in many cases. While recent international initiatives by the Organisation for Economic Co-operation and Development (OECD) and the European Union have led to much greater access by national tax authorities to the financial accounts income of related entities abroad, and authorities can request consolidated accounts, information gaps remain. And even if full consolidated accounts were available, the ETR of the entire group may be lower than that in any particular country simply as a result of different statutory tax rates in different jurisdictions.

Within a single jurisdiction, at one end of the spectrum, as noted earlier, an ETR lower than the statutory tax rate may actually indicate that a company is adopting policies in line with and encouraged by the government. A company may, for example, deliberately invest in assets for which the government provides accelerated depreciation or even immediate write-offs to encourage greater investment in these assets, engage in subsidised activities such as research and development that attract special enhanced deductions or credits, derive income from transactions that qualify for lower or nil tax rates, or take steps to achieve government goals such as environmental protection or reduced emissions and that qualify for targeted tax expenditures. If the reduction of tax by use of measures positively endorsed and promoted by the government is regarded as a form of tax avoidance, it is 'state-induced avoidance'[20] that arguably should be applauded, not condemned.

[20] Simone de Colle and Ann Marie Bennett, 'State-Induced, Strategic, or Toxic? An Ethical Analysis of Tax Avoidance Practices' (2014) 33(1) *Business and Professional Ethics Journal* 53.

At the other end of the spectrum, depending on the company's accounting practices, a low ETR may indicate serious tax avoidance. For local subsidiaries of multinational enterprises headquartered elsewhere, accounting profits are profits of a company *after* tax avoidance has taken place as all profit shifting payments to affiliates are treated as ordinary deductible business expenses. They thus reduce the profit in the jurisdiction in which the profits were originally sourced and increase the profits in the lower-tax jurisdiction to which they flowed. In a perfectly executed profit shifting arrangement, the company in the higher-tax jurisdiction will have shifted a large portion of its profits to a tax haven and paid tax on the amount left. The ETR of the local subsidiary calculated using the remaining accounting profits will be very close to, if not the same as, the statutory tax rate imposed on taxable income.

The story may be different in the jurisdiction in which the head company of a multinational enterprise is resident. If company law or stock exchange listing rules require the use of the International Financial Reporting Standards (IFRS), the headquarters company will be required to present consolidated accounts of the company and its subsidiaries, including those in low-tax jurisdictions. This could lead to an ETR lower than the statutory rate in the headquarters jurisdiction. However, the IFRS only requires the inclusion of the group's 'controlled' subsidiaries in the consolidated accounts, leaving the company free to ignore subsidiaries owned by sister companies or entities higher up the ownership chain. And, in any case, the ETR based on consolidated accounting profits will differ from the statutory rate even if no transfer pricing takes place if tax rates differ in the jurisdictions in which profits are actually derived (as opposed to the jurisdictions to which profits are transferred). Any study of relationships between independent variables and tax avoidance must be regarded with scepticism if tax avoidance is equated with a low ETR in the study.

Ironically, studies that investigate the attitudes of shareholders, directors and the general public including customers and tax avoidance may be measuring exactly the opposite of what they set out to measure as a result of the flawed proxy for tax avoidance. Companies that the researchers view as tax avoiders are more likely to be those most closely aligning with the government's social and economic objectives by engaging in the activities that qualify for government tax subsidies, recorded in the government's budget documents as 'tax expenditures'. At most, the studies can show a particular group is largely indifferent to tax behaviour or reacts to one measurement of tax behaviour. They can also show connections between various independent variables such as ownership type (including the proportion of institutional, state, family, foreign, managerial and dual equity-owning and debt-owning shareholders) and a measurement of tax avoidance.[21]

Not all studies of factors affecting the views of different parties on corporate tax minimisation use the problematic ETR variations. One alternative is the use of revenue authority audits as a proxy for non-compliance[22] and another is the use of publicly

---

[21] Patrick Velte, 'Ownership Structure and Corporate Tax Avoidance: A Structured Literature Review on Archival Research' (2024) 25(3) *Journal of Applied Accounting Research* 696. See also Bryce C Tingle, 'What Do We Know about Shareholders' Potential to Solve Environmental and Social Problems?' (2023) 58(1) *Georgia Law Review* 169, 186.

[22] Lillian F Mills, 'Book-Tax Differences and Internal Revenue Service Adjustments' (1998) 36(2) *Journal of Accounting Research* 343; Lillian F Mills and Richard C Sansing, 'Strategic Tax and Financial Reporting Decisions: Theory and Evidence' (2000) 17(1) *Contemporary Accounting Research* 85, finding audit adjustments increase as book-tax differences increase.

available evidence of tax shelter use, a term denoting arrangements to take advantage of arrangements with no justifiable commercial purpose other than to defer recognition of taxable profits.[23] Other proxies used include tax disputes,[24] tax disclosures in CSR reports,[25] and evidence of corporate connections with affiliates (or head offices) based in tax havens.[26] The vast majority, however, use a version of ETR as the proxy for tax avoidance.

In short, there is no simple way to determine the extent to which a company may be avoiding tax. But without an accurate understanding of a company's level of tax avoidance, it would be impossible to correctly identify their tax behaviour in an ESG context.

## 3. WHO IS RESPONSIBLE FOR TAX AVOIDANCE?

Companies are artificial entities created in the interest of investors who seek to maximise returns on their invested capital by directing their funds into multi-owner and multi-part enterprises that enjoy synergies and reduced transaction costs which are not available to individual traders.[27] Multinational companies are able to enhance these advantages significantly by extending sales and supply chains globally. In a world yet to extend ESG evaluations to include (T) considerations, it might first be asked who is responsible for a company's tax avoidance. The company itself, of course, has no operating mind but pressure to avoid tax may come from another source – perhaps shareholders, the general public including customers, employees, or company directors, all of whom might, in theory, gain if the company's after-tax earnings were enhanced. The company itself also, again, of course, has no knowledge of tax avoidance schemes. The arrangements themselves must come from external sources, usually professional tax advisors, and be authorised by the board of directors,[28] though it remains a question whether they act in their own interest or at the behest of, or in the interest of, others.

There are, of course, connections between the interests. Directors wishing to retain their positions and remuneration are likely to adopt policies favoured by the shareholders who elect them and shareholders are likely to support policies favoured by customers whose purchases yield the profits shareholders seek. What do these three parties think about companies that pursue or forgo tax minimisation strategies? The answer to that question, as it turns out, has been the subject of a remarkably large number of studies, all of which, unfortunately, start with a severe handicap – the proxy used to identify tax avoidance is as likely to reflect admirable tax compliance as it is morally questionable

---

[23] Petro Lisowsky, Leslie Robinson and Andrew Schmidt, 'Do Publicly Disclosed Tax Reserves Tell Us About Privately Disclosed Tax Shelter Activity?' (2013) 51(3) *Journal of Accounting Research* 583, finding public disclosures reflect tax shelter participation disclosed to the IRS.

[24] John R Graham and Alan L Tucker, 'Tax Shelters and Corporate Debt Policy' (2006) 81(3) *Journal of Financial Economics* 563, finding less debt used by corporations engaging in tax sheltering.

[25] Inga Hardeck, Kerry K Inger, Rebekah D Moore and Johannes Schneider, 'The Impact of Tax Avoidance and Environmental Performance on Tax Disclosure in CSR Reports' (2024) 46(1) *Journal of the American Taxation Association* 83.

[26] Petro Lisowsky, 'Seeking Shelter: Empirically Modeling Tax Shelters Using Financial Statement Information' (2010) 85(5) *The Accounting Review* 1693; Preuss, above n 6; Grantley Taylor and Grant Richardson, 'International Corporate Tax Avoidance Practices: Evidence from Australian Firms' (2012) 47(4) *The International Journal of Accounting* 469.

[27] RH Coase, 'The Nature of the Firm' (1937) 4(16) *Economica* 386.

[28] Nubia Evertsson, 'Is the Top Leadership of the Organizations Promoting Tax Avoidance?' (2016) 23(2) *Journal of Financial Crime* 273.

tax avoidance. The links purportedly demonstrated in the studies are therefore as likely to reflect the opposite of what they claim to do as they are to reflect the apparent findings.

At the margin, some studies might best be euphemistically characterised as eccentric – an example being as a study purporting to show a link between tax avoidance and company CEO facial masculinity[29] – but there is no shortage of studies looking for links between tax avoidance behaviour and other company management attributes including the CEO's native language,[30] gender or tenure,[31] pre-career exposure to religion,[32] or a combination of tenure and financial experience.[33] Contrasting studies show there is no apparent relationship between CEO characteristics and tax avoidance.[34] Other studies show that tax avoidance is more likely for larger firms,[35] or when less quantitative data is shown in financial statement footnote disclosures;[36] and less likely when the tone is set by higher executives,[37] when directors have more tax expertise or performance-based incentives,[38] when entrenched managers hold a higher level of shares,[39] or when companies pursue sustainability policies.[40] Studies find that the tenure of individual audit committees and the size of audit committees also matter.[41] The results of more mainstream studies are sufficiently inconsistent to cast doubts about possible links

---

[29] Iman Harymawan, Nadia Anridho, Adib Minanurohman, Sri Ningsih, Khairul Anuar Kamarudin and Yulianti Raharjo, 'Do More Masculine-Faced CEOs Reflect More Tax Avoidance? Evidence from Indonesia' (2023) 10(1) *Cogent Business and Management* 2171644.

[30] Ke Na and Wenjia Yan, 'Languages and Corporate Tax Avoidance' (2022) 27(1) *Review of Accounting Studies* 148.

[31] Faith Ogagaoghene Obarolo, Mary Josiah and Omimi Ejoor, 'Chief Executive Officer (CEO) Attributes and Tax Avoidance Insight from Listed Non-Financial Firms in Nigeria' (2023) 5(9) *International Journal of Management and Entrepreneurship Research* 718; Ofuan James Ilaboya and Edosa Joshua Aronmwan, 'Chief Executive Officer's Attributes and Tax Avoidance: Evidence from Nigeria' (2023) 20(1) *International Journal of Disclosure and Governance* 99.

[32] Yu Chen, Ruchunyi Fu, Yi Tang and Xiaoping Zhao, 'CEOs' Pre-Career Exposure to Religion and Corporate Tax Avoidance' (2024) *Journal of Management Studies* (advance).

[33] Jiaojiao Qin, Jun Lin and Yan Xin, 'Corporate Tax Avoidance: The Impact of Performance Above Aspiration and CEO Experience' (2023) *Asia Pacific Journal of Management* (advance).

[34] Pieter van der Spuy and Phillip de Jager, 'Corporate Tax Avoidance: Is South African Society Negatively Affected by Chartered Accountant CEOs?' (2023) 119(11/12) *South African Journal of Science* 15549.

[35] Md Shamim Hossain, Md Sobhan Ali, Md Zahidul Islam, Chui Ching Ling and Chorng Yuan Fung, 'Nexus Between Profitability, Firm Size and Leverage and Tax Avoidance: Evidence from an Emerging Economy' (2024) *Asian Review of Accounting* (advance), finding large firms are more likely to engage in tax avoidance activities.

[36] Hanni Liu, 'Tax Aggressiveness and the Proportion of Quantitative Information in Income Tax Footnotes' (2022) 20(2) *Journal of Financial Reporting and Accounting* 352.

[37] Scott D Dyreng, Michelle Hanlon and Edward L Maydew, 'The Effects of Executives on Corporate Tax Avoidance' (2010) 85(4) *The Accounting Review* 1163. See, similarly, Mostafa Monzur Hasan, Gerald J Lobo and Buhui Qui, 'Organizational Capital, Corporate Tax Avoidance, and Firm Value' (2021) 70 *Journal of Corporate Finance* 102050.

[38] Grantley Taylor and Grant Richardson, 'Incentives for Corporate Tax Planning and Reporting: Empirical Evidence from Australia' (2014) 10(1) *Journal of Contemporary Accounting and Economics* 1; Mihir A Desai and Dhammika Dharmapala, 'Corporate Tax Avoidance and High-Powered Incentives' (2006) 79(1) *Journal of Financial Economics* 145.

[39] Ahmed A Sarhan, 'Corporate Social Responsibility and Tax Avoidance: The Effect of Shareholding Structure – Evidence from the UK' (2024) 21(1) *International Journal of Disclosure and Governance* 1.

[40] Patrick Velte, 'Sustainable Institutional Investors, Corporate Sustainability Performance, and Corporate Tax Avoidance: Empirical Evidence for the European Capital Market' (2023) 30(5) *Corporate Social Responsibility and Environmental Management* 2406.

[41] Manon Deslandes, Anne Fortin and Suzanne Landry, 'Audit Committee Characteristics and Tax Aggressiveness' (2020) 35(2) *Managerial Auditing Journal* 272.

between any independent variables and company tax avoidance.[42] It has further been suggested that companies with more foreign directors and more outside members on the board are more likely to avoid tax[43] while those with more women on the board are less likely to do so.[44] Other studies suggest companies with non-controlling large shareholders[45] on the share registers are less likely to avoid tax, results inconsistent with studies that show shareholders have no significant role in determining a company's tax behaviour.[46]

While a high ESG score and appropriate proxies such as high CSR ranking or environmental and sustainability scores may correlate with a greater willingness to pay taxes on profits,[47] the opposite may also be true, with companies using CSR reporting

---

[42] See literature reviews in Jemiolo and Farnsel, above n 6; Francesco Scarpa and Silvana Signori, 'Understanding Corporate Tax Responsibility: A Systematic Literature Review' (2023) 14(7) *Sustainability Accounting, Management and Policy Journal* 179; Jost Kovermann and Patrick Velte, 'CSR and Tax Avoidance: A Review of Empirical Research' (2021) 18(2) *Corporate Ownership and Control* 20; Francesco Scarpa and Silvana Signori, 'Ethics of Corporate Taxation: A Systematic Literature Review' in Jacob Dahl Rendtorff (ed), *Handbook of Business Legitimacy: Responsibility, Ethics and Society* (Springer, 2020) 459; Robert B Whait, Katherine L Christ, Eduardo Ortas and Roger L Burritt, 'What Do We Know About Tax Aggressiveness and Corporate Social Responsibility? An Integrative Review' (2018) 204 *Journal of Cleaner Production* 542; Xin Chang, Kangkang Fu, Yaling Jin and Pei Fun Liem, 'Sustainable Finance: ESG/CSR, Firm Value, and Investment Returns' (2022) 51(3) *Asia-Pacific Journal of Financial Studies* 325.

[43] Badar Alshabibi, Shanmuga Pria and Khaled Hussainey, 'Nationality Diversity in Corporate Boards and Tax Avoidance: Evidence from Oman' (2022) 12(3) *Administrative Sciences* 111; Roman Lanis and Grant Richardson, 'The Effect of Board of Director Composition on Corporate Tax Aggressiveness' (2011) 30(1) *Journal of Accounting and Public Policy* 50.

[44] Anis Jarboui, Maali Kachouri Ben Saad and Rakia Riguen, 'Tax Avoidance: Do Board Gender Diversity and Sustainability Performance Make a Difference?' (2020) 27(4) *Journal of Financial Crime* 1389; Riguen Rakia, Maali Kachouri and Anis Jarboui, 'The Moderating Effect of Women Directors on the Relationship Between Corporate Social Responsibility and Corporate Tax Avoidance? Evidence from Malaysia' (2024) 14(1) *Journal of Accounting in Emerging Economies* 1; Anissa Dakhli, 'Do Women on Corporate Boardrooms Have an Impact on Tax Avoidance? The Mediating Role of Corporate Social Responsibility' (2022) 22(4) *Corporate Governance* 821; Avit Tri Laksono and Erna Handayani, 'The Impact of Financial Distress, Women on Boards and Profitability on Corporate Tax Avoidance' (2024) 3(3) *East Asian Journal of Multidisciplinary Research* 999.

[45] Nindhita Nisrina Sari and Siti Nuryanah, 'The Role of Shareholders in Controlling Tax Avoidance: Evidence from ASEAN Countries' (2024) 21(3) *International Journal of Disclosure and Governance* 421.

[46] Dirk Kiesewetter and Johannes Manthey, 'Tax Avoidance, Value Creation and CSR – A European Perspective' (2017) 17(5) *Corporate Governance* 803.

[47] Michael Overesch and Sina Willkomm, 'The Relation Between Corporate Social Responsibility and Profit Shifting of Multinational Enterprises' (2024) *International Tax and Public Finance* (advance); Kaishu Wu, 'Corporate Social Responsibility and Tax Planning: Evidence from the Adoption of Constituency Statutes' (2023) 30 *Advances in Taxation* 71; Lassaad Abdelmoula, Salim Chouaibi and Jamel Chouaibi, 'The Effect of Business Ethics and Governance Score on Tax Avoidance: A European Perspective' (2022) 38(4) *International Journal of Ethics and Systems* 576; Jamel Chouaibi, Matteo Rossi and Nouha Abdessamed, 'The Effect of Corporate Social Responsibility Practices on Tax Avoidance: An Empirical Study in the French Context' (2022) 32(3) *Competitiveness Review* 326; Catriona Lavermicocca and Jenny Buchan, 'Role of Reputational Risk in Tax Decision Making by Large Companies' (2015) 13(1) *eJournal of Tax Research* 5; Silvia Bressan, 'ESG, Taxes, and Profitability of Insurers' (2023) 15(18) *Sustainability* 13937; Mashiyat Tasnia, Syed Musa Syed Jaafar AlHabshi and Romzie Rosman, 'The Impact of Corporate Social Responsibility on Stock Price Volatility of the US Banks: A Moderating Role of Tax' (2021) 19(1) *Journal of Financial Reporting and Accounting* 77; Hongli Jiang, Wenjie Hu and Pengcheng Jiang, 'Does ESG Performance Affect Corporate Tax Avoidance? Evidence from China' (2024) 61 *Finance Research Letters* 105056; Tao Zeng, 'Relationship Between Corporate Social Responsibility and Tax Avoidance: International Evidence' (2019) 15(2) *Social Responsibility Journal* 244; Bohyun Yoon, Jeong-Hwan Lee and Jin-Hyung Cho, 'The Effect of ESG Performance on Tax Avoidance – Evidence from Korea' (2021) 13(12) *Sustainability* 6729; Astrid Rudyanto and Kashan Pirzada, 'The Role

as a cosmetic tool to hedge against any reputation risk arising from tax avoidance.[48] Ultimately companies have to generate after-tax returns for the owners and if more has to be spent attaining higher ESG scores, a simple offset could be paying less tax, leading to a correlation between increased ESG performance (or CSR performance) and increased tax avoidance[49] or increased tax and reduced ESG performance.[50] Similarly, an increase in expenses due to environmental taxes may be associated with greater compensatory tax avoidance,[51] or better remuneration of employees might be offset with increased tax avoidance or, perhaps, reflect the risk premium required by employees to be associated with a firm that engages in tax avoidance.[52] This logic could help explain findings that greater geopolitical tensions that increase risk profiles (regional instability,

---

of Sustainability Reporting in Shareholder Perception of Tax Avoidance' (2021) 17(5) *Social Responsibility Journal* 669; Astrid Rudyanto, 'Does Tax Disclosure in Global Reporting Initiative (GRI)-Based Sustainability Reporting Mitigate Aggressive Tax Avoidance? Evidence from a Developing Country' (2024) *Journal of Global Responsibility* (advance); Eduardo Ortas and Isabel Gallego-Álvarez, 'Bridging the Gap Between Corporate Social Responsibility Performance and Tax Aggressiveness: The Moderating Role of National Culture' (2020) 33(4) *Accounting, Auditing and Accountability Journal* 825; Stewart Jones, Max Baker and Ben Forrest Lay, 'The Relationship Between CSR and Tax Avoidance: An International Perspective' (2017) 32(1) *Australian Tax Forum* 95; Kiesewetter and Manthey, above n 46; Jaehong Lee, Suyon Kim and Eunsoo Kim, 'Designation as the Most Admired Firms to the Sustainable Management of Taxes: Evidence from South Korea' (2021) 13(14) *Sustainability* 7994; Luca Menicacci and Lorenzo Simoni, 'Negative Media Coverage of ESG Issues and Corporate Tax Avoidance' (2024) 15(7) *Sustainability Accounting, Management and Policy Journal* 1; Mohammed Benlemlih, Jamil Jaballah, Sholom Schochet and Jonathan Peillex, 'Corporate Social Responsibility and Corporate Tax Avoidance: The Channel Effect of Consumer Awareness' (2023) 50(1-2) *Journal of Business Finance and Accounting* 31; Chun Keung Hoi, Qiang Wu and Hao Zhang, 'Is Corporate Social Responsibility (CSR) Associated with Tax Avoidance? Evidence from Irresponsible CSR Activities' (2013) 88(6) *The Accounting Review* 2025; Roman Lanis and Grant Richardson, 'Is Corporate Social Responsibility Performance Associated with Tax Avoidance?' (2015) 127(2) *Journal of Business Ethics* 439.

[48] Souhir Abid and Saîda Dammak, 'Corporate Social Responsibility and Tax Avoidance: The Case of French Companies' (2022) 20(3/4) *Journal of Financial Reporting and Accounting* 618; Tânia Menezes Montenegro, 'Tax Evasion, Corporate Social Responsibility and National Governance: A Country-Level Study' (2021) 13(20) *Sustainability* 11166; Dylan Minor and John Morgan, 'CSR as Reputation Insurance: *Primum Non Nocere*' (2011) 53(3) *California Management Review* 1; David J Emerson, Ling Yang and Ruilian Xu, 'Investors' Responses to Social Conflict between CSR and Corporate Tax Avoidance' (2020) 19(1) *Journal of International Accounting Research* 57.

[49] Nasir Khan, Ogunleye Oluwasegun Abraham, Adegboye Alex, Damilola Felix Eluyela and Iyoha Francis Odianonsen, 'Corporate Governance, Tax Avoidance, and Corporate Social Responsibility: Evidence of Emerging Market of Nigeria and Frontier Market of Pakistan' (2022) 10(1) *Cogent Economics and Finance* 2080898; Vidiyanna Rizal Putri, Nor Balkish Zakaria, Jamaliah Said and Maz Ainy Abdul Azis, 'Do Foreign Ownership, Executive Incentives, Corporate Social Responsibility Activity and Audit Quality Affect Corporate Tax Avoidance?' (2023) 16(2) *Indian Journal of Corporate Governance* 218; Kadarisman Hidayat and Diana Zuhroh, 'The Impact of Environmental, Social and Governance, Sustainable Financial Performance, Ownership Structure, and Composition of Company Directors on Tax Avoidance: Evidence from Indonesia' (2023) 13(6) *International Journal of Energy Economics and Policy* 311; Ones Amri and Hasna Chaibi, 'The Moderating Role of Tax Avoidance on CSR and Stock Price Volatility for Oil and Gas Firms' (2023) *EuroMed Journal of Business* (advance); Xiang-Yuan Ao, Tze San Ong, Roberto Aprile and Assunta Di Vaio, 'Environmental Uncertainty and Digital Technologies Corporate in Shaping Corporate Green Behavior and Tax Avoidance' (2023) 13 *Scientific Reports* 22170.

[50] Liyuan Meng and Yuchen Zhang, 'Impact of Tax Administration on ESG Performance – A Quasi-Natural Experiment Based on China's Golden Tax Project III' (2023) 15(14) *Sustainability* 10946.

[51] Keyu Lai and Xuming Hu, 'The Influence of Changing Emission Charge into Environmental Tax on Firms' Tax Avoidance' in Jiuping Xu, Fausto Pedro García Márquez, Mohamed Hag Ali Hassan, Gheorghe Duca, Asaf Hajiyev and Fulya Altiparmak (eds), *Proceedings of the Fifteenth International Conference on Management Science and Engineering Management, Vol 1* (Springer, 2021) 775.

[52] Sholom Schochet, Mohammed Benlemlih and Jamil Jaballah, 'Is Corporate Tax Avoidance Related to Employee Treatment?' (2022) 69 *Journal of Empirical Finance* 63.

terrorist attack, coups, climate change territorial clashes, etc) are associated with higher levels of tax avoidance.[53]

In conclusion, it can be seen that the factors of company governance that may encourage or discourage corporate tax minimisation are almost impossible to pin down. Without knowing exactly what explains decisions to engage in tax avoidance, it is difficult to rank a company's tax behaviour.

## 4. Does anyone care about 'T'?

Whether the general public really cares about corporate tax avoidance is unclear. There are, to be sure, movements by global organisations such as the International Monetary Fund, OECD, United Nations and World Bank Group to promote global tax policies that are less susceptible to international tax avoidance[54] and public interest groups such as the Tax Justice Network[55] as well as international charities such as Oxfam[56] regularly criticise corporate tax avoidance behaviour. But while it may be the case that firms are less likely to pursue aggressive tax avoidance in jurisdictions with high levels of social capital in the sense of shared values and beliefs,[57] there is no convincing evidence that the general public is greatly concerned about the level of corporate tax avoidance.[58] Experience suggests that, to the contrary, negative reactions from social constituencies may be both short-lived and ineffective in terms of long-term corporate behavioural change.[59]

One group that should be interested in corporate tax behaviour is that comprising shareholders, though it is difficult to predict the pressure they might exert. On the one hand, greater avoidance could increase after-tax yields.[60] Alternatively, it could increase the risk of tax authority audits or consumer backlashes, yielding lower profits in the

---

[53] Vishnu K Ramesh and A Athira, 'Geopolitical Risk and Corporate Tax Behavior: International Evidence' (2024) 20(2) *International Journal of Managerial Finance* 406; Yingzhao Ni, Zhian Chen, Donghui Li and Shijie Yang, 'Climate Risk and Corporate Tax Avoidance: International Evidence' (2022) 30(2) *Corporate Governance* 189.

[54] Alfio Valsecchi, 'What Corporate Tax Policy Has to Do with Sustainability and How Companies Should Deal with It' (2022) 14(1) *World Tax Journal* 113.

[55] John Hasseldine and Gregory Morris, 'Unacceptable Tax Behaviour and Corporate Responsibility' in Nigar Hashimzade and Yuliya Epifantseva (eds), *The Routledge Companion to Tax Avoidance Research* (Routledge, 2018) 430 ('Unacceptable Tax Behaviour and Corporate Responsibility'); Nathan C Goldman and Christina M Lewellen, 'Ethical Considerations of Corporate Tax Avoidance: Diverging Perspectives from Different Stakeholders' in Eileen Z Taylor and Paul F Williams (eds), *The Routledge Handbook of Accounting Ethics* (Routledge, 2021) 258.

[56] Hasseldine and Morris, 'Unacceptable Tax Behaviour and Corporate Responsibility', above n 55.

[57] Justin Chircop, Michele Fabrizi, Elisabetta Ipino and Antonio Parbonetti, 'Does Social Capital Constrain Firms' Tax Avoidance?' (2018) 14(3) *Social Responsibility Journal* 542.

[58] Lisa Baudot, Joseph A Johnson, Anna Roberts and Robin W Roberts, 'Is Corporate Tax Aggressiveness a Reputation Threat? Corporate Accountability, Corporate Social Responsibility, and Corporate Tax Behavior' (2020) 163(2) *Journal of Business Ethics* 197; John R Graham, Michelle Hanlon, Terry Shevlin and Nemit Shroff, 'Incentives for Tax Planning and Avoidance: Evidence from the Field' (2014) 89(3) *The Accounting Review* 991, finding it difficult to test the relationship between reputational concerns and corporate engagement in tax planning. See further the literature review in Kimberly S Krieg and John Li, 'A Review of Corporate Social Responsibility and Reputational Costs in the Tax Avoidance Literature' (2021) 20(4) *Accounting Perspectives* 477.

[59] See, eg, Jia Lynn Yang, 'The British Want to Stop Starbucks from Dodging Taxes. It Won't Work', *Washington Post* (19 April 2014).

[60] Kumari Juddoo, Issam Malki, Sudha Mathew and Sheeja Sivaprasad, 'An Impact Investment Strategy' (2023) 61(1) *Review of Quantitative Finance and Accounting* 177.

longer term. Complicating the calculation is the possible impact of governance factors on shareholder pressure for lesser or greater avoidance behaviour[61] and the moderating effect of shareholder views on corporate social responsibilities and tax.[62] Not surprisingly, studies that purport to show shareholders' views on tax avoidance as evidenced by changes in share prices following tax avoidance disclosures are at best contradictory. Some studies show tax avoidance correlates with reduction in share values[63] and others with rises in share value.[64] The actual impact remains a mystery, though it is possible it depends on the impact of further independent variables and thus differs in each case.

## 5. THE FOUNDATIONS FOR TAX AVOIDANCE

There is much about corporate tax avoidance that we know. We know that we do not know whether theoreticians think it is good or bad behaviour. We know that we do not know who is the driving force behind companies' tax behaviour. We know that we do not know whether shareholders think it is good or bad for their companies to avoid tax. What do governments, the destination of taxes that are not avoided, think of the practice? The view of states could help us find an answer to the question of whether investors should consider the tax behaviour of corporations when evaluating companies by reference to ESG standards. If governments decry corporate tax avoidance, the behaviour on its face certainly appears anti-social. If, on the other hand, governments make a show of condemning the behaviour while legislatively facilitating it, it would be reasonable to conclude that legislatures believe tax revenues are secondary to the indirect benefits states derive by hosting corporations, and those evaluating company behaviour should not regard avoidance in negative terms.

A full understanding of legislatures' views on tax avoidance requires a trip back in time, to a century ago when the victorious World War I Allies created the League of Nations, a body intended to establish norms of international behaviour. Among the many issues referred to the body by national governments and international organisations was the question of taxing rights over multinational enterprises. Shortly before, during and after the war, almost all developed economies had adopted company income tax regimes and many shared a twin-pronged tax base design: resident companies were taxed on their worldwide income and non-resident companies on their local-source income. The parallel tax bases posed a dilemma for multinational companies that potentially faced double taxation of foreign-source income, in the home country on the basis of their residency and in the source country on the basis of the income's source.

The problem was soon addressed by way of unilateral responses with most home countries providing credits for foreign income tax levied on foreign-source income or

[61] Mihir A Desai and Dhammika Dharmapala, 'Corporate Tax Avoidance and Firm Value' (2009) 91(3) *Review of Economics and Statistics* 537.
[62] Ann Boyd Davis, Rebekah D Moore and Timothy J Rupert, 'Corporate Social Responsibility and Tax Management: The Moderating Effect of Beliefs about Corporate Tax Duty' (2022) 44(2) *Journal of the American Taxation Association* 35.
[63] Rustandi Rustandi and Etty Murwaningsari, 'The Effect of Environmental, Social and Governance (ESG) Business Strategy on Tax Aggressiveness with Corporate Social Responsibility (CSR) as a Moderation Variable' (2024) 4(1) *Asian Journal of Management, Entrepreneurship and Social Science* 421; Xudong Chen, Na Hu, Xue Wang and Xiaofei Tang, 'Tax Avoidance and Firm Value: Evidence from China' (2013) 5(1) *Nankai Business Review International* 25.
[64] Mouna Guedrib and Ghazi Marouani, 'The Interactive Impact of Tax Avoidance and Tax Risk on the Firm Value: New Evidence in the Tunisian Context' (2023) 31(2) *Asian Review of Accounting* 203.

exempting the income from resident company taxation if it had been subject to tax abroad.[65] The solution clearly favoured source-country taxation over residence-country taxing rights and capital-exporting nations looked for a mechanism that would create a more even allocation of taxing rights. The Finance Committee of the League of Nations was asked to develop a solution and the proposal of the Committee of Experts appointed to devise a solution was the adoption of a global 'formulary apportionment' system to allocate taxing rights over the profits of a multinational enterprise to all the countries in which it had a presence or customers.[66] The proposed system allocated profits using a three-pronged formula with each jurisdiction receiving taxing rights over a share of a multinational's profits based on their share of the global tangible capital, labour costs and sales destinations of the group. The first two factors measured the two inputs that created goods and services sold by a multinational and the third the necessary output, a buyer willing to pay more than the cost of production.

The proposed system has proved robust – it was adopted in a number of federal jurisdictions with subnational income taxes (the US, Canada and Australia) to allocate profits within the jurisdictions and more recently has been proposed for use within the EU.[67] It was not favoured by all members, however, and separately rejected for use at the international level by the US, the country that sponsored the formation of the League of Nations but ultimately decided not to join the global body. The US, unsurprisingly, preferred a system that favoured the allocation of taxing rights to resident companies, that is capital-exporting nations. Despite the fact that the US was not a member of the League, as the world's leading economic power, it had great sway over economic aspects of the organisation and subsequent to the release of the international taxation recommendation had successfully nominated Thomas S Adams, an American academic, as head of the Fiscal Committee. He in turn appointed an American tax lawyer and advisor to the US government, Mitchell B Carroll, to head an investigation into alternative systems to allocate the profits of a multinational enterprise.

Carroll recommended the adoption of an international profit allocation system now known as the separate entity and arm's length system. Under this system, each part of an enterprise would be regarded as a separate entity unrelated to other parts of the same enterprise except that all transactions between the parts would be treated for tax purposes as having taken place at the arm's length price if that differs from the price nominated by the members of the same enterprise. The arm's length price is the price that unrelated entities would charge for a comparable transaction.

---

[65] Mitchell B Carroll, 'Evolution of US Treaties to Avoid Double Taxation of Income Part II' (1968) 3(1) *The International Lawyer* 129.

[66] League of Nations, *Report on Double Taxation Submitted to the Financial Committee by Professors Bruins, Einaudi, Seligman, and Sir Josiah Stamp*, League of Nations Doc No EFS 73/F 19 (League of Nations, 1923). See further C John Taylor, 'Twilight of the Neanderthals, or Are Bilateral Double Taxation Treaty Networks Sustainable?' (2010) 34(1) *Melbourne University Law Review* 268.

[67] The plan was originally presented as a proposal for a 'Common Consolidated Corporate Tax Base' (CCCTB), which was subsequently modified and reissued as the 'Business in Europe: Framework for Income Taxation (BEFIT)' proposal: European Commission <https://taxation-customs.ec.europa.eu/taxation-1/corporate-taxation/business-europe-framework-income-taxation-befit_en>. The evolution is described in European Parliament, 'Legislative Train Schedule, Common Corporate Tax Base (CCTB)' <https://www.europarl.europa.eu/legislative-train/package-action-plan-on-corporate-taxation/file-common-corporate-tax-base-(cctb)>.

Carroll's proposal prevailed and was incorporated into model bilateral tax treaties published by the League of Nations in various iterations until its dissolution in 1946.[68] Faced with other priorities, the successor to the League, the UN, did not take up the League's tax work and the model treaties remained in a state of limbo until 1963 when the newly formed OECD published a model for member nations based on separate entity, arm's length profit allocation principles. The UN subsequently reviewed the impact of treaties between developing and higher income countries[69] before releasing a manual for negotiating tax treaties in 1979[70] and its own model treaty in 1980.[71] The UN model retained the separate entity, arm's length profit allocation system of the OECD model.

The impact of the choice of allocation system was significant for the ESG(T) debate. The operation of the two systems is best illustrated with an example using, say, a technology company that invests considerable labour costs and capital costs in, say, California, to develop a personal hand-held communications device that is sold worldwide, including in Singapore. The customers buy the device for all the features that were developed in California and under the formulary apportionment tax regime first recommended for the international tax system, taxing rights over the profits would be allocated to California and Singapore. Under the separate entity, arm's length approach, the company could transfer its intellectual property to another (and likely low-tax) jurisdiction and then pay itself to use its only trademark, logo, design, copyright, and so forth. It could also borrow money from itself via a finance arm in a lower-tax jurisdiction and pay itself for different services such as marketing services from a subsidiary notionally located in a lower-tax jurisdiction. The result could be very low taxable profits in California or Singapore and very high profits in a tax haven.

Tax authorities have found it almost impossible to unwind these arrangements for tax purposes. The only tool authorities have is the arm's length price rule, arguing that the subsidiaries or branches in higher-tax jurisdictions paid above the arm's length price for services from the low-tax parts of the enterprise.[72] It is, however, almost impossible to

---

[68] Christina Allen, 'Disentangling Taxation Rights Rules in Business Taxation: Tracing the Work of International Organisations' (2022) 28(4) *New Zealand Journal of Taxation Law and Policy* 345; Nikki J Teo, *The United Nations in Global Tax Coordination: Hidden History and Politics* (Cambridge University Press, 2023); Sunita Jogarajan, *Double Taxation and the League of Nations* (Cambridge University Press, 2018).

[69] United Nations, *Tax Treaties Between Developed and Developing Countries: First Report*, UN Doc ST/ECA/110 (1969); United Nations, *Tax Treaties Between Developed and Developing Countries: Second Report*, UN Doc ST/ECA/137 (1970); United Nations, *Tax Treaties Between Developed and Developing Countries: Third Report*, UN Doc ST/ECA/166 (1972); United Nations, *Tax Treaties Between Developed and Developing Countries: Fourth Report*, UN Doc ST/ECA/188 (1973); United Nations, *Tax Treaties Between Developed and Developing Countries: Fifth Report*, UN Doc ST/ESA/18 (1975); United Nations, *Tax Treaties Between Developed and Developing Countries: Sixth Report*, UN Doc ST/ESA/42 (1976); United Nations, *Tax Treaties Between Developed and Developing Countries: Seventh Report*, UN Doc ST/ESA/79 (1978).

[70] United Nations, *Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries* (United Nations, 1979).

[71] United Nations, *Model Double Taxation Convention between Developed and Developing Countries* (United Nations, 1980).

[72] Because profit shifting is consistent with the law provided a plausible arm's length price is offered, it cannot be attacked using conventional general anti-avoidance rules (GAARs). For a description of the role of GAARs, see Judith Freedman, 'United Kingdom' in Michael Lang, Jeffrey Owens, Pasquale Pistone, Alexander Rust, Josef Schuch and Claus Staringer (eds), *GAARs – A Key Element of Tax Systems in the Post-BEPS World* (IBFD Publications, 2016) 741. Australia amended its GAAR to add a 'diverted profits

succeed fully using an arm's length price argument as this requires authorities to show the price used was inconsistent with the price that would have been used by unrelated parties undertaking comparable transactions. By definition, the transactions would only take place within a single enterprise, so there could never be truly comparable transactions. Starbucks does not license unrelated companies to use its logo and name to sell coffee. Nike does not license competitors to allow them to use its Swoosh on their shoes. Apple does not license access to its software to allow third parties to call their phones iPhones.[73] And so on.

Despite the challenges, tax authorities regularly dispute transfer prices nominated by taxpayers and often are able to convince courts to make small adjustments to the transfer prices used by the intragroup parties. Even in their most successful cases, authorities do not stop transfer pricing; at best they reduce the impact slightly.[74] The reality is that the underlying transaction would not have taken place but for the separate entity/arm's length system and any transfer price results in some profit shifting. In this environment, how should ESG proponents evaluate tax behaviour?

## 6. SHOULD ESG BE EXTENDED TO ESG(T)?

Advocates of ESG evaluations considering an extension of the valuation criteria to include 'T' face a significant initial challenge: no one except the company and to a lesser extent tax authorities know whether a company is avoiding tax. As explained above, the most common proxy for tax avoidance used by researchers appears to be the ETR of companies in higher-tax jurisdictions. This indicator may broadly reflect the tax burden (and tax avoidance) of a multinational enterprise if it is based on comprehensive consolidated accounts of the global reach of the enterprise. Equally, in selected jurisdictions it may reflect positive tax compliance based on adoption of state-induced incentives that align with the local government's social and economic development programs. It is not a useful proxy for ESG(T) purposes.

An apparent alternative source of information is the public tax disclosure statements issued by some companies in some jurisdictions. Unfortunately, however, they tell little beyond the company's narrative of good behaviour.[75] Indeed, the disclosures are as likely as not to exculpate companies if they can, for example, explain away tax haven subsidiaries as legacy holdings inherited in the course of takeovers or past mergers.[76]

In some cases authorities make public the 'country-by-country' reports required by jurisdictions that have enacted local legislation to implement parts of an action plan

---

tax' but the provision only catches profit shifts attributable to contrived arrangements and has no application to transfer pricing where a plausible arm's length price is used.

[73] Rachel Brewster, 'Enabling ESG Accountability: Focusing on the Corporate Enterprise' [2022] (6) *Wisconsin Law Review* 1367. This article, discussing ESG accountability from the perspective of corporate enterprise law, starts with two examples of Apple transferring intellectual property and shipping companies incorporating multiple subsidiaries for multiple ships.

[74] See, eg, *Chevron Australia Holdings Pty Ltd v Federal Commissioner of Taxation* (2017) 105 ATR 599, where the Court allowed the taxpayer to deduct intragroup interest payments far above the actual cost to the group of borrowed funds from an external lender.

[75] McCredie, Sadiq and Krever, above n 12.

[76] Vodafone, for example, explains its subsidiaries in jurisdictions identified in various tax avoidance reports as 'legacy' holdings that result from prior acquisitions. See further 'Vodafone, Luxembourg and "Tax Havens"', *Vodafone* (Web Page) <https://www.vodafone.com/about-vodafone/reporting-centre/tax-and-economic-contribution/vodafone-luxembourg-and-tax-havens>.

sponsored by the OECD.[77] While these reports do not provide details of companies' particular profit shifting arrangements, they do contain information on profits derived through low-tax or no-tax jurisdictions and the relative size of those compared to the total profits of the enterprise can be a useful surrogate indicator of tax avoidance. The scope of country-by-country reports is limited, however, and extends to only a small percentage of the world's companies with cross-border arrangements in place.[78]

Identifying companies that avoid tax is just the first step in the evaluation of firms in terms of possible ESG(T) benchmarks. The difficult step is determining whether tax avoidance equates with less ethical, moral or social behaviour. Some of those who advocate most strongly for consideration of tax burdens when evaluating companies' behaviour concede directly or inadvertently that low taxes may be the result of explicit government policies.[79]

To the extent companies take active steps to avoid tax, the most effective and widely used technique is by shifting profits to low-tax jurisdictions by using the international profit allocation rules chosen by the governments of jurisdictions in which they derived their profits. Those governments are well aware of the alternative methodology that could be used to identify the actual source of profits as opposed to the jurisdictions nominated by the companies that minimise their tax burdens but choose not to adopt those systems, even though lower-tier governments in these jurisdictions have adopted the alternative to allocate profits between subnational governments.

In effect, by adopting the separate entity, arm's length system for allocating the global profits of multinational enterprises, governments force companies to nominate the sources of their profits and to arrange internal transactions so they achieve the chosen allocation. How should companies that use the election offered them to reduce tax burdens be judged? Both the policy and letter of the law enable and encourage taxpayers to nominate the source of their profits using whatever criteria the taxpayers choose. Moreover, governments have indicated time and again they have no objection to profit shifting and tax minimisation where the nominated transfer prices used to shift profits fall within their guidelines.[80] If some tax avoidance is state-induced (concessions to

---

[77] Annet Wanyana Oguttu, 'Curtailing BEPS through Enforcing Corporate Transparency: The Challenges of Implementing Country-by-Country Reporting in Developing Countries and the Case for Making Public Country-by-Country Reporting Mandatory' (2020) 12(1) *World Tax Journal* 167; OECD, 'Country-by-Country Reporting for Tax Purposes' <https://www.oecd.org/en/topics/country-by-country-reporting-for-tax-purposes.html> (accessed 17 October 2024), reporting around 120 jurisdictions have adopted a country-by-country obligation.

[78] Maria Theresia Evers, Ina Meier and Christoph Spengel, 'Country-by-Country Reporting: Tension Between Transparency and Tax Planning' (Centre for European Economic Research Discussion Paper No 17-008, 2016); Michelle Hanlon, 'Country-by-Country Reporting and the International Allocation of Taxing Rights' (2018) 72(4/5) *Bulletin for International Taxation* 209; Felix Hugger, 'The Impact of Country-by-Country Reporting on Corporate Tax Avoidance' (IFO Institute Working Paper 304, 2019); Richard Murphy, Petr Janský and Atul Shah, 'BEPS Policy Failure – The Case of EU Country-by-Country Reporting' [2019] (1) *Nordic Tax Journal* 63.

[79] See, for example, Danielle A Chaim and Gideon Parchomovsky, 'The Missing "T" in ESG' (2024) 77(3) *Vanderbilt Law Review* 789, 792, who cite resources that attribute the doubling of the number of companies in the US that reduced their tax liabilities to zero to deliberate concessional policies legislated by a sympathetic federal government.

[80] Allison Christians, 'How Starbucks Lost Its Social License – and Paid £20 Million to Get It Back' (2013) 71(7) *Tax Notes International* 637.

achieve the state's social or economic objectives), many of the remaining opportunities are state-invited or examples of state acquiescence.

There is logic to evaluating companies by reference to a criterion that has no legal, moral or ethical basis. If governments establish a system that invites companies to arrange their affairs in a way that minimises tax on returns from their investment in capital and workers and the consideration received by consumers happy to acquire the companies' goods and services, the governments must have concluded the welfare gains from investment, employment and consumption exceed the value of the taxes forgone by way of the election offered. ESG evaluators should not second-guess tax policy-makers in respect of this judgment call.

*eJournal of Tax Research (2024) vol. 22, no. 3, pp. 462-491*

# The concept of sustainable taxation and its impact on tax policy

Kasem Zotkaj* and Flurim Aliu**

***Abstract***

The concepts of sustainability and taxation are increasingly associated with each other, and the question of sustainable taxation has never been more urgent. Sustainable taxation, which is still largely vague, carries the risk of moral subjectivity and threatens to influence policy-makers and taxpayers. This article performs a concept analysis to clarify the concept of sustainable taxation and its fundamental characteristics. Furthermore, this article highlights the interaction between tax policy and the Sustainable Development Goals (SDGs), distinguishing between indirect and direct implications. Indirectly, tax policy serves as a supportive mechanism to achieve the SDGs by promoting domestic resource mobilisation and financing sustainable development through tax revenues. On the other hand, direct support requires the design of tax laws with regulatory objectives in mind that go beyond mere revenue generation. Both these interactions represent two of the main objectives of taxation, revenue generation and behavioural regulation.

**Keywords**: sustainable taxation, tax policy, sustainable development goals (SDGs)

* Academic Research Assistant and PhD Candidate at the Chair for Business Taxation and the Laws of International and Liechtenstein Taxation at the Liechtenstein Business Law School at the University of Liechtenstein, Vaduz, Liechtenstein.
** Fellow at Council on Economic Policies, Zürich, Switzerland.

## 1. INTRODUCTION

The international tax architecture is undergoing significant transformation and increasingly focusing on sustainability-linked reforms. Among the two main objectives of taxation, revenue generation and behavioural regulation, both are utilised as crucial instruments to achieve broader sustainability objectives. Concurrently, sustainability-related initiatives are increasingly incorporating taxation as an essential supportive means to attain these objectives. There appears to be a relationship of interchangeability between the inclusion of tax policy into the sustainability agenda and vice versa, the integration of sustainability principles into tax reforms and initiatives. Regardless of how this interaction is viewed, understanding the nature of the relationship between taxation and sustainability is crucial.

The primary motivator for research in this discipline is the noticeable lack of a clear definition and concept of sustainable taxation.[1] Despite the increasing discourse on sustainable taxation, there remains ambiguity regarding what it implies and how it should be operationalised. To address this gap, this study raises two research questions: 1) what is sustainable taxation and what are the main characteristics of the sustainable taxation concept, and 2) how do tax policies and laws interact with sustainability?

To answer these research questions, the authors employ a concept analysis methodology. This approach enables a thorough examination of the existing literature and the application of sustainable taxation. Initially, it is crucial to understand the use of sustainability as a concept from a tax perspective, to narrow down the broad and rather unquantifiable concept of sustainability, and then to incorporate it into the tax landscape. This particular step considers the two-way relationship (tax in sustainability and sustainability in tax) as described above. As observed, the most feasible sustainability parameter from a tax perspective is the Sustainable Development Goals (SDGs)[2] and, consequently, the authors define sustainable taxation as 'the alignment of tax reforms with the SDGs'.[3] This definition emphasizes the role of tax policy in supporting sustainable development and provides a foundation for further exploration of its practical implications.

As a second step, this article aims to illustrate the practical use of the concept. In doing so, the authors highlight the complex interaction between the SDGs and tax policies, making a clear distinction between indirect and direct implications. The authors follow

---

[1] Danuše Nerudová, David Hampel, Jitka Janová, Marian Dobranschi and Petr Rozmahel 'Tax System Sustainability Evaluation: A Model for EU Countries' (2019) 54(3) *Intereconomics* 138 ('Tax System Sustainability Evaluation'); Karie Davis-Nozemack and Kathryn Kisska-Schulze, 'Applying Sustainability to Tax' (2020) 23(2) *Florida Tax Review* 502.

[2] Numerous scholars rely on the SDGs as their preferred term for sustainability. See Cécile Brokelind and Servaas van Thiel (eds), *Tax Sustainability in an EU and International Context* (IBFD Publications, 2020); Leonie C Kopetzki, Christoph Spengel and Stefan Weck, 'Moving Forward with Tax Sustainability Reporting in the EU – A Quantitative Descriptive Analysis' (2023) 15(2) *World Tax Journal* 291; Annet Wanyana Oguttu, 'Tax Reforms for Africa to Achieve the UN Sustainable Development Goals in the Post-COVID-19 Economic Fallout' [2021] (3) *British Tax Review* 298.

[3] For all the 17 goals and their content, see Table 1 (Appendix). For more detailed information, refer to United Nations General Assembly, *Transforming Our World: The 2030 Agenda for Sustainable Development*, Resolution A/RES/70/1, 25 September 2015 ('*The 2030 Agenda*').

the already established approach by Pirlot in this regard.[4] Indirectly, tax policy serves as a supportive mechanism to achieve the SDGs by promoting domestic revenue mobilisation and financing sustainable development through tax revenues. This includes measures such as improving tax efforts and consequently tax potential, strengthening anti-tax avoidance and evasion measures, and enhancing international tax cooperation. On the other hand, direct interaction requires the design of tax laws, through the introduction of tax reforms, expenditures, and incentives, with specific behavioural regulatory objectives to achieve. This involves tax incentives for sustainable behaviour, an increased tax burden on harmful and unsustainable activities, and the utilisation of tax policy as a tool for social equity and economic redistribution.

In conclusion, this study seeks to deepen the understanding of sustainable taxation and its critical role in contemporary tax policy. By clarifying the concept and exploring its practical implications, the authors aim to contribute to the ongoing discourse on how taxation can support sustainable development. The findings of this study are expected to provide valuable insights for policy-makers, researchers, and practitioners interested in employing tax policy for sustainable outcomes.

This article is organised as follows. Section 2 lays out the scene by providing a background on the United Nation's Sustainability Agenda. Section 3 describes the performed methodology in this study. Section 4 elaborates on the description and defines the concept of sustainable taxation. Section 5 analyses the application of sustainability in a tax context and focuses on the interaction between the SDGs and tax policy. Section 6 presents the tax institutional role in supporting sustainability targets. Section 7 elaborates on challenges that the achievement of sustainable taxation may encounter, and section 8 concludes the article.

## 2. UNITED NATIONS SETTING THE SUSTAINABILITY SCENE

For decades, the United Nations (UN) has been responsible for leading the efforts to promote sustainability and the role of the UN has been a major breakthrough as its programs are the most comprehensive and inclusive.[5] These programs cover decades of efforts to understand sustainability, raise awareness, draft specific goals and targets to achieve sustainability, and more. Prior to setting the scene for a global consensus on the SDGs, the UN started a campaign as early as 1992 for a National Sustainable Development Strategy (NSDS) where jurisdictions were called upon to integrate economic, social and environmental objectives into a strategically focused plan of action at the national level.[6] During the 19th Special Session of the General Assembly in June 1997, member states acknowledged the importance of NSDS and set 2002 as a target year for the formulation and communication of their national strategies. An example of such a national strategy is the case of the Austrian Strategy for Sustainable Development[7] published in April 2002. Tax matters were included in certain policy areas, such as lowering the tax burden for individual taxpayers to create greater tax

---

[4] Alice Pirlot, 'A Legal Analysis of the Mutual Interactions between the UN Sustainable Development Goals (SDGs) and Taxation' in Cécile Brokelind and Servaas van Thiel (eds), *Tax Sustainability in an EU and International Context* (IBFD Publications, 2020) 87.

[5] See *Charter of the United Nations* and *Statute of the International Court of Justice*.

[6] Elaborated in section 8.7 of United Nations, *United Nations Conference on Environment and Development: Agenda 21* (June 1992).

[7] Austrian Federal Government, *The Austrian Strategy for Sustainable Development: A Sustainable Future for Austria* (April 2002).

equity,[8] appropriate tax incentives to promote education and training programs, further development of the system of environmental taxes, energy taxes, taxes on labour and taxes on transport. During the next two decades, many more significant targets[9] were set by the UN regarding adjustments or additional recommendations to push further these national strategies.

The continuous work of the UN to solidify a globally accepted sustainable framework culminated in 2015 with the publication of the United Nations *2030 Agenda for Sustainable Development*[10] and its distinct 17 SDGs and 169 specific targets. This new sustainability framework carries a high importance for this article as it is elaborated further in section 4. With the publication of the SDGs, the focus of the NSDS shifted or, better said, aligned with reports on the achievement of each goal. So, these national reports were subsequently rephrased as Voluntary National Reviews (VNR), with the objective of 'encouraging Member States to conduct regular and inclusive reviews of progress [in achieving each goal] at the national and subnational levels'.[11] An example of such VNR is the latest (second) report of the Government of the Principality of Liechtenstein, communicated in June 2023.[12] This report includes certain tax measures as mechanisms used by the Liechtenstein government. Some examples are environment-related taxes referring to SDG 12, and international tax cooperation on SDG 16.

Aligning tax reforms (or tax policy) with the SDGs is a key part of the agenda of major international organisations, particularly for the UN. In 2021, the UN launched its 'Tax for SDGs' initiative, aiming to help developing countries leverage tax policy towards achieving the goals set out by the *2030 Agenda for Sustainable Development*. Only in 2023, the Tax for SDGs initiative supported 25 countries (particularly least developed countries) to align their tax systems with SDG targets[13] and furthermore, launched a unique *SDG Taxation Framework Toolkit* designed for national governments to facilitate the alignment of their tax systems with the SDGs.[14] The UN is not alone in having recognised the interaction between taxation and the achievement of the SDGs. Other major international organisations such as the International Monetary Fund (IMF), the World Bank, and the Organisation for Economic Co-operation and Development (OECD) have also pointed out the role of taxes as an important source of domestic revenue mobilisation and have joined the UN in forming the Platform for Collaboration on Tax (PCT) to strengthen collaboration on domestic revenue mobilisation.[15]

---

[8] Tax-to-GDP (gross domestic product) ratio of 45.9 per cent in 2001, above the EU average of about 41.7 per cent, and significantly higher the Organisation for Economic Co-operation and Development (OECD) average of 38.7 per cent: ibid 18.

[9] Examples include 'Integrating Climate Change into National Sustainable Development Strategies' (United Nations Expert Group Meeting, New York, 12-13 November 2007); 'The Future We Want' (United Nations Sustainable Development Conference, Rio de Janeiro, 20-22 June 2012).

[10] United Nations General Assembly, *The 2030 Agenda*, above n 3.

[11] Ibid para 79.

[12] Government of the Principality of Liechtenstein, *Sustainability in Liechtenstein: Second Report on the Implementation of the 2030 Agenda for Sustainable Development* (June 2023).

[13] United Nations Development Programme, *Tax for Sustainable Development Goals Initiative: Annual Report 2023* (2024) ('*Tax for Sustainable Development Goals Initiative*').

[14] United Nations Development Programme, *SDG Taxation Framework (STF): Toolkit* (2023).

[15] See, eg, 'First Global Conference of the Platform for Collaboration on Tax – Tax and the SDGs' (New York, 14-16 February 2018).

The PCT, and much of the literature on the interaction between taxation and the SDGs, focuses on Domestic Revenue Mobilisation (DRM)[16] as the connecting principle between tax policy and the SDGs.[17] Nonetheless, the UN's Tax for SDGs initiative sees tax policy not only as an instrument for mobilising revenue but also as a tool to directly influence behaviour towards desired outcomes related to the SDGs. This distinction is important since it hints at two different channels through which tax policy can help achieve the SDGs, the indirect and direct channels that are explained in detail in section 5. Hence, any analytical framework which aims to reflect on whether existing tax measures and initiatives for tax reforms support or undermine the achievement of the SDGs should look at both these channels.[18]

## 3. METHODOLOGY

To gain a deeper insight into the concept of sustainable taxation, this article employs a concept analysis methodology. Several other methodological approaches were considered, such as a scoping review or content analysis, but concept analysis is better suited to exploring a term or concept where the literature is rather vague and common features are not evident. In essence, concept analysis is the process of clarifying concepts, their characteristics, and their relationships to other concepts.[19] Following that definition, this method is applied for two main reasons: 1) the lack of a generally accepted definition/concept of sustainable taxation, and 2) the complex interaction between tax policy and sustainability dimensions.

Various models can be employed for concept analysis, depending on the specifics of the process, data sources, and disciplines. Researchers in different disciplines, such as philosophy, law, business, or medicine, may employ slightly different concept analysis models. This study uses elements from the models of Wilson, Nuopponen, and Walker and Avant.[20]

The authors follow a four-step approach to perform the concept analysis, as illustrated in Figure 1. Once this process is complete, the authors conduct an applicative analysis of the concept, examining how taxation contributes to and interacts with sustainability. As a first step, it is essential to justify the necessity for a conceptual analysis in the area of sustainable taxation. This section of the methodology addresses the rationale for conducting this analysis and examines the current state of the art of the concept's use, with the objectives of acknowledging and contributing to the existing sustainable taxation literature. As elaborated above, the concept of sustainable taxation is still largely vague and carries a high risk of moral subjectivity and, in this guise, also threatens to influence taxpayers and policy-makers. Another area of interest is the little-explored relationship between tax policy and sustainability. Therefore, the objectives of this research method are to elucidate the relationship between taxation and

---

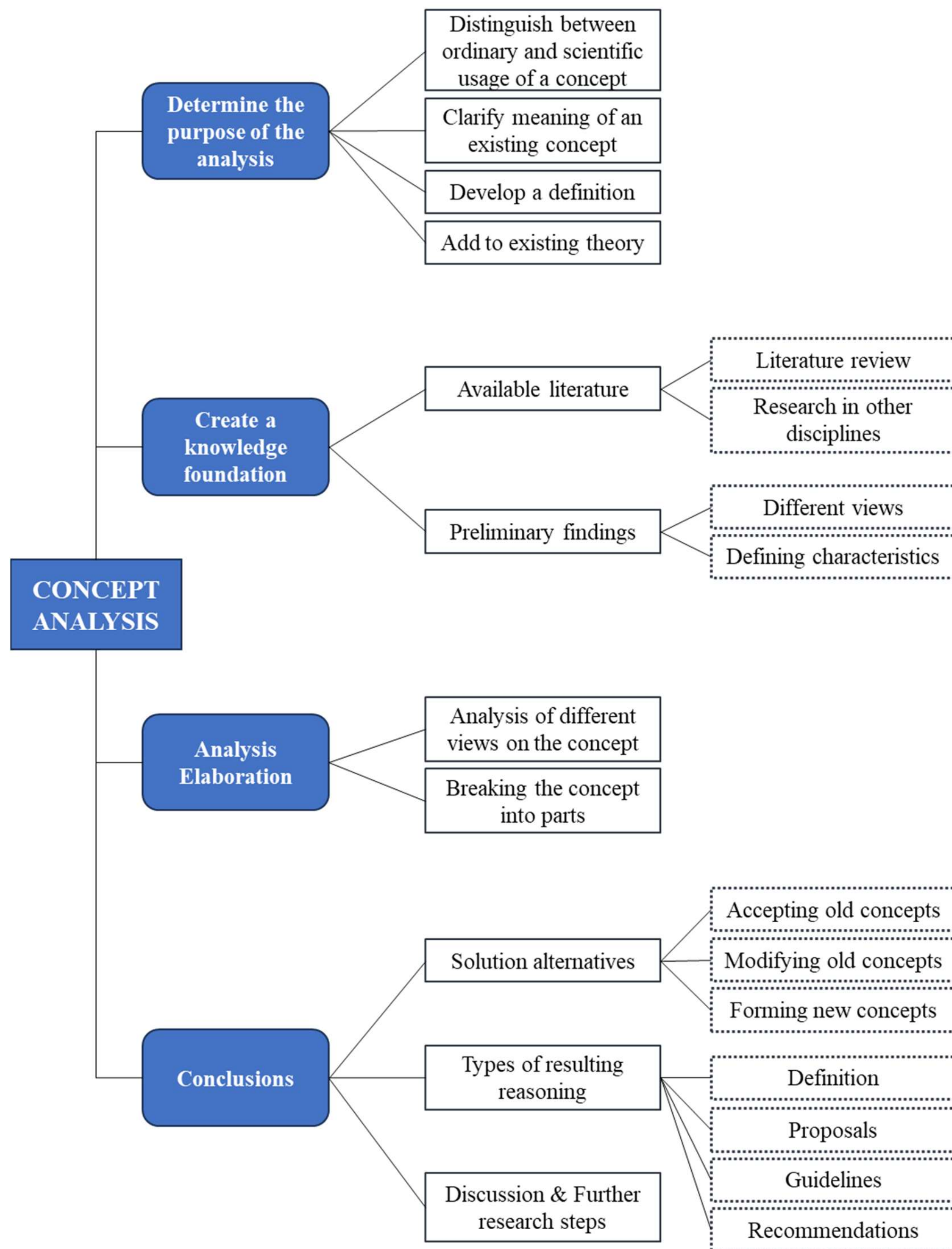
[16] Often DRM refers to both domestic 'revenue' and 'resource' mobilisation. From the tax viewpoint, the authors believe that 'revenue' might fit better to this article. Nevertheless, we acknowledge the fact that both these terms might be used as synonyms.
[17] Oguttu, above n 2.
[18] Pirlot, above n 4.
[19] Anita Nuopponen, 'Methods of Concept Analysis – A Comparative Study' (2010) 1(1) *Language for Special Purposes Journal* 4.
[20] John Wilson, *Thinking with Concepts* (Cambridge University Press, 1963) ('*Thinking with Concepts*'); Nuopponen, above n 19; Lorraine Olszewski Walker and Kay Coalson Avant, *Strategies for Theory Construction in Nursing* (Pearson, 6th ed, 2019).

sustainability, to define a concept for sustainable taxation, and to further clarify the interaction between taxation and sustainability.

The second step requires an analysis of the literature available on the topic. Sustainable taxation is a rather new concept and a literature review itself might not be a great fit to fully understand the characteristics and use of the concept, but nevertheless, it is an important aspect to recognise the use of the concept.[21] For this process, only literature in English is considered and the platforms utilised to search for academic publications were Google Scholar, Scopus, Web of Science Core Collection, and Swisscovery. Additionally, a comprehensive search for non-academic sources was performed. This involved identifying and examining various forms of grey literature, such as reports, policy papers, working documents and databases published by international organisations (EU, OECD, UN), non-governmental organisations and other non-academic sources on diverse online platforms. The aim was to ensure a thorough understanding of the topic by incorporating valuable insights and data from non-traditional and non-peer-reviewed sources. Once the available literature is collected, the process of screening for any sustainable taxation definition or concept is performed. Screening the available literature on sustainable taxation is crucial in three ways: 1) to identify all uses of the concept; 2) to apprehend some of the defining characteristics mentioned in the literature for sustainable taxation and, 3) to compare some of the distinguished views on sustainable taxation. Once this process is completed, an additional review process is performed to understand the use of the term ‘sustainability’ in other disciplines such as sustainable finance, sustainable economy, sustainable agriculture, sustainable construction, and so on. Careful consideration must be given to the fact that the meaning of a concept depends on the context of its use.[22] This raises the question whether ‘sustainability’ in ‘sustainable finance’ is identical, comparable, or very different to that term in ‘sustainable agriculture’, for example. This procedure helps to better understand the bigger picture of what characteristics sustainability is made of.

[21] A list of authors and publications related to the literature on defining sustainable taxation can be found in Table 2 (Appendix).
[22] Mark Risjord, ‘Rethinking Concept Analysis’ (2009) 65(3) *Journal of Advanced Nursing* 684.

**Fig. 1: Concept Analysis**




Source: authors' elaboration based on Wilson,[23] Nuopponen[24] and Walker and Avant.[25]

---

[23] Wilson, above n 20.
[24] Nuopponen, above n 19.
[25] Walker and Avant, above n 20.

Thirdly, a concrete analysis is conducted on the concept of sustainable taxation based on the preliminary findings derived from the literature review. It is important to analyse the different views on the raised concept of sustainable taxation. Therefore, this article distinguishes and delimits sustainable taxation in relation to other related concepts and the more general field of taxation. An investigation on concepts such as 'Tax for SDG', 'sustainable tax system', 'tax sustainability', 'environmental taxes', and 'green taxes' is performed. Concepts are expressed by a word or phrase in a given language, and therefore an analysis of a concept must be an analysis of the descriptive word and its use. Wording and the assumption that 'SDG', 'sustainable', or 'green' are synonyms must be carefully addressed. This step supports the principle of breaking the concepts into parts and determining the main attributes or characteristics of the concept.

Fourthly, this analysis aims to observe and compare the collected alternatives and currently used concepts of sustainable taxation. This will help to either accept or reject the definitions and concepts of sustainable taxation already in use and possibly modify them or form a new concept as a result of the research carried out. Such results may vary depending on the preliminary findings, but in general an outcome could be a new definition, a proposal, a recommendation or a set of guidelines to be followed by policy-makers and researchers in the future.

Finally, the practical application of the concept is considered, following the suggestions of Risjord[26] and Walker and Avant.[27] All of these authors argue that the defining attributes of the concept should be brought together in the real world, so an explanation of the practical application is illustrated. To support this process, Berenskoetter[28] argues that the nature of the relationship between the defining attributes of the concept shapes the conflict between theory and practice. Considering the practical use of the defined concept, the present authors apply this new knowledge to further elaborate the relationship between tax policy and the SDGs. As a result, the direct and indirect interactions between taxation and the SDGs are analysed and described in detail in section 5.

## 4. CONCEPT OF SUSTAINABLE TAXATION

### 4.1 Description of the concept in policy-making

Categorised as one of the supportive mechanisms to attain sustainability, taxation stands out for its potential to contribute in two particular ways. First and foremost, taxes serve as a financial instrument to generate revenues for governments. These revenues are fundamental to the financing of sustainability-related projects. In the EU, tax revenue accounted for 40.6 per cent of GDP in 2021,[29] while in OECD countries it accounted for 34.1 per cent of GDP[30] with countries like Denmark having the highest tax-to-GDP ratio (46.9 per cent). Bearing in mind such data, it is a necessity to assess the ability of tax systems to generate tax revenues to support a more sustainable and fairer future.

---

[26] Risjord, above n 22.
[27] Walker and Avant, above n 20.
[28] Felix Berenskoetter, 'Approaches to Concept Analysis' (2017) 45(2) *Millennium: Journal of International Studies* 151.
[29] European Commission, *Annual Report on Taxation 2023: Review of Taxation Policies in EU Member States* (June 2023).
[30] OECD, *Revenue Statistics 2022: The Impact of COVID-19 on OECD Tax Revenues* (OECD Publishing, 2022) ('*Revenue Statistics 2022*').

Nevertheless, the capacity to raise revenue through taxation alone is not sufficient. It is important that a portion of these revenues are allocated to projects that contribute to the achievement of sustainability, or at the very least, do not contradict them. Secondly, taxes could be directly used to address matters closely linked to sustainability and encourage behavioural change rather than elevate government tax revenue. Appropriately designed and balanced tax policy can play a key role in shifting unsustainable behaviours towards sustainable alternatives. A more detailed explanation of this matter is elaborated in section 5 of this article.

Reforms are being introduced to include taxation within the sustainability agenda at national, regional, and international levels. The aim is to observe the role of tax policy as a supportive instrument to achieve sustainability and to endorse the role of tax in the design and accomplishment of sustainable targets. At the national level, numerous jurisdictions have presented local sustainable strategies and measures, which are typically designed to improve the domestic economic, social, and environmental situation. To illustrate some national reforms, the present authors make reference to two national examples: the German Sustainable Development Strategy,[31] which is compiled by the German Federal Government, and the Swiss 2030 Sustainable Development Strategy,[32] compiled by the Swiss Federal Council. Both strategies were published in 2021. The aforementioned reports were established in response to the ongoing crisis related to the COVID-19 pandemic and in reaction to mounting pressure from the international community to implement reforms that prioritise sustainability. These exemplary sustainability strategies indicate the role of taxation as a policy mechanism that governments utilise to facilitate the achievement of various sustainability targets. The German Federal Government enacted the following tax measures: reduced sales tax rates during COVID times (July-December 2020), supporting companies through economic recovery investment incentives (tax loss carry-backs), supporting young individuals and families (tax relief doubled to EUR 4,008 for single parents), lower tax burden for drivers using vehicles with lower emissions (from 2021), and overall preferential tax treatment for purely electric vehicles. Similarly, the Swiss Confederation refers to the reduction or restructuring of subsidies and tax incentives for fossil fuels, negative employment incentives reduction (individual taxation plans dependent on different life trajectories and associated needs of women and men), prevention of illicit financial flows bound up with illegal activities such as money laundering or tax evasion and avoidance to promote sustainability in the financial market.

At the European Union level, the Europe 2020 Strategy[33] marks a clear proposal that addresses the need for sustainability reforms and illustrates a detailed guideline on the achievement of these sustainability targets. In addition, the European Green Deal[34] exhibits the European roadmap for the sustainable development of the EU's economy, health, quality of life and environment. It targets transformation of the current

---

[31] German Federal Government, *Sustainable Development Strategy for Germany, Update 2021* (March 2021).
[32] Swiss Federal Council, *2030 Sustainable Development Strategy* (June 2021).
[33] For tax-related information, see sections 2, 3 and 4 of European Commission, *Europe 2020: A Strategy for Smart, Sustainable and Inclusive Growth*, COM(2010) 2020 final (3 March 2010).
[34] Ursula von der Leyen (President, European Commission), 'Press Remarks by President von der Leyen on the Occasion of the Adoption of the European Green Deal Communication' (Speech, 11 December 2019).

environmental, societal and economic challenges into opportunities across all policy areas. It is noteworthy that various matters under the European Green Deal are legislative Acts and proposals,[35] including the Emissions Trading System (ETS) Directive[36] and the Circular Economy Action Plan.[37] It is evident that these exemplary EU sustainability strategies refer to taxation as a mechanism at both national and European levels utilised to achieve sustainability.

### 4.2 Description of the concept in literature

One can argue that concepts of sustainability in taxation have been employed since the 18th century by the famous Scottish economist and philosopher, Adam Smith. Among various economic fundamentals elaborated in his volume *The Wealth of Nations*,[38] Smith argues that taxation should be imposed according to the canons of equality, certainty, convenience, and economy.[39] That definition provides certain links to sustainability but does not make up for a clear sustainable taxation settling. Despite the approach of Smith centuries ago, the concept of sustainable taxation seems to have gained significant attention only during the last few decades. The turning point towards sustainability and sustainable development particularly occurred in March 1987 with the famous Brundtland Report,[40] a report that shaped the concept of sustainable development as the ability to meet the needs of the present without compromising the ability of future generations to meet their own needs'.[41] The report contributed to making sustainability a central topic in policy discussions. Applying the same notion and adding taxation to it, sustainable taxation may be interpreted as the requirement to draft tax laws to influence present developments that will not create a burden for future generations. Nevertheless, sustainability is not framed and sealed under the criterion of 'considering the needs of the future generations' when reforms account for the impact on the present generation(s) as well.

In the search for a sustainable taxation concept, Gunnarsson argues that tax policy must include the concept of social justice to ensure that sustainability is not conflated with the dominant notion of 'taxing for economic growth'.[42] Nerudová and co-authors define a sustainable tax system as 'a tax system that contributes to the sustainability of a country's economic, social, environmental and institutional pillars' and '[a]lternatively … a system of taxes, tax-related legislative measures and fiscal tools

---

[35] European Commission, 'Commission Welcomes Completion of Key "Fit for 55" Legislation, Putting EU on Track to Exceed 2030 Targets' (News Article, 9 October 2023).
[36] For tax-related information, see articles 3 and 30 of European Parliament and European Council, Directive (EU) 2023/959 of 10 May 2023 Amending Directive 2003/87/EC Establishing a System for Greenhouse Gas Emission Allowance Trading Within the Union and Decision (EU) 2015/1814 Concerning the Establishment and Operation of a Market Stability Reserve for the Union Greenhouse Gas Emission Trading System [2023] OJ L 130/134.
[37] For tax-related information, see section 6.2 in European Commission, *Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 11 March 2020, A New Circular Economy Action Plan for a Cleaner and More Competitive Europe*, COM(2020) 98 final (11 March 2020).
[38] Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (W Strahan and T Cadell, 1776).
[39] Ibid Bk V, Ch 2.
[40] United Nations, *Report of the World Commission on Environment and Development: Our Common Future* (1987) (Brundtland Report).
[41] Ibid 15.
[42] Åsa Gunnarsson, 'Fair and Sustainable Taxation – From a European Horizon' (2020) 23(2) *Florida Tax Review* 695.

that do not distort the sustainable behaviour of economic agents in the sense of Brundtland's definition'.[43] Similarly, Schratzenstaller indicates that a sustainable tax system should pursue economic, social and environmental sustainable objectives.[44] In that regard, to assess tax system sustainability, input indicators are needed to capture their design and potential impact. Outcomes are determined by applying quantitative methods to find relationships between sustainability-related tax features (eg, share of environmental taxes) and sustainability-related outcomes (eg, development of greenhouse gas emissions). Therefore, a sustainable tax system should identify output indicators that specify the pillars of sustainability.[45]

Analysing the impact of sustainability according to its three-pillar approach[46] has raised discussions among tax researchers whether one of the pillars is more important than the other two or they are all equally to be addressed through tax policy. Schratzenstaller argues that a tax system can only be sustainable if it addresses the three pillars of sustainability whereas Davis-Nozemack and Kisska-Schulze argue that sustainable taxation should come to the rescue of the society and the planet because of the effects of industrialisation during the past century.[47] In their views, the latter authors insist that sustainable taxation must be 'more than equitable, certain, convenient, and efficient to support the society that we want to sustain', urging tax scholars to consider how tax policy can support quality of life, social justice and cohesion, diversity and human rights.[48] As outlined, there is a lack of consensus among tax scholars regarding the extent to which tax policy should address sustainability concerns. Nerudová and co-authors propose a four-pillar approach, while Schratzenstaller asserts that the three-pillars of sustainability have equal importance in a tax context.[49] Moreover, Davis-Nozemack and Kisska-Schulze argue that tax policy should be exclusively concerned with addressing the adverse impacts of economic activities on the two other pillars of sustainability: environmental and societal.

As elaborated already in section 2, sustainability as a concept is reframed from the Brundtland definition to the one known as the emergence of the SDGs. This new approach is a more concrete and measurable definition, as it consists of quantifiable targets. From a very pragmatic standpoint, the definition of sustainability became the equivalent of the SDGs for a great number of researchers and policy-makers.[50] Moreover, the emergence of the SDGs has impacted the perspective of conceptualising

---

[43] Nerudová et al, 'Tax System Sustainability Evaluation', above n 1, 139.
[44] Margit Schratzenstaller, 'Sustainable Tax Policy: Concepts and Indicators Beyond the Tax Ratio' (2015) 141(5) *Revue de l'OFCE* 57.
[45] Ibid 67-68.
[46] Ben Purvis, Yong Mao and Darren Robinson, 'Three Pillars of Sustainability: In Search of Conceptual Origins' (2019) 14(3) *Sustainability Science* 681.
[47] Schratzenstaller, above n 44; Davis-Nozemack and Kisska-Schulze, above n 1.
[48] Davis-Nozemack and Kisska-Schulze, above n 1, 520.
[49] Danuše Nerudová, Marian Dobranschi, Marek Litzman and Petr Rozmahel, 'Tax Policy Areas and Tools for Keeping Sustainable Economy and Society in the EU' in Cécile Brokelind and Servaas van Thiel (eds), *Tax Sustainability in an EU and International Context* (IBFD Publications, 2020) 71 ('Tax Policy Areas and Tools'); Schratzenstaller, above n 44.
[50] Eelco van der Enden and Bronetta Charlotte Klein, 'Good Tax Governance? …Govern Tax Good!' (1 May 2020) <https://ssrn.com/abstract=3610858>; Alfio Valsecchi, 'What Corporate Tax Policy Has to Do with Sustainability and How Companies Should Deal with It' (2022) 14(1) *World Tax Journal* 113; Oguttu, above n 2.

sustainable taxation.[51] A growing number of scholars have begun to examine sustainable taxation as a potential convergence point for tax policy that could facilitate the achievement of the SDGs. In this regard, Brokelind[52] addresses the need that policy-makers must consider the UN SDGs as tax policy tools. The SDGs can interact with tax systems, encouraging governments to reform their tax laws to achieve the goals (or at least not contradict them) and align their tax systems more closely with SDG targets.[53] In the context of sustainable development, taxation is not an end in itself, but a subordinate instrument for achieving the goals of sustainability. The ultimate goals of sustainability are not set by tax lawyers or tax economists, but they are the result of a political decision-making process. However, taxation as an instrument, among many objectives that it aims to attain, can be important in two specific ways: as a behavioural tool to encourage a change in taxpayers' appetite and as a revenue source to elevate the governmental budget.[54]

### 4.3 Development of the sustainable taxation concept

Defining the concept of sustainable taxation presents considerable challenges. These challenges appear to arise from the focus on tax initiatives that promote sustainability, such as transparency, fairness, and equality, rather than considering the full scope of sustainability in the tax context. As a result, there is a tendency to overlook the possible conceptualisation of the term itself. Notably, there is no universally accepted definition of sustainable taxation, nor a specific way to measure or evaluate it.[55] Scholars appear to agree on the individual terms, but the narrative becomes muddled when both terms are employed in conjunction. The existing tax literature addresses terms such as 'fair taxation'[56] or 'equality in taxation',[57] yet it fails to adequately address all the sustainability dimensions holistically.

To comprehend and potentially measure the impact of sustainability, it is essential to divide it into at least three principal pillars, Economic (ECO), Social (SOC), and Environmental (ENV). As described in section 4.2, tax researchers and also researchers

---

[51] Despite the use of sustainability as a synonym of Sustainable Development Goals, sustainability is often referred to in terms of the long-term goals and sustainable development in terms of the processes to achieve them. See UNESCO, *Education for Sustainable Development: Sourcebook* (2012).
[52] Cécile Brokelind, 'Introduction' in Cécile Brokelind and Servaas van Thiel (eds), *Tax Sustainability in an EU and International Context* (IBFD Publications, 2020) 1, 6.
[53] United Nations Development Programme, *Tax for Sustainable Development Goals Initiative: Annual Report 2022* (2023).
[54] N Kaldor, 'The Role of Taxation in Economic Development' in E A G Robinson (ed), *Problems in Economic Development* (International Economic Association, 1965) 170; Robin Burgess and Nicholas Stern, 'Taxation and Development' (1993) 31(2) *Journal of Economic Literature* 762.
[55] Nerudová et al, 'Tax System Sustainability Evaluation', above n 1.
[56] Attila Bánfi, 'A Few Thoughts on Fair Taxation' (2011) 19(2) *Periodica Polytechnica Social and Management Sciences* 67; Åsa Gunnarsson, 'Fair Taxes to End Poverty' in Martha F Davis, Morten Kjaerum and Amanda Lyons (eds), *Research Handbook on Human Rights and Poverty* (Edward Elgar, 2021) 474.
[57] William B Barker, 'The Three Faces of Equality: Constitutional Requirements in Taxation' (2006) 57(1) *Case Western Reserve Law Review* 1; Dietmar von der Pfordten, 'Justice, Equality and Taxation' in Helmut P Gaisbauer, Gottfried Schweiger and Clemens Sedmak (eds), *Philosophical Explorations of Justice and Taxation: National and Global Issues* (Springer, 2015) 47; Dennis M Davis, 'Taxation and Equality: The Implications for Redressing Inequality and the Promotion of Human Rights' (2019) 10(3) *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 465.

from different disciplines have widely referred to these three sustainability pillars.[58] However, in the same way as the research of Nerudová and co-authors,[59] this article includes the institutional (INST) pillar as a fourth dimension of analysing sustainability, at least in the context of taxation. This is essential for this study as the present authors rely significantly on the role of institutions to analyse the application of sustainability in a tax context. The assumption to assess sustainability in a scope of more than three dimensions is supported by the UN itself through the five principles (P) of the SDGs.[60] These five principles, namely, People, Planet, Prosperity, Peace, and Partnerships represent a grouping scheme for all the 17 goals.[61] Following other researchers' logic on grouping the SDGs on their desired outcome and principles,[62] the authors identify a link between the five Ps of the SDGs and the four sustainability pillars of Nerudová and co-authors.[63] The relationship seems rather straightforward regarding SOC, ECO, and ENV pillars being the equivalent of People, Prosperity and Planet. That is justified under the similarity of grouping between goals 1 to 15, under the three mentioned principles/pillars. However, it is unclear if Peace and Partnerships (both representing SDG 16 on 'Peace, Justice and Strong Institutions' and SDG 17 on 'Partnership for the Goals') could be comparable to the INST pillar. Investigating that potential relationship, some researchers support the idea that Peace and Partnerships are closely related to each other as they both represent matters linked to building effective, accountable, and inclusive institutions and encourage collaboration among governments to share knowledge and implement effective strategies nationally and internationally.[64] Following that, this article draws a link between the four-pillar approach of sustainability and the principles of the SDGs. Table 3 (Appendix) illustrates this relationship in more detail.

This relationship helps to clarify the potential impact of tax policies and legislative measures on the four pillars of sustainability and the broader SDG principles. To gain a

---

[58] Mohan Munasinghe, *Environmental Economics and Sustainable Development* (World Bank Environment Paper 3, 1993); Purvis, Mao and Robinson, above n 46; Ralph Hansmann, Harald A Mieg and Peter Frischknecht, 'Principal Sustainability Components: Empirical Analysis of Synergies Between the Three Pillars of Sustainability' (2012) 19(5) *International Journal of Sustainable Development and World Ecology* 451; Becky J Brown, Mark E Hanson, Diana M Liverman and Robert W Merideth, Jr, 'Global Sustainability: Toward Definition' (1987) 11(6) *Environmental Management* 713.

[59] Nerudová et al, 'Tax Policy Areas and Tools', above n 49.

[60] United Nations Economic and Social Commission for Western Asia, 'The 5Ps of the Sustainable Development Goals' <https://www.unescwa.org/sites/default/files/inline-files/the_5ps_of_the_sustainable_development_goals.pdf>.

[61] SDG Services, 'What Are the Sustainability Principles?' and 'The Pillars and Frameworks of the SDGs' in 'The Main Principle of Sustainability Is the Common Good' (Web Page) <https://www.sdg.services/principles.html>.

[62] Shujiro Urata, Kazuo Kuroda and Yoshiko Tonegawa, *Sustainable Development Disciplines for Humanity: Breaking Down the 5Ps—People, Planet, Prosperity, Peace, and Partnerships* (Springer, 2023); Marina Mattera and Carmen Alba Ruiz-Morales, 'UNGC Principles and SDGs: Perception and Business Implementation' (2021) 39(2) *Marketing Intelligence and Planning* 249; Sherif Goubran, 'On the Role of Construction in Achieving the SDGs' (2019) 1(2) *Journal of Sustainability Research* e190020.

[63] Nerudová et al, 'Tax Policy Areas and Tools', above n 49.

[64] Stephen Morton, David Pencheon and Neil Squires, 'Sustainable Development Goals (SDGs), and Their Implementation: A National Global Framework for Health, Development and Equity Needs a Systems Approach at Every Level' (2017) 124(1) *British Medical Bulletin* 81; Angkana Lekagul, Anamika Chattong, Putthipanya Rueangsom, Orratai Waleewong and Viroj Tangcharoensathien, 'Multi-Dimensional Impacts of Coronavirus Disease 2019 Pandemic on Sustainable Development Goal Achievement' (2022) 18(1) *Globalization and Health* 65.

deeper understanding of these interactions, it is important to link specific tax measures with legislative interventions, as described below.[65]

- *Economic Pillar (Prosperity)*: increasing debt levels to a point where it becomes a burden for future generations contradicts the sustainability principles. The concept of debt and its ratio to GDP has been gaining renewed attention in recent years, mostly because debt levels in some countries such as the US have reached previously unseen levels.[66] The projected path of national debt poses significant economic risks, as illustrated by the US example, where, without changes in tax and spending policies, the debt could rise from 62 per cent of GDP to over 100 per cent by the decade's end and nearly double within 25 years.[67]

- *Social Pillar (People)*: regarding the social pillar, social cohesion and specifically reducing poverty levels and the gap between the wealthier and the poorer citizens is an important target. Wealth and income inequality have increased in most OECD countries over the past three decades,[68] expanding even further the gap between different social classes in society. From a tax system perspective, the introduction of a wealth tax makes a strong case to address wealth inequality and redistribution, and additionally raise more tax revenues.[69]

- *Environmental Pillar (Planet)*: aspects of environment protection, carbon emission, and climate change have been addressed as policy areas of high importance, where immediate action is required.[70] Organisations like the OECD and the EU have acknowledged the importance of tax reforms on climate matters. One example is the ETS Directive enforced by the EU[71] that aims to financially incentivise the reduction of overall carbon emissions and carbon pricing mechanisms[72] through tax levied on the carbon content of fossil fuels.

- *Institutional Pillar (Peace and Partnerships)*: the objective is to provide policy-makers with the necessary mechanisms and capacities to effectively collect taxes and fight or put an end to tax avoidance and evasion. Legislative frameworks are already in place to address aggressive tax avoidance behaviours

[65] Nerudová et al, 'Tax Policy Areas and Tools', above n 49.
[66] Melissa S Kearney, Justin Schardin and Luke Pardue (eds), *Building a More Resilient US Economy* (The Aspen Institute, 2023).
[67] Martin Feldstein, 'Preventing a National Debt Explosion' (2011) 25(1) *Tax Policy and the Economy* 109.
[68] OECD, *The Role and Design of Net Wealth Taxes in the OECD*, OECD Tax Policy Studies 26 (OECD Publishing, 2018) 28.
[69] Ibid 98.
[70] Simon Bushell, Géraldine Satre Buisson, Mark Workman and Thomas Colley, 'Strategic Narratives in Climate Change: Towards a Unifying Narrative to Address the Action Gap on Climate Change' (2017) 28 *Energy Research and Social Science* 39.
[71] European Parliament and European Council, *Directive (EU) 2023/959 of 10 May 2023 Amending Directive 2003/87/EC Establishing a System for Greenhouse Gas Emission Allowance Trading Within the Union and Decision (EU) 2015/1814 Concerning the Establishment and Operation of a Market Stability Reserve for the Union Greenhouse Gas Emission Trading System* [2023] OJ L 130/134.
[72] OECD, *Effective Carbon Rates 2021: Pricing Cabon Emissions Through Taxes and Emissions Trading* (OECD Publishing, May 2021).

such as the Anti-Tax-Avoidance Directive (ATAD)[73] at the EU level or the action plan developed by the Inclusive Framework (OECD/G20) on anti-Base Erosion and Profit Shifting (BEPS).[74] It is important that BEPS practices and ATAD measures create a level of protection against tax avoidance and at the same time ensure a more transparent tax environment. Additionally, to strengthen collaboration on domestic resource mobilisation and share expertise, the Platform for Collaboration on Tax (PCT)[75] emerged as a supportive initiative in developing guidance and tools to assist countries achieve sustainable tax system reforms and improve tax collection capacities.

To gain a deeper insight into the characteristics of sustainable taxation, the authors draw upon the literature elaborated in section 4.2, as well as the integration of taxation into the four pillars of sustainability. It is of significant importance to recognise that a combination of policy objectives designed to: 1) finance the achievement of the Sustainable Development Goals (SDGs), and 2) motivate taxpayers to orient their behaviours towards more sustainable actions, is fundamental to understand the interaction between taxation and sustainability. To conclude, considering the interplay between the SDG principles and the four-pillar sustainability approach and the role of taxation in addressing sustainable development, the authors assert that 'the alignment of tax reforms with the SDGs' represents the most accurate definition of sustainable taxation.

## 5. Application of sustainability in a tax context – direct and indirect interaction between the SDGs and tax policy

### 5.1 Indirect interaction

Government revenue, more broadly, and tax revenue, specifically, is seen as a key funding source to support the implementation of the SDGs.[76] It is important to note that tax revenue represents the most significant source of revenue for most governments.[77] Furthermore, assuming that the collected taxes will be allocated to pursue policy objectives that are in line with the SDGs, domestic revenue mobilisation plays a pivotal role in the achievement of the SDGs. Countries that can raise more revenue are, in principle, also able to spend more towards the achievement of the SDGs. This correlation between taxes raised and SDG performance is very high (correlation 0.78) and is also evident in the data (Figure 2). Countries such as Austria, Denmark, Finland, Sweden, Germany, and France with a relatively high tax-to-GDP ratio also score highest in the SDG performance score. Meanwhile, countries such as Afghanistan, Chad, Democratic Republic of the Congo, Madagascar, Niger, and Somalia with very low tax-to-GDP ratios also have very low scores of SDG performance.

---

[73] European Council, *Directive (EU) 2016/1164 of 12 July 2016 Laying Down Rules Against Tax Avoidance Practices that Directly Affect the Functioning of the Internal Market* [2016] OJ L 193/1.

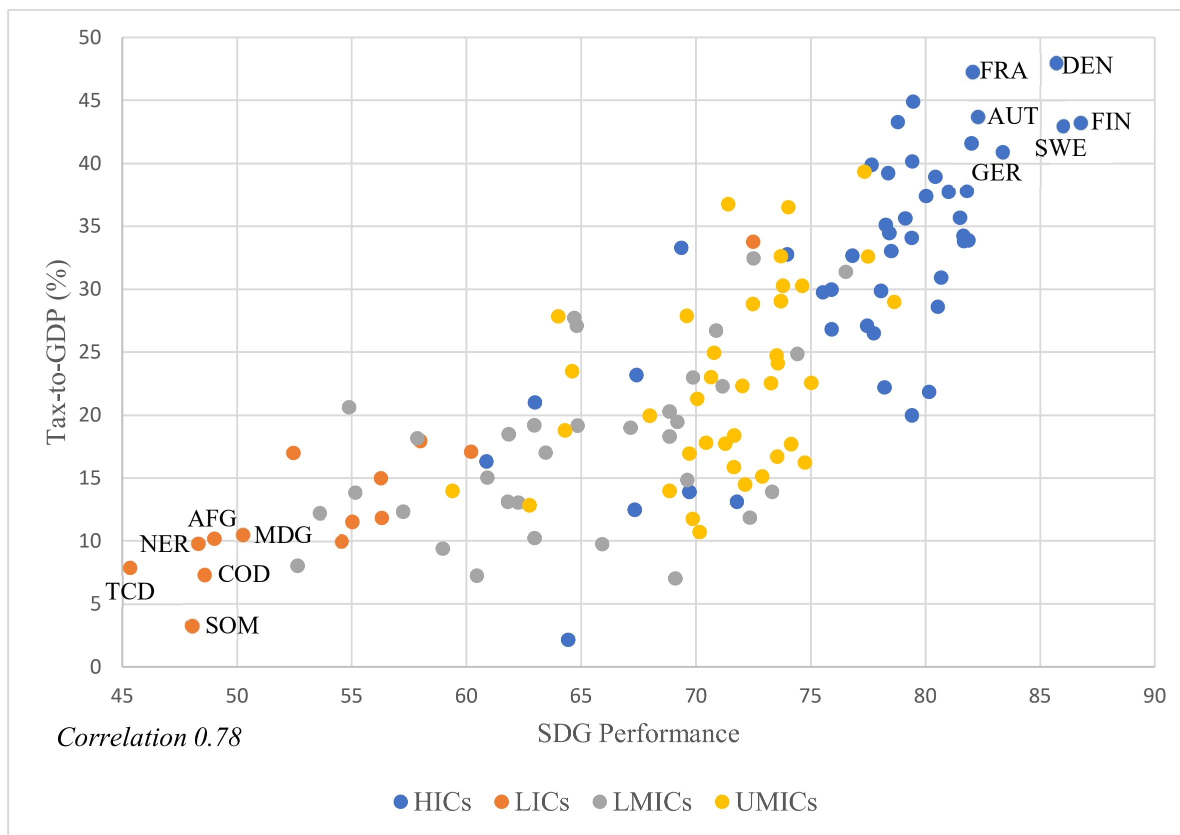
[74] OECD, *Addressing Base Erosion and Profit Shifting* (OECD Publishing, 2013) ('*Addressing Base Erosion and Profit Shifting*').

[75] Platform for Collaboration on Tax, 'Who We Are' (Web Page) <https://www.tax-platform.org/who-we-are>.

[76] 'First Global Conference of the Platform for Collaboration on Tax – Tax and the SDGs', above n 15; United Nations General Assembly, *The 2030 Agenda*, above n 3.

[77] United Nations Development Programme, *Tax for Sustainable Development Goals Initiative*, above n 13.

**Fig. 2: Correlation Between Tax-to-GDP and SDG Performance**




Source: SDG Index[78] and UNU-WIDER Government Revenue Dataset.[79]

Note: Tax-to-GDP ratio data is collected from the UNU-Wider Government Revenue Dataset. It uses General Government Tax Revenue and is for the most recent available year (typically 2021). SDG Performance data is collected from the SDG Index and measures total progress towards achieving all 17 SDGs. The highest score is 100, and it indicates that all SDGs have been achieved or are on track to be achieved by 2030. Countries are grouped into low-income (LIC), lower middle-income (LMIC), upper middle-income (UMIC), and high-income (HIC) according to the World Bank classification.

However, correlation does not mean causation and the assumption that higher DRM would necessarily translate to better SDG performance may not always hold true.

---

[78] Jeffrey D Sachs, Guillaume Lafortune, Grayson Fuller and Eamon Drumm, *Sustainable Development Report 2023: Implementing the SDG Stimulus* (Dublin University Press, 2023).
[79] UNU-WIDER, *Government Revenue Dataset* (2023) <https://www.wider.unu.edu/project/grd-government-revenue-dataset>.

Converting higher DRM into better SDG performance requires the alignment of fiscal policy as a whole, including the expenditure side, with the SDG agenda. Otherwise, the extra revenue could be spent on projects that are not well aligned with the SDGs or are actively contributing to the detriment of certain SDGs (eg, subsidies for environmentally harmful industries). On the other hand, a lower tax-to-GDP ratio may be indicative of a general approach to taxation at the national level. Some countries may exhibit a low tax-to-GDP ratio due to a lack of government capacity to collect taxes[80] (eg, tax effort, as described below) or as a policy objective to attract investment and offer lower tax rates and potentially more generous deductions.[81]

While empirical literature on the effect of increased tax revenues on SDG performance is scarce, some scholars have studied the link between the SDGs and gross domestic product (GDP), the latter of which is highly correlated with DRM. Hence, to achieve the goals, GDP growth is seen as a key indicator. However, there is no consensus among scholars that higher GDP will lead to the achievement of the SDGs.[82] In addition, Costanza and co-authors point out that higher GDP growth has a negative impact on goals linked to protecting the environment and climate change.[83]

Additionally, other scholars and policy-makers have shown a growing interest in other factors that might influence governments' ability to raise tax revenue, such as tax capacity and tax efforts. In simple terms, tax effort defines the ratio of actual tax collection to the full tax potential.[84] Empirical studies estimate through numerous variables tax effort scores for countries around the world as a high-level benchmark for the level of tax that a country might be able to collect. Among the most common variables used to estimate and score tax effort, researchers agree that certain *revenue variables* (total tax), *economic variables* (GDP/capita, openness to trade, grants), *demographic variables* (urbanisation, public goods), and *varieties of democracy* (accountability index, rule of law index, public sector corruption index) play an essential role in countries' tax effort and tax potential. Estimations based on some of the most common variables mentioned above, covering a specific time frame and number of countries, are described in Table 4. There are different approaches and variables used to derive these estimates, which is why it is necessary to be cautious about comparing and drawing any conclusions about these scores. Nevertheless, no matter the difference in estimations, some of the mentioned studies refer to the need that most countries have

---

[80] Christine Fauvelle-Aymar, 'The Political and Tax Capacity of Government in Developing Countries' (1999) 52(3) *Kyklos* 391; Dina Pomeranz and José Vila-Belda, 'Taking State-Capacity Research to the Field: Insights from Collaborations with Tax Authorities' (2019) 11 *Annual Review of Economics* 755.
[81] Howell H Zee, Janet G Stotsky and Eduardo Ley, 'Tax Incentives for Business Investment: A Primer for Policy Makers in Developing Countries' (2002) 30(9) *World Development* 1497.
[82] Bahram Adrangi and Lauren Kerr, 'Sustainable Development Indicators and Their Relationship to GDP: Evidence from Emerging Economies' (2022) 14(2) *Sustainability* 658; Luca Coscieme, Lars F Mortensen, Sharolyn Anderson, James Ward, Ian Donohue and Paul C Sutton, 'Going Beyond Gross Domestic Product as an Indicator to Bring Coherence to the Sustainable Development Goals' (2020) 248 *Journal for Cleaner Production* 119232; Eyup Dogan, Sabina Hodžić and Tanja Fatur Šikić, 'Do Energy and Environmental Taxes Stimulate or Inhibit Renewable Energy Deployment in the European Union?' (2023) 202 *Renewable Energy* 1138.
[83] Robert Costanza, Lew Daly, Lorenzo Fioramonti, Enrico Giovannini, Ida Kubiszewski, Lars Fogh Mortensen, Kate E Pickett, Kristin Vala Ragnarsdottir, Roberto De Vogli and Richard Wilkinson, 'Modelling and Measuring Sustainable Wellbeing in Connection with the UN Sustainable Development Goals' (2016) 130 *Ecological Economics* 350.
[84] Mark Miller and Cathal Long, 'Taxation and the Sustainable Development Goals: Do Good Things Come to Those Who Tax More?' (Overseas Development Institute, April 2017) 8.

to improve their effort to mobilise revenue to finance the SDGs.[85] Unsurprisingly, following the estimations of Fenochietto and Pessino,[86] Miller and Long[87] indicate a strong connection between tax-to-GDP and tax effort (correlation 0.718).

**Table 4: Comparison of Tax Effort Estimates**

| Authors | Latest Available Year | Number of Countries | Tax Effort, % (Sample Average) |
|---|---|---|---|
| Fenochietto & Pessino | 2012 | 113 | 0.68 |
| Langford & Ohlenburg | 2010 | 85 | 0.63 |
| Mawejje & Sebudde | 2015 | 150 | 0.47 |
| McNabb, Danquah & Tagem | 2019 | 161 | 0.84 |

Source: the authors' elaboration is based on the calculations of Fenochietto and Pessino,[88] Langford and Ohlenburg,[89] Mawejje and Sebudde,[90] and McNabb, Danquah and Tagem.[91]

Furthermore, while DRM is the main (and most preferred) channel to fund the SDGs, it is not the only option. Countries that face greater financing needs, mainly developing countries, receive support from the Development Assistance Committee (DAC) through Official Development Assistance (ODA). Foreign aid through DAC countries is roughly at 0.36 per cent of their gross national income (GNI) (UN set a target of 0.7 per cent).[92] Hence, aligning ODA funds with the SDGs is another way to help those countries most in need fund the achievement of the SDGs. Removing the requirement of many DAC countries that their ODA remains untaxed in the recipient country would be an important step to contribute towards the SDGs also through the DRM channel.[93]

---

[85] Joseph Mawejje and Rachel K Sebudde, 'Tax Revenue Potential and Effort: Worldwide Estimates Using a New Dataset' (2019) 63 *Economic Analysis and Policy* 119, 124; Kyle McNabb, Michael Danquah and Abrams ME Tagem, 'Tax Effort Revisited: New Estimates from the Government Revenue Dataset' (UNU-WIDER Working Paper 2021/170, November 2021) 1.
[86] Ricardo Fenochietto and Carola Pessino, 'Understanding Countries' Tax Effort' (International Monetary Fund Working Paper WP/13/244, November 2013).
[87] Miller and Long, above n 84.
[88] Fenochietto and Pessino, above n 86.
[89] Ben Langford and Tim Ohlenburg, 'Tax Revenue Potential and Effort: An Empirical Investigation' (International Growth Centre Working Paper, January 2016).
[90] Mawejje and Sebudde, above n 85.
[91] McNabb, Danquah and Tagem, above n 85.
[92] OECD, *Official Development Assistance (ODA) in 2022, by Members of the Development Assistance Committee (Preliminary Data)* (2023).
[93] Iain Steel, Roel Dom, Cathal Long, Nara Monkam and Paddy Carter, 'The Taxation of Foreign Aid: Don't Ask, Don't Tell, Don't Know' (Overseas Development Institute and African Tax Administration Forum Briefing Note, May 2018).

Nonetheless, despite not being a perfect approach targeting the achievement of SDGs, increased DRM remains a valid path as shown above and discussed at the UN and OECD[94] often, albeit in an indirect way.

## 5.2 Direct interaction

In addition to focusing on the indirect approach, countries can also design tax policies that directly influence the achievement of various SDGs. These can take three primary forms: 1) revenue-positive policies, in the form of additional taxation for certain goods, services, or activities to disincentivise certain types of behaviour; 2) burden-shifting policies which redistribute tax responsibility among taxpayers to achieve regulatory objectives or correct market failures, and 3) revenue-negative policies, such as tax expenditures, which incentivise certain activities or behaviour by forgoing potential revenue.

Revenue-positive policies can often take the form of excise taxes on goods like alcohol and cigarettes. Such excise taxes not only generate revenue (that could in itself be spent towards the financing of the SDGs) but also discourage harmful behaviour and improve public health. For example, countries like Finland and Sweden have implemented high excise taxes on alcohol and tobacco products, contributing to lower levels of consumption and associated health problems, thereby supporting SDG 3 on 'Good Health and Well-Being'.[95] Revenue-positive policies can also take the form of wealth taxes which target the wealthiest individuals, helping to mitigate wealth concentration and promote economic equity. They aim to reduce inequality and promote social justice, aligning with SDG 10 on 'Reduced Inequalities'. Countries such as Norway, Spain and Switzerland have introduced wealth tax regimes, helping to reduce inequality.[96]

The most common type of burden-shifting policy is progressive personal income taxation. Virtually all countries that have a personal income tax (PIT) design it in a progressive way.[97] Such a design aims to reduce inequality (SDG 10) by ensuring that higher-income individuals contribute a larger share of their income in taxes compared to lower-income individuals and is seen as a key mitigator of inequality.[98] Another example of burden-shifting policies is carbon pricing, which aims to internalise the external costs of carbon emissions and incentivise cleaner production methods and consumption patterns, supporting SDG 13 on 'Climate Action'. Carbon pricing mechanisms, such as carbon taxes or cap-and-trade systems, can effectively address climate change by encouraging businesses and individuals to reduce their carbon footprint. For instance, the EU's ETS imposes a cap on greenhouse gas emissions and allows companies to buy and sell emission allowances, thereby creating a market-based incentive for emissions reduction while remaining revenue-neutral for governments. Similarly, the revenues from taxes on single-use plastics or fossil fuel subsidies can be

---

[94] OECD, *OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors* (February 2024) 12.

[95] Š Papadaki, 'The Amount of Excise Tax and its Effect on the Consumption of Alcohol and Cigarettes in European Countries' (2022) 22(4) *Addictology* 234.

[96] See chapter 7 in Lucas Chancel, Thomas Piketty, Emmanuel Saez and Gabriel Zucman, *World Inequality Report 2022* (World Inequality Lab, 2022).

[97] Eberhard Karls University of Tübingen Research School of International Taxation, *The International Tax Institutions Database* (2024).

[98] World Bank, *Poverty and Shared Prosperity 2022: Correcting Course* (2022).

earmarked for renewable energy projects, supporting SDG 7 on 'Affordable and Clean Energy' while maintaining overall revenue neutrality.

Tax expenditures are a key component of the third type of direct interaction between tax policy and the SDGs – the revenue-negative type. The term refers to benefits granted to specific sectors, activities or groups through preferential tax treatments such as exemptions, deductions, credits, deferrals and lower tax rates. Almost all (central) governments use tax expenditures typically to pursue a multitude of goals spanning across almost all SDGs.[99] The number of such policies, on average, is around 180 but in some countries, it can exceed 1,000 (eg, in Greece or Cameroon).

In relation to climate-related SDGs for instance, the Global Tax Expenditures Database (GTED) found 713 tax expenditure provisions from around the world with such goals.[100] Of these provisions, 301 are related to the promotion of renewable energy generation (eg, sales tax exemptions of photovoltaic modules in Pakistan or customs duty and value added tax (VAT) exemptions for wind turbines in Cameroon). Electric vehicles provisions account for 113 (eg, in Ukraine, Mexico, South Korea, and many other countries). The remaining provisions are aimed to incentivise the usage or development of public transport (eg, PIT reimbursements for commuting expenses using public transport in Belgium), incentivising energy efficiency (eg, 65 per cent PIT deduction for various energy redevelopment interventions of existing buildings in Italy), or other climate-related goals.

## 6. APPLICATION AT DIFFERENT LEVELS – THE ROLE OF INSTITUTIONS

As previously outlined, the four-pillar approach proposed by Nerudová and co-authors identifies the institutional pillar of sustainability as a pivotal element in the achievement of the SDGs.[101] The implementation of diverse social, economic, and environmental reforms frequently necessitates a certain degree of institutional commitment. The amendment or drafting of tax legislation that supports the achievement of sustainability goals also requires the involvement of national and international institutions. Accordingly, this section delineates the function of institutions in the pursuit of a sustainable future. The institutional features of tax compliance and cooperation, the capacity to adapt to the 21st century technological advancement, carbon pricing, international tax dialogues and initiatives, and tax capacity contribute to the development of sustainable taxation. By focusing on the institutional pillar, this article emphasises the need for strong governance structures at both national and international levels to navigate the complexities of implementing sustainable and coordinated tax policies.

From a tax perspective, DRM requires the minimisation of tax loopholes, to prevent the loss of potential tax revenue. The existence of a well-defined and functioning national tax law is regarded as insufficient when the matters and involvements are of a cross-border nature. It is therefore crucial to agree on international rules and guidelines and enforce them in practice to provide all the engaged stakeholders with some certainty when exposed to additional legislation. As a result, the establishment of a level playing

---

[99] Augustin Redona, Christian von Haldenwang and Flurim Aliu, *Global Tax Expenditures Database* (GTED) (2023) <https://gted.taxexpenditures.org/data-download>.
[100] Christian von Haldenwang, Agustin Redonda and Flurim Aliu, *Tax Expenditures in an Era of Transformative Change: GTED Flagship Report 2023* (Tax Expenditures Lab, 2023).
[101] Nerudová et al, 'Tax Policy Areas and Tools', above n 49.

field on international tax policy and standards is critical, given the ease of individuals' mobility and technological advances in the 21st century. As previously stated, this essential coordination is pivotal to combat any tax avoidance or evasion behaviour and to provide jurisdictions across the globe with increased tax revenue. However, there are debates surrounding the desired impact and scope of cooperation for tax purposes, particularly regarding the loss of sovereignty by most nations. One argument is that a lack of cooperation could result in a loss for all nations, particularly the least powerful.[102] On the other hand, Dagan challenges the assertion that international tax cooperation benefits all countries. In her volume, *International Tax Policy: Between Competition and Cooperation*, Dagan refers to the phenomenon of the 'marketization' of taxation, whereby countries compete for investments, but the decisions that sovereign countries make domestically are now constrained by international standards.[103] Her analysis focuses on the role of tax treaties as a fundamental element of the international tax system, their failure to promote greater welfare for all countries, the power imbalances between the most and least economically developed nations in the context of treaty negotiations, and the shortcomings of the OECD in revising tax treaties and enhancing source taxation rights as a means of improving the position of developing countries.

Tax revenue loss as a result of the use of tax havens by both individuals and multinational entities over the past few decades has created a significant challenge for tax authorities in identifying taxpayers and levying taxes. The Tax Justice Network estimates tax losses worldwide amount to USD 483 billion annually, of which USD 312 billion are attributed to corporate tax avoidance and USD 171 billion to tax evasion by individuals.[104] Furthermore, the OECD estimates that between USD 100 and 240 billion in revenue is lost annually due to multinational corporations' activities.[105]

Initiatives that aim to implement global tax transparency and exchange of information standards, such as Exchange of Information upon Request (EoIR) of the Global Forum on Tax Transparency and Exchange of Information for Tax Purposes and Automatic Exchange of Information (AEoI) under the Common Reporting Standard have managed to achieve success in the fights against tax avoidance and evasion.[106] As an outcome of the global financial crisis and the emergence of the need to increase transparency, the G20 issued in April 2009 at their London Summit a declaration to put an end to the banking secrecy era.[107] That is the establishment of Global Forum's work to endorse EoIR and later AEoI (2013) as the new international tax transparency standards. A regional response to address cooperation and respond to international development regarding compliance and exchange of information mechanisms is the Directive on Administrative Cooperation in the Field of Taxation at the EU level, initially introduced

[102] Laurens van Apeldoorn, 'BEPS, Tax Sovereignty and Global Justice' (2018) 21(4) *Critical Review of International Social and Political Philosophy* 478.
[103] Tsilly Dagan, *International Tax Policy: Between Competition and Cooperation* (Cambridge University Press, 2018).
[104] Tax Justice Network, *The State of Tax Justice 2021* (November 2021).
[105] OECD, 'Base Erosion and Profit Shifting (BEPS)' (Web Page) <https://www.oecd.org/en/topics/policy-issues/base-erosion-and-profit-shifting-beps.html>.
[106] Global Forum on Transparency and Exchange of Information for Tax Purposes, *Pioneering Global Progress in Tax Transparency: A Journey of Transformation and Development, 2023 Global Forum Annual Report* (OECD Publications, 2023).
[107] G20, 'London Summit – Leaders' Statement' (2 April 2009).

in 2011.[108] From its introduction in 2011 until 2023, there have been seven amendments to expand the scope of AEoI within the EU covering a broad range of taxpayers and taxable income.[109]

From a sustainable taxation stance, countries that effectively implement exchange of tax information are generally better off. However, it is essential to evaluate the efficacy of information exchange mechanisms in practice, as not all countries possess the same technological capabilities, sufficient human resources, or even the willingness to participate in such agreements. Nevertheless, as demonstrated below, since the introduction of information exchange mechanisms, a greater number of taxpayers engaged in cross-border situations have been identified, resulting in an increase in tax revenue.[110] In principle, the wider and more effective the network of exchange of information, the more complicated it is for tax avoiders and evaders to take advantage of secrecy granted in some jurisdictions. The introduction of various forms of exchange of information for tax purposes has been a successful program to address untaxed offshore wealth. According to the EU Tax Observatory, since the application of automatic exchange of information in 2016, the share of untaxed offshore wealth has declined drastically.[111] This is a very significant progress towards enabling tax authorities around the world to identify additional taxpayers and raise extra tax revenue. The OECD reports more than EUR 126 billion of additional revenues (tax, interest, penalties) raised as a result of exchange of information and tax transparency standards enforced by at least 171 jurisdictions (EoIR) and 123 jurisdictions (AEoI), where EUR 41 billion are raised in developing countries.[112]

The Inclusive Framework on BEPS contributes to the sustainability of the current international tax framework through a project involving 15 Actions, with a particular focus on the engagement of multinational entities in cross-border operations. BEPS is designed to combat tax avoidance and double non-taxation of multinational entities' profits by addressing loopholes that have emerged in the international tax system because of globalisation and digitalisation.[113] Among the most prominent actions that aim best to improve the sustainability of the international tax framework are Country-by-Country Reporting (CbCR/Action 13) and the Two-Pillar Solution (Action 1/BEPS 2.0). However, there are ongoing initiatives to address and better coordinate reforms in the near future in areas such as taxation and value creation, reallocation of tax rights, and taxation of the digital economy.

Capacity-building is what the OECD/UN are pushing towards so all the countries participating in internationally developed standards are capable of enforcing such standards. It is often pointed out that developing countries need technical assistance or

---

[108] European Council, *Directive 2011/16/EU of 15 February 2011 on Administrative Cooperation in the Field of Taxation and Repealing Directive 77/799/EEC* [2011] OJ L 64/1.
[109] For an overview of all amending legislative Acts, see European Union, <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32011L0016>.
[110] Sebastian Beer, Maria Coelho and Sébastien Leduc, 'Hidden Treasures: The Impact of Automatic Exchange of Information on Cross-Border Tax Evasion' (International Monetary Fund Working Paper WP/19/286, 2019); Hjalte Fejerskov Boas, Niels Johannesen, Claus Thustrup Kreiner, Lauge Truels Larsen and Gabriel Zucman, 'Taxing Capital in a Globalized World: The Effects of Automatic Information Exchange' (National Bureau of Economic Research Working Paper 32714, 2024).
[111] Annette Alstadsæter, Sarah Godar, Panayiotis Nicolaides and Gabriel Zucman, *Global Tax Evasion Report 2024* (EU Tax Observatory, 2024) 25-30.
[112] Global Forum on Transparency and Exchange of Information for Tax Purposes, above n 105.
[113] OECD, *Addressing Base Erosion and Profit Shifting*, above n 74.

know-how from the developed countries. That is the only way to achieve a global consensus and enforcement, so countries do not miss out on tax revenues simply because they were unable to implement in time new tax standards. The best example to illustrate this enhanced tax collaboration is the PCT,[114] as already elaborated earlier in this article, and Tax Inspectors Without Borders (TIWB). Since its inception in 2012, TIWB has generated USD 2.30 billion in additional tax collections and USD 6.05 billion in additional tax assessments, with USD 230 million in additional tax revenue collected and USD 1.11 billion in additional tax revenue assessed in 2023 alone.[115]

Another crucial area where the institutional pillar plays a central role is the global effort to implement carbon pricing mechanisms, such as carbon taxes or emissions trading systems (ETS), in support of SDG 13 on Climate Action. While carbon pricing is widely recognised as a crucial tool for reducing greenhouse gas emissions, global cooperation is essential for its success. A cohesive multilateral framework could help to ensure consistency and fairness across borders.[116] The absence of such a framework, however, may be limiting the full potential of carbon pricing. Studies indicate that, although carbon pricing has been effective in reducing emissions in some regions, its overall impact remains modest – typically resulting in reductions ranging from only zero to 2 per cent annually.[117] This limited effectiveness may be attributed, in part, to the fragmented national approaches and the lack of coordinated international action. Without robust international coordination to harmonise carbon pricing frameworks and address equity concerns, the global effectiveness of such policies will remain constrained. Instruments like border carbon adjustments can help mitigate competitiveness concerns and prevent carbon leakage in countries that unilaterally adopt carbon pricing, but these measures offer only modest incentives for broader global adoption.[118] Stronger international cooperation, such as implementing an international carbon price floor, would be far more effective.

The importance of institutional coordination extends beyond environmental policies to the global tax landscape. The abovementioned tax initiatives have played a significant role in shaping the current international tax architecture. Furthermore, these initiatives have influenced a large number of countries to align their tax systems with internationally agreed standards[119] and a growing number of developing countries are undergoing tax reforms to support the achievement of the SDGs. Recently, even the discussions at the United Nations regarding the new proposal for an UN Tax Framework

---

[114] 'First Global Conference of the Platform for Collaboration on Tax – Tax and the SDGs', above n 15.
[115] These data represent operations from 59 ongoing programs across Africa, Asia, Arab States, Europe, Latin America and the Caribbean. See United Nations Development Programme, *Tax for Sustainable Development Goals Initiative*, above n 13, 38.
[116] Tatiana Falcão, *A Proposition for a Multilateral Carbon Tax Treaty* (IBFD Publications, 2019).
[117] Jessica F Green, 'Does Carbon Pricing Reduce Emissions? A Review of Ex-Post Analyses' (2021) 16(4) *Environmental Research Letters* 43004.
[118] Ian Parry, Peter Dohlman, Cory Hillier, Martin Kaufman, Kyung Kwak, Florian Misch, James Roaf and Christophe Waerzeggers, 'Carbon Pricing: What Role for Border Carbon Adjustments?' (International Monetary Fund Staff Climate Note 2021/004, 2021).
[119] Referring to membership of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, Inclusive Framework on BEPS, Global Forum, Common Reporting Standards, Two-Pillar Solution and other international initiatives.

Convention include topics related to sustainable development and emphasise the role that taxation should play in the scope of equality, inclusiveness and fairness.[120]

## 7. CHALLENGES TO THE ESTABLISHMENT OF SUSTAINABLE TAXATION

The achievement of sustainability goals and SDGs more precisely is a challenge for countries acting on their own, through tax measures and reforms implemented alone.[121] As an international commitment, it requires national reforms and considerations and regional/global coordination. Unfortunately, by the midpoint of the 2030 Agenda timeline, in 2023, it has become evident that the SDGs are significantly behind schedule. On a worldwide scale, considering all jurisdictions, there is not one SDG that is expected to be achieved by 2030, with the poorest jurisdictions struggling the most.[122] Yet, undeniably, taxation carries a crucial role in supporting the achievement of these goals, facilitating the process of reaching the targets and maintaining stable and desired progress once the targets are achieved, in particular because tax revenue remains the most sustainable source of revenue for governments across the globe – for example, tax collection rates sit between 15 per cent and 20 per cent of the GDP in many developing countries and are at 34 per cent of the GDP in OECD countries – and it reduces the dependence on international assistance to lower debt levels. Additionally, significant progress is observed in countries that have aligned their tax systems with SDG targets, particularly developing countries.[123]

Several challenges to address sustainability through taxation are observed. The first challenge is to apply all 17 SDGs in tax policy since they can be contradictory. Achieving a specific target on a given SDG could have a negative impact on another goal. An example to support this matter could be tax incentives/deductions for electric vehicles which aim to promote environmental sustainability (eg, SDG 13). Such deductions aim to encourage the purchases and usage of e-vehicles and to reduce the usage of oil/petrol engine cars for any transportation purpose. However, these types of tax deductions might also have a negative impact and go against some SDGs that promote communities with sustainable transport networks, less traffic and a lower number of passenger cars per 1,000 inhabitants (eg, SDG 9, SDG 11). Often there are trade-offs and tensions that come with choices that require a balance between economic growth that can contribute to poverty reduction and the preservation of the environment.[124]

In relation to overall tax expenditure regimes, while most countries provide some form of climate-related tax expenditures, they, at the same time, also provide fossil fuel subsidies through the tax system.[125] For example, aviation fuel is tax-exempt in all

[120] United Nations, *Promotion of Inclusive and Effective International Tax Cooperation at the United Nations: Report of the Secretary-General*, UN Doc A/78/235 (26 July 2023).
[121] Pernilla Rendahl and Katarina Nordblom, 'Identifying Challenges for Sustainable Tax Policy' in Cécile Brokelind and Servaas van Thiel (eds), *Tax Sustainability in an EU and International Context* (IBFD Publications, 2020) 393.
[122] Sachs et al, above n 78.
[123] United Nations Development Programme, *Tax for Sustainable Development Goals Initiative*, above n 13.
[124] Justice Mensah, 'Sustainable Development: Meaning, History, Principles, Pillars, and Implications for Human Action: Literature Review' (2019) 5(1) *Cogent Social Sciences* 1653531.
[125] OECD, *Fossil Fuel Support Data* (2023) <https://www.oecd.org/en/topics/fossil-fuel-support.html>.

international flights around the world.[126] Many countries also provide employer-provided car tax incentives, which could counteract SDG 11 on 'Sustainable Cities and Communities' and SDG 13 on 'Climate Action' (if such employer-provided cars run on fossil fuels). Beyond climate-harming tax incentives, other tax policies such as joint taxation of adult couples could have negative effects on other SDGs, such as SDG 5 on 'Gender Equality'.

Furthermore, targeting SDGs through tax measures may not reach all segments of the population, particularly in developing countries with high rates of informality. In these contexts, a significant portion of economic activity occurs outside formal channels, making it challenging for governments to effectively implement tax policies and collect revenue. For instance, in some African and Latin American countries, a large portion of the workforce operates in the informal sector, where transactions often go unrecorded and taxes are not paid.[127] The size and value of these transactions in the shadow economy are often not easily measurable, making it harder to assess the real revenue loss. Despite that, studies conducted by committees within the European Parliament for instance, estimate lost revenue of over EUR 50 billion per year from the EU Member States because of VAT fraud.[128] As a result, revenue-positive policies such as excise taxes or progressive income taxation may primarily affect those who are formally employed or engaged in formal business activities, leaving out a substantial portion of the population. Moreover, wealth taxes may not be applicable or enforceable in regions where wealth is often held in non-traditional forms, such as land or livestock, rather than financial assets. Similarly, carbon pricing mechanisms may have limited impact in regions where energy consumption is predominantly rural and decentralised. Additionally, in countries with weak tax administration systems or pervasive corruption, tax revenue may not be effectively utilised for SDG-related initiatives, further exacerbating disparities.

The interaction between the SDGs and taxation should be assessed carefully. Regulatory tax measures could be very attractive from a political perspective, but their consequences on the SDGs may not be the desired ones.[129] Environmental taxes and their implementation could be used as an example to support such a claim. Tax reforms aiming to impact the environment and climate change such as ETS or carbon border adjustment mechanisms are used as instruments that essentially require polluters to pay. Undoubtedly, they aim to incentivise the reduction of carbon emission levels but at the same time these taxes design a 'right to pollute' for those able to pay. These environmental taxes most likely will generate a behavioural change for those who cannot cover the costs of the tax and effectively will reduce their likelihood to pollute. This leads to an unfair situation, where the richer polluters may buy themselves out of the situation and policy-makers must consider one of the guiding principles when the polluter pays principle was adopted by the OECD in 1972 to limit the effect of such tax measures to the specific socioeconomic problems associated with the implementation

[126] International Air Transport Association, 'Tax Exemption on Jet Fuel' (undated), available at: <https://www.iata.org/en/programs/ops-infra/fuel/>.
[127] Marius-Cristian Frunza, *Value Added Tax Fraud* (Routledge, 2019).
[128] Marie Lamensch and Emanuele Ceci, *VAT Fraud: Economic Impact, Challenges and Policy Issues* (European Parliament, Study Requested by the TAX3 Committee, 2018) 8.
[129] Rob van Gestel and Jurgen de Poorter, 'Putting Evidence-Based Law Making to the Test: Judicial Review of Legislative Rationality' (2016) 4(2) *The Theory and Practice of Legislation* 155.

of a country's environmental program.[130] In cases like this, it is rather unclear if environmental tax incentives or reforms will achieve the goal(s) that are aimed for.

The continuous reforms and changes in the international tax framework represent a challenge of their own. Many changes and adjustments carry a specific risk and uncertainty, especially for countries that cannot keep up with the pace of such developments. This is closely linked to the political pressure that many developing countries face to adopt new international tax standards in a timely manner, switching the focus of national legislators and prioritising certain initiatives instead of sustainability for instance. For example, focusing on the implementation of the Global Minimum Tax (GMT) may affect the implementation of the SDGs in some African countries.[131] At the same time, however, participating in the GMT agreement might yield additional tax revenue for low-income countries, so there is a direct gain from it although it slows down the progress to fund and support directly the SDGs. However, participation in such an agreement may result in the offset of national tax incentives which could impact the position of a low-tax jurisdiction to attract foreign investment.

Lastly, another observed challenge is to design a new and more sustainable tax system. This carries a highly practical and political challenge. Discussions are still taking place on reforming the way value is interpreted for tax purposes. Christians argues that the current international tax system is unsustainable due to the conflict of 'real value' creation, both legally and economically, resulting from intangible and tangible assets.[132] A tension exists in assumptions if profits are driven by tangible assets (human capital, natural resources) or intangible assets (concepts, branding) and this leads to a shift in taxing rights, wherever profit-generating factors are deemed to be resident.

While discussions on designing more sustainable tax systems are often linked to corporate or personal income tax reforms[133] which improve progressivity, that is not always the case. Recently, there has been growing discussion about a global wealth tax system for ultra-high-net-worth individuals. The EU Tax Observatory and its director, Gabriel Zucman, have already proposed a 2 per cent minimum tax on billionaires' wealth to address the fact that current tax systems have failed to tax the rich effectively.[134] Others like de la Feria and Swistak argue that VAT systems could also be redesigned to be more progressive through the introduction of real-time refund schemes for low-income households.[135] However, such fundamental VAT reforms would require time and careful planning and may be difficult to implement in technologically disadvantaged countries.

## 8. CONCLUSIONS

To identify the key features of sustainable taxation and examine the relationship between tax policy and sustainability, this article conducts a conceptual analysis of the

[130] OECD, *The Polluter-Pays Principle: OECD Analyses and Recommendations* (1992).
[131] Afton Titus, 'Global Minimum Corporate Tax: A Death Knell for African Country Tax Policies?' (2022) 50(5) *Intertax* 414.
[132] Allison Christians, 'Designing a More Sustainable Global Tax System' (2021) 44(1) *Dalhousie Law Journal* 19.
[133] Ibid.
[134] Gabriel Zucman, *A Blueprint for a Coordinated Minimum Effective Taxation Standard for Ultra-High-Net-Worth Individuals: Commissioned by the Brazilian G20 Presidency* (EU Tax Observatory, 2024).
[135] Rita de la Feria and Artur Swistak, 'Designing a Progressive VAT' (International Monetary Fund Working Paper WP/24/78, April 2024).

topic. First, through a conceptual analysis, the authors analyse the use of sustainability in tax policy and conclude that sustainable taxation is 'the alignment of tax reforms with the SDGs'. Once the concept is clarified, the authors examine the ways in which the SDGs and tax policy interact, both indirectly and directly. An indirect interaction between the two is distinguished as an instrument to influence DRM through better tax effort(s), stronger anti-tax avoidance measures and foreign aid to developing countries. This article demonstrates that in general, countries that have a higher tax-to-GDP ratio or a higher tax effort score tend to perform better regarding their SDG achievement. Directly designing tax policies to support sustainable behaviour through tax expenditures or incentives might also impact the achievement of the SDGs. Nevertheless, it is essential to carefully assess the direct and indirect interaction between SDGs and tax policy, as certain tax measures might have both positive and negative impacts on the achievement of some SDGs. In addition, this article highlights the ongoing progress towards a more inclusive and collaborative international tax framework, which contributes to more efficient revenue mobilisation and alignment of tax systems with SDG targets. Finally, it identifies a number of challenges that the current international tax framework needs to further address in order to achieve sustainable taxation.

# 9. APPENDIX

**Table 1: The Sustainable Development Goals and Their Targets**

| Goal | Target |
|---|---|
| 1. No Poverty | End poverty in all its forms everywhere |
| 2. Zero Hunger | End hunger, achieve food security and improved nutrition and promote sustainable agriculture |
| 3. Good Health and Well-Being | Ensure healthy lives and promote well-being for all at all ages |
| 4. Quality Education | Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all |
| 5. Gender Equality | Achieve gender equality and empower all women and girls |
| 6. Clean Water and Sanitation | Ensure availability and sustainable management of water and sanitation for all |
| 7. Affordable and Clean Energy | Ensure access to affordable, reliable, sustainable and modern energy for all |
| 8. Decent Work and Economic Growth | Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all |
| 9. Industry, Innovation, and Infrastructure | Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation |
| 10. Reduced Inequalities | Reduce inequality within and among countries |
| 11. Sustainable Cities and Communities | Make cities and human settlements inclusive, safe, resilient and sustainable |
| 12. Responsible Consumption and Production | Ensure sustainable consumption and production patterns |
| 13. Climate Action | Take urgent action to combat climate change and its impacts |
| 14. Life Below Water | Conserve and sustainably use the oceans, seas and marine resources for sustainable development |
| 15. Life on Land | Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss |

| | |
|---|---|
| 16. Peace, Justice, and Strong Institutions | Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels |
| 17. Partnerships | Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development |

Source: United Nations.[136]

**Table 2: Publications on the Concept of Sustainable Taxation**

| Publication | Title | Determinants |
|---|---|---|
| **Schratzenstaller (2015)[137]** | Sustainable tax policy: Concepts and indicators beyond the tax ratio | Three-pillar approach (ECO, SOC, ENV) |
| **Gunnarsson (2020)[138]** | Fair and Sustainable Taxation from a European Horizon | No specific approach |
| **Davis-Nozemack & Kisska-Schulze (2020)[139]** | Applying Sustainability to Tax | Two-pillar approach (SOC and ENV) |
| **Nerudová et al (2019)[140]** | Tax System Sustainability Evaluation: A Model for EU Countries | Four-pillar approach (ECO, SOC, ENV, INST) |
| **Brokelind & van Thiel (2020)[141]** | Tax Sustainability in an EU and International Context | SDGs |

Source: authors' elaboration.

[136] United Nations General Assembly, *The 2030 Agenda*, above n 3.
[137] Schratzenstaller, above n 44.
[138] Gunnarsson, above n 42.
[139] Davis-Nozemack and Kisska-Schulze, above n 1.
[140] Nerudová et al, above n 1.
[141] Brokelind and van Thiel, above n 2.

**Table 3: Relationship between the 5 Ps of the SDGs and Each Specific Goal**

| Source | People | Planet | Prosperity | Peace | Partnership |
|---|---|---|---|---|---|
| United Nations[(a)] | SDG: 1, 2, 3, 4, 5 | SDG: 6, 12, 13, 14, 15 | SDG: 7, 8, 9, 10, 11 | SDG: 16 | SDG: 17 |
| Hammes et al (2021)[(b)] | SDG: 1, 2, 3, 4, 5 | SDG: 6, 12, 13, 14, 15 | SDG: 7, 8, 9, 10 | SDG: 16 | SDG: 11, 17 |
| Urata et al (2023)[(c)] | SDG: 1, 2, 3, 4, 6, 7 | - | - | SDG: 5, 8, 10, 16, 17 | SDG: 17 |
| Morton et al (2017)[(d)] | SDG: 1, 2, 3, 4, 5, 6 | SDG: 13, 14, 15 | SDG: 7, 8, 9, 10, 11, 12 | SDG: 16, 17 | |
| Mattera & Ruiz-Morales (2021)[(e)]; UNGC (2017)[(f)] | Human rights SDG: 1, 2, 3, 4, 5, 8, 10, 16 Labour Standards SDG: 1, 2, 3, 4, 5, 8, 10, 16 | Environment SDG: 2, 6, 7, 13, 14, 15 | Anti-corruption SDG: 8, 9, 10, 11, 12, 16 | SDG 17 is referred to the connecting factor for all the other 16 goals | |
| Lekagul et al (2022)[(g)] | Social SDG: 1, 2, 3, 4, 5, 6 | Environment SDG: 11, 12, 13, 14, 15 | Economic SDG: 7, 8, 9, 10 | Fostering Peace and Partnerships SDG: 16, 17 | |
| Goubran (2019)[(h)] | People SDG: 1, 2, 3, 4 | Environment SDG: 6, 12, 14, 15 | Society SDG: 3, 5, 7, 8, 10, 11, 16 | Means SDG: 5, 7, 9, 13, 17 | |

Source: authors' elaboration.
Notes: (a) SDG Services, above n 61.
(b) Valéria Sucena Hammes, Daniela Biaggioni Lopes, André Carlos Cau dos Santos, Joanne Régis Costa and Yeda Maria Malheiros de Oliveira (eds), *Agricultural Research and Innovation in the 2030 Agenda: Contributions of Embrapa and Partners* (Embrapa, 2021) ch 2 <https://ainfo.cnptia.embrapa.br/digital/bitstream/item/221298/1/SDG-188.pdf>.
(c) Urata et al, above n 62.
(d) Morton et al, above n 64.
(e) Mattera and Ruiz-Morales, above n 62.
(f) United Nations Global Compact, *United Nations Global Compact Progress Report 2017: Business Solutions to Sustainable Development* (2017) <https://d306pr3pise04h.cloudfront.net/docs/publications%2FUN+Impact+Brochure_Concept-FINAL.pdf>.
(g) Lekagul et al, above n 64.
(h) Goubran, above n 62.

*eJournal of Tax Research* (2024) vol. 22, no. 3, pp. 492-517

# Sustainable tax governance: a shared responsibility

Hans Gribnau*

### *Abstract*

Governments and businesses share the responsibility for sustainable development, the environmental, societal and economic aspects of which are expressed in Sustainable Development Goals (SDGs) and environmental, social and governance factors (ESG). Tax is fundamental to collaborative steps towards sustainability and should therefore be integrated into both public and corporate sustainability agendas. Corporate tax governance should reflect the organisation's purpose, values and principles geared towards its sustainability commitment. Sustainable tax is a boardroom responsibility. Companies committing to SDG and ESG objectives should build on CSR, which should inform sustainable corporate (tax) governance. This requires that the ethical obligation to go beyond (strict) compliance with the law be viewed as an obligation to pay a fair share of tax and be proactively transparent to enhance accountability to a wide set of stakeholders. Important challenges are the change of mindset needed to integrate tax into the ESG framework and the design of a (public transparency) benchmark which provides detailed tax data to enable a proper analysis of corporations' substantive tax performance.

**Keywords**: sustainability, public governance, corporate governance, stakeholder theory, shareholder primacy, taxes, tax governance, Sustainable Development Goals (SDGs), environmental, social and governance factors (ESG), CSR, beyond compliance, fair share, accountability, transparency, public country-by-country reporting

* Professor of Tax Law at the Fiscal Institute, Tilburg University; J.L.M.Gribnau@tilburguniversity.edu.
The author wishes to thank the anonymous reviewers for valuable comments on a draft of this article.

## 1. INTRODUCTION

Sustainability is a highly debated topic in a world facing many environmental and social challenges. Governments have to promote sustainability, which is fleshed out in the United Nations 17 Sustainable Development Goals (SDGs). Their governance should therefore be geared to sustainable development. Governments cannot achieve these goals without the help of society and the business community. Corporations indeed have a huge impact on the environment, society and the everyday lives of countless people. Sustainable development is therefore a shared responsibility.

Corporations should embed sustainability in their purpose which determines their corporate governance. This regards management and oversight as well as accountability and transparency – being accountable to a wide set of stakeholders becoming ever more important. Rather than SDGs, often environmental, social and governance (ESG) factors are used, especially by (institutional) investors who focus on ESG reporting. However, reporting rules may invite strategic compliance, for example with disclosure rules, which may crowd out ethics.

Here the concept of corporate social responsibility (CSR) might be useful, understood as a commitment to 'do the right thing'. Companies have an ethical responsibility to society (and environment) which is captured in the voluntary obligation to go beyond (strict) compliance with the law.

What about taxation? Unfortunately, the relevance of taxation for sustainable development in the broad sense is often overlooked, but they are clearly linked. Taxes provide governments with the resources to achieve SDGs. Thus the payment of a fair share of tax is a token of shared responsibility for sustainable development. Tax should therefore be integrated into corporate governance oriented to sustainability. However, often multinational enterprises with a strong ESG agenda still engage in aggressive tax planning. Tax seems thus disconnected.

The foregoing can be brought together in the following research question: how does corporate tax governance reflect companies' shared responsibility for sustainable development?

To answer this question, first the concept of public governance and the way it is nowadays oriented to sustainable development (SDGs) will be analysed – including the need for cooperation with the business community. The next step will be a closer look at the way taxation can serve to attain SDGs (sustainable public tax governance). Tax payments by (corporate) citizens enhance governments' capacity to attain sustainable development. In which way does corporate governance reflect the shared responsibility for sustainability? And is there an intrinsic connection between public and corporate governance (also) in this respect? It will be shown that a corporation's purpose determines its governance, an important component of which is accountability, and its prerequisite transparency, to stakeholders. ESG-metrics are increasingly used by, for example, (institutional) investors. Corporate sustainability can follow the course set by CSR. CSR's ethical obligation of going 'beyond compliance with the law' embodies an important ethical dimension of corporate governance. Its meaning will be elaborated on for corporate tax governance, after having examined the need for integration of tax in corporate sustainability. This will be fleshed out for the material (paying a fair share) and procedural tax governance aspects (tax transparency).

Thus, it will be argued that corporations as powerful actors bear responsibility for sustainable development which is a shared responsibility since sustainable development is only to be achieved by cooperation with governments and other actors.

Moreover, tax is fundamental to collaborative, global steps towards sustainability and should therefore be integrated in both public and corporate sustainability agendas and should therefore not be left out of mainstream discussions of sustainable development.

Thirdly, sustainability corporate (tax) governance should build on CSR. It is argued that corporations' obligation towards society requires them to share a government's responsibility to provide a sustainable tax system. Therefore, the ethical CSR obligation entailing going beyond (strict) compliance translates into the obligation to pay a fair share of tax and be proactively transparent.

As for methodology, an interdisciplinary approach is necessary which requires a review of (corporate) governance, law and CSR and sustainability literature. The interdisciplinary character of the article is capped off with some philosophical insights.

## 2. SUSTAINABILITY, TAX AND GOVERNANCE

The world is facing a number of crises: rising inequality, increasing personal insecurity, and slow economic growth, climate change, polarisation in society and politics and low levels of trust in politics and business to name but a few.[1] Many of these issues appear to be closely connected to the design of tax systems. Moreover, tax avoidance and evasion by large corporations and the rich has shifted the costs public infrastructure largely onto less well-off people and small local businesses.[2] Powerful lobbies advocating wealthy and corporate taxpayers' interests often successfully redirect public policy and legislation according to their needs. Governments are oftentimes willing to cooperate with businesses, to advance their own economic policy agendas. Many of these problems concern sustainability issues; they adversely impact the sustainability of the environment and societies.

Apparently, both government and corporations are in need of (better) sustainability governance which should interact with their tax governance. The term 'governance' broadly refers to the various ways through which social life is coordinated. Governance covers the activity and process (or complex of processes) of ruling – often involving a number of levels or layers.[3] The term is typically used when examining the quality and effectiveness of rule and management of organisations and the systems for doing this.[4]

Governance is aimed at the realisation of the organisation's objectives. Importantly, governance has an internal and an external dimension. It is about relationship(s) with individuals (and organisations) internal and external who can affect or are affected by an organisation's objectives and actions. Governance thus has a relational component. After all, organisations – like people – are not islands; they are part of a larger whole. An organisation impacts and is impacted by others – organisations (for example,

---

[1] For a detailed overview, see Martin Wolf, *The Crisis of Democratic Capitalism* (Allen Lane, 2023).
[2] Sol Picciotto, *Regulating Global Corporate Capitalism* (Cambridge University Press, 2011) 226-230; Andrew Heywood, *Global Politics* (Palgrave Macmillan, 2nd ed, 2014) 129-130.
[3] Heywood, above n 2, 129-130.
[4] Rod Hague and Martin Harrop, *Comparative Government and Politics: An Introduction* (Palgrave Macmillan, 2007) 9.

businesses, government, civil society organisations, traditional and social media) and individuals alike. These affected parties might want to hold the organisation to account. Governance therefore comprises management and oversight, but also accountability and transparency towards relevant stakeholders.[5] Communicating and being accountable in an open manner for the benefit of stakeholders is often seen as one of the safeguards for achieving the organisation's objectives. It is the responsibility of the top management of an organization to achieve these objectives and the activities undertaken to that end: directing, controlling, monitoring, accountability and open communication. This goes for public sector and private sector organisations alike; that is, these are characteristics of both public and corporate governance.

## 3. PUBLIC GOVERNANCE

### 3.1 Purpose, accountability and transparency

This article mainly deals with sustainable corporate tax governance but there is a clear connection to governance in the public sector. Here, too, the goal is to ensure organisational effectiveness. In the context of public administration, (public) governance can be roughly defined as the exercise of political authority and the use of institutional resources to manage society's problems and affairs.[6]

The purpose, the *raison d'être*, of government is to promote the public interest and provide the goods and services that society needs. This requires good public governance to enhance decision-making to enact and implement policies that deliver public goods. Good public governance is the capacity to have public services delivered and is strongly related to concepts such as state capacity, quality of government and government interaction with the private sector and civil society.[7] Good public governance is also open and democratic. In a democracy it is a basic requirement that legislation and public administration be responsive to citizens' concerns, expectations and interests.[8] Responsiveness can help restore trust in government. It requires government to go beyond minimum norms of legality (constitutionality) and formal democratic decision-making procedures.

But many public problems are too complex to be solved and handled by a government alone. Cooperation is then needed between public agencies and the people and organisations affected, and more generally, society (including non-governmental organisations (NGOs)). Arguably, companies, and in particular large corporations, may play an important role here. Governments and corporations are partners in the business of sustainability; both are powerful institutions capable of providing sustainable solutions to the most serious problems of today and tomorrow. They therefore bear a shared responsibility.

---

[5] R Edward Freeman, Jeffrey S Harrison, Andrew C Wicks, Bidhan L Parmar and Simone de Colle, *Stakeholder Theory: The State of the Art* (Cambridge University Press, 2010); Hague and Harrop, above n 4, 364-366.

[6] World Bank, *Managing Development: The Governance Dimension, A Discussion Paper* (World Bank, 1991) 1-2.

[7] Bo Rothstein, 'Good Governance' in David Levi-Faur (ed), *The Oxford Handbook of Governance* (Oxford University Press, 2012) 143, 143-144.

[8] For the idea of responsiveness understood as civil servants 'respond[ing] to the needs and demands of the public – especially clients of programs', see B Guy Peters, *The Politics of Bureaucracy: An Introduction to Comparative Public Administration* (Routledge, 6th ed, 2010) 265.

Liberal-democratic states employ two classical institutional mechanisms for making executive government accountable and keeping it under control: 'oversight by elected representatives and legal adjudication by an independent judiciary'.[9] The democratic mechanism of periodical open elections is nowadays supplemented by other mechanisms to involve citizens in inclusive decision-making processes to reinforce the legitimacy of the usual electoral democracy. Civil society itself should directly become involved in decision-making by way of participation and consultation. Government is accountable to the general public, but this is an increasingly complex and challenging task as publics are 'becoming ever more diverse as a result of increasing institutional differentiation, pluralization of interests, and proliferation of stakeholder groups'.[10] Perhaps states collaborating in international and supranational organisations even face a more daunting task in this respect. Transparency, as one of the principal democratic values, should help citizens to gain a clear insight and understanding of the democratic decision-making processes. 'It allows citizens to control the activity of their elected representatives, to verify respect for legal procedures, to understand decision-making processes, and to trust political institutions.'[11] The Covid-19 pandemic has created a new sense of urgency. The vulnerability of societies and the global economy exposed by the pandemic again showed the need for better governance for sustainable development's societal and economic aspects – on top of the threat of climate change.[12]

### 3.2 Public governance and sustainability

Public governance aims to create safeguards for the realisation of the public organisation's objectives. Sustainability is an important objective of government today. The classic definition of sustainable development applies can be found in the so-called Brundtland Report. Sustainable development 'meets the needs of the present without compromising the ability of future generations to meet their own needs'.[13] Solutions to current problems must therefore be future proof. 'Future proof' is thus the most obvious, but very abstract, meaning of sustainability, which needs to be further elaborated in more detail which will next be done in terms of Sustainable Development Goals. Public governance must be aligned with this sustainability objective. In section 5.2 below corporate responsibility for sustainable development will be discussed in terms of ESG.

The broader theme of sustainable development is broken down into the United Nations' 17 Sustainable Development Goals. The United Nations' ultimate objective is to tackle today's global challenges, including poverty, systemic inequalities, climate change and biodiversity loss. The SDGs were formulated in the resolution *Transforming Our World: The 2030 Agenda for Sustainable Development* adopted by the United Nations General Assembly on 25 September 2015. Before formulating the SDGs in concrete terms, the resolution states that this UN Agenda has three intertwined and balancing

[9] Christopher Hood, 'Controlling Public Services and Government: Towards a Cross-National Perspective' in Christopher Hood, Oliver James, B Guy Peters and Colin Scott (eds), *Controlling Modern Government: Variety, Commonality and Change* (Edward Elgar, 2004) 3, 5.
[10] Carmen Sirianni, *Investing in Democracy: Engaging Citizens in Collaborative Governance* (Brookings Institution Press, 2009) 16.
[11] Daniel Innerarity, *Governance in the New Global Disorder: Politics for a Post-Sovereign Society*, tr Sandra Kingery (Columbia University Press, 2016) 89.
[12] John Morrissey and Patrick Heidkamp, 'Sustainability after COVID-19: Pillars for a Just Transition' (2022) 5(2) *Environmental Sustainability* 261.
[13] United Nations, *Report of the World Commission on Environment and Development: Our Common Future* (United Nations, 1987) 15 (Brundtland Report).

dimensions of sustainable development – 'the economic, social and environmental'. To achieve sustainable development, five 'P's' are then guiding: 'People, Planet, Prosperity, Peace and Partnership'.[14] This last 'P' points to an important governance aspect: collaboration among all stakeholders. Achieving the SDGs requires cooperation among many actors, such as governments, intergovernmental organisations, non-governmental organisations, businesses and society at large. Governments and the business community should therefore partner.[15]

The 17 SDGs call for action by all countries, poor, rich and middle-income to promote prosperity while protecting the planet. They were agreed upon by countries affiliated with the United Nations. The goals came about based on global input from organisations and individuals. Those goals therefore cover a broad palette and address major global issues, including poverty and hunger, climate action, affordable and sustainable energy, industry, innovation and infrastructure, life in water and on land, inequality, sustainable cities and communities, and more. Each of the 17 goals is further fleshed out into a number of specific targets – 169 in all.[16] These targets require international cooperation and thus proper governance of the various states, international (governmental) partnerships and NGOs, etc. Sustainability must thus be understood as a comprehensive concept. It is about sustainable development of all countries – not just developing countries. Moreover, the SDGs make it clear that sustainability is not limited to concern for the environment and climate change and reducing energy consumption, as it used to be.

## 4. PUBLIC TAX GOVERNANCE AND SUSTAINABILITY

Public tax governance is a part of public governance, namely that part that relates to taxation. Transparency serves accountability of the tax authorities and offers 'the public … a mechanism to enable it to check up on these authorities'.[17] Responsiveness to citizens' concerns, expectations and interests requires taxation for the benefit of society (the vertical dimension of the social contract).[18] Government, especially the legislature, has primary responsibility for the integrity of the tax system and has to take sustainability, one of the major problems of our time, on board.[19] Therefore, tax governance will also have to pay attention to sustainable development. Taxes can be employed to enhance sustainable development in three different ways, since taxation carries three functions, namely the budgetary, redistributive and regulatory (or instrumental) functions. Taxation provides government with revenue to pay for all kinds

---

[14] United Nations General Assembly, *Transforming Our World: The 2030 Agenda for Sustainable Development*, Resolution A/RES/70/1, 25 September 2015 <https://sdgs.un.org/documents/ares701-transforming-our-world-2030-agen-21254>.
[15] See Colin Mayer, *Prosperity: Better Business Makes the Greater Good* (Oxford University Press, 2018) 8: 'Private corporations are part of the attainment of that public purpose'.
[16] See United Nations, 'Make the SDGs a Reality' <https://sdgs.un.org/>.
[17] Judith Freedman, 'Restoring Trust in the "Fairness" of Corporate Taxation: Increased Transparency and the Need for Institutional Reform' in Sjoerd Goslinga, Lisette van der Hel-van Dijk, Peter Mascini and Albert van Steenbergen (eds), *Tax and Trust: Institutions, Interactions and Instruments* (Eleven International Publishing, 2018) 121, 124.
[18] This the reciprocal relationship between state/government and citizen/taxpayer; see Hans Gribnau and Carl Dijkstra, 'Social Contract and Beyond: Sociability, Reciprocity and Tax Ethics' in Robert F van Brederode (ed), *Ethics and Taxation* (Springer, 2020) 47.
[19] Tax legislation should be implemented in an effective, efficient and fair way, which points at another dimension of public tax governance (which is multilevel governance). See Gyöngyi Végh and Hans Gribnau, 'Tax Administration Good Governance' (2018) 27(1) *EC Tax Review* 48.

of public goods and services, it is an important means of redistribution of income and wealth. Lastly, in the regulatory state taxation is increasingly relied on to encourage citizens to act in ways deemed desirable by the state – and to (financially) discourage other types of behaviour.[20]

Consequently, taxes provide governments with the resources to achieve SDGs: the budgetary function can thus serve prosperity and wellbeing.[21] Taxes may for example be used to finance policies that aim to reduce poverty (SDG 1: 'no poverty') or to improve the health care system (SDG 3: 'good health and wellbeing') or the educational system (SDG 4: 'quality education'). Second, the redistributive function may be employed for combating income and wealth inequalities (SDG 10 'reduced inequalities'). With regard to the regulatory function, taxes may for example function as a tool to promote access to clean energy (SDG 7: 'affordable and clean energy') and climate friendly technologies (SDG 13: 'climate action').[22] Sustainable tax governance may take the form of introducing tax incentives or disincentives in existing regulations and specific taxes, such as environmental taxes and sugar taxes.[23] A system change may even promote both SDGs 13 and 10: a more sustainable society can be promoted by a shift from taxing labour to environmental taxes which would also reduce inequality.[24] Taxation is thus a sustainability issue par excellence.

However, the introduction of tax legislation to promote sustainability should be carefully considered.[25] First, the rule of law should be respected, which fits in well with target 16.3 'promote the rule of law' of SDG 16 ('peace, justice and strong institutions'). In this respect, human rights standards 'provide important individual benchmarks against which to evaluate specific tax policies'.[26] Many tax policies nowadays aim at the realisation of SDGs which comprise economic, social and cultural rights.[27] Also (other) rule of law preconditions must be met: the legislator should respect important values such as legal certainty, equality (distributive justice), and proportionality. Moreover, the use of tax incentives involves (another) balancing act, as excessive use

---

[20] Reuven S Avi-Yonah, 'The Three Goals of Taxation' (2006) 60(1) *Tax Law Review* 3; Hans Gribnau, 'Why Social Responsible Corporations Should Take Tax Seriously' in Karina Kim Egholm Elgaard, Rasmus Kristian Feldthusen, Axel Hilling and Matti Kukkonen (eds), *Fair Taxation and Corporate Social Responsibility* (Ex Tuto Publishing, 2019) 103, 107-113 ('Why Social Responsible Corporations Should Take Tax Seriously').

[21] Major international organisations, including the IMF, OECD, and the World Bank Group have recognised this aspect of domestic revenue mobilisation; see Alice Pirlot, 'A Legal Analysis of the Mutual Interactions between the UN Sustainable Development Goals (SDGs) and Taxation' in Cécile Brokelind and Servaas van Thiel (eds), *Tax Sustainability in an EU and International Context* (IBFD Publications, 2020) 87, 90-92 (who calls this 'indirect interaction').

[22] For example, see Annette Nellen and Monika Miles, 'Taxes and Sustainability' (2007) 2(4) *Journal of Green Building* 57.

[23] Ricardo García Antón and Cihat Öner, 'Public Health Taxes: Should Sugar-Sweetened Beverages Be Taxed? If So, How?' (2023) 15(4) *World Tax Journal* 643; Bret N Bogenschneider, 'A "Fool" and His Sugar-Sweetened Beverage are Soon Taxed' (2017) 38(2) *Liverpool Law Review* 207.

[24] The Ex'tax Project for example, proposes to tax natural resources and pollution, and use 'the revenues to lower the tax burden on labour and increase (social) spending': Ex'tax Project Foundation, 'The Ex'tax Project' <https://ex-tax.com/>. See also Edoardo Traversa, 'The Tax Implications of Global Warming: Preparing for a Change of Climate' (2020) 48(5) *Intertax* 468.

[25] See Mart van Hulten, 'Aiming for Well-being through Taxation: A Framework of Caution and Restraint for States' (PhD Thesis, Tilburg University, 2019).

[26] Philip Alston and Nikki Reisch, 'Introduction: Fiscal Policy as Human Rights Policy' in Philip Alston and Nikki Reisch (eds), *Tax, Inequality, and Human Rights* (Oxford University Press, 2019) 1, 19.

[27] Olivier De Schutter, 'Taxing for the Realization of Economic, Social, and Cultural Rights' in Philip Alston and Nikki Reisch (eds), *Tax, Inequality, and Human Rights* (Oxford University Press, 2019) 59.

may cause a crowding-out effect of intrinsic motivations – such as ethical considerations – to comply with the law ('crowding out ethics') – or intrinsic reasons to reduce unsustainable conduct.[28] Ideally, rewarding good behaviour via tax incentives is aimed at internalisation; resulting in an internal drive to do what is right, instead of being driven merely by for example a cost-benefit analysis, good relations with the (tax) authorities or reputational concerns (strategic, extrinsic motivation).

Furthermore, governance requires ensuring policy coherence.[29] Many environmental and societal problems can only be solved by multiple sectors interacting in new ways, possible generating multiple impacts (multiplier effect).[30] An interesting example is the US *CHIPS and Science Act* which requires semiconductor companies that receive tax credits to reinvest profits in improved working conditions and energy-efficient supply chains.[31] Policy coherence is not an easy job given the enormous complexity of the tax system and the sometimes contradictory intended and unintended effects of behavioural incentives. An unbalanced system of tax incentives, however, can lead to redistribution 'upwards', as with the Dutch tax incentives to promote the use of hybrid and electric vehicles to reduce carbon emissions (SDG 13).[32] This is in stark contrast with the redistributive function of taxation.[33]

Strong institutions (SDG 16) enhance better tax laws and regulations at the domestic and international level. With respect to domestic tax policy-making there should be equal opportunities for individuals to participate in a democratic society ('social sustainability').[34] The idea of equal opportunities to participate is also of relevance at the international level. A sustainable international tax system requires good

[28] Benjamin van Rooij and Adam Fine, *The Behavioral Code: The Hidden Ways the Law Makes Us Better…or Worse* (Beacon Press, 2021) 59-60.
[29] Coherence can be identified as one of the underlying basic values of the SDGs and their underlying targets, the others being equity and equality, and environmental protection. These values show 'the contradictions and complexity of the SDGs' which are 'immanent challenges for creating sustainable tax policies': Pernilla Rendahl and Katarina Nordblom, 'Identifying Challenges for Sustainable Tax Policy' in Cécile Brokelind and Servaas van Thiel (eds), *Tax Sustainability in an EU and International Context* (IBFD Publications, 2020) 393, 400.
[30] See Mariana Mazzucato and Rainer Kattel, 'What Mission-Driven Government Means', *Project Syndicate* (7 May 2024) <https://www.project-syndicate.org/commentary/mission-driven-government-what-it-means-and-common-misconceptions-by-mariana-mazzucato-and-rainer-kattel-1-2024-05>.
[31] The White House (US), 'CHIPS and Science Act Will Lower Costs, Create Jobs, Strengthen Supply Chains, and Counter China' (Fact Sheet, 9 August 2022) <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/09/fact-sheet-chips-and-science-act-will-lower-costs-create-jobs-strengthen-supply-chains-and-counter-china/>.
[32] In the Netherlands, the generous tax incentives for the purchase of often (expensive) luxury hybrid (plug-in) and electric cars benefited mostly wealthy people and employees who drove a car paid for by their employer. Moreover, most drivers of these cars actually (still) drove on petrol since their employers paid for the costs (fuel included) of the car; they had no incentive to drive electric. See the report of the Netherlands Court of Audit (Algemene Rekenkamer), *Autobelastingen als Beleidsinstrument. Effecten van elektrische auto's en bestelauto's voor belastingopbrengsten, luchtkwaliteit en klimaat* (*Car Taxes as a Policy Tool. Effects of Electric Cars and Vans on Tax Revenues, Air Quality and Climate*) (2020) <https://www.rekenkamer.nl/archief/2020>.
[33] In France, for example, the government's plan to increase the carbon tax which is particularly inegalitarian' was one of the causes massive protests of the *gilets jaunes* ('yellow vests'); Thomas Piketty, *A Brief History of Equality*, tr Steven Rendall (Harvard University Press, 2022) 11.
[34] Yvette Lind, 'Political (Tax) Equity in a Global Context as a Part of Social Sustainability: Some Guidance for Researchers Who Wish to Explore Democratic Implications on Tax and Spending Decisions' in Cécile Brokelind and Servaas van Thiel (eds), *Tax Sustainability in an EU and International Context* (IBFD Publications, 2020) 175.

international tax governance with responsive, inclusive, participatory and representative mechanisms – also enabling less powerful countries and parties to successfully advance their interests.[35] Sustainable tax governance requires a framework for global and sustainable tax governance that benefits not only Western countries.[36] Moreover, cooperation and in particular the formation and maintenance of partnerships helps to achieve SDG 16, and all other SDGs (SDG 17: 'partnerships for the goals'). This also goes for taxation. There is for example an increasing need for cooperation among states at the international level to counter harmful tax competition and tax evasion and aggressive tax planning by taxpayers.[37] Diminishing tax revenues will (further) hollow out states' capacity to provide public goods and services and negatively impacts distributive justice. This also undermines their capacity to achieve SDGs – for example the reduction of poverty.[38] At this point, public tax governance interacts with the tax governance of companies, in particular those that are committed to sustainability and social responsibility.

## 5. CORPORATE GOVERNANCE

### 5.1 Governance: purpose and stakeholders

Corporate governance is 'about management and control, about responsibility and influence, and about supervision and accountability'.[39] Incidentally, there is no single definition of corporate governance, which is not surprising now that views on it are in flux.[40] However, one does see convergence between national corporate governance systems and codes through the work of international organisations.[41]

Corporate governance is aimed at the realisation of the corporation's purpose which therefore determines its governance. The aim of corporate governance is 'to promote the interests of the firm as a whole and, in particular, to assist it with achieving its

---

[35] This may also include external assistance for capacity building; see, for example, Sathi Meyer-Nandi, 'Policy Coherence for Sustainable Development in International Tax Matters: A Way Forward for Donor Countries?' in Irma Johanna Mosquera Valderrama, Dries Lesage and Wouter Lips (eds), *Taxation, International Cooperation and the 2030 Sustainable Development Agenda* (Springer, 2021) 63.

[36] Martin Hearson, Rasmus Corlin Christensen and Tovony Randriamanalina, 'Developing Influence: The Power of "the Rest" in Global Tax Governance' (2023) 30(3) *Review of International Political Economy* 841; F Heitmüller, *Combatting Tax Avoidance, the OECD Way? The Impact of the BEPS Project on Developing and Emerging Countries' Approach to International Tax Avoidance* (PhD Thesis, Leiden University, 2024).

[37] Holle and co-authors recognise the need for concerted action of states and corporations and propose a rating of states based on the ratio between their sustainability performance and the corporate tax payments, which allows for a sustainable tax competition: Florian Holle, Madeleine Kockrow and Kira Thuar, '*Der Dualismus der steuerlichen Nachhaltigkeit: Wechselwirkungen zwischen staatlichem und unternehmerischem Handeln*' [2020] (20) *Internationales Steuer- und Wirtschaftsrecht* 809.

[38] 'Corruption, bribery, theft, and tax evasion cost some US $1.26 trillion for developing countries per year': UN, 'Sustainable Development Goals: Factsheet' 8 <https://sustainabledevelopment.un.org/content/documents/8326Factsheet_SummitPress_Kit__final.pdf>. See Robert Bird and Karie Davis-Nozemack, 'Tax Avoidance as a Sustainability Problem' (2018) 151(4) *Journal of Business Ethics* 1009.

[39] Corporate Governance Code Monitoring Committee (Netherlands), *The Dutch Corporate Governance Code 2022* (2022) 5 <https://www.mccg.nl/publicaties/codes/2022/12/20/dutch-corporate-governance-code-2022>.

[40] Jill Solomon, *Corporate Governance and Accountability* (Wiley, 4th ed, 2013) 5.

[41] Jonathan Charkham, *Keeping Better Company: Corporate Governance Ten Years On* (Oxford University Press, 2nd ed, 2005) 7.

corporate purposes'.[42] Purpose is therefore critical to governance serving as 'a coordinating mechanism for long-term ventures and associations'.[43] Corporate purpose determines the structure, conduct and performance of companies. Henderson argues that a deeply held shared purpose 'aligns everyone in the organization around a common mission'.[44]

But what does the concept of (corporate) purpose mean? The British Academy writes: 'The purpose of corporations is to produce profitable solutions for the problems of people and planet'.[45] Additionally companies should not profit from doing harm to others, that is, from producing problems for people or planet. Thus, the company's commitment to sustainability should serve its purpose. Sustainability can either contribute to corporate purpose or can detract from it.[46] Talking in terms of not doing harm shows that the purpose of the company cannot be separated from moral considerations. Accordingly, Charkham argues that the firm's purpose 'is to provide *ethically and profitably* the goods and services people need or want'.[47]

Since corporate governance is value-driven, assisting to realise its purpose which provides deepest values, these rather abstract values have to be fleshed out into the corporation's values and principles which are consistent with corporate purposes. These values form the core of organisational culture.[48] The corporation's governance system should therefore be structured so as to 'align managerial interests with companies' purposes and a set of values and principles necessary to deliver, 'and establish accountability to a range of stakeholders through appropriate board structures'.[49]

According to Mayer the articulation of the (moral) values and principles by which the company will abide is the first component to corporate governance. Precision in their articulation converts purpose statements into truly credible commitments, for example, to sustainability. The second component is '*accountability* and accounting for liabilities attributable to the values and principles'.[50] The company is accountable to its internal and external stakeholders who should be consulted. Accountability 'coupled with the influence of [internal and external stakeholders'] diverse value systems, makes a

---

[42] Mayer, above n 15, 19.
[43] Dorothy S Lund and Elizabeth Pollman, 'Corporate Purpose' (European Corporate Governance Institute Working Paper Series in Law 711/2023, 2023) 3.
[44] Rebecca Henderson, *Reimagining Capitalism: How Business Can Save the World* (Penguin Books, 2020) 92.
[45] The British Academy, *Reforming Business for the 21st Century: A Framework for the Future of the Corporation* (2018) 24 <https://www.thebritishacademy.ac.uk/sites/default/files/Reforming-Business-for-21st-Century-British-Academy.pdf>.
[46] Robert Eccles, Colin Mayer and Judith Stroehle, 'The Difference Between Purpose and Sustainability (aka ESG)', *Harvard Law School Forum on Corporate Governance* (20 August 2021) <https://corpgov.law.harvard.edu/2021/08/20/the-difference-between-purpose-and-sustainability-aka-esg/>.
[47] Charkham, above n 41, 2 (emphasis in original); see also G20/OECD, *G20/OECD Principles of Corporate Governance* (OECD Publishing, 2015) 47: 'High ethical standards are in the long term interests of the company as a means to make it credible and trustworthy, not only in day-to-day operations but also with respect to longer term commitments'.
[48] Geert Hofstede and Gert Jan Hofstede, *Cultures and Organizations: Software of the Mind, Intercultural Cooperation and Its Importance for Survival* (McGraw-Hill, 2nd ed, 2005) 8.
[49] The British Academy, *Principles for Purposeful Business: How to Deliver the Framework for the Future of the Corporation* (2019) 8 <https://www.thebritishacademy.ac.uk/documents/224/future-of-the-corporation-principles-purposeful-business.pdf> ('*Principles for Purposeful Business*').
[50] Mayer, above n 15, 159.

business more likely to embed and bring about societal goals'.[51] Corporate governance's third component is '*attribution* of responsibility for attainment of the values and principles and adjudication over their allocation between different parties'.[52]

In this view, accountability extends to a wider group of stakeholders. For a long time, however, the corporate purpose was seen as to promote shareholder interest (short-term shareholder value maximisation).[53] However, this looks like a self-serving myth, since generally managers have the fiduciary duty to act in the best (long-term) interests of the company and enjoy some discretion to take into account corporations' effects on people and the environment.[54] It is therefore nowadays quite often accepted that there must be room for the interests of other stakeholders in the company.[55] The stakeholder theory embraces this view and presumes that 'corporations exist to serve a number of different interests and not just shareholders'.[56] The basic idea is that value creation is the result of interaction among groups which have a stake in the activities that make up business. Stakeholders are described as 'groups and individuals who, directly or indirectly, influence – or are or could be influenced by – the attainment of the company's objectives'.[57] One can distinguish between primary (including shareholders, investors, employees and suppliers) and secondary stakeholders (including governments and regulators, NGOs, media, and academic scholars).[58] Transparency is an evident prerequisite of accountability, as without adequate information one cannot assess corporate behaviour.

### 5.2 Sustainability: CSR, SDGs and ESG

The idea of value-driven corporate governance having been explained, the next step is to understand business obligation to enhance sustainable development. Repurposing towards a wider group of stakeholders impacts the kind of interests to be taken into

---

[51] The British Academy, *Principles for Purposeful Business*, above n 49, referring to Peter J Buckley, 'Can Corporations Contribute Directly to Society or Only Through Regulated Behaviour?' (2018) 6(s1) *Journal of the British Academy* 323, 340.
[52] Mayer, above n 15, 159.
[53] This still seems the prevalent creed in the United States. Business groups (the Business Roundtable) talk about dropping 'shareholder primacy', but this seems to be a strategy for holding off tax and regulatory reform. See Eric Posner, 'Milton Friedman Was Wrong', *The Atlantic* (22 August 2019). A shift in their social norms is thus required; see Beate Sjåfjell and Mark B Taylor, 'A Clash of Norms: Shareholder Primacy vs Sustainable Corporate Purpose' (2019) 13(3) *International and Comparative Corporate Law Journal* 40.
[54] Ave Geidi Jallai and Hans Gribnau, 'Aggressive Tax Planning and Corporate Social Irresponsibility: Managerial Discretion in the Light of Corporate Governance' (Tilburg Law School Working Paper, 2018) <http://ssrn.com/abstract=3119552>.
[55] See Rebecca Henderson and Eric Van den Steen, 'Why Do Firms Have "Purpose"? The Firm's Role as a Carrier of Identity and Reputation' (2015) 105(5) *American Economic Review: Papers and Proceedings* 326: 'firm purpose appears to be almost invariably directed toward a prosocial goal, ie, it offers some benefit to society'. It is thus to defined as 'a concrete goal or objective for the firm that reaches beyond profit maximization' (at 327).
[56] John Farrar, *Corporate Governance: Theories, Principles, and Practice* (Oxford University Press, 2nd ed, 2005) 5.
[57] Corporate Governance Code Monitoring Committee, above n 39, 6. See also G20/OECD, above n 47, 34.
[58] R Edward Freeman, Laurence Wainwright, Sergiy Dmytriyev and Robert G Strand, 'Stakeholder Approaches to Corporate Sustainability' in Andreas Rasche, Mette Morsing, Jeremy Moon and Arno Kourula (eds), *Corporate Sustainability: Managing Responsible Business in a Globalised World* (Cambridge University Press, 2nd ed, 2023) 75, 78-83.

account and allows for a turn towards sustainability.[59] The SDGs which are primarily to be pursued by governments also require a sustainability commitment from companies, but also embody a variety of stakeholders interests. They 'lay out a coherent road map – widely embraced by the business community – for building a just and sustainable world'.[60] Like CSR and corporate governance, sustainability is based on social responsibility and ethics – also towards future generations. Consequently, the UN's SDGs are becoming increasingly important for companies.[61]

The view that the corporation is a long-term partnership of the corporation's various stakeholders, with attention to the problems of 'people and planet' fits well with common understandings of CSR. The three dimensions 'people, planet, profit' form the 'triple bottom line' there: the company should not only focus on 'profit' (also called 'prosperity'), but also on human rights of employees ('people') and care for natural resources and the environment ('planet').[62] CSR thus flows smoothly into sustainable and responsible business. Indeed, sustainability and sustainable development are umbrella terms in this respect, also including CSR.[63] Sustainability policies can thus build on the experiences that companies have gained with CSR.[64] That is why Mayer writes that 'what a sustainable firm needs to do is exactly the same as what a responsible firm should do'.[65] He explains that it should therefore account for the cost of maintaining its physical capital as well as 'its natural, human, and social capitals'.

The increasing relevance of sustainability for companies is evidenced by the 2000 Global Compact which is 'a voluntary initiative based on CEO commitments to implement universal sustainability principles'.[66] Stating 10 principles in the areas of human rights, labour, the environment and anti-corruption, it aimed at support for the Millennium Development Goals. These MDGs were succeeded by the SDG framework in 2015. Thus, the Global Compact's focus is on supporting the Sustainable Development Goals. The UN thus set up a 'moral framework […] promoting corporate social responsibility'.[67]

In 2004, the UN invited the CEOs of 55 major financing institutions to support the Global Compact. This resulted in a report which argued for the goal of 'sustainable

---

[59] This is for example recognised in the *Dutch Corporate Governance Code 2022*, principle 1.1.1, vi: Corporate Governance Code Monitoring Committee, above n 39, 11.

[60] Henderson, above n 44, 27. For a more conservative position, see Edward Rock, 'For Whom is the Corporation Managed in 2020?: The Debate over Corporate Purpose' (European Corporate Governance Institute Working Paper 515/2020, 2020) <https://ssrn.com/abstract=3589951>.

[61] For example, the members of the largest employers' organisation in the Netherlands, the Confederation of Netherlands Industry and Employers (known as VNO-NCW) endorse the 10 principles of the UN Global Compact that support the realisation of the SDGs.

[62] Afua Owusu-Kwarteng and Sarah L Jack, 'International Development and Corporate Sustainability' in Andreas Rasche, Mette Morsing, Jeremy Moon and Arno Kourula (eds), *Corporate Sustainability: Managing Responsible Business in a Globalised World* (Cambridge University Press, 2nd ed, 2023) 526, 536-537.

[63] International Chamber of Commerce, *How to Inspire and Grow Your Business in the 21st Century: ICC Business Charter for Sustainable Development* (2015) 6.

[64] Alfio Valsecchi, 'What Corporate Tax Policy Has to Do with Sustainability and How Companies Should Deal with It" (2022) 14(1) *World Tax Journal* 113, 122-123.

[65] Mayer, above n 15, 133.

[66] United Nations Global Compact, 'About the UN Global Compact' <https://unglobalcompact.org/about>. For example, as noted previously, n 61 above, members of the Dutch employers' organisation VNO-NCW endorse the 10 principles of the UN Global Compact.

[67] Buckley, above n 51, 347.

development' and 'awareness of mutual understanding of involved stakeholders' for a 'better inclusion of environmental, social and corporate governance (ESG) factors in investment decisions'.[68] ESG as an acronym for 'environmental, social, governance' was born. The report refrains from using terms such as sustainability, corporate citizenship, etc. which allow many different interpretations and prefers 'to spell out the environmental, social and governance issues' that should be integrated into investment analysis.[69]

ESG has evolved into a separate corporate function. Companies feel obliged to voluntarily integrate ESG improvements 'into their business operations for the benefit of shareholders, other stakeholders, society as a whole, and the environment'.[70] Companies using ESG is to identify the risks due to their environmental and social impact. In this way, ESG is a set of reporting measurements of CSR performance. Voluntary adopting ESG measurements enables accountability to a range of stakeholders – in line with corporate purpose.[71]

ESG measurement regards three complementary dimensions. 'Environmental' concerns the impact of a company on nature and the environment, such as greenhouse gas emissions, pollution, and freshwater supply. 'Social' includes the interaction with stakeholders such as employees and communities in which the company operates and supply chain responsibility towards suppliers and customers. Finally, 'governance' is about leadership style and culture within a company, executive remuneration, (internal and external) risk management,[72] transparency, reporting policy and the relationship with and involvement of stakeholders.[73] By adding G to E and S it is explicitly acknowledged that governance is the basis for achieving every corporate goal, including E and S. Hence 'governance' (G) has been added to E and S as conceptualised in ESG. E, S and G are each referred to in sustainability reports translated into criteria, the so-called ESG metrics, that ensure measurability and comparability. However, the economic dimension should also be taken into account;[74] sustainable value creation requires therefore creating value in ecological, social and economic terms.[75]

---

[68] The Global Compact, *Who Cares Wins: Connecting Financial Markets to a Changing World* (2004) 3 <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/280911488968799581/who-cares-wins-connecting-financial-markets-to-a-changing-world>.
[69] Ibid 2-3.
[70] Lynn M LoPucki, 'Repurposing the Corporation Through Stakeholder Markets' (2022) 55(3) *UC Davis Law Review* 1445, 1447 (footnote omitted).
[71] Elizabeth Pollman, 'The Making and Meaning of ESG' (European Corporate Governance Institute Law Working Paper 659/2022, 2022).
[72] See SFW van den Bosch, 'Business at Risk: The Governance and Disclosure of Sustainability Risks' (PhD Thesis, Tilburg University, 2022).
[73] Andreas Rasche, Mette Morsing, Jeremy Moon and Arno Kourula, 'Corporate Sustainability: What It Is and Why It Matters' in Andreas Rasche, Mette Morsing, Jeremy Moon and Arno Kourula (eds), *Corporate Sustainability: Managing Responsible Business in a Globalised World* (Cambridge University Press, 2nd ed, 2023) 1, 3-4.
[74] A company strives for economic value creation; this is recognised in Carroll's CSR pyramid: economic obligations constitute the bottom layer: Archie B Carroll, 'The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders' (1991) 34(4) *Business Horizons* 39, 41.
[75] Florian Lüdeke-Freund and Stefan Schaltegger, 'Business Model Innovation for Sustainability' in Andreas Rasche, Mette Morsing, Jeremy Moon and Arno Kourula (eds), *Corporate Sustainability: Managing Responsible Business in a Globalised World* (Cambridge University Press, 2nd ed, 2023) 388, 395-400.

Thus, sustainability has also become an important issue for many investors, in particular, institutional investors.[76] These are important stakeholders of companies and increasingly assessing and engaging with companies in terms of their ESG policy and practice. As shown above, ESG as such evolved from the concept of sustainability, the negative externalities of business activities on people and the environment (the 'inside-out' perspective). However, social and environmental developments can have an impact on companies as well (the 'outside-in' perspective). This reciprocal relation between the corporation and its environment is known as the 'double materiality perspective'.[77]

ESG is not all 'moonlight and roses', though. Lund and Pollman, for example, argue that in the United States the corporate social responsibility movement transformed into value-enhancing ESG standards oriented toward serving shareholders and their interests (long-term shareholder value maximisation); not aimed at obtaining benefits for stakeholders or the general public.[78] Pollman discusses critics of ESG who assert that ESG engenders confusion, unrealistic expectations, and greenwashing that could inhibit corporate accountability and crowd out other solutions to pressing environmental and social issues and inhibits accountability.[79] Moreover, ESG ratings from different providers are substantially dissimilar and the information that decision-makers receive from the rating agencies about ESG performance is relatively noisy.[80] Serafeim, a leading scholar of ESG, largely provides the same picture, but nonetheless in his experience, 'most organizations have now developed commitment among their leaders to take ESG seriously'.[81]

Regulators play an important role. Governments for example are introducing an increasing number of laws and regulations to encourage ESG policies whilst pension funds and other institutional investors are also putting pressure on firms.[82] Regulation may also inject legal certainty into areas of law where uncertainty is lingering with regard to the permissibility of investing in environmental and social interests (which

---

[76] ESG-driven investors sometimes urge private investors – private equity – to also take ESG seriously – partly to prevent them from taking over unsustainable investments. See UN Environment Programme, 'Net-Zero Asset Owner Alliance Outlines Requests for Asset Managers in Private Markets' (24 November 2022) <https://www.unepfi.org/industries/the-net-zero-asset-owner-alliance-outlines-its-recommendations-for-asset-managers-in-private-markets/>.

[77] See for example, European Commission, *Proposal for a Directive of the European Parliament and of the Council Amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as Regards Corporate Sustainability Reporting*, COM/2021/189 (21 April 2021) 1, 8. Materiality is a fundamental concept in financial reporting. 'An information is considered material if its omission, misstatement or obscurity could reasonably be expected to influence decisions made by the primary users of financial statements (IAS 1.7)': Marek Muc, 'Materiality in IFRS Standards and Financial Reporting', *IFRS Community* (last updated 2 May 2024) <https://ifrscommunity.com/knowledge-base/materiality/>.

[78] Dorothy S Lund and Elizabeth Pollman, 'The Corporate Governance Machine' (2021) 121(8) *Columbia Law Review* 2563.

[79] Pollman, above n 71, 31-45. 'Many of these challenges and critiques are "hyperboles" or at least can be partially sorted out with time', though as 'the alignment between shareholder value creation and ESG performance was asserted from the outset but never fully proven or reconciled' (at 40-41, footnote omitted).

[80] Florian Berg, Julian F Koelbel, Anna Pavlova and Roberto Rigobon, 'ESG Confusion and Stock Returns: Tackling the Problem of Noise' (NBER Working Paper w30562, 2022 (revised July 2024)).

[81] George Serafeim, 'ESG: Hyperboles and Reality' (Harvard Business School Working Paper 22-031, 2021) 20.

[82] For 'sustainable finance', see Christoph Van der Elst, 'Fostering Sustainability in The Netherlands: Companies, Ownership, Engagement, Finance and Products' (Ghent University Financial Law Institute Working Paper WP 2022-21, 2022) <https://financiallawinstitute.ugent.be/wp-content/uploads/2022/12/2022-21.pdf>.

involves ethical considerations).[83] Governance aimed at SDGs may also be made a precondition for subsidies and public procurement. Thus, there is an interaction between public and private governance.

Incidentally, it is not self-evident that politicians and government (continue to) support the 'ESG agenda' of companies that is in line with their sustainability assignment; see the US Republicans seeking legislative action against this 'woke' capitalism.[84] Nonetheless, in Europe a prevailing belief underscores the importance of ESG investing for fostering a sustainable economy.[85] This distinctly European perspective accounts for a higher commitment to ESG goals among institutional investors.[86]

Two other factors may account for a change of mindset. Climate change gives many young people a sense of purpose. It has become part of Generation Z's values. They seek to align their values and purpose with their careers and seek socially responsible employers – climate corporate responsibility being a major demand. More generally more employees want to work for sustainable companies.[87] In the wake of the Covid-19 pandemic many companies renewed their organisations' focus on sustainable business practices. A survey conducted in 2022 by Economist Impact found that there is growing evidence that ESG can be a source of value creation for companies and not just a cost centre. Eighty-four percent of 350 corporate leaders across eight different markets in the Asia-Pacific are developing clear strategies to incorporate ESG in their operations rather than seeing it as a pure compliance exercise.[88] There is also evidence that companies with well-designed ESG policies can benefit from cost savings,[89] while enhancing their credibility, brand reputation, and trustworthiness among customers.[90]

### 5.3 ESG, stakeholders and transparency

Transparency is a major dimension of governance. This 'procedural' element is about communicating openly and serves accountability to stakeholders. When long-term value creation should take into account the interests of stakeholders, transparency becomes particularly relevant. Communication of relevant information may enhance

---

[83] Vincent Ooi and A.W.-L. See, 'Promoting ESG Investing by Trustees: Risk Management and Structuring Solutions' (2024) 35(1) *King's Law Journal* 68.

[84] Andrew Edgecliffe-Johnson, 'The War on "Woke Capitalism"', *Financial Times* (28 May 2022), and more recently Spencer Kimball, 'Judge Rules Exxon Can Sue Activist Shareholder Over Climate Proposal', *CNBC* (22 May 2024).

[85] European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Strategy for Financing the Transition to a Sustainable Economy*, COM/2021/390 final (6 July 2021).

[86] Anne Lafarre, 'Do Institutional Investors Vote Responsibly? Global Evidence' (Tilburg Law School TILEC Discussion Paper DP2022-001, January 2024).

[87] See Emission Sentri, 'Why Employees Want to Work for Sustainable Companies' <https://emissionsentri.com/why-employees-want-to-work-for-sustainable-companies/>: '70% of employees and job seekers feel a sustainability program makes an employer more attractive, and 44% of executives acknowledge it's a key factor in attracting and retaining top talent'.

[88] The Economist, 'Sustainability Is About Value Creation as Much as It Is About Resilience' < https://impact.economist.com/projects/profiles-of-progress/article/sustainability-is-about-value-creation-as-much-as-it-is-about-resilience/?utm_source=PaidSocial&utm_medium=LinkedIn&utm_campaign=Kyndryl&utm_content=Article3 >.

[89] Dominic Tantram, 'Cost or Value? Why Is Sustainability Strategically Undervalued?', *Terrafiniti* <https://www.terrafiniti.com/cost-or-value-why-is-sustainability-strategically-undervalued/>.

[90] Philip Malley, 'The Benefits of Corporate Sustainability' *Cleaning and Maintenance Management* <https://cmmonline.com/articles/benefits-of-corporate-sustainability>.

accountability. Transparency can be defined as the accessibility of information to stakeholders of organisations, regarding matters that affect their interests.[91] Accessible and relevant information tailored to the needs and knowledge of the stakeholders may enable them to understand and evaluate companies' behaviour and is essential for stakeholder dialogues.[92] And, if necessary, companies can be held accountable for behaviour that stakeholders consider irresponsible and unsustainable.

Corporate social responsibility as ESG means that it is explicitly acknowledged that corporate governance, and therefore transparency, is the basis for achieving every corporate goal, including broad sustainability that encompasses both 'environmental' and 'social'. Hence 'governance' (G) has been added to E and S as conceptualised in ESG. Transparency takes the form of ESG reporting. The financial performance of companies, profitability and risks are placed in the broader context of their impact on society, people and the environment. ESG transparency should therefore be a boardroom responsibility as the corporate ESG agenda expresses a company's core values and principles and transparency is key for accountability, another main component of corporate governance.

Companies thus provide information about their external impacts towards stakeholders (eg, governments, employees, customers, NGOs, and communities); this can be called stakeholder materiality. This kind of information has become increasingly important for investors. Important standards have been developed by the Sustainability Accounting Standards Board (SASB). The industry-specific SASB standards for disclosures identify the sustainability-related risks and opportunities most likely to affect a company's financial condition, that is, 'cash flows, access to finance or cost of capital over the short, medium or long term'.[93]

However, Delgado-Ceballos and co-authors argue that a financialisation of sustainability occurred: the focus shifted away from this external impact. The emergence of ESG rating agencies and ESG-related products, such as metrics and indices, has contributed to the broad adoption of the term 'ESG' from a financial materiality perspective.[94] In general, however, information on ESG provided by companies is mainly targeting investors by focusing on factors that might affect the company financially, that is on financial materiality.[95] As a result, external impacts that involve no real risk to affect the company financially tend not to be taken into account.

---

[91] Don Tapscott and David Ticoll, *The Naked Corporation: How the Age of Transparency Will Revolutionize Business* (Penguin, 2004) 41.
[92] See Charkham, above n 41, 8.
[93] SASB Standards, 'SASB Standards Overview' <https://sasb.ifrs.org/standards/>. The standards for 77 industries across 11 sectors are detailed in disclosure topics and accounting metrics. SASB focuses on disclosure by companies to their investors and other providers of financial capital, and not to a wider set of stakeholders. See Dimitar Zvezdov and Stefan Schaltegger, 'Sustainability Accounting' in Samuel O Idowu, Nicholas Capaldi, Liangrong Zu and Ananda Das Gupta (eds), *Encyclopedia of Corporate Social Responsibility* (Springer, 2013) 2363. See also GRI and SASB, *A Practical Guide to Sustainability Reporting Using GRI and SASB Standards* (2021) <https://sasb.ifrs.org/knowledge-hub/practical-guide-to-sustainability-reporting-using-gri-and-sasb-standards/>.
[94] Javier Delgado-Ceballos, Natalia Ortiz-De-Mandojana, Raquel Antolín-López and Ivan Montiel, 'Connecting the Sustainable Development Goals to Firm-Level Sustainability and ESG Factors: The Need for Double Materiality' (2023) 26(1) *Business Research Quarterly* 2, 5-6. See also Robert G Eccles, Linda-Eling Lee and Judith C Stroehle, 'The Social Origins of ESG: An Analysis of Innovest and KLD' (2020) 33(4) *Organization and Environment* 575.
[95] Leo E Strine, Jr, *Toward Fair and Sustainable Capitalism* (Roosevelt Institute, 2020) 6.

Moreover, sustainability reporting's shifting emphasis from morality and values to strategic value creation for corporations measured in ESG-metrics may crowd out morality.[96]

Regulators may however intervene in case of external impacts not accounted for.[97] The European Commission, for example, initiated transparency obligations such as the Sustainable Finance Disclosure Regulation (SFDR),[98] the Corporate Sustainability Reporting Directive (CSRD),[99] and the Taxonomy Regulation.[100] This is in line with EU policy to ensure that companies protect human rights and reduce their impact on the planet.

### 5.4 Ethics: CSR's 'beyond compliance'

Importantly, the notion of social responsibility adds to corporate governance's ethical dimension connotation – going beyond pure cost-benefit analysis or reputational considerations.[101] This produces reciprocal benefits for the company, stakeholders and society. Ethics and social responsibility are certainly essential for CSR companies – after all, they explicitly affirm themselves with social responsibility. Here it can be seen that CSR, sustainable development and corporate governance developments overlap. This also applies for three concepts which are common to both corporate governance and CSR: 'transparency, accountability and the participation of stakeholders in the decision-making process'.[102]

The terms 'corporate sustainability' and 'corporate social responsibility' are often used interchangeably. However, two different scientific perspectives are involved. The notion of 'corporate sustainability' originates in natural science and systems perspectives to companies and society, whereas CSR's point of departure is in (normative) moral theory and ideas on business ethics and considering the morality of managers and their moral responsibility to society and the environment.[103] During the 1990s and 2000s, the notions of corporate sustainability and CSR have converged. CSR literature often 'did not necessarily ignore environmental issues, but they did not

---

[96] See Koen van Bommel, Andreas Rasche and André Spicer, 'From Values to Value: The Commensuration of Sustainability Reporting and the Crowding Out of Morality' (2023) 36(1) *Organization and Environment* 179.

[97] See, for example, the *Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and Amending Directive (EU) 2019/1937*, COM/2022/71 final (23 February 2022) ('CSDDD'), and the provisional agreement dated 14 December 2023; European Parliament, 'Corporate Due Diligence Rules Agreed to Safeguard Human Rights and Environment' (Press Release, 14 December 2023) <https://www.europarl.europa.eu/news/en/press-room/20231205IPR15689/corporate-due-diligence-rules-agreed-to-safeguard-human-rights-and-environment>.

[98] European Parliament and European Council, *Regulation (EU) 2019/2088 of 27 November 2019 on Sustainability-Related Disclosures in the Financial Services Sector* [2019] OJ L 317/1.

[99] European Parliament and European Council, *Directive (EU) 2022/2464 of 14 December 2022 Amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as Regards Corporate Sustainability Reporting* [2022] OJ L 322/15.

[100] European Parliament and European Council, *Regulation (EU) 2020/852 of 18 June 2020 on the Establishment of a Framework to Facilitate Sustainable Investment, and Amending Regulation (EU) 2019/2088* [2020] OJ L 198/13.

[101] Charkham, above n 41, 21.

[102] Tineke E Lambooy, *Corporate Social Responsibility: Legal and Semi-Legal Frameworks Supporting CSR* (Kluwer, 2010) 30.

[103] Pratima Bansal and Hee-Chan Song, 'Similar But Not the Same: Differentiating Corporate Sustainability from Corporate Responsibility' (2017) 11(1) *Academy of Management Annals* 105.

integrate them into their CSR conceptualization'.[104] Some corporate sustainability scholars may seem to be less certain on integrating economic responsibility into their definitions. However, even absent a clear distinction between the two terms, one approach does not exclude the other. CSR perspectives complement corporate sustainability.[105] Corporate sustainability thus aims at managing a company as part of interacting economic, social and environmental systems – of which governments are also part. Economic, social and environmental interests have to be balanced while doing business. The focus of corporate social responsibility is more on 'relevant management practices within corporations', that is, on 'its operations, processes and core business strategy'.[106] In this article, the ethical 'complement' provided by CSR is CSR-companies' 'beyond compliance' commitment, as conceptualised by Carroll. As shown above, climate change and the Covid-19 pandemic have created greater sustainability awareness and may be additional drivers to go 'beyond compliance'.

At its core, CSR-companies voluntarily assume certain obligations because of their responsibility to society. (They take the horizontal dimension of the social contract seriously.[107]) Here this article follows Carroll's approach since he emphasises obligations for businesses that go beyond what is required by the law (and the focus on profit s. Carroll captured these beyond-compliance social responsibilities in his famous pyramid of corporate social responsibility. He makes an analytical distinction between a firm's economic, legal, ethical and philanthropic responsibilities, which are not mutually exclusive.[108] In the pyramid the ethical and philanthropic (at the top) layers are placed above the economic (at the bottom) and legal layers.[109] Thus, a company should pursue it economic purpose within the legal framework (the rules of the game) and should interpret and supplement the latter with ethical norms.[110] This ethical responsibility extends beyond what the law (strictly speaking) requires of a company – this may also apply for legally mandated corporate social responsibility.[111] The point is that laws are essential but not always adequate. Since the legal system is conceptualised

---

[104] Ivan Montiel, 'Corporate Social Responsibility and Corporate Sustainability: Separate Pasts, Common Futures' (2008) 21(3) *Organization and Environment* 245, 257.
[105] Karin Buhmann, 'Corporate Sustainability and Climate Change' in Deborah C Poff and Alex C Michalos (eds), *Encyclopedia of Business and Professional Ethics* (Springer, 2023) 472, 473-474.
[106] Rasche et al, above n 73, 9.
[107] The horizontal dimension regards the reciprocal relationships among members of society; Gribnau and Dijkstra, above n 18. See Dunfee, T.W. and T. Donaldson (1999)," Social Contract Approaches to Business Ethics: Bridging the 'Is–ought' Gap" in R.E. Frederick (ed.), A Companion to Business Ethics, Blackwell, Oxford, pp. 38-55.
[108] Carroll, above n 74, 41. Carroll's statement is the most often cited definition in the general management articles reviewed in Montiel, above n 104, 252.
[109] Philanthropy, often incentivised by for example tax breaks, deserves careful consideration since it may advance some SDGs but also entrench existing inequalities more firmly. See Rob Reich, Just Giving: *Why Philanthropy Is Failing Democracy and How It Can Do Better* (Princeton University Press, 2018); Anand Giridharadas, *Winners Take All: The Elite Charade of Changing the World* (Allen Lane, 2020). See also Amy Fallon, 'Calls Renew for Australia's Corporate Religious Institutions to Pay "Fair Share" of Tax', *Crikey* (26 March 2024) <https://www.crikey.com.au/2024/03/26/religious-charities-tax-productivity-commission-lara-kaput/>.
[110] Ave-Geidi Jallai, 'Good Tax Governance: International Corporate Tax Planning and Corporate Social Responsibility – Does One Exclude the Other?' (PhD Thesis, Tilburg University) 93-96: The model was later elaborated upon (leaving the philanthropic obligations out), but the core elements remained the same, and the pyramid model is the most suitable here.
[111] Nayan Mitra and Bhaskar Chatterjee, 'India and Its Corporate Social Responsibility Mandate' in Nayan Mitra and René Schmidpeter (eds), *Mandated Corporate Social Responsibility: Evidence from India* (Springer, 2020) 11.

as a system of 'codified ethics', it should be supplemented by ethical responsibilities in cases of morality where this is not, or is inadequately, codified by law.[112] A company may for example voluntarily adopt policies that reduce a negative impact on the environment and society although that may result in lower profits. It may also invest heavily in stakeholder relationships and transparency because it is the right thing to do rather than for strategic reasons.

CSR corporations accept ethical responsibilities beyond the law, or more precisely beyond the letter of the law.[113] In other words, they go beyond a strict, minimalist interpretation of the body of legal rules. Transplanting the idea of 'going beyond compliance' to corporate sustainability ensures that businesses 'explicitly address the ethical component of business beyond taking into account impacts on society and the natural environment'.[114] Thus 'ethical aspirations beyond legal requirements' should inform ESG practices.[115] Corporate governance requires this ethical aspiration to be articulated, with due attention for accountability for implementation and attribution of responsibility for upholding it.

## 6. CORPORATE TAX GOVERNANCE

### 6.1 Corporate tax governance and sustainability

Corporate tax governance is part of public governance, namely that part that relates to taxation.

The purpose of a corporation determines of course its tax governance. The purpose of many companies contains the CSR and sustainability elements of 'People, Planet and Profit/Prosperity'. Value creation in this 'triple bottom line' must lead to more sustainable core activities of a company – not burdening future generations. Taxes are inherent to these activities and financial contributions to sustain society and the natural environment. A fourth 'P' – 'Paying a fair share' logically follows from this, which the tax policy must therefore be in line with.[116] This determines companies' tax strategy. Companies tax governance should thus more focus on sustainability.[117] As was shown, in the wake of the Covid-19 pandemic many companies renewed their organisations' focus on sustainable business practices and developed clear strategies to incorporate

---

[112] Unfortunately, many companies cherish the opposite, 'rules are made to be broken', ideal; Rana Foroohar, *Don't Be Evil: The Case Against Big Tech* (Allen Lane, 2019) 44.

[113] Doreen McBarnet, 'Corporate Social Responsibility Beyond Law, Through Law, For Law: The New Corporate Accountability' in Doreen McBarnet, Aurora Voiculescu and Tom Campbell (eds), *The New Corporate Accountability: Corporate Social Responsibility and the Law* (Cambridge University Press, 2007) 9, 48-50.

[114] Mark S Schwartz and Archie B Carroll, 'Integrating and Unifying Competing and Complementary Frameworks: The Search for a Common Core in the Business and Society Field' (2008) 47(2) *Business and Society* 148, 163.

[115] Angeli Weller, 'Exploring Practitioners' Meaning of "Ethics," "Compliance," and "Corporate Social Responsibility" Practices: A Communities of Practice Perspective' (2020) 59(3) *Business and Society* 518, 539.

[116] Eelco van der Enden and Bronetta Charlotte Klein, 'Good Tax Governance? …Govern Tax Good!' (2020) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3610858>. See also Gribnau, 'Why Social Responsible Corporations Should Take Tax Seriously', above n 20.

[117] Dutch Association of Investors for Sustainable Development (VBDO), *Good Tax Governance in Transition: Transcending the Tax Debate to CSR* (2014); Bird and Davis-Nozemack, above n 38, 1017-1020, also argue for integrating prevention of tax avoidance in 'sustainability frameworks'.

ESG in their operations. This should translate into sustainable tax governance which sees tax not just as a cost centre or a pure compliance exercise.

The three components of corporate governance (see section 5.1) have to be elaborated for tax. Corporate tax governance therefore requires the precise articulation of tax values and principles, which converts purpose statements into genuinely credible commitments. Sustainability should be taken on board. Tax should be integrated into the ESG objective.[118] Stakeholders expect board members to address sustainability concerns also through the corporate tax governance system, aligning it with the company's sustainability policy.[119] Around 15 years ago, Erle wrote: 'tax cannot stay in the splendid isolation in which its technical nature has historically placed it'.[120] This statement has lost none of its topicality; to the contrary. The articulated set of 'responsible tax principles' (or 'sustainable tax principles') inform the tax strategy with regard to tax planning, tax risk management, tax compliance and the desired relationship with tax authorities and other stakeholders.

The second component is the company's accountability to its internal and external stakeholders. Accountability requires engagement with stakeholders on their expectations with regard to the company's tax management and reporting about relevant tax issues. Accountability in turn requires transparency, that is, to the tax authorities, but also to other stakeholders. This public transparency can entail, for example, publishing the tax strategy,[121] reporting on corporate tax payments and lobbying activities on tax.

The third component is attribution of responsibility for tax. Responsibilities must be identified and assumed by implementing the necessary processes to enable the company to comply with tax law and other regulations. The primary responsibility for tax rests with the board.[122] To manage and control the tax risks associated with sustainability a tax control framework will have to be implemented – as part of the business control

---

[118] IKEA, the popular Swedish furniture retailer, is not exactly setting an example. Some think that IKEA is leading the way in sustainability: DGB Group, 'IKEA: Leading the Way in Sustainability' (13 March 2023) <https://www.green.earth/net-zero/case-studies/ikea-leading-the-way-in-sustainability>. However, see the report on IKEA's tax structure: Marc Auerbach, *IKEA: Flat Pack Tax Avoidance* (Study Commissioned by the Greens/EFA Group in the European Parliament, [2016]). Moreover, the contributions made by Stichting INGKA Foundation often go to companies within the IKEA sphere and not to charity; Nubia Evertsson, 'Corporate Tax Avoidance: A Crime of Globalization' (2016) 66(2) *Crime, Law and Social Change* 199, 208-213.

[119] This requirement does not allow for opportunistic behaviour like the gaming of the Dutch system of tax incentives to reduce carbon emissions by car producers who engineered hybrid (plug-in) cars (often SUVs) which did qualify for tax credits but had a very limited electric range of 35 kilometres or so, and therefore mostly consumed petrol.

[120] Bernd Erle, 'Tax Risk Management and Board Responsibility' in Wolfgang Schön (ed), *Tax and Corporate Governance* (Springer, 2008) 205, 209.

[121] For certain companies in the United Kingdom it is already mandatory to publish the tax strategy; Dennis de Widt and Lynne Oats, 'Co-operative Compliance: The UK Evolutionary Model' in Ronald Hein and Ronald Russo (eds), *Co-operative Compliance and the OECD's International Compliance Assurance Programme* (Wolters Kluwer, 2020) 216, 223-225.

[122] See OECD, *Guidelines for Multinational Enterprises on Responsible Business Conduct* (OECD Publishing, 2023) 51-52; Katarzyna Bronzewska and Eelco van der Enden, 'Tax Control Framework – A Conceptual Approach: The Six Nuances of Good Tax Governance' (2014) 68(11) *Bulletin for International Taxation* 635, 636.

framework. A tax control framework contains all procedures within the company pertaining to taxation.[123]

The three components of (good) corporate tax governance can be articulated with an eye to the interaction of ESG and taxation. With regard to taxation, the three ESG pillars can interact with tax, and the Global Reporting Initiative (GRI) provides some examples of this interaction. Tax in 'Environmental' includes the amount of, eg, carbon taxes, plastics taxes companies pay, and the amount of green subsidies and incentives companies receive. For 'Social', examples are social insurance, health care and pension premiums. Finally, in the case of 'Governance' applied to tax concerns, examples are the alignment of the ESG policy with tax behaviour, tax risk management and assurance, tax reporting and the relationship with and involvement of stakeholders.[124]

This article will elaborate on two aspects of the first and second component of corporate tax governance going beyond compliance, that is, paying a fair share of tax (taking into account the spirit of the law) as companies' key tax value, and, transparency as precondition of accountability, respectively.

### 6.2 Fair share

Corporate tax governance impacts a government's ability to collect sufficient tax revenues to provide public goods and services to its citizens (the vertical dimension of the social contract).[125] Thus, it impacts the living standards of other members of society.[126] Moreover, aggressive tax planning shifts the tax burden to fellow citizens whose tax behaviour is less elastic who have to shoulder it (the horizontal dimension of the social contract). This implies a shared responsibility taxation for the benefit of society not only *vis-à-vis* government but also *vis-à-vis* fellow citizens. Corporations, as powerful tax actors, have a special responsibility for the integrity of the tax system.[127]

Corporate governance's moral dimension should impact a company's tax governance. Tax minimisation does not fit in with that. On the contrary, sustainable (or good) tax governance's starting point is that taxes provide the necessary funding for a sustainable society. The tax purpose to be realised by tax governance must therefore be the payment of a fair share of taxes.[128] This is in line with the CSR principle that companies voluntarily accept ethical obligations on top of legal and economic obligations towards

---

[123] Ronald Russo and Rebwar Taha, 'Corporate Governance and Taxes' in R Russo and R Hein (eds), *Tax Assurance: Latest Developments on Tax Control Frameworks, Technology and Governance* (Kluwer, 2022) 31, 38.

[124] GRI, 'We Need to Talk About Tax', *The GRI Perspective* (Issue 5, March 2022) 3. See also Vasiliki Koukoulioti, 'T for Taxation: The Fourth Pillar in the ESG Framework' (2024) 22(3) *eJournal of Tax Research* 420.

[125] Hans Gribnau, 'Voluntary Compliance Beyond the Letter of the Law: Reciprocity and Fair Play' in Bruno Peeters, Hans Gribnau and Jo Badisco (eds), *Building Trust in Taxation* (Intersentia, 2017) 17, 18-49.

[126] Hans Gribnau and Ave-Geidi Jallai, 'Sustainable Tax Governance and Transparency' in Susanne Arvidsson (ed), *Challenges in Managing Sustainable Business: Reporting, Taxation, Ethics and Governance* (Palgrave Macmillan, 2018) 337.

[127] Hans Gribnau, 'The Integrity of the Tax System after BEPS: A Shared Responsibility' (2017) 10(1) *Erasmus Law Review* 12.

[128] See, for example, the *Dutch Corporate Governance Code 2022*, Principle 1.1.1 which states, among other things, that when developing the strategy for long-term value creation, the board will in any event pay attention to 'vii. paying a fair share of tax to the countries in which the company operates': Corporate Governance Code Monitoring Committee, above n 39, 11.

society. Of course, they have a right to arrange their tax affairs in such a way as to achieve a favourable tax treatment within the limits set by the law. Tax planning may be motivated to avoid double taxation. However, this is not the aim of aggressive tax planning, a far more serious problem which for example is aimed at double non-taxation. To tackle aggressive tax planning, measures have been proposed at the international level, such as a global minimum tax ('Pillar 2').[129] This is however not a watertight solution; gaming the rules is still possible.[130]

Sustainable social responsibility, however, entails the ethical obligation to go 'beyond compliance' with the law which is at odds with complying with the (tax) law in a minimalist way.[131] Responsibility goes beyond the mere legal requirements (legality).[132] This requires embedding ethics into corporate sustainability strategy and acknowledging the spirit underlying tax regulations and the need for moral considerations and judgments.[133] In this way, a company moves from the economic and legal layer further in the pyramid to the ethical layer, which reflects the key substantive part of good tax governance.[134] Voluntarily going beyond minimalist compliance with the letter of the law evidently entails a sustainable choice to comply with the law. Going beyond strict compliance with the tax law is thus a matter of exercising economic self-restraint with regard to legal obligations.[135] To be sure, it is a choice within the band width of possible interpretations of the tax laws, and therefore not a matter of paying more than the law requires.

In brief, companies should value long-term sustainability whilst taxes are an important means of achieving the SDGs. This requires compliance with the letter and spirit of the law, amounting to paying a fair share of tax. It follows that companies which summarily state as one of their tax principles that they comply with the tax laws in the jurisdictions they operate probably do not act responsibly, because they apparently seek to carry out the bare minimum behaviour required by the law.[136] They apparently do not see tax as

---

[129] Michael Devereux and John Vella, 'The Impact of the Global Minimum Tax on Tax Competition' (2023) 15(3) *World Tax Journal* 323.

[130] See Stefan Greil and Madeleine Kockrow, 'Shaping the UN's Future Role in International Tax Cooperation: Resolution A/RES/77/244 and the Options Raised in Tax Report 2023 as an Opening for Legally Binding Tax-Norm Setting by the UN' (2024) 78(2) Bulletin for International Taxation 75, 79: 'Tax planning is still possible, and profits may be allocated in a way that is erroneous from an economic perspective'.

[131] Hans Gribnau, 'Corporate Social Responsibility and Tax Planning: Not by Rules Alone' (2015) 24(2) *Social and Legal Studies* 225 ('Corporate Social Responsibility and Tax Planning').

[132] Reijo Knuutinen and Matleena Pietiläinen, 'Responsible Investment: Taxes and Paradoxes' (2017) (1) *Nordic Tax Journal* 135.

[133] Perhaps in exceptional circumstances, such as corrupt governments, tax avoidance may be morally and democratically 'justified if companies counterbalance this behaviour with higher contributions to society'; Francesco Scarpa and Silvana Signori, 'Understanding Corporate Tax Responsibility: A Systematic Literature Review' (2023) 14(7) *Sustainability Accounting, Management and Policy Journal* 179, 193.

[134] This can be called the substantive dimension of good corporate tax governance. See: Hans JLM Gribnau and Ave-Geidi Jallai, 'Good Tax Governance: A Matter of Moral Responsibility and Transparency' [2017] (1) *Nordic Tax Journal* 70; Jallai, above n 110, 161-170.

[135] Gribnau, 'Corporate Social Responsibility and Tax Planning', above n 132. For the need for economic self-restraint, see Axel Hilling and Daniel T Ostas, *Corporate Taxation and Social Responsibility* (Wolters Kluwer, 2017) 90-107.

[136] For example, see IKEA's UK Tax Principles: 'INGKA [Holding B.V] pays taxes in accordance with laws and regulations, wherever we are present as a retailer or in any other role': Ingka Group, 'Ingka Group Governance' (Web Page) <https://www.ingka.com/this-is-ingka-group/how-we-are-organised/>.

an integral part of their ESG agenda. Good tax governance should however ensure responsible tax behaviour.

### 6.3 Public tax transparency

Companies should account for the way they deal with the substantive component of sustainable tax. A company's accountability, the second corporate tax governance component, is conditional upon transparency to stakeholders. It is about transparency not only to the tax authorities but also to society as a whole as they influence and could be influenced by the way a company integrates tax into its sustainability objectives. Increasing demands for public tax transparency force corporations to take accountability. Accessible and adequate tax information can lead to a better understanding of companies' tax behaviour, and of the tax ecosystem. As such it is a precondition for a better informed and more nuanced public debate. As Stevens notes, transparency 'will force all stakeholders in a tax system to answer difficult moral and justification questions about how that system works and the foundations on which it is based'.[137] Transparency has an educational function because it allows stakeholders to gain greater insight into the complex, highly technical area of (corporate) taxation and to discuss this with companies. Tax complexity implies however that reporting inevitably has a certain degree of complexity: overly simple, one-dimensional information can mislead stakeholders.

Transparency enhances multi-stakeholder dialogues and enables stakeholders to exchange and debate views on their expectations. Transparency on policy choices and (moral) dilemmas promotes stakeholders' understanding of the complex balancing act of their different interests, arguments and expectations. Being open and transparent towards society shows stakeholders that the company 'walks the talk'. Communication should not be restricted to the dissemination of information in the public space. It 'is also, and increasingly, to construct a discourse with a view to explaining and convincing,' as Gutmann emphasises.[138] However, in the present author's view, it is not a one-way street. Corporations should also want to be educated themselves about societal perspectives, concerns, needs, etc. As stakeholders urge corporations to take ESG seriously, there should be a shift in tax reporting towards a sustainability discourse. Indeed, corporate tax reporting increasingly portrays tax as a meaningful corporate responsibility to society, rather than as a risk management issue or even as a burden.[139] Tax transparency may also improve the behaviour of those lagging behind; 'it makes it harder for others to hide in the shadows, and focuses the attention of scrutineers'.[140]

Transparency can be voluntary but also mandatory. Think of the mandatory country-by-country reporting to the tax authorities (only) which is exchanged among tax

---

[137] Stan A Stevens, 'The Duty of Countries and Enterprises to Pay Their Fair Share' (2014) 42(11) *Intertax* 702, 708.

[138] Daniel Gutmann, 'Corporate Groups in the Age of Tax Communication' (2023) 63(4) *European Taxation* 154, 155.

[139] Axel Hilling, Niklas Sandell, Amanda Sonnerfeldt and Anders Vilhelmsson, 'The Development of a Multidimensional Meaning of Tax: From Unfair Tax to Fair' (2023) 17(1) *Discourse and Communication* 57.

[140] Jeremy Hirschhorn, 'Tax in a Transparent World' (Australian Taxation Office, 7 November 2019) 11 <https://www.ato.gov.au/Media-centre/Speeches/Other/Tax-in-a-Transparent-World/>.

authorities.[141] The same applies for the mandatory reporting in the European Union about possible tax avoidance schemes by certain tax intermediaries (DAC 6).[142] Other stakeholders, such as investors, also insist on (public) transparency for their assessment of companies' tax sustainability performance. In Europe, the public country-by-country reporting Directive has been in force since 9 December 2021.[143] However, this mandatory provision of information probably does not contain sufficiently detailed tax data to enable a proper analysis of the tax behaviour of multinational enterprises.

Responsible (sustainable) tax governance therefore entails companies voluntarily going 'beyond compliance' with hard law transparency obligations. Top management should promote a proactive 'beyond compliance' policy also in this context. However, there may be little incentive to over-disclose where additional information might be misinterpreted.[144] This makes an open dialogue with stakeholders all the more important – which allows for reciprocal education. Institutional investors, like insurance companies, pension funds and banks, are major actors in this respect as they exercise power at the annual general meeting and in private shareholder engagements like meetings, phone calls and letters.[145] Both institutional investors and senior executives should seriously engage in discussions and knowledge exchanges about tax conduct. Otherwise, the resulting oversimplification of tax data will impact the quality of the information that flows into the public domain, significantly affecting public tax knowledge.[146] Moreover, consistent reporting is required and not opportunistic disclosure (for example, diminished reporting in times when there is less media attention for corporate tax practices).[147] This may also be helpful to counter strategic compliance and self-promotion, driven by reputational considerations, in the guise of transparency.

Powerful actors such as institutional investors and ESG rating agencies, both important actors in the ESG arena, should play an active role in this respect and 'discipline' corporations. Unfortunately, many institutional investors and ESG rating agencies are often taking a passive approach toward tax. They tend to overlook tax avoidance in their evaluation of companies' ESG profiles and are remarkably tolerant of aggressive tax planning; and to some extent may even encourage it.[148] They should therefore flex their muscles and integrate tax in their ESG ratings and evaluations. Otherwise, many (US)

---

[141] Jeffrey Owens, 'Tax Transparency: The "Full Monty"' (2014) 68(9) *Bulletin for International Taxation* 512; Alessandro Turina, '"Visible, Though Not Visible in Itself": Transparency at the Crossroads of International Financial Regulation and International Taxation' (2016) 8(3) *World Tax Journal* 378.

[142] European Council, *Directive 2018/822 of 25 May 2018 Amending Directive 2011/16/EU as Regards Mandatory Automatic Exchange of Information in the Field of Taxation in Relation to Reportable Cross-Border Arrangements* [2018] OJ L 139/1 (DAC 6).

[143] European Parliament and European Council, *Directive EU 2021/2101 of 24 November 2021 Amending Directive 2013/34/EU as Regards Disclosure of Income Tax Information by Certain Undertakings and Branches* [2021] OJ L 429/1; see Willemien Netjes and Dominik Freyer, 'Tax Transparency Is Here to Stay: An Analysis of the Public CbCR Directive' (2022) 50(8/9) *Intertax* 612.

[144] Lynn Oats and Penelope Tuck, 'Corporate Tax Avoidance: Is Tax Transparency the Solution?' (2019) 49(5) *Accounting and Business Research* 565.

[145] Lafarre, above n 86.

[146] Carla Edgley and Kevin Holland, '"Unknown Unknowns" and the Tax Knowledge Gap: Power and the Materiality of Discretionary Tax Disclosures' (2021) 81 *Critical Perspectives on Accounting* 102227, 20. See also Rebwar Taha, 'Tax Policy and Asset Management' (PhD Thesis, Tilburg University, 2021).

[147] See Kevin Holland, Sarah Lindop and Fatimah Zainudin, 'Tax Avoidance: A Threat to Corporate Legitimacy? An Examination of Companies' Financial and CSR Reports' [2016] (3) *British Tax Review* 310.

[148] Danielle A Chaim and Gideon Parchomovsky, 'The Missing "T" in ESG' (2024) 77(3) *Vanderbilt Law Review* 789, 800.

corporations, which often tout their ESG credentials, will continue tax planning practices and resist communicating their tax approach and payments to stakeholders.[149]

There are important exceptions to this bleak picture. Norges Bank Investment Management (officially 'Government Pension Fund Global'), for example, one of the largest asset managers worldwide, views tax as a sustainability topic. It has developed three main 'tax and transparency' principles.[150] In 2021 it announced that it had divested shares of firms due to 'aggressive tax planning and cases where companies do not give information of where, and how, they pay tax'.[151]

Corporations outside the United States of America, for example in Europe, seem to be more willing to integrate tax into their sustainability agenda as shown by the 2023 Tax Transparency Benchmark of the Dutch Association of Investors for Sustainable Development (VBDO). This benchmark comprises a comparative survey of 51 Dutch and 65 EU stock-listed companies. It appears that in recent years companies have shown (sometimes strong) progress on a number of principles (each fleshed out in a number of criteria); taxes are for example more often seen as contributions to sustainable society, though ESG tax reporting in particular is still underdeveloped.[152] In 2019, another standard-setter, GRI, which develops global standards for (voluntary) sustainability reporting, released the *GRI 207: Tax Standard*.[153] An analysis of the July and August 2023 publicly available ESG document(s) from the 1,000 largest public companies worldwide showed that in Europe 34 per cent of the companies mentioned the GRI 207, whilst in Asia this proportion was 23 per cent and in United States 18 per cent.[154] A more detailed analysis is of course needed in order to assess whether companies go beyond compliance with hard law regulations in force, but it is important to note that businesses, investors and various organisations are developing frameworks and benchmarks for the assessment of corporate sustainability practices.

## 7. CONCLUSION

Sustainable development is aimed at solving major contemporary environmental, social and economic issues. Both governments and businesses are major actors in this respect and should be committed to sustainability since sustainable development can only be

---

[149] Ibid 818: 'the percentage of US companies that voluntarily provide public CbCR is remarkably low'. Multinationals like Amazon indeed strongly resist tax transparency; see GRI, 'Tax Transparency Debate Moves Center Stage' (30 May 2022) <https://www.globalreporting.org/news/news-center/tax-transparency-debate-moves-center-stage/>.

[150] Norges Bank Investment Management, 'Tax and Transparency' (Web Page) <https://www.nbim.no/en/the-fund/responsible-investment/principles/expectations-to-companies/tax-and-transparency/>.

[151] Gwladys Fouche, 'For First Time, Norway's Wealth Fund Ditches Firms over Tax Transparency', *Reuters* (1 February 2021) <https://www.reuters.com/article/us-norway-swf-idUSKBN2A11TR/> (quoting Fund CEO Nicolai Tangen); VBDO, *Tax Transparency Benchmark 2023: A Comparative Study of 51 Dutch and 65 EU Stock-Listed Companies* (2023) <https://www.vbdo.nl/> ('*Tax Transparency Benchmark 2023*'). The Benchmark was developed in 2014 (and recently updated). Global Reporting Initiative, *GRI 207: Tax Standard 2019* (2019) ('*GRI 207*').

[152] VBDO, *Tax Transparency Benchmark 2023*, above n 151.

[153] Global Reporting Initiative (2019), *GRI 207*, above n 151. See Arne Schnitger, Florian Holle and Madeleine Kockrow, 'Tax and Transparency: Reporting in Accordance with the Global Reporting Initiative' (2021) 49(8/9) *Intertax* 702.

[154] Page Allen and Miguel Perez Ludena, *Global Adoption Trends for the GRI Tax Standard: An Analysis of the Use of* GRI 207: Tax 2019 *by the 1,000 Largest Public Companies Worldwide* (Global Reporting Initiative, 2024).

achieved by cooperation with governments and other actors. They share the responsibility for sustainable development, the environmental, societal and economic aspects of which are expressed in SDGs and ESG.

Unsurprisingly public governance and corporate governance are increasingly required to focus on sustainable development. Transparency is required to ensure accountability to a wide set of stakeholders. Companies committing to SDG and ESG objectives should build on CSR, in particular the ethical dimension of 'going beyond compliance' with the law, that is, hard law sustainability obligations.

Tax is fundamental to collaborative steps towards sustainability and should therefore be integrated into both public and corporate sustainability agendas. Without tax revenue any government's sustainability policy would be doomed to fail. Moreover, tax law itself can be used as a regulatory instrument for SDGs, for example environmental taxes. Aggressive tax planning and tax evasion by (corporate) taxpayers reduce governments' capacity to attain SDGs and shift the tax burden to other members of society. Corporations' tax behaviour therefore impacts sustainable development twice. Taxation is thus special in the sense that (corporate) taxpayers are responsible to provide revenue to government to advance its sustainability agenda – on top of their own responsibility to society to contribute to sustainable development. Corporate tax governance should therefore reflect the organisation's purpose, value and principles. Moreover, public tax transparency should be endorsed in order to render account to stakeholders. Sustainable tax is a boardroom responsibility.

Taxation's integration into the corporate sustainability agenda implies that it plays an autonomous role: gross underperformance cannot be sidestepped by, for example, excellent performance on the other pillars of the ESG framework. CSR should therefore also inform sustainability corporate (tax) governance. Corporations' shared responsibility for the integrity of the tax system requires that the ethical obligation to go beyond (strict) compliance with the law be viewed as an obligation to pay a fair share of tax and be proactively transparent.

Thus, good corporate tax governance requires tax values and principles embodying the ethical CSR dimension (beyond compliance) oriented to sustainability, and accountability with its prerequisite of transparency to stakeholders and responsibility attribution. These components should be fleshed out in more detail so as to provide a practical benchmark for sustainable corporate tax governance.

Nonetheless, important challenges are the change of mindset needed to integrate tax into the ESG framework and the design of a (transparency) benchmark which provides detailed tax data to enable a proper analysis of corporations' substantive tax performance.

eJournal of Tax Research (2024) vol. 22, no. 3, pp. 518-546

# The function(s) of taxation: the impacts of regulatory taxes on taxation

Amy Lawton*


### *Abstract*

Taxes can be designed to fulfil a number of different objectives for society, which can result in both intended and unintended consequences. Three of the core functions of tax include raising revenue, redistribution, and the regulation of behaviour. This article explores how regulatory taxes – taxes designed to change behaviour – interact with the other functions of tax. This article ultimately argues that regulatory taxes prioritise regulation over revenue-raising and redistribution, which may introduce messaging about taxation more generally. It communicates that it is acceptable not to pay tax, creating a possibility for 'permissive tax avoidance' in an anti-tax avoidance era. It also brings elements of regressivity to a tax system and communicates that it is those with the least who should pay to address environmental and societal harms.


**Keywords**: functions of taxation, regulatory taxation, behavioural change, inequalities in tax

* Senior Lecturer in Tax Law, University of Edinburgh. The author would like to thank the organisers and attendees of the SMU–Edinburgh Environmental, Social, Governance, and Taxation (ESGT) conference held at the Yong Pung How School of Law in April 2024 as well as the attendees of the University of Canterbury Business School research seminar series where this work was presented. The author would also like to thank the anonymous reviewers for their constructive and helpful feedback.

## 1. INTRODUCTION

Taxes raise revenue for state functions, but they also perform other functions for society, and often multiple things at once (Avi-Yonah, 2006; Posner, 1971, pp. 28-29). Amongst other functions, taxes raise revenue, redistribute wealth, and regulate (Avi-Yonah, 2006, p. 3). The pool of literature on the general functions of taxation is surprisingly thin. Lots of articles mention the functions of taxation, but few engage in a rich and meaningful way; fewer still engage with how the functions may interact with one another.

Here, this article refers to the function of taxation as the objectives that the tax was designed to perform; functions that create real financial, social, and environmental consequences for individuals, businesses, and states. However, it could also include the functions that the tax performs even where those functions were not designed into the tax originally; these functions, or the unintended consequences of tax, remain important to consider when exploring the role tax plays in society. To fully ignore them would place a blind reliance on the stated policy objectives of taxes. This article therefore considers both the aims and consequences of tax when referring to the term 'function'.

Likewise, tax can be considered on a micro and macro scale. Individual taxes can be impacted by a particular function or have specific consequences. For example, the United Kingdom (UK) Soft Drinks Industry Levy has had specific consequences on the consumption of sugar in the UK, with consumption dropping 11 grams per day per adult by the end of its first year (Rogers et al., 2024). At the macro level, each tax forms part of the overall tax system of a state. Significant changes in how taxes are used to perform functions could have real consequences on: a) the composition of the overall tax system in a state, and b) wider messages that are communicated (intentionally and non-intentionally) around tax, such as whether the tax system of a state is a tool for redistribution, raising revenue, or changing behaviour. While one tax is unlikely to cause a large ripple across the whole tax system, many taxes could.

This article seeks to explore how the functions of regulatory taxes (both their objectives and consequences) might impact taxation at a macro level. That is not to say that environmental or social harms should not be regulated. They should be. Indeed, firms engaging with environmental regulatory taxes can improve, for example, their environmental, social, and governance (ESG) performance (Wang & Ye, 2024, p. 14; He, Jing & Chen, 2023, p. 7). The field of literature that looks at how economic instruments can regulate (and benefit the environment, for example) is rich but this article attempts to reverse the gaze. This article therefore considers whether regulatory taxes benefit *taxation.* That is to say, is a tax system full of regulatory taxes good for the overall tax system? This article ultimately identifies that there is a need for further research in this field.

To explore whether regulatory taxes have an impact on the other tax functions, this article will draw on both regulatory and tax scholarship. It will also consider the UK landfill taxes as an example of a longstanding and (relatively) stable regulatory tax. Whilst this article focuses on UK taxes as illustrative examples, most of the taxes discussed exist in many jurisdictions, and regulatory taxes are used globally. This is a discussion that transcends any given jurisdiction. Overall, this article highlights that the prioritisation of the regulatory function pushes the other two core functions to the background. This poses two initial problems that are worth exploring.

First, in placing regulation over revenue-raising, taxes can become instruments of permissive tax avoidance. Regulatory taxes, by their very design, encourage taxpayers not to pay them by shifting their behaviour; their intended behavioural consequences send messages that avoiding taxes (the legal reduction of tax liability) is both sanctioned and invited. This is in direct conflict with global messages around the need to pay tax, as can be seen in both the corporate social responsibility (CSR) and ESG literatures. There is therefore an inherent paradox that is created between paying taxes and the regulation of negative behaviour.

Second, by prioritising regulation over redistribution, regulatory taxes are a tool to perpetuate inequality through both regressivity (a higher burden on those who can least afford it) and a possible reduction in tax revenues. This problem can be created by both the intended and unintended consequences of taxes (regulatory and otherwise). Likewise, a single tax that worsens inequality does not mean an overall tax system does so. However, an increasing reliance on regulatory taxes, which are almost always regressive, to solve societal problems does introduce greater regressivity and could pose redistribution problems. There is therefore a secondary paradox between regulating social harms and addressing inequality.

Both issues run counter to all functions of taxation if these are internalised by taxpayers in any way. In the words of Avi-Yonah, 'it is necessary to resurrect a question that has not been considered recently in the tax policy literature: What are taxes for?' (Avi-Yonah, 2006, p. 3).

## 2. THE FUNCTIONS OF TAXATION

Work on the functions of taxation, i.e., what taxes could or should achieve in society, can best be summarised by the seminal work of Reuven Avi-Yonah, who outlined three main goals of taxation (Avi-Yonah, 2006, p. 3). The goals are that taxes can raise revenue, redistribute wealth, and regulate behaviours on behalf of the state (Avi-Yonah, 2006, p. 3). Whilst these are not the only functions of taxation, and other scholars will be cited, these three functions provide a clear and useful categorisation tool to structure the discussion that follows.

These three functions of taxation are a meaningful and useful starting point when thinking about the function that taxation can play in society. They are not the end point, however, and it is also important to think about how taxes perform multiple functions and how each of these functions relates to and interacts with the others.

### 2.1 Revenue-raising

Whilst there are alternatives to taxation, such as socialism (Schumpeter, 2013; cited in de Cogan, 2020, pp. 10-11), all taxes need to raise revenue to be successful:

> [A]ll taxes have to fulfill this function to be effective; as the Russian government discovered in the 1990's (following many others in history), a government that cannot tax cannot survive. And there is widespread ideological agreement that this function is needed, even while people vehemently disagree about what functions of government are truly necessary, and what size of government is required (Avi-Yonah, 2006, p. 3, footnotes omitted).

This argument, that all taxes should contain a revenue-raising element, is important, as it indicates that the revenue-raising function of taxes is a permanent feature of taxation.

Revenue-raising has been described as a 'key function' (Hickman, 2014, p. 1723); that the general assumption is that the primary purpose of taxation is to raise revenue (Duff, 2016, p. 895); or, at least, that taxes raise 'sufficient revenue' (Daniel et al., 2017, p. 1).

There is not a country in the world that does not have some form of taxation.[1] While the taxes used vary significant across countries, the Organisation for Economic Co-operation and Development (OECD) has identified that consumption taxes are the most important revenue source on average (yielding 31.6% of tax revenues) (Weigel & Bunn, 2024, citing OECD data). This is followed by social insurance taxes and individual taxes at 25.2% and 23.6% respectively, while other taxes (such as environmental taxes) share a much smaller proportion of tax revenues (2.9%). Some taxes are therefore better at raising revenues than others, and Avi-Yonah highlights that experience from OECD countries would indicate that a mixture of income taxation and consumption taxation improves the overall revenues collected by a state (Avi-Yonah, 2006, p. 8).

Additional work has been undertaken to develop the current thinking around the functions of taxation and how a state finances itself; something that goes beyond the revenue-raising role that taxes play. Taxation can stabilise and manage the economy and overcome financial volatility (Loutzenhiser, 2019, p. 9). An example of this function can be seen in the Tobin Tax, a proposal which sought to curb currency speculation and stabilise exchange rates by taxing foreign exchange transactions (Tobin, 1978; Felix, 1995). The Tobin Tax was predicted to introduce stability that would encourage longer-term investment and stability, as well as generating revenue for the state (Felix, 1995, p. 204).

Taxes can also build up, as well as stabilise. De Cogan draws on the work of Schumpeter to highlight the critical role that taxes play in the formation of a state (de Cogan, 2020, p. 9). Schumpeter (1991, p. 108) argues:

> We have seen that without financial need the immediate cause for the creation of the modern state would have been absent. … Taxes not only helped to create the state. They helped to form it. The tax system was the organ the development of which entailed the other organs.

This, de Cogan argues, transforms 'the search for finances from a prerequisite into an instrument of the state' (de Cogan, 2020, p. 10). Once the state is formed, this function of taxation moves to the background but is not completely lost (de Cogan, 2020, p. 10). When a state makes a decision about whom, what, and how to tax, (or 'on whose shoulders the tax burden shall fall' (Daly, 2023, p. 541)) tax still reflects the ever-changing social norms and social values of that state: 'A country's tax system is thus both an important and a highly visible symbol of its fundamental political and philosophical choices' (Bird & Zolt, 2005, p. 1631).

Social values in tax have, however, been described as 'grime in what would otherwise be a pristine revenue-raising machine' (Abreu & Greenstein, 2018, p. 5 (footnote omitted)). Yet, divorcing revenue-raising from the other functions of taxation is not straightforward and invites the categorisation of good and bad tax policy on a single factor: good tax policy raises revenue, bad, spends money (Abreu & Greenstein, 2018,

[1] Whilst there are countries that do not impose income taxation or value added tax (VAT), this is often accompanied by either corporation tax, capital gains, duties, or a withholding tax on certain payments. Some countries distinguish between citizens and non-citizens, but some element of taxation remains.

pp. 12-13). This is reflected in what feels like a rather bipartisan debate in the scholarship around tax expenditures: those who argue that revenue-raising is a core function of taxation are highly critical of the use of tax expenditures to implement social policy (Surrey, 1970, 1973; Knauer, 2014).

This feeds into some of the strongest (and most important) criticism of putting the revenue-raising function of taxation onto a pedestal. Hickman argues that the importance of revenue-raising is often used as a shield to defend tax exceptionalism (Hickman, 2014, p. 1720). Olson has highlighted that, in the US, the revenue-raising function has led to a judicial reluctance that is in favour of the Inland Revenue Service (Olsen, 2010, pp. 230-233).

In addition, focusing solely on revenue-raising brings in broader tax scholarship, such as tax compliance and tax avoidance. Setting tax rates too high can lead to behavioural change (albeit perhaps unintended behavioural change), demonstrating that how taxes raise revenue can (even if inadvertently) also regulate behaviour. For instance, in income tax, Stiglitz identifies three ways in which tax avoidance can manifest (Stiglitz, 1985, pp. 325-326): first, through the postponement in any tax paid; second, the individual may engage in 'tax-induced transactions' to reduce the overall tax liability, and, third, through the shifting of revenue-raising activities, such as from income to capital gains (which are often taxed at a lower rate, such as in the UK, for example).

It can also lead to smaller changes, such as when income tax eats into a taxpayer's consumption decisions. In economics, the negative impacts of tax rates and rate changes on consumption are called 'deadweight losses' (or excess burdens) (Feldstein, 1999), which eat into the revenue raised by a tax (Harberger, 1964), or, while empirical evidence remains limited (Kleven et al., 2020, p. 120), lead to larger behavioural shifts, with individuals or businesses leaving (or at risk of leaving) a tax jurisdiction altogether (see Agrawal & Foremny, 2019; Agrawal, Foremny & Martínez-Toledano, 2023). It also manifests in the shifting of profits to another jurisdiction – one of the rationales behind the OECD Base Erosion and Profit Shifting (BEPS) scheme, which seeks to combat such artificial shifts where this is no economic activity.

Due to these criticisms, as well as others, not all scholars agree that revenue-raising is the only (Riza, 2016, p. 66), or even key function of taxation. Often, as Posner argues, taxation is doing other things (such as transferring money from one group to another), or multiple things at once (Posner, 1971, pp. 28-29). Hickman (2014, p. 1721 (footnote omitted)) highlights:

> But the government's reliance on tax collection notwithstanding, it does not necessarily follow that raising revenue is the only, or even the primary, focus of the contemporary US tax system and those charged with administering it.

While revenue-raising is clearly an important function of taxation (in terms of both its objectives and consequences), it is clearly not the only possible function of taxation. Taxes can provide more than just revenue-raising for a state, and it may be the case that revenue-raising could or should be sacrificed for other objectives. It is clearly important to consider the other functions of taxation and how they relate to one another: the three functions are 'not necessarily compatible' (Riza, 2016, p. 66).

## 2.2 Redistribution of income or wealth

While tax systems have been understood as 'being geared primarily' to raise revenue for the state, this is not exclusively the case (Daly, 2023, p. 541). Recent decades have seen a 'dramatic escalation' in the use of taxes for non-revenue-raising goals (Hickman, 2014, p. 1728), which would allude to other functions of taxation coming to the foreground.

The second of Avi-Yonah's goals of taxation is redistribution, which aims to reduce 'the unequal distribution of income and wealth that results from the normal operation of a market-based economy' (Avi-Yonah, 2006, p. 3). Historically, the redistributive function of taxation has explained why income taxes replaced tariffs and duties as a primary revenue-raising tool: consumption taxes are traditionally seen as regressive, while income taxes allow the state to tax according to ability to pay (Avi-Yonah, 2006, p. 11). Income tax was therefore seen as 'the center of the tax universe' (Bird & Zolt, 2005, p. 1632), and a way to redistribute wealth from the wealthy to those who are less wealthy (Avi-Yonah, 2006, p. 12). There has been critical debate on whether income taxes or consumption taxes are better at redistributing wealth, and whether redistribution is strongly needed (Bankman & Weisbach, 2006).

Redistribution can take multiple forms, including taxing on someone's ability to pay, or correcting the existing distribution where this is considered to be unjust (Loutzenhiser, 2019, p. 8). In fact, it is impossible to look at redistribution as a single-faceted concept:

> In examining the redistributive role of taxes, it is equally difficult (and often not very useful) to disentangle the following issues: the amount of resources available to the government, the tax regime that provides those resources, and the effectiveness with which the government uses the resources (Bird & Zolt, 2005, p. 1635).

A redistribution therefore occurs where there has been a change in tax burden, or where the revenue raised is used for redistributive purposes: redistribution is not simply 'just the shape of the tax schedule' (Kaplow, 2007, p. 57).

Taxes that specifically target the wealthy (or those considered more able to pay) to achieve a redistributive aim have been labelled as 'Robin Hood' taxes by both scholars and the media.[2] In a nutshell, these taxes are levied on those with means, so that wealth or income can be redistributed to those with less. Oates has argued that redistributive taxation should be conducted at a national level (as opposed to regional or local level) to negate taxpayer mobility (taxpayers simply moving to a different region or locality to avoid the redistributive tax) (Oates, 1972). However, Bakija and Slemrod have found that while the rich do flee when looking at redistributive state sales and inheritance/estate taxes in the US, the resulting deadweight losses are quite small (Bakija & Slemrod, 2004). Effective redistribution could, therefore, depend on the mobility of taxpayers (Mirrlees, 1982); although Leigh has found little evidence that more local redistributive taxes do result in higher taxpayer migration (Leigh, 2008, p. 101).

---

[2] Whether this is a helpful label remains up for discussion. There are many examples in the literature, and it would be impossible to cite them all here. Simply search 'Robin Hood Tax' in Google Scholar. For example: Franko, Tolbert and Witko (2013); Cate and Kumar (2016); Ullmann (1973); Sachs (2010).

The redistributive function of taxation reduces inequalities in societies (Christians, 2018, p. 6). Progressivity (where tax increases in line with ability to pay) alone does not provide a complete picture on redistribution; it is instead a complex picture comprising factors such as the levels of taxes, the incidence of taxes and welfare benefits, and how the revenues are used (Kaplow, 2007, p. 60). Indeed, the tax revenues are likely to have a 'significant distributive impact' through their spending (Kaplow, 2007, p. 71). In this way, the revenue-raising function of taxation has a significant crossover with tax's ability to also redistribute. It also means that while a single tax may not be redistributive, the overall tax system can remain redistributive.

### 2.3 Regulation of behaviour

Taxes can also change behaviour through decisions on what to tax and what not to tax. In this way, taxes can 'steer private sector activity in the directions desired by governments' (Avi-Yonah, 2006, p. 3); it can also compensate for negative externalities, where it can be 'appropriate' for taxes to correct behaviour (Stewart, 2022, p. 98). These more regulatory taxes are better known as Pigouvian taxes (Pigou, 1924). Applied to environmental (and social) taxation, Pigou's work equates to a 'tax (subsidy) per unit on the externality-generating activity equal to its marginal external damage (benefit)' (Andersen, 1994, p. 36). Baumol argued that Pigou's work seeks to guard against the under-pricing of goods which do not bear all of their costs (Baumol, 1972). Christians (2018, p. 21 (footnote omitted)) provides the example of a factory that dumps its toxic waste rather than disposing of it properly:

> The pollution caused by the toxic waste, both immediately and for an indefinite future, creates costs for all those who are directly or indirectly impacted by the river. By avoiding this cost, the factory can sell its goods more cheaply to customers, leading to an oversupply of goods relative to their actual cost as the demand/supply curve would represent perfect market equilibrium. The theory that costs should be *internalized* tells us that we ought to use taxes (as opposed to something else – such as tort or criminal law) to correct the error.

Pigou's work therefore arguably laid the groundwork for thinking about how taxation can capture environmental harms (Milne, 2018, p. 2).

Taxes can be 'regulatory carrots' (Gamage & Shankse, 2017, p. 362). They can also be regulatory sticks. These concepts derive from the idiom, which makes reference to the cart driver who uses both a carrot (dangling in front of a donkey pulling the cart) and a stick to motivate the donkey. It also forms part of motivation theory, first attributed to Jeremy Bentham, which identifies that some individuals act for reward, whilst others from fear:

> Nature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do, as well as determine what we shall do (Mill & Bentham, 1987, p. 65).

Translating the concepts to the carrot and stick theory, the pain represents the stick, whilst the pleasure, the carrot. Bentham argues that these concepts are the only way in which behaviour can be changed (Mill & Bentham, 1987, p. 83).

Whilst other motivation theories exist, the carrot and stick analogy is helpful in categorising the two functions that taxation can play in regulating behaviour. There is a distinction to be made between incentives that discourage behaviour (negative

incentives or penalties), and incentives that encourage behaviour (positive incentives or rewards) (Service et al., 2014, p. 25).

The additional financial burden created through the imposition of taxation on environmentally or socially unwanted behaviour can provide a regulatory stick for behavioural change (Driesen, 2010, p. 206). In environmental literature, scholars have noted that taxes can be used to penalise polluters (Scott, 2010, p. 111), and that for smaller businesses, these taxes could constitute a significant incentive in themselves (Gunningham, 2002, p. 21). However, Feld and Frey argue that this should be coupled with further incentives in order to uphold what they say is the psychological tax contract (Feld & Frey, 2007).

This tax contract comprises the idea of tax morale, which is a 'complicated interaction between taxpayers and the government establishing a fair, reciprocal exchange that involves the giving and taking of both parties' (Feld & Frey, 2007, p. 104). They argue that without further incentives, taxpayers with low morale will not pay their fair share (Feld & Frey, 2007, p. 106). Therefore, incentives are needed to enforce taxation and ensure tax compliance (Feld & Frey, 2007, p. 105).

Tax incentives, or regulatory carrots, are therefore important to consider as part of the regulatory function of taxation. Grabosky argues that positive incentives can provide flexibility and freedom: 'Positive incentives allow freedom of choice; penalties do not' (Grabosky, 1995, p. 262). In the tax context, however, incentives for individuals are not perfect. Mumford (2001, p. 416) argues:

> One of the more difficult issues involved is that of class, especially when one considers that tax incentives are usually constructed by members of a higher income bracket with the aim of enticing members of lower income brackets into behaviour likely to modify their earning capacity/living conditions.

As with the design of tax policy, the design of tax incentives is riddled with pitfalls. Common tax incentives also receive strong criticism: as above, tax expenditures deprive the state of revenue (although revenues can be controlled with the right mix of carrots and sticks (Gamage & Shankse, 2017, p. 368)) and hypothecated environmental or social taxation is considered unpalatable (Advani, Leicester & Levell, 2011).

It should be noted that there are several possible regulatory approaches to change behaviour: tax is not the only tool (for a succinct review of environmental literature, see Taylor et al., 2012). However, there has been a trend towards using economic instruments for regulation, which are considered 'less restrictive' and 'incentive-based' (Baldwin, Cave & Lodge, 2010, p. 9).

As such, taxation became an attractive tool for behavioural change and has 'an increasingly important place at the table' (Milne, 2018, p. 1). Braithwaite (2007, p. 3) argues:

> If regulation entails directives to act in certain ways but not others, backed by enforcement practices, formalized as law and justified in terms of protecting the public interest, taxation should be at the center of the regulatory stage.

Indeed, the OECD also argues that taxes should form 'a central pillar of green growth policy' (OECD, 2024); while Milne highlights that the evolution of using environmental

taxation demonstrates their versatility in addressing environmental challenges (Milne, 2018, p. 7).

The design of taxation can have both intended and unintended behavioural change. Where a tax is designed to have an intended behavioural change, it is arguably paternalistic in nature:

> Paternalists embrace taxation as a way to redeem harmful choices. They view sin taxes as a win-win proposition. The thinking goes something like this: by using a tax to raise the price of harmful goods, individuals buy less of those goods. Their well-being will thus increase, and society overall will benefit (Thom, 2021, p. 3).

Whilst Thom introduces a somewhat religious angle to their argument, regulatory taxation is a form of state paternalism. It involves the state identifying a behaviour that they deem to be harmful and intervening with taxation policy to steer people and business away from that behaviour (either with negative or positive incentives attached to that tax policy).

Even where there is an intention to change behaviour, an environmental or social tax may not do so if the rate is not set high enough (Milne, 2018, p. 4). Here, Pigou's theory on externalities requires the rate to be set at a price that is equivalent to the cost of the harmful behaviour. In practice, this is difficult to achieve, especially on the first try (Määttä, 2006, p. 46). In the environmental sphere, much work has been undertaken on carbon pricing, where it has been argued that shifts in behaviour will only be seen where the price is 'highly credible' and where those prices are predicted to increase over time (Edenhofer, Franks & Kalkuhl, 2021, p. 1099).

In contrast, if the rate is set too high, then this may encourage tax mobility or tax avoidance. These 'unintended consequences', which can happen 'even frequently' (Stewart, 2022, p. 97), reflect the power of tax to change behaviour even when it is not used as a direct function. The UK government is quite cognisant of the potential impact of these unintended consequences and has adopted an 'IN CASE' framework (a behavioural framework) to anticipate any such consequences (Government Communication Service, 2021). Whilst it is important to recognise this latent function of tax policy design, this article would argue that rigorous tax design, which consults widely with those impacted, could help minimise any unintended consequences.

### 2.4 Relationships between the three functions of taxation

Even in outlining the functions of tax, it becomes clear that they do not and cannot operate in isolation; individual taxes are also part of the broader tax landscape. The functions that taxation performs for society therefore give rise to a complex web, with functions interacting with one another to enhance or take away.

For instance, greater revenue raising can allow for a greater redistribution of wealth due to redistribution's complex interaction between tax design and how tax revenues are spent. Revenue-raising's 'significant' role in redistribution should not be underestimated (Kaplow, 2007, p. 71): even where a tax becomes more regressive, it can become more redistributive due to its increased size (Torregrosa-Hetland & Sabaté, 2021, p. 313). As such, too much of a focus on progressivity as redistribution (taxing only the wealthy, for example) will potentially impact on the revenues raised if too

narrow a taxpayer or tax base is targeted (for example, only the ultra-wealthy or the ultra-mobile).

Progressivity does remain relevant to regulatory taxation. Where we impose taxation for environmental harms, it may not be the polluter who bears the burden of this taxation. Instead, research has shown that it is often the consumer who pays the price of this taxation (Jacob & Zerwer, 2024); and it is often the consumer who is least able to do so. This reflects a tension between the regulatory and redistributive functions of taxation.

Likewise, regulating behaviour through taxation could affect a tax's ability to raise revenue. Imposing a tax that creates true behavioural change will see a diminishing tax base over time for that particular regulatory tax (fewer emissions as emissions drop, fewer cigarettes sold as smoking declines). Where the tax does not evolve to expand the tax base, or increase the rate, the revenues from these taxes should theoretically decline (or rise more slowly than it would but for the regulatory tax). Likewise, creating tax expenditures (through, for example, subsidies and reliefs) to encourage behavioural shifts in a positive way removes revenue that would otherwise be collected. It also creates a more complex tax system.

Overall, the different functions are all part of the web of taxation; it is likely that focusing on or changing one of these functions will have impacts on the other functions.

## 3. How the regulatory function and other functions of taxation can interact: a case study of the landfill tax

One of the key interactions in environmental and social taxation is between the revenue-raising and regulatory functions of taxation. It is useful to explore an example of an environmental tax in detail, to highlight the tensions its regulatory function can place on the other functions.

The landfill tax is one of the core environmental taxes in the UK. Introduced in 1996, it is one of the UK's older environmental taxes (*Finance Act 1996* (UK), s. 39), and was introduced to 'encourage the minimisation, re-use and recovery of value from waste where it is economically efficient to do so' (Parliamentary Debates, House of Commons (UK), 1996a (David Heathcoat-Amory, Paymaster General)). It was a tax intended to regulate, and was seen as 'another step towards green taxation' and was 'widely welcomed' (Parliamentary Debates, House of Commons (UK), 1996b (John Gummer, Secretary of State for the Environment)). At the start of its life, however, it was highlighted that the tax was unlikely to discourage landfill due to the lack of cost-effective and sustainable alternatives to landfill (Morris, Phillips & Read, 2000, p. 164). Its low starting rate also 'provided little financial incentive' (Fletcher, Hooper & Dunk, 2018, p. 161), and was evaluated to have had a 'relatively low impact' on the production and disposal of UK waste at the turn of the millennium (Martin & Scott, 2003, p. 686). It has now been almost 28 years since the introduction of the UK landfill tax, and much has changed.

There are landfill taxes in many jurisdictions, including the New Zealand Waste Disposal Levy (*Waste Minimisation Act 2008* (NZ)), some States in Australia (see Parliament of Australia, Senate Standing Committee on Environment and Communications, 2018), the United States (Statista, 2023), 23 out of the 27 members of the EU (European Environment Agency, 2023), and a domestic 'garbage fee' for

rubbish collection in Russia (Semenova, 2021). The broad implementation of some form of landfill tax makes it an apt case study for how regulatory taxes interact with the other tax functions. It is also deemed to be an environmentally effective tax: the OECD acknowledged that 'countries with high landfill taxes tend to have lower landfill rates' (OECD, 2019, p.29). This correlates with academic research that estimates that a EUR 1 increase per tonne of landfill tax is associated with a 0.009 million tonne reduction in waste generated (Malek et al., 2023, p. 91).

In the UK, section 40 of the *Finance Act 1996* outlines the charge to landfill tax:

> 40.— Charge to tax.
>
> (1) Tax shall be charged on a taxable disposal made in [England or Northern Ireland].
>
> (2) A taxable disposal takes place where material is disposed of and either –
>
> (a) the disposal is made at a landfill site (see subsection (4)), or
>
> (b) the disposal requires a permit or licence mentioned in subsection (4) but is not made at a landfill site. …

The landfill tax therefore targets waste that is disposed of at landfill (or waste that should have been disposed of at landfill). The current rates of landfill tax are GBP 103.70 (standard rate) and GBP 3.30 (lower rate), and the tax is calculated by multiplying the rate by the whole tonnage of waste disposed of at landfill (*Finance Act 1996*, ss 42(1) and (2)). Inert waste, such as rocks and soil, enjoy the lower rate (*The Landfill Tax (Qualifying Material) Order 2011* (UK)).

The landfill tax was devolved to Scotland in 2015 (*Landfill Tax (Scotland) Act 2014* (UK)), and to Wales in 2018 (*Landfill Disposals Tax (Wales) Act 2017* (UK)). It is important to acknowledge this devolving landscape when looking at the revenues raised by all landfill taxes in the UK. Under article 2 of the *Scottish Landfill Tax (Standard Rate and Lower Rate) Order 2024*, the 2024-25 rates of Scottish landfill tax are also GBP 103.70 (standard rate) and GBP 3.30 (lower rate). Likewise, the succinctly named *Landfill Disposals Tax (Tax Rates) (Amendment) and Tax Collection and Management (Wales) Act 2016 (Miscellaneous Amendments) (Wales) Regulations 2024* also prescribes rates of GBP 103.70 and GBP 3.30 for the Welsh landfill disposals tax. There is therefore a uniformity in rates across the UK, even if the taxes are devolved.

### 3.1 Regulation over revenues

A tax designed to shift behaviour (one that prioritised regulation) should see either a diminishing tax base or a slower tax base growth over time. As behaviour moves away from the now more costly behaviour, such as emissions, or waste disposal, the regulatory tax reduces or limits the growth of the harmful behaviour that the tax is applied to. The landfill taxes in the UK all multiply the applicable rate to each tonne of waste: less waste at landfill means that the rate is applied to fewer tonnes.

An environmental tax that is effective but does not change could therefore see its revenues drop over time. An environmental tax could be reformed to avoid this: by broadening the tax base or increasing the rates significantly (above inflation). This is likely to happen at the start of an environmental tax's life, due to the difficulties in reaching a true Pigouvian tax on the first attempt (Määttä, 2006, p. 46). An illustration

of this can be seen in the historic rate of the landfill tax, which was GBP 7 per tonne at the standard rate at the start of its life in 1996 (IFS, 2023). Yet, the equivalent of the current rate in 1996 (factoring in inflation) is GBP 53.62,[3] showing that the rates of landfill tax in the UK have grown significantly over time. If tax rate increases were to outstrip any reductions in the tax base, then a regulatory tax would continue to raise increasing levels of revenue.

A tax could also be altered so that its tax base broadens; bringing in new environmental and/or social harms can counter the impact of any behavioural changes on revenues. The New Zealand waste disposal levy, for example, is expanding to cover additional landfill types that will greatly increase its tax base.[4] Combined with increases in its tax rates, the New Zealand waste disposal levy is predicted to rise 'significantly' from its NZD 36 million in revenues in 2022 (Ministry for the Environment, 2024b). Interestingly, New Zealand established that the tax in its form in 2022, which charges NZ$10 per tonne, was insufficient to change behaviour (Ministry for the Environment, 2020): this expansion and increase therefore reflects an increasing emphasis on the waste tax's ability to regulate behaviour.

The UK landfill tax (now comprising England and Northern Ireland) raised GBP 626 million in the 2022-23 financial year (HM Revenue and Customs (HMRC), 2023a). The total tax receipts in the UK were GBP 789 billion in 2022-23 (HMRC, 2024), which means that the landfill tax represented 0.08% of the UK's total tax receipts. It is therefore quite a small tax, but not too different in terms of revenue-raising to the other environmental taxes in the UK.

HMRC lists the receipts of the UK landfill tax as set out in Table 1 (HMRC, 2023a):

**Table 1: Receipts from UK Landfill Tax**

| Financial Year | GBP million | Notes |
|---|---|---|
| 2013 to 2014 | 1,189 | |
| 2014 to 2015 | 1,144 | |
| 2015 to 2016 | 919 | The landfill tax was devolved to Scotland (Scottish landfill tax). |
| 2016 to 2017 | 874 | |
| 2017 to 2018 | 757 | |
| 2018 to 2019 | 683 | The landfill tax was devolved to Wales (landfill disposals tax). |
| 2019 to 2020 | 641 | |

[3] Calculated in accordance with Bank of England, 'Inflation calculator', available at: https://www.bankofengland.co.uk/monetary-policy/inflation/inflation-calculator. (accessed 28 May 2024).
[4] See Ministry for the Environment (NZ), 'Waste disposal levy expansion' (last updated 20 June 2022), available at: https://environment.govt.nz/what-government-is-doing/areas-of-work/waste/waste-disposal-levy/expansion/ (accessed 28 May 2024).

| | | |
|---|---|---|
| 2020 to 2021 | 566 | COVID-19 pandemic. |
| 2021 to 2022 | 667 | |
| 2022 to 2023 | 626 | |

The devolution of the UK landfill tax complicates the picture. Clearly, there are significant drops in the receipts to HMRC once Scotland and Wales both take over the administration of this tax via Revenue Scotland and the Welsh Revenue Authority respectively. Yet even before the tax was devolved at all, there were some small reductions in revenues between 2013 and 2015; there has also been a drop in revenues from 2018 to 2023. This decline could be attributable to increased tax avoidance (or, fly-tipping), which was a concern from increasing the landfill tax rates (National Audit Office (UK), 2022). However, HMRC estimates that the landfill tax gap (the difference between what was collected, and what should have been collected) peaked in 2018-19, and that it has been in decline since (HMRC, 2023b).

It could also be attributed to shifts to other environmentally harmful behaviour such as incineration, a risk associated with the landfill taxes (Powell & Craighill, 2014, ch. 15). Recent UK data on overall waste treatment appears to be a little dated, but between 2016 and 2018 there was an increase of 28.3% in incineration without energy recovery, and a 15.5% increase in incineration with energy recovery (Department for Environment, Food and Rural Affairs (UK) (DEFRA), 2023). However, this article argues that *where* the behaviour shifts to (whether that is to avoidance, to other environmentally harmful activities that are not taxed, or to greener alternatives) is almost irrelevant. The important point from the perspective of *regulatory taxation* (as opposed to the point from the perspective of environmental protection) is that the tax base could be shrinking, and the revenues could be dropping.

Scottish receipts are also dropping. In its commentary on the Scottish landfill tax receipts, Revenue Scotland (2024) stated:

> Total SLfT [Scottish landfill tax] declared due in Q3 of 2023/24 was the lowest of any quarter, and even lower than Q1 of 2020/21, which was affected by COVID-19 restrictions. Tonnes of standard taxable waste reported were the lowest for any quarter, and 26% lower than the previous low in last quarter. Total tonnes of lower rate waste were the lowest since Q4 2021/22, and 18% lower than last quarter.

This maps on to a general reduction that has been seen in the amount of waste disposed of at landfill in Scotland. In 2015, 3,384,725 tonnes of waste were landfilled (Scottish Environment Protection Agency (SEPA), 2024). This dropped to 2,344,931 tonnes in 2022. With less waste being landfilled, the landfill taxes have a smaller tax base, and revenues decline.

This is further corroborated by the UK Office for Budget Responsibility (2024a), who forecast that the UK landfill taxes' revenues will fall over time:

> The subsequent downward trend in landfill tax in both cash terms and as a share of [gross domestic product] reflects the continued downward trend in the tax

> base outstripping the effect of more limited inflation-linked rises in the duty rate.

The landfill taxes are therefore taxes with a declining revenue, and this would indicate that the regulatory function has taken priority over the revenue-raising one: the landfill tax has contributed to a successful shift in behaviour.

The landfill taxes in the UK are not the only environmental taxes with declining revenues. In its first year of operation, the UK plastic packaging tax has already seen a drop in revenues between the first quarter and final quarter of 2022-23 (HMRC, 2023c). Whilst it is very early days for this environmental tax, it is another example of a regulatory tax potentially achieving its function of changing behaviour. It should be noted that not all environmental and social taxes drop in revenues, as a regulatory tax may not be effective, or simply aim to slow the growth of a particular behaviour. The UK climate change levy and carbon price floor have had relatively stable revenues over the past decade; whilst they have been successful at phasing out the burning of solid fuels (in lieu of electricity and gas), revenues have remained consistent (HMRC, 2023a). This levy is also the biggest revenue-raiser of all the UK environmental taxes.

However, overall environmental tax revenues appear to be in decline. In the UK:

> Environmental taxes provided 5.3% of all UK tax and social contribution revenue in 2022, down from 5.6% in 2021 and the lowest share since 1997 (Office for National Statistics, 2023).

The starting point for the analysis in this article, therefore, is that regulatory taxes are experiencing gradually decreasing revenues, neglecting the revenue-raising function of taxation in favour of regulation.

### 3.2 Regulation over redistribution

Due to the importance of tax revenues for redistribution, the potentially declining revenue stream of a regulatory tax provides less opportunity to reduce 'the unequal distribution of income and wealth' (Avi-Yonah, 2006, p. 3). This notion of taking from those who can afford it (taxing) and giving to those with less means (redistributing) only works where there are revenues to redistribute. Clearly the taxes explored above still have revenues, but a focus on regulation at the expense of revenues may lead to a diminished redistributive function.

This is particularly the case where the justification for the environmental tax is coupled with a commitment to reduce income or other taxes. The UK landfill tax was proposed as a way to reduce national insurance contributions:

> Since the revenue will allow the main rate of employer's national insurance contributions to be reduced, the tax will provide for a further boost to employment (Parliamentary Debates, House of Commons, 1996a (David Heathcoat-Amory)).

This double dividend effect of regulatory taxation (that other taxes can be reduced because of the new revenues from regulatory taxes) is problematic. Whilst the double dividend effect of regulatory taxation may look like 'a free lunch' (Speck et al., 2011, p. 112), it is not guaranteed (Oates, 1995, p. 916).

Environmental taxes have also been argued to be regressive in nature, which means that the tax burden disproportionately falls on those with lower incomes, or less means to pay the tax. Where there are indirect taxes, such as regulatory taxes, that target businesses or business activity in particular, a distinction needs to be made between the legal incidence (who is actually required to pay the tax) and economic incidence (who bears the burden of the tax) (Kosenen, 2012, p. 162). This means that while a regulatory tax may not specifically target individuals, the costs of the tax can trickle down to the individual.

Whilst there has been little research on the regressivity of waste taxes in particular, an Italian waste tax imposed on individuals was shown to be regressive and impose a higher financial burden on low-income households (Agovino, Marchesano & Musella, 2021, p. 9). Taxes on domestic heating and electricity have been found to be regressive 'in practically all studies' (Kosenen, 2012, p. 165). Other taxes, such as transport fuel taxes, have a higher impact on middle-income households (Johnstone & Alavalapati, 1998, p. 10). Social taxes that add a cost to food also impact the poorest the most, with lower-income families spending a greater percentage of their household budget on food (Cornelsen et al., 2015, p. 19; Johnstone & Alavalapati, 1998, p. 12). An increase in a regulatory tax that targets pollution may 'deteriorate the welfare of all and may be regressive' (Chiroleu-Assouline & Fodha, 2014, p. 140); a Danish CO2 tax was also determined to be regressive (Wier et al., 2005, p. 249), as was a carbon tax in Brazil (Moz-Christofoletti & Pereda, 2021, p. 10).

That regulatory taxes can be regressive is not a particularly controversial statement; research has shown that environmental taxes operated on their own (without other policy measures to support them) have an 84% chance of being regressive (and a very significantly lower chance of being progressive) (Alvarez, 2019, p. 391). The regressivity of a regulatory tax does not mean that a tax system is regressive overall, but an increasing reliance on tax as regulatory tool brings greater regressive elements to a tax system.

Regulatory taxes can be made less regressive:

> [W]hatever the degree of regressivity of the environmental tax alone, it is possible to re-design a recycling mechanism that renders the tax reform Pareto-improving, by modifying the progressivity characteristics of the tax system, instead of lump-sum transfers or any other form of homogeneous compensation (Chiroleu-Assouline & Fodha, 2014, p. 128 (footnote omitted)).

But regulatory taxes on their own are not a mechanism for redistribution, and such broader incentives are likely to have a financial cost: eating into the revenues of that particular tax (which will also impact on the redistributive ability of a given tax). Whilst regulatory carrots alongside taxes can be self-financing (Gamage & Shankse, 2017, p. 367), it is likely that the use of incentives will limit the overall revenue-raising ability of a tax. Overcoming the undesirable distributional effects of regulatory taxes will therefore come at a further cost of the revenue-raising function.

The UK landfill taxes are imposed on businesses and landfill operators, so it does not apply to households (*Finance Act 1996*, ss 40(2) and (4)). This means that the landfill taxes will add a cost to the disposal of commercial and construction waste, rendering the business activities of those involved more expensive. Whilst individuals will not pay the tax personally, it will have an impact on the prices they pay for certain goods and

services. There are some exemptions and reliefs from the tax (such as pet cemeteries (*Finance Act 1996*, s. 45)), but very limited positive incentives for waste disposal otherwise. This, combined with the declining revenues of the landfill taxes, show that redistribution is not a core function of the landfill taxes.

Overall, Johnstone and Alavalapati (1998, p. 1) argue:

> While environmental measures should not be the instrument through which distributional objectives are realised, their growing importance means that distributional implications can no longer be ignored…

Since this argument was put forward in 1998, the number of environmental taxes in the UK and around the world has only increased. How the regulatory function of these taxes interacts with both their revenue-raising and distributional functions is therefore important. Once again, a focus on regulation can come at the expense of redistribution in the tax system.

## 4. REVERSING THE GAZE: HOW REGULATORY TAXES AFFECT TAXATION

Whilst there has been much research on how taxes can help achieve environmental or social goals – such as their advantages *vis-à-vis* other regulatory measures, as well as their effectiveness at creating behavioural change (see section 2) – there has been no such consideration of how regulatory taxes impact the goals of taxation at a macro level.

It is clear that a focus on the regulatory function of taxation, such as through environmental or social taxation, pushes the other functions to the background. Much in the same way as the state-building function decreases in importance once a state is fully established (de Cogan, 2020, p. 10), it may be that having one function of taxation at the fore is a positive (or at least not a negative) for taxation. This article would like to highlight two ways in which these functional interactions may be problematic.

First, the prioritisation of regulation over revenues will push taxpayers away from paying tax. There is a current, global focus on combating tax avoidance, as is seen in the OECD BEPS project. It can also be seen in broader discussions of tax and CSR, and ESG measures. The use of regulatory taxation encourages behavioural change by using a financial stick or carrot to move the individual or business away from the tax base. There is an argument that such an approach facilitates permissive tax avoidance. Second, the prioritisation of regulation over redistribution is an additional mechanism through which inequalities are perpetuated. These inequalities ensure that tax systems hit those with the least, hardest.

It is not as straightforward as this. The discussion above highlights how the functions are delicately connected to one another, and that designing a tax with one function in mind will impact the others, which in turn may have secondary impacts. This article seeks to start the discussions on how regulatory taxes can impact taxation.

### 4.1 A tax system that encourages permissive tax avoidance

Whilst some regulatory taxes have stable revenues that do not decline over time, some do not. The overall decline in environmental tax revenue has been explored above, but this also applies to social taxation as well (although not universally, alcohol duties in the UK continue to do very well, for example (Office for Budget Responsibility, 2024b)); in the case of tobacco duties for example:

> Tobacco duties fell in cash terms from 2011-12 to 2016-17, despite real-terms increases in the duty rate. This reflected falling cigarette consumption driven by above-inflation duty rises, changing attitudes to smoking, policies (such as the display ban) and the growing popularity of e-cigarettes (Office for Budget Responsibility, 2024c).

As regulatory taxation shifts behaviour away from the tax base, it is encouraging people to not pay the tax if they change their behaviour. Taxpayers are therefore changing their behaviour, at least in part, *because* of the regulatory tax.

This is not surprising. Existing research has shown that regulatory taxes are effective, and that regulatory taxes have significant signalling effects to taxpayers. Ghalwash shows that individual consumers are sensitive to changes in taxes that raise the price of heating (but less so for transport) (Ghalwash, 2007, p. 35). This impact is stronger where the tax is clearly framed to the consumer (Cornelsen et al., 2020). Downstream taxes (imposed directly on households or industry) are more visible and have a greater effect (Moz-Christofoletti & Pereda, 2021, p. 4).

Yet, there has been no empirical research that explores whether this powerful push to 'not pay the regulatory tax' to achieve environmental or social goals impacts broader views and attitudes towards taxation. This article argues that consistently introducing an increasing number of regulatory tax measures may engender a tax culture of not needing to pay taxes due to the constant pushes to change behaviour to pay less. This article argues that this may create, or worsen, an environment of permissive tax avoidance. There is a conflict between shifting behaviour to minimise a regulatory tax liability, and the societal drive to ensure individuals and companies are paying their taxes.

'Permissive tax avoidance' is a strong and loaded label. The scholarly and legal interest in tax avoidance tends to be when that avoidance crosses a line. In this way, tax avoidance tends to be defined as aggressive, abusive, and/or artificial avoidance that subverts the intention of tax legislation (see, for example, Seely, 2021, p. 11; Prebble & Prebble, 2010, p. 696), but 'avoidance' is a term that lacks consensus. Tax avoidance is distinguished from tax evasion by its legality (Slemrod & Yitzhaki, 2002, p. 1428), so at its core, tax avoidance is a legal activity. Tax planning, a related term (and arguably a 'subset' of avoidance (Loutzenhiser, 2019, p. 100)), is also concerned with the legal reduction of tax liability and tends to be associated with the availability of reliefs and exemptions in tax legislation (Seely, 2021, p. 11). The word 'planning' paints a picture of the taxpayer taking an active (if not necessarily abusive) role in reducing their tax liability.

Yet, with a regulatory tax designed to change behaviour, it is the state taking the active role, not the taxpayer. There is a clear financial signalling and political will to shift behaviour in a way that perhaps goes beyond designing a relief and allowing taxpayers to avail themselves of it. In this case, the lure to avoid the tax is a stick, rather than a carrot. Whether permissive tax avoidance would also capture unintended consequences of taxes is less clear: but there is an argument that those unintended consequences may be less 'permissive' than their intended counterparts.

This article interprets the 'tax avoidance' in 'permissive tax avoidance' in its most innocent light:

> [I]f two people marry in order to reduce their tax burden they are practising tax avoidance; if they tell the Revenue that they are married when they are not, they are guilty of tax evasion (Loutzenhiser, 2019, p. 99).

Clearly, shifting behaviour due to an intentional regulatory tax is not abusive avoidance as this is the policy objective of regulatory taxation – but it nonetheless reduces tax liability in a legal way. As a regulatory tax specifically encourages taxpayers to lower their tax liability, it is explicitly permissive in a way that an unintended consequence (such as an individual choosing to work less due to a change in the income tax brackets) is not.

This 'permissive tax avoidance' sits in direct conflict with the global push for tax transparency and tax payment that can be seen in international tax policy and scholarship on corporate tax avoidance. The OECD BEPS project now comprises multiple action points and pillars, but all seek to address aggressive tax planning at the international scale. This particularly relates to 'tax planning strategies that multinationals use to exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations … where they have little or no economic activity'.[5] In a nutshell, BEPS is therefore concerned with multinational companies paying the right amount of tax in the right jurisdiction.

Corporate social responsibility (CSR) comprises economic, legal, and ethical responsibilities that organisations should adhere to (Carroll, 1991). There is a plethora of academic literature on the relationship between tax avoidance (the legal reduction in tax liability) and CSR. Sikka, for example, argues that the payment of taxes 'provide[s] a litmus test for corporate claims of social responsibility as it involves transfers of wealth and contrived avoidance cannot easily be reconciled with claims of ethical business conduct' (Sikka, 2010, p. 154).

Whilst not everyone has agreed with all of Sikka's conclusions (Hasseldine & Morris, 2013), Sikka's work has, as of mid-2024, been cited 587 times on Google Scholar. For example, there have been studies showing whether the use of tax services impacts the amount of tax paid (Huseynov & Klamm, 2012), whether firms with excessively irresponsible CSR activities have a higher likelihood of avoiding tax (Hoi, Wu & Zhang, 2013), and whether there is a link between CSR and tax aggressiveness (Lanis & Richardson, 2012). These studies have themselves been cited hundreds of times.

More recently, Kovermann and Velte, in a review of the CSR and tax avoidance literature, show that there are multiple perspectives regarding the relationship between CSR and tax avoidance (Kovermann & Velte, 2019, p. 22). There is also a divergence in the scholarship between those who think there is a positive relationship between CSR and tax avoidance, and those who think there is negative relationship (Kovermann & Velte, 2019, p. 22). Indeed, there is such a wide range of findings that the 'empirical research is of not much help, yet' (Kovermann & Velte, 2019, p. 35). But it remains the case that there is a rich field of scholarship that is dedicated to determining whether or not organisations should or will engage in tax avoidance as part of their CSR commitments. There is a clear tranche who argue that organisations probably should pay tax and not engage in tax avoidance.

---

[5] OECD, 'Base erosion and profit shifting (BEPS)', available at: https://www.oecd.org/en/topics/policy-issues/base-erosion-and-profit-shifting-beps.html (accessed 31 October 2024). See also Brauner (2014).

Similarly, ESG provides a framework for measuring the impact that an organisation has and their future financial performance, and it has become a 'hot topic of discussion worldwide' (Li et al., 2023, p. 1). Friede, Busch and Bassen have found that ESG factors do have a positive impact on corporate financial performance, meaning that there is a business case for ESG investing (Friede, Busch & Bassen, 2015, p. 226). Positive engagement with ESG has been suggested to send positive signals to stakeholders that a company is trustworthy (Zhu et al., 2023, p. 54902). It has become a framework that has been adopted globally as a useful measurement of corporate performance.

There has been some very recent economic analysis on the impact of environmental taxes on ESG in Asia. Green taxation can improve a company's performance under ESG, through the cost of the tax pushing them to invest in a more environmentally friendly way (Wang & Ye, 2024, p. 14); this can be a 'significant positive impact', particularly in relation to the 'E' of ESG (He et al., 2023, p. 7). However, this impact can be limited where the tax rate is too low, in a similar way to how the impact of the tax itself is limited where the rate is too low (Zhang et al., 2023, p. 60208).

Shifting behaviour *because* of the environmental tax can therefore improve ESG measurement outcomes, meaning that the regulatory function of taxation is favourable for ESG. Once again, however, the focus is on what environmental taxation can do for the environment, not what environmental taxation does for tax. In a similar way to the CSR literature, ESG literature has also considered whether tax avoidance should form part of the ESG framework. Chaim and Parchomovsky (2024, p. 826) argue:

> Corporate tax avoidance – the pursuit of transactions and structures to reduce tax liability in a manner that is contrary to the spirit of the law – undermines a variety of social and sustainability goals espoused by the ESG movement.

Practitioners would appear to agree that the payment of tax forms part of the 'S' component of ESG: PwC explain that '[b]uilding trust in tax reporting, therefore, has the potential to translate to building trust in other areas' (Morris & Visser, 2022). Likewise, KPMG, Ernst and Young, and Deloitte all have sections on their websites dedicated to tax and ESG (Evans-Greenwood et al., 2023; KPMG International, 2021; Chai & Toh, 2022). Overall, the payment of tax is considered to be an important part of a company's conduct.

Many of these scholarly and political discussions focus on tax being paid. Yet, at the same time, there is a proliferation of regulatory taxes that, by their very nature, discourage their payment. This is a concerning conflict that warrants further research: there is permissive tax avoidance in an anti-avoidance era.

### 4.2 A tax system that perpetuates inequalities

> Taxation is a powerful tool to help finance achievements of the SDGs, and it can also spur inclusive and sustainable development in other ways. Fiscal policies can simultaneously mobilize resources, reduce inequalities, and promote sustainable consumption and production patterns.[6]

[6] United Nations, 'Taxation and the SDGs', available at: https://financing.desa.un.org/what-we-do/ECOSOC/tax-committee/thematic-areas/taxation-and-sdgs (accessed 30 May 2024).

While well-designed taxes can be used for social good, this article argues that taxes can also be a tool to limit the distribution of resources, as well as compound inequalities through regressivity. This is the case whether these impacts are intended or otherwise.

In encouraging permissive tax avoidance, regulatory taxes may crowd out ethics as the tax system becomes a mechanism to individually benefit (through changing behaviour to reduce tax liabilities). If the system is internalised as a game, then more tax may be avoided:

> [T]he failure of taxpayers – individuals and companies – to pay their fair share of taxes exacerbates income and wealth disparities (Chaim & Parchomovsky, 2024, p. 827 (footnote omitted)).

Whilst this is in relation to corporate tax avoidance, it is easy to see how the reductions in revenues will worsen inequality, as the tax system becomes a less powerful tool for redistribution. This avoidance disproportionately impacts low-income individuals (Giuliano, 2005; Chaim & Parchomovsky, 2024, p. 827).

The general regressivity of regulatory taxes is also a problem. As they become a tool of choice for policy-makers to achieve environmental and social goals (because they do tick multiple boxes and allow some revenue to be raised, unlike command-and-control regulation), more of the taxes in a tax system will be regressive. Regardless of their declining revenues over time, these taxes will have a greater burden for those on a low income.

This goes against the work to reduce inequalities at a global level. The Sustainable Development Goals include a goal to reduce inequality: 'In order for nations to flourish, equality and prosperity must be available to everyone'; this goal specifically requires states to 'adopt fiscal and social policies that promote equality'.[7] Regulatory taxation, more often than not, takes us away from that goal, placing the highest burden of environmental and social protection onto those with the least.

## 5. CONCLUDING REMARKS

The functions of taxation are not quite so clear cut as a bullet point list of the three, core functions of revenue-raising, redistribution, and regulation (Avi-Yonah, 2006, p. 3). Whilst it is not new that taxes may achieve more than one function at a time, how these functions interact with one another has received scant attention. The reality is that the functions likely muscle one another out of the way when they are brought to the fore.

This article has focused on regulatory taxes, or taxes that are designed to create behavioural change. These taxes, unsurprisingly, prioritise regulation over revenues and redistribution. It makes them effective tools of environmental and social protection. Companies engaging well with environmental taxation can perform better under ESG frameworks (Wang & Ye, 2024, p. 14; He et al., 2023, p. 7).

However, from the perspective of taxation, this article has raised two potential conflicts that this generates. First, in encouraging taxpayer to change behaviour and *not pay tax*, regulatory taxes could be a tool of 'permissive tax avoidance'. The use of the words 'tax

[7] The Global Goals, '10: Reduced inequalities', available at: https://www.globalgoals.org/goals/10-reduced-inequalities/ (accessed 31 May 2024).

avoidance' here does not allude to abusive or aggressive tax avoidance actions taken by a taxpayer to subvert the intention of tax legislation; rather, that a regulatory tax is designed to push taxpayers to legally reduce their tax liability by changing what they are doing. In this way, regulatory taxes communicate the message that it is acceptable to not pay tax.

Second, by using what are almost always regressive taxes, regulatory taxes perpetuate inequalities. Clearly, one regressive tax does not mean that the overall tax and transfer system is regressive, and the use of regulatory taxes can be offset by a progressive tax system. However, there remain two important points when considering that there is now a consistent reliance on regulatory taxes to solve societal problems: 1) that increasing elements of regressivity will have an influence on an overall tax system, and 2) using tax to regulate (when such taxes are almost always regressive) sends a message that it is those with the least who must pay for environmental and social protection. This is because the other, more progressive taxes that may overcome the regressivity of a regulatory tax (such as income tax), do not correlate with the harms that the regulatory taxes aim to address.

By consistently relying on regulatory taxes to regulate, for example, the environment, societies are placing the highest cost on those who can afford it the least. These two conflicts warrant further research to explore whether permissive tax avoidance can be internalised to (or contribute towards) anti-tax sentiment, and whether the regressivity of regulatory taxes skews the cost of regulation to low-income groups.

## 6. References

Abreu, A G & Greenstein, R K 2018, 'Rebranding tax/increasing diversity', *Denver Law Review*, vol. 96, no. 1, pp. 1-50.

Advani, A, Leicester, A & Levell, P 2011, 'Hyping hypothecation: Should green tax revenues be earmarked?', Institute for Fiscal Studies Comment, 7 July. Available at: https://www.ifs.org.uk/publications/5622 (accessed 24 May 2024).

Agovino, M, Marchesano, K & Musella, G 2021, 'Inequality and regressivity in Italian waste taxation: Is there an alternative route?', *Waste Management*, vol. 122, pp. 1-14.

Agrawal, D R & Foremny, D 2019, 'Relocation of the rich: Migration in response to top tax rate changes from Spanish reforms', *Review of Economics and Statistics*, vol. 101, no. 2, pp. 214-232.

Agrawal, D R, Foremny, D & Martínez-Toledano, C 2023, 'Wealth tax mobility and tax coordination', working paper, October. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3676031.

Alvarez, M 2019, 'Distributional effects of environmental taxation: An approximation with a meta-regression analysis', *Economic Analysis and Policy*, vol. 62, pp. 382-401.

Andersen, M S 1994, *Governance by green taxes: Making pollution prevention pay*, Manchester University Press, Manchester.

Avi-Yonah, R S 2006, 'The three goals of taxation', *Tax Law Review*, vol. 60, no. 1, pp. 1-28.

Bakija, J & Slemrod, J 2004, 'Do the rich flee from high state taxes? Evidence from federal estate tax returns, National Bureau of Economic Research Working Paper 10645. Available at: https://www.nber.org/papers/w10645.

Baldwin, R, Cave, M & Lodge, M (eds) 2010, 'Introduction: Regulation – the field and the developing agenda', in Baldwin, R, Cave, M & Lodge, M (eds), *The Oxford handbook of regulation*, Oxford University Press, Oxford, pp. 3-16.

Bankman, J & Weisbach, D A 2006, 'The superiority of an ideal consumption tax over an ideal income tax', *Stanford Law Review*, vol. 58, no. 5, pp. 1413-1456.

Baumol, W J 1972, 'On taxation and the control of externalities', *The American Economic Review*, vol. 62, no. 3, pp. 307-322.

Bird, R M & Zolt, E M 2005, 'Redistribution via taxation: The limited role of the personal income tax in developing countries'," *UCLA Law Review*, vol. 52, no. 6, pp. 1627-1696.

Braithwaite, V 2007, 'Responsive regulation and taxation: Introduction', *Law and Policy*, vol. 29, no. 1, pp. 3-10.

Brauner, Y 2014, 'What the BEPS?', *Florida Tax Review*, vol. 16, no. 2, pp. 55-115.

Carroll, A B 1991, 'The pyramid of corporate social responsibility: Toward the moral management of organizational stakeholders', *Business Horizons*, vol. 34, no. 4, pp. 39-48.

Cate, J & Kumar, G 2016, 'The financial transaction tax: Robin Hood tax or Prince of Thieves dream?', *Journal of Taxation of Investments*, vol. 33, no. 4, pp. 67-74.

Chai, W F & Toh, S 2022, 'Why tax should feature prominently on the ESG agenda', *Ernst and Young*, 1 April. Available at: https://www.ey.com/en_vn/tax/why-tax-should-feature-prominently-on-the-esg-agenda (accessed 30 May 2024).

Chaim, D A & Parchomovsky, G 2024, 'The Missing "T" in ESG', *Vanderbilt Law Review*, vol. 77, no. 3, pp. 789-843.

Chiroleu-Assouline, M & Fodha, M 2014, 'From regressive pollution taxes to progressive environmental tax reforms', *European Economic Review*, vol. 69, pp. 126-142.

Christians, A 2018, 'Introduction to tax policy theory'. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3186791.

Cornelsen, L, Green, R, Dangour, A & Smith, R 2015, 'Why fat taxes won't make us thin', *Journal of Public Health*, vol. 37, no. 1, pp. 18-23.

Cornelsen, L, Quaife, M, Lagarde, M & Smith, R D 2020, 'Framing and signalling effects of taxes on sugary drinks: A discrete choice experiment among households in Great Britain', *Health Economics*, vol. 29, no. 10, pp. 1132-1147.

Daly, S 2023, 'Tax systems: Adaptability and resilience during a global pandemic', *Accounting and Business Research*, vol. 53, no. 5, pp. 541-560.

Daniel, P, Keen, M, Świstak, A & Thuronyi, V 2017, 'Introduction and overview', in Daniel, P, Keen, M, Świstak, A & Thuronyi, V (eds), *International taxation and the extractive industries*, Routledge, London, pp. 1-10.

De Cogan, D 2020, *Tax law, state-building and the constitution*, Hart Publishing, Oxford.

Department for Environment, Food and Rural Affairs (UK) (DEFRA) 2023, 'UK statistics on waste'. Available at: https://www.gov.uk/government/statistics/uk-waste-data/uk-statistics-on-waste (accessed 29 May 2024).

Driesen, D 2010, 'Alternatives to regulation? Market mechanisms and the environment', in Baldwin, R, Cave, M & Lodge, M (eds), *The Oxford handbook of regulation*, Oxford University Press, Oxford, pp. 203-222.

Duff, D G 2016, 'Alternatives to the gift and estate tax', *Boston College Law Review*, vol. 57, no. 3, pp. 893-912.

Edenhofer, O, Franks, M & Kalkuhl, M 2021, 'Pigou in the 21st century: A tribute on the occasion of the 100th anniversary of the publication of The Economics of Welfare', *International Tax and Public Finance*, vol. 28, no. 5, pp. 1090-1121.

European Environment Agency 2023, *Overview of landfill taxes on municipal waste used in EU Member States, 2023*. Available at: https://www.eea.europa.eu/data-and-maps/figures/overview-of-landfill-taxes-on (accessed 27 May 2024).

Evans-Greenwood, P, Auld, L, Robertson, R & D'Addona, A 2023, 'Does your tax team hold the keys to success in sustainability?', *Deloitte Insights*, 30 January. Available at: https://www2.deloitte.com/us/en/insights/environmental-social-governance/tax-strategy-sustainability-and-climate-change.html (accessed 30 May 2024).

Feld, L P & Frey, B S 2007, 'Tax compliance as the result of a psychological tax contract: The role of incentives and responsive regulation', *Law and Policy*, vol. 29, no. 1, pp. 102-120.

Feldstein, M 1999, 'Tax avoidance and the deadweight loss of the income tax', *Review of Economics and Statistics*, vol. 81, no. 4, pp. 674-680.

Felix, D 1995, 'The Tobin tax proposal: Background, issues and prospects', *Futures*, vol. 27, no. 2, pp. 195-208.

Fletcher, C A, Hooper, P D & Dunk, R M 2018, 'Unintended consequences of secondary legislation: A case study of the UK landfill tax (qualifying fines) order 2015', *Resources, Conservation and Recycling*, vol. 138, pp. 160-171.

Franko, W, Tolbert, C J & Witko, C 2013, 'Inequality, self-interest, and public support for "Robin Hood" tax policies', *Political Research Quarterly*, vol. 66, no. 4, pp. 923-937.

Friede, G, Busch, T & Bassen, A 2015, 'ESG and financial performance: Aggregated evidence from more than 2000 empirical studies', *Journal of Sustainable Finance and Investment*, vol. 5, no. 4, pp. 210-233.

Gamage, D & Shanske, D 2017, 'Tax cannibalization and fiscal federalism in the United States', *Northwestern University Law Review*, vol. 111, no. 2, pp. 295-376.

Ghalwash, T 2007, 'Energy taxes as a signaling device: An empirical analysis of consumer preferences', *Energy Policy*, vol. 35, no. 1, pp. 29-38.

Giuliano, G 2005, 'Low income, public transit, and mobility', *Transportation Research Record*, vol. 1927, no. 1, pp. 63-70.

Government Communication Service (UK) 2021, *IN CASE: A behavioural approach to anticipating unintended consequences*. Available at: https://gcs.civilservice.gov.uk/wp-content/uploads/2021/07/GCS_IN_CASE_A_behavioural_approach_to_anticipating_unintended_consequences.pdf (accessed 24 May 2024).

Grabosky, P N 1995, 'Regulation by reward: On the use of incentives as regulatory instruments', *Law and Policy*, vol. 17, no. 3, pp. 257-282.

Gunningham, N 2002, 'Regulating small and medium sized enterprises', *Journal of Environmental Law*, vol. 14, no. 1, pp. 3-32.

Harberger, A C 1964, 'Taxation, resource allocation, and welfare', in National Bureau of Economic Research, *The role of direct and indirect taxes in the Federal Reserve System: A conference report of the NBER and the Brookings Institution*, Princeton University Press, Princeton, pp. 25-80.

Hasseldine, J & Morris, G 2013, 'Corporate social responsibility and tax avoidance: A comment and reflection', *Accounting Forum*, vol. 37, no. 1, pp. 1-14.

He, X, Jing, Q & Chen, H 2023, 'The impact of environmental tax laws on heavy-polluting enterprise ESG performance: A stakeholder behavior perspective', *Journal of Environmental Management*, vol. 344, 118578.

Hickman, K E 2014, 'Administering the tax system we have', *Duke Law Journal*, vol. 63, no. 8, pp. 1717-1770.

HM Revenue and Customs (HMRC) 2023a, *Environmental Taxes Bulletin commentary*. Available at: https://www.gov.uk/government/statistics/environmental-taxes-bulletin/environmental-taxes-bulletin-commentary-june-2022 (accessed 27 May 2024).

HM Revenue and Customs (HMRC) 2023b, *Tax gaps: Other taxes*. Available at: https://www.gov.uk/government/statistics/measuring-tax-gaps/6-tax-gaps-other-taxes (accessed 28 May 2024).

HM Revenue and Customs (HMRC) 2023c, *Plastic packaging tax (PPT) statistics commentary*. Available at: https://www.gov.uk/government/statistics/plastic-packaging-tax-ppt-statistics/plastic-packaging-tax-ppt-statistics-commentary (accessed 28 May 2024).

HM Revenue and Customs (HMRC) 2024, *HMRC tax receipts and national insurance contributions for the UK*. Available at: https://www.gov.uk/government/statistics/hmrc-tax-and-nics-receipts-for-the-uk (accessed 27 May 2024).

Hoi, C K, Wu, Q & Zhang, H 2013, 'Is corporate social responsibility (CSR) associated with tax avoidance? Evidence from irresponsible CSR activities', *The Accounting Review*, vol. 88, no. 6, pp. 2025-2059.

Huseynov, F & Klamm, B K 2012, 'Tax avoidance, tax management and corporate social responsibility', *Journal of Corporate Finance*, vol. 18, no. 4, pp. 804-827.

Institute for Fiscal Studies (IFS) 2023, 'Landfill tax' IFS Fiscal Facts. Available at: https://ifs.org.uk/taxlab/taxlab-data-item/ifs-fiscal-facts (accessed 28 October 2024).

Jacob, M & Zerwer, K L 2024, 'Emission taxes and capital investments: The role of tax incidence', *The Accounting Review*, vol. 99, no. 5, pp. 247-278.

Johnstone, N & Alavalapati, J R 1998, 'The distributional effects of environmental tax reform', International Institute for Environment and Development Discussion Paper DP 98-01, October. Available at: https://ageconsearch.umn.edu/record/24140/?v=pdf (accessed 29 May 2024).

Kaplow, L 2007, 'Taxation and redistribution: Some clarifications', *Tax Law Review*, vol. 60, no. 2, pp. 57-82.

Kleven, H, Landais, C, Muñoz, M & Stantcheva, S 2020, 'Taxation and migration: Evidence and policy implications', *Journal of Economic Perspectives*, vol. 34, no. 2, pp. 119-142.

Knauer, N J 2014, 'Critical tax policy: A pathway to reform?', *Northwestern Journal of Law and Social Policy*, vol. 9, no. 2, pp. 206-263.

Kosonen, K 2012, 'Regressivity of environmental taxation: Myth or reality?', in Milne, J E & Anderson, M S (eds), *Handbook of research on environmental taxation*, Edward Elgar, Cheltenham, UK, pp. 161-174.

Kovermann, J & Velte, P 2021, 'CSR and tax avoidance: A review of empirical research', *Corporate Ownership and Control*, vol. 18, no. 2, pp. 20-39.

KPMG International 2021, *ESG and tax: Increasing importance to institutional investors*, September. Available at: https://assets.kpmg.com/content/dam/kpmg/xx/pdf/2021/09/esg-and-tax.pdf (Accessed: 30 May 2024).

Lanis, R & Richardson, G 2012, 'Corporate social responsibility and tax aggressiveness: An empirical analysis', *Journal of Accounting and Public Policy*, vol. 31, no. 1, pp. 86-108.

Leigh, A 2008, 'Do redistributive state taxes reduce inequality?', *National Tax Journal*, vol. 61, no. 1, pp. 81-104.

Li, T-T, Wang, K, Sueyoshi, T & Wang, D D 2021, 'ESG: Research progress and future prospects', *Sustainability*, vol. 13, no. 21, 11663.

Loutzenhiser, G 2019, *Tiley's revenue law*, 9th edn, Hart Publishing, Oxford.

Määttä, K 2006, *Environmental taxes: An introductory analysis*, Edward Elgar, Cheltenham, UK.

Malek, W, Mortazavi, R, Cialani, C & Nordström, J 2023, 'How have waste management policies impacted the flow of municipal waste? An empirical analysis of 14 European countries', *Waste Management*, vol. 164, pp. 84-93.

Martin, A & Scott, I 2003, 'The effectiveness of the UK landfill tax', *Journal of Environmental Planning and Management*, vol. 46, no. 5, pp. 673-689.

Mill, J S & Bentham, J 1987, *Utilitarianism and other essays*, ed. Ryan, A, Penguin Books, Harmondsworth.

Milne, J E 2018, 'A bird's-eye view of environmental taxation', in Mann, R F & Roberts, T M (eds), *Tax law and the environment: A multidisciplinary and worldwide perspective*, Lexington Books, Lanham, MD, pp. 1-16.

Ministry for the Environment (NZ) 2020, *Regulatory impact assessment: Increase and expansion of waste disposal levy*. Available at https://environment.govt.nz/assets/Publications/regulatory-impact-statement-waste-disposal-levy.pdf (accessed 28 May 2024).

Mirrlees, J A 1982, 'Migration and optimal income taxes', *Journal of Public Economics*, vol. 18, no. 3, pp. 319-341.

Morris, J R, Phillips, P S & Read, A D 2000, 'The UK landfill tax: An evaluation of the first three years', *Environmental Law Review*, vol. 2, no. 3, pp. 150-176.

Morris, W & Visser, E 2022, 'Tax is a crucial part of the ESG conversation', *PwC*, 28 January. Available at: https://www.pwc.com/gx/en/services/tax/publications/tax-is-a-crucial-part-of-esg-reporting.html (accessed 30 May 2024).

Moz-Christofoletti, M A & Pereda, P C 2021, 'Winners and losers: The distributional impacts of a carbon tax in Brazil', *Ecological Economics*, vol. 183, 106945.

Mumford, A 2001, 'Marketing working mothers: Contextualizing earned income tax credits within feminist cultural theory', *Journal of Social Welfare and Family Law*, vol. 23, no. 4, pp. 411-426.

National Audit Office (UK) 2022, *Investigation into government's actions to combat waste crime in England*, Report by the Comptroller and Auditor General, Session 2021-22, HC 1149, 27 April. Available at: https://www.nao.org.uk/wp-content/uploads/2022/01/Investigation-into-governments-actions-to-combat-waste-crime-in-England.pdf (accessed 28 May 2024).

Oates, W E 1995, 'Green taxes: Can we protect the environment and improve the tax system at the same time?', *Southern Economic Journal*, vol. 61, no. 4, pp. 915-922.

Oates, W E 1972, *Fiscal federalism*, Harcourt, Brace, Jovanovich, New York.

Office for Budget Responsibility (2024a), *Landfill tax*, last updated 22 April 2024. Available at: https://obr.uk/forecasts-in-depth/tax-by-tax-spend-by-spend/landfill-tax/ (accessed 27 May 2024).

Office for Budget Responsibility (2024b), *Alcohol duties*, last updated 22 April 2024. Available at: https://obr.uk/forecasts-in-depth/tax-by-tax-spend-by-spend/alcohol-duties/ (accessed 30 May 2024).

Office for Budget Responsibility (2024c), *Tobacco duties*, last updated 22 April 2024. Available at: https://obr.uk/forecasts-in-depth/tax-by-tax-spend-by-spend/tobacco-duties/ (accessed 29 May 2024).

Office for National Statistics 2023, *UK environmental taxes: 2022*, statistical bulletin, 4 May. Available at: https://www.ons.gov.uk/economy/environmentalaccounts/bulletins/ukenvironmentaltaxes/2022 (accessed 28 May 2024).

Olson, N E 2010, 'Taking the *Bull* by its horns: Some thoughts on constitutional due process in tax collection', *The Tax Lawyer*, vol. 63, no. 3, pp. 227-237.

Organisation for Economic Co-operation and Development (OECD) 2019, *Waste management and the circular economy in selected OECD countries: Evidence from environmental performance reviews*, OECD Publishing, Paris.

Organisation for Economic Co-operation and Development (OECD) 2024, *Environmental taxation*. Available at: https://www.oecd.org/environment/tools-evaluation/environmentaltaxation.htm (accessed 27 May 2024).

Parliament of Australia, Senate Standing Committee on Environment and Communications (2018), *Never waste a crisis: The waste and recycling industry in Australia*, June. Available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/WasteandRecycling/Report/ (accessed 27 May 2024).

Parliamentary Debates, House of Commons (UK) 1996a, 'Landfill tax, volume 271, debated on Thursday 8 February 1996'. Available at: https://hansard.parliament.uk/Commons/1996-02-08/debates/12773fd6-d604-483c-9bc4-6171f1cc718c/LandfillTax (accessed 27 May 2024).

Parliamentary Debates, House of Commons (UK) 1996b, 'Landfill tax, volume 272, debated on Tuesday 27 February 1996'. Available at: https://hansard.parliament.uk/Commons/1996-02-27/debates/12d31a7d-f093-40a5-8005-92a007a9e545/LandfillTax (accessed 27 May 2024).

Pigou, A C 1924, *The economics of welfare*, 2nd edn, Macmillan, London.

Posner, R A 1971, 'Taxation by regulation', *The Bell Journal of Economics and Management Science*, vol. 2, no. 1, pp. 22-50.

Powell, J & Craighill, A 1997, 'The UK landfill tax', in O'Riordan, T (ed.), *Ecotaxation*, Routledge, London, pp. 304-320.

Prebble, Z & Prebble, J 2010, 'The morality of tax avoidance', *Creighton Law Review*, vol. 43, no. 3, pp. 693-746.

Revenue Scotland 2024, *Quarterly SLfT statistics*. Available at: https://revenue.scot/news-publications/publications/statistics/quarterly-slft-statistics (accessed 28 May 2024).

Riza, L 2016, 'In retrospect of 40 years, another look at Andrews' personal deductions argument: A comparison of charitable contributions and child-care expenses', *DePaul Business and Commercial Law Journal*, vol. 15, no. 1, pp. 55-80.

Rogers, N T, Cummins, S, Jones, C P, Mytton, O, Rayner, M, Rutter, H, White, M & Adams, J 2024, 'Estimated changes in free sugar consumption one year after the UK soft drinks industry levy came into force: Controlled interrupted time series analysis of the National Diet and Nutrition Survey (2011-2019)', *Journal of Epidemiology and Community Health*, vol. 78, no. 9, pp. 578-584.

Sachs, J 2010, 'Robin Hood tax's time has come', *The Guardian*, 19 March. Available at: https://www.theguardian.com/commentisfree/2010/mar/18/robin-hood-tax-benefits.

Schumpeter, J A 1991, *The economics and sociology of capitalism*, ed. Swedberg, R, Princeton University Press, Princeton.

Schumpeter, J A 2013 [1942], *Capitalism, socialism and democracy*, Routledge, London.

Scott, C 2010, 'Standard-setting in regulatory regimes', in Baldwin, R, Cave, M & Lodge, M (eds), *The Oxford handbook of regulation*, Oxford University Press, Oxford, pp. 104-119.

Scottish Environment Protection Agency (SEPA) 2024, *Waste data*. Available at: https://www.sepa.org.uk/environment/waste/waste-data/ (accessed 28 May 2024).

Seely, A 2021, 'Tax avoidance and tax evasion', House of Commons Library Research Briefing No 7948, 24 November. Available at: https://researchbriefings.files.parliament.uk/documents/CBP-7948/CBP-7948.pdf (accessed 30 July 2024).

Semenova, G 2021, '"Garbage reform" in Russia and the introduction of a new tax payment', *E3S Web of Conferences*, vol. 244, 10031.

Service, O, Hallsworth, M, Halpern, D, Algate, F, Gallagher, R, Nguyen, S, Ruda, S & Sanders, M with Pelenur, M, Gyani, A, Harper, H, Reinhard, J & Kirkman, E 2014, *EAST: Four simple ways to apply behavioural insights*, The Behavioural Insights Team Handbook, 11 April. Available at: https://www.bi.team/publications/east-four-simple-ways-to-apply-behavioural-insights/ (accessed 22 May 2024).

Sikka, P 2010, 'Smoke and mirrors: Corporate social responsibility and tax avoidance', *Accounting Forum*, vol. 34, nos 3-4, pp. 153-168.

Slemrod, J & Yitzhaki, S 2002, 'Tax avoidance, evasion, and administration', in Auerbach, A J & Feldstein, M (eds), *Handbook of public economics, vol. 3*, North-Holland, Amsterdam, pp. 1423-1470.

Speck, S, Summerton, P, Lee, D & Wiebe, K 2011, 'Environmental taxes and ETRs in Europe: The current situation and a review of the modelling literature', in Ekins, P & Speck, S (eds), *Environmental tax reform (ETR): A policy for green growth*, Oxford University Press, Oxford, pp. 99-130.

Statista 2023, *Average cost to landfill municipal solid waste in the United States from 2020 to 2022, by region*. Available at: https://www.statista.com/statistics/692063/cost-to-landfill-municipal-solid-waste-by-us-region/ (accessed 27 May 2024).

Stiglitz, J E 1985, 'The general theory of tax avoidance', *National Tax Journal*, vol. 38, no. 3, pp. 325-337.

Stewart, M 2022, *Tax and government in the 21st century*, Cambridge University Press, Cambridge.

Surrey, S S 1970, 'Federal income tax reform: The varied approaches necessary to replace tax expenditures with direct governmental assistance', *Harvard Law Review*, vol. 84, no. 2, pp. 352-408.

Surrey, S S 1973, *Pathways to tax reform: The concept of tax expenditures*, Harvard University Press, Cambridge, MA.

Taylor, C, Pollard, S, Rocks, S & Angus, A 2012, 'Selecting policy instruments for better environmental regulation: A critique and future research agenda', *Environmental Policy and Governance*, vol. 22, no. 4, pp. 268-292.

Thom, M 2020, *Taxing sin*, Palgrave Macmillan, Cham.

Tobin, J 1978, 'A proposal for international monetary reform', *Eastern Economic Journal*, vol. 4, no. 3/4, pp. 153-159.

Torregrosa-Hetland, S & Sabaté, O 2021, 'Income tax progressivity and inflation during the world wars', *European Review of Economic History*, vol. 26, no. 3, pp. 311-339.

Ullmann, A 2022, '"Taxing the heart and soul out of the people": Disney's *Robin Hood* (1973) as conservative fable', in Dettmar, U & Tomkowiak, I (eds), *On Disney: Deconstructing images, tropes and narratives*, J B Metzler, Berlin, pp. 171-183.

Wang, X & Ye, Y 2024, 'Environmental protection tax and firms' ESG investment: Evidence from China', *Economic Modelling*, vol. 131, 106621.

Weigel, C P & Bunn, D 2024, 'Sources of government revenue in the OECD, 2024 update', *Tax Foundation*, 18 March. Available at: https://taxfoundation.org/data/all/global/oecd-tax-revenue-by-country-2024/ (accessed 21 May 2024).

Wier, M, Birr-Pedersen, K, Jacobsen, H K & Klok, J 2005, 'Are CO2 taxes regressive? Evidence from the Danish experience', *Ecological Economics*, vol. 52, no. 2, pp. 239-251.

Zhang, Q, Zhang, Y, Liao, Q & Guo, X 2023, 'Effect of green taxation on pollution emissions under ESG concept', *Environmental Science and Pollution Research*, vol. 30, no. 21, pp. 60196-60211.

Zhu, N, Zhou, Y, Zhang, S & Yan, J 2023, 'Tax incentives and environmental, social, and governance performance: Empirical evidence from China', *Environmental Science and Pollution Research*, vol. 30, no. 19, pp. 54899-54913.