Corporate Tax Avoidance and Base Erosion: Legal and Ethical Implications in Developing Economies

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ABSTRACT:
Corporate tax avoidance and base erosion pose significant risks to developing countries, where already fragile tax bases and limited capacity make losing critical public revenues even more damaging. Tax avoidance opportunities through legal loopholes, transfer pricing, and poor enforcement practices give Multinational Enterprises (MNEs) opportunities to reduce tax liabilities that harm fiscal sovereignty and exacerbate inequities in the tax system. The study examines the legal and ethical issues that challenge countries in response to aggressive tax planning versus legitimate tax planning that results in tax liability eroding the domestic revenue bases of countries. The study uses doctrinal legal analysis and comparative lenses to navigate and catalogue how domestic tax laws interact with international approaches, specifically the OECD's Base Erosion and Profit Shifting (BEPS) agendas. The study identifies how the local legislation of developing countries is challenged to conform to global regimes while simultaneously competing for foreign investment. The study also examines whether the corporate practice of engaging in legally permissible XMLMR practices provides ethical legitimacy that institutionalizes an erosion of state capacity to support development. The study concludes with recommendations of legal regimes, institutional capacity, and regional approaches to make tax equitable, engage corporations to admit to the issues, and build sustainable governance over tax.

Keywords: Corporate Tax Avoidance, Base Erosion and Profit Shifting, Fiscal Sovereignty, Multinational Enterprises, Tax Governance, Corporate Social Responsibility.

1. Introduction

In the complex landscape of modern taxation, ethical tax compliance has become an essential pillar in fostering tax justice and ensuring equitable revenue collection[Doyle, E. (2022). Encouraging ethical tax compliance behaviour: The role of the tax practitioner in enhancing tax justice. Law & Contemp. Probs., 85, 137.]. The role of tax practitioners is increasingly critical, as they act as intermediaries between taxpayers and tax authorities, influencing compliance behaviors through their professional conduct and ethical decision-making[Bourton, S. (2021). A critical and comparative analysis of the prevention of tax evasion through the application of law and enforcement policies in the United Kingdom and United States of America (Doctoral dissertation, University of the West of England).]. Tax avoidance, particularly by multinational enterprises (MNEs), presents significant challenges, often exploiting gaps in international tax laws and transfer pricing strategies to minimize tax liabilities, which undermines the fairness of tax systems globally [Magalhães, T. D. (2021). International Tax Law Between Loyalty, Exit, and Voice. DalhOusiE lJ, 44, 49.]. Efforts to enhance tax transparency, such as public country-by-country reporting and international cooperation frameworks, are gaining momentum to curb aggressive tax avoidance and promote accountability[Schön, W. (2021). Public country-by-country reporting: Corporate law, fiscal law and the principle of unanimity. In Challenges of Contemporary Tax Law. Jubilee Book Dedicated to Professor Włodzimierz Nykiel. Volume 2 (pp. 381-401). Wydawnictwo Uniwersytetu Łódzkiego.].

Despite ongoing efforts to promote ethical tax compliance, numerous challenges continue to undermine the effectiveness of tax systems globally[Sebele-Mpofu, F., Mashiri, E., & Schwartz, S. C. (2021). An exposition of transfer pricing motives, strategies and their implementation in tax avoidance by MNEs in developing countries. Cogent Business & Management, 8(1), 1944007.]. One major issue is the persistent complexity and loopholes within international tax laws that multinational enterprises exploit through aggressive transfer pricing and capital round-tripping, often shifting profits to low-tax jurisdictions and eroding national tax bases[Stiglingh, M., Smit, A. R., & Smit, A. (2022). The relationship between tax transparency and tax avoidance. South African Journal of Accounting Research, 36(1), 381-401.]. Developing economies face additional hurdles, including limited administrative capacity and pressure to attract foreign investment, which can incentivize lenient tax practices and undermine compliance[Sani, A. U. A., Kibiya, I. U., Al-Absy, M. S. M., Muhammad, M. L., Bala, H., Khatoon, G., ... & Garba, S. (2024). A dynamic panel data approach of corporate tax avoidance and debt financing in Nigeria. Cogent Business & Management, 11(1), 2316283.]. Furthermore, the ethical orientation of tax practitioners and corporate leaders varies, influencing the extent to which tax avoidance is pursued or mitigated[Pan, Y., Liao, L., Yao, D., & Zhang, J. H. (2024). Board chairs' early-life experience and tax avoidance. Journal of business ethics, 192(4), 381-401.]. These interconnected problems highlight the urgent need for comprehensive solutions that blend legal reform, enhanced enforcement, and ethical commitment to achieve effective tax justice[Karhunen, P., Ledyaeva, S., & Brouthers, K. D. (2022). Capital round-tripping: Determinants of emerging market firm investments into offshore financial centers and their ethical implications. Journal of business ethics, 181(1), 381-401.].

Addressing the multifaceted challenges of tax avoidance and unethical compliance requires a combination of legal reform, enhanced transparency, and ethical leadership[Mashiri, E., Dzomira, S., & Canicio, D. (2021). Transfer pricing auditing and tax forestalling by Multinational Corporations: A game theoretic approach. Cogent Business & Management, 8(1), 1907012.]. Strengthening international cooperation and harmonizing tax laws can help close loopholes exploited by multinational corporations, particularly in transfer pricing and capital round-tripping schemes.[Rogers, H., & Oats, L. (2022, January). Transfer pricing: changing views in changing times. In Accounting Forum (Vol. 46, No. 1, pp. 381-401). Routledge.] The implementation of public country-by-country reporting and improved disclosure standards fosters greater transparency and accountability, making aggressive tax planning more difficult to conceal[Barake, M., & Le Pouhaër, E. (2024). Tax revenue from Pillar One Amount A: country-by-country estimates. International Tax and Public Finance, 381-401.]. Building the ethical capacity of tax practitioners through professional development and stricter codes of conduct is vital in encouraging tax justice and compliance[Ndori Queku, Y., Adibura Seidu, B., Aneyire Kubaje, T., Boateng, K., Antwi-Agyei, E., Apeku, T., & Yamoah, K. (2023). IFRS adoption and tax revenue performance in Africa: does Africa need tax-targeted IFRS reforms? Cogent Business & Management, 10(2), 2212500.]. Enhancing corporate governance, by fostering ethical leadership at the board level, also plays a crucial role in curbing tax avoidance behaviors[Godar, S., Aliprandi, G., Faccio, T., Janský, P., & Toledo Ruiz, K. (2024). The long way to tax transparency: lessons from the early publishers of country-by-country reports. International Tax and Public Finance, 31(2), 381-401.].

The evolving landscape of international tax and economic governance is deeply influenced by the rapid advancement of digital technologies such as fintech and artificial intelligence[Hughes, H. (2021). The complex implications of fintech for financial inclusion. Law & Contemp. Probs., 84, 115.]. These tools, while offering the promise of increased efficiency and financial inclusion, also introduce new complexities in ensuring tax compliance and upholding global justice[Thompson, P. B., Bischof, J., Powell-Palm, M. J., Smith, K., & Tiersch, T. R. (2024). Biopreservation in agriculture and food systems: a summary of ethical issues. Journal of Law, Medicine & Ethics, 52(3), 381-401.]. Fintech platforms, for example, create alternative financial systems that may evade traditional tax oversight mechanisms, challenging regulators to adapt swiftly[Lang, A. (2024). 'Global Disordering': Practices of Reflexivity in Global Economic Governance. European Journal of International Law, 35(1), 381-401.]. These technological disruptions occur against a backdrop of "global disordering," where the once-stable structures of international governance are being reconfigured through reflexive, fragmented practices[Peng, S. Y., Lin, C. F., & Streinz, T. (2024). Artificial Intelligence and International Economic Law. Artificial Intelligence and International Economic Law, Query date, 10, 42.]. In sectors like agriculture and food systems, biotechnological innovations such as biopreservation raise further ethical issues around data use, environmental impact, and regulatory gaps[Hárs, A. (2022). AI and international law– Legal personality and avenues for regulation. Hungarian Journal of Legal Studies.].

1.1 Objectives of study

The objectives of study are provided below

- To examine the major strategies employed by multinational enterprises (MNEs) to avoid taxation and assess their impact on the revenue of developing countries.
- To analyze the effectiveness of domestic anti-avoidance measures, including transfer pricing regulations and General Anti-Avoidance Rules (GAAR), in curbing tax base erosion in selected developing economies.
- To evaluate the role of international cooperation and regional frameworks (e.g., OECD BEPS, ATAF, SAARC) in strengthening tax governance and mitigating challenges faced by developing countries in corporate taxation.

2. Theoretical study

2.1 Substantive Tax Sovereignty theory

The globe is a challenging place for governments from the standpoint of substantive tax sovereignty. States are currently under new challenges from rising levels of capital mobility, economic activity, and increasingly, inhabitants themselves. Originally, states were characterized by their ability to impose coercion on their population and territory. People possessing skills and attributes desired by jurisdictions can select from complementary jurisdictions, diminishing the unilateral power of the state to tax. States attempt to consolidate their substantive tax sovereignty by competing to attract and motivate mobile factors using preferential regimes, incentives, and privileges. This competition is indicative of a change in state decision making: taxation should not only be viewed and thought of in the context of a necessary levy to meet a collective domestic objective, but as a tool shaped by international competition that demands states balance their fiscal autonomy with the realities of a constantly interconnected and mobile global society[Dagan, T. (2024). Substantive tax sovereignty under globalization. Tilburg Law Review, 29(3), 1–9. https://doi.org/10.5334/tilr.399].

2.2 Corporate Mobility Theory

Corporate Mobility Theory posits that the movement of employees is more than a human resources function, it is a strategic consideration for employee tax, compliance, and corporate competitiveness in a globalized economy. Mobile employees create ripple effects that go well beyond individual taxation and can create exposures for corporate tax purposes such as permanent establishment (PE) risk, reporting obligations, and payroll liability. The theory illustrates how corporate tax and global mobility functions depend on one another: deployments of employees can affect a multinational enterprise's tax footprint and corporate tax structures can, in turn, directly affect the financial outcomes for mobile employees. When the two functions are synchronized, effective planning, documentation, and shared objectives become effective means of converting mobility into a tool for both compliance and value add to the enterprise. It is important to recognize that employee assignments have implications on business strategy and the legal and compliance conditions of the host countries. When mobile, tax becomes part of the entirety of global mobility policy and the employee experience and will, when planning is tied to the overall mobility focus, mitigate risk, yield cost savings, and provide best outcomes for both the business and the employee. Global mobility policy uniquely interfaces with the concept of risk, compliance, and overall strategy as it relates to corporate governance[Leach, R., & Novotny, T., CPA. (2025, July 31). What to do if you work outside the US and haven't filed a US tax return. https://www.gtn.com/blog/bridging-the-gap-between-global-mobility-and-corporate-tax].

2.3 Financial theory and the company law approach

In a global economy, portfolio investments are widespread across regions and sectors, and ownership structures of multinational enterprises (MNEs) are also very fragmented. In this context, corporate executives must create value for shareholders; however, this value creation is complicated by issues of corporate responsibility[Plan, O. A. (2013). On Base Erosion and Profit Shifting. OECD Publishing: Paris, France.]. A key question is whether corporate executives impose "hidden taxes" on shareholders by spending resources to achieve social objectives that transcend their legal obligations to shareholders. While there is a legitimate concern about hidden taxes, it can be countered by the position that corporate social responsibility (CSR) is not only a tax on shareholders but a form of strategic fundraising. Shareholders, directly or indirectly, can enhance funding for CSR initiatives, and many CSR initiatives will mitigate reputational, regulatory, or operational risk and therefore protect or actually create long term value to shareholders. In relation to corporate responsibility regarding taxation, the debate remains. Some excess tax payments incurred by the corporation, notwithstanding the objective to economize tax and improve shareholder value, might constitute mismanagement of shareholder funds. On the other hand, aggressive tax planning is consistent with creating value for shareholders but can potentially create reputational issues for the firm and regulation. This paper brings turf wars in taxation and CSR together to provide insights. Specifically, given the globalization of capital and mobility of capital, and expectations on corporations to manage substantive tax sovereignty, corporate responsibility on the question of balancing profit with the expectations of society will continue to be engaged.

3. Literature Review

(Bryan & Hill, 2024)[Bryan, M. A., & Hill, A. E. (2024). Worldwide illicit and counterfeit alcoholic spirits: problem, detection, and prevention. Journal of the american Society of Brewing chemiStS, 82(3), 381-401.] investigated their global issues of counterfeit, illicit, and untaxed alcoholic spirits and their economic, labor, and public health impacts. Their review scope and scale of the problem, estimating that counterfeit spirits comprise 25% to 40% of global consumption. Their findings reveal significant economic losses, including €3 billion in lost EU revenue and over 23,000 lost jobs, alongside at least €1.2 billion in lost government revenue annually.

(Nelen, 2024)[Nelen, H. (2024). Burying the head in the sand a bit deeper? How to enhance critical thinking on fraud and money laundering in European professional football. Sport in Society, 381-401.] explored that response to the author's

2022 book, Ostrageous, which examined financial malpractices and associated crime risks in professional football. It reviews the academic debate sparked by the book and the reluctance of the football industry to engage openly on issues like tax evasion and money laundering. Methodologically, that article analyzes the industry's responses and resistance to addressing their structural problems.

(Tandon et al., 2025)[Tandon, A., Dhir, A., Kaur, P., & Ogbonnaya, C. (2025). Ethical sourcing and decision making in the fashion industry: A longitudinal qualitative examination. Journal of Business Ethics, 196(4), 381-401.] explored how employees in the fashion supply chain perceive and enact ethical sourcing amid increasing pressure for responsible supply chains. Using moral agency theory, their researchers conducted a longitudinal qualitative study with UK-based employees, collecting open-ended essays across three waves over nine months and analyzing that data via grounded theory. Their findings identify key themes, including boundaries of ethical responsibility and three levels of ethical action: supplier, organization, and individual employee.

(Ahmad et al., 2024)[Ahmad, Z., Hidthiir, M. H. B., & Rahman, M. M. (2024). Impact of CSR disclosure on profitability and firm performance of Malaysian halal food companies. Discover Sustainability, 5(1), 18.] examined on impact of Corporate Social Responsibility (CSR) disclosure on profitability and firm performance in Malaysian Halal food companies. Employing a quantitative approach, it analyzes data from 75 publicly listed firms between 2012 and 2021 using a dynamic GMM statistical technique. Findings reveal significant positive effects of economic, environmental, and social CSR disclosures on both return on assets (ROA) and Tobin's Q (TBQ).

(Kassem, 2024)[Kassem, R. (2024). Understanding and mitigating fraud risk in professional football. Deviant Behavior, 45(3), 381-401.] examined to provide a holistic understanding of fraud in professional football by developing a comprehensive framework covering fraud typologies, enabling factors, and mitigation strategies. Through an extensive literature review, it identifies gaps and synthesizes existing knowledge on fraud in football. Findings reveal that while insider fraud, particularly corruption, is well documented, evidence of external fraud is lacking, and other insider fraud types remain underexplored.

(Becchetti et al., 2024)[Becchetti, L., Pelligra, V., & Rossetti, F. (2024). The corporate legality game a lab experiment on the impact of policies, frames and information. Crime, Law and Social Change, 82(5), 381-401.] investigated their effectiveness of institutional legality ratings in promoting lawful corporate behavior and combating corruption through a randomized experiment simulating redistributive policies. Their experiment examines how taxing buyers of unrated products and rewarding buyers of legality-rated products influence consumer choices. Findings indicate that redistribution policies, framing legality, and providing conformity information significantly reduce non-cooperative behavior and enhance consumer willingness to pay for legal products.

(Sebele-Mpofu et al., 2021)[Sebele-Mpofu, F., Mashiri, E., & Schwartz, S. C. (2021). An exposition of transfer pricing motives, strategies and their implementation in tax avoidance by MNEs in developing countries. Cogent Business & Management, 8(1), 1944007.] explored their strategies employed by multinational enterprises (MNEs) to minimize tax burdens through transfer pricing in developing countries, with a focus on Zimbabwe. It adopts an interpretivist research philosophy, utilizing in-depth interviews with tax officers, consultants, and Ministry of Finance officials to gather qualitative data. Their study identifies the predominant use of service fees, particularly management fees, as a common but underexplored transfer pricing scheme employed by MNEs.

(Kurniasih et al., 2023)[Kurniasih, L., Yusri, Y., Kamarudin, F., & Sheikh Hassan, A. F. (2023). The role of country by country reporting on corporate tax avoidance: Does it effective for the tax haven?. Cogent Business & Management, 10(1), 2159747.] evaluate their impact of Country-by-Country Reporting (CbCR) regulation on deterring corporate tax avoidance among multinational corporations listed on the Indonesia Stock Exchange. Using panel data from 166 companies over 2010–2019, and employing pooled OLS regression, their study examines both the direct effect of CbCR and its moderating role on tax avoidance, particularly focusing on firms affiliated with tax havens.

(Abu Huson et al., 2024)[Abu Huson, Y., Aljawarneh, N. M., Obeidat, A. M., & Alqudah, M. (2024). Insights into corporate tax evasion and its ramifications on overall budget revenue: An empirical study. In The AI revolution: Driving business innovation and research: Volume 2 (pp. 381-401). Cham: Springer Nature Switzerland.]. explored their issue of corporate tax evasion by examining its impact on public revenue, expenditures, tax rates, and budget deficits through their lenses of public choice and tax compliance theories. Employing questionnaire data analyzed via structural equation modeling, their research investigates the complex relationships influencing tax evasion. Their findings reveal that tax evasion is significantly affected by factors such as tax income, government spending, tax rates, and budget deficits.

(Pan et al., 2024)[Pan, Y., Liao, L., Yao, D., & Zhang, J. H. (2024). Board chairs' early-life experience and tax avoidance. Journal of business ethics, 192(4), 381-401.] explored corporate tax avoidance from an ethical and behavioral perspective by examining how their board chair's early-life famine experience influences tax practices in Chinese firms. Their research identifies a significant negative association between famine experience and tax avoidance, suggesting that early adversity fosters ethical altruism and risk aversion, which aggressive tax strategies. Their effect is particularly strong when the experience occurred during childhood or adolescence, highlighting the long-lasting behavioral imprint of early-life events.

3.1 RESEARCH GAP

While existing literature offers valuable insights into various dimensions of tax avoidance, ethical compliance, and transparency, several critical research gaps persist. A dominant theme across the studies is the fragmented approach to understanding the interplay between legal frameworks, ethical behaviour, and technological innovation in shaping tax compliance. Many studies explore transfer pricing and legal loopholes, but they often isolate legal and economic analyses from ethical dimensions and behavioural influences. Begin to bridge this gap by examining the role of early-life experiences in shaping tax behavior, but broader integration of behavioural ethics into compliance research remains limited. Despite growing scholarly attention on tax avoidance, ethical compliance, and regulatory frameworks, a significant research gap remains in integrating ethical, technological, and governance dimensions in addressing aggressive tax strategies by multinational enterprises (MNEs). Most existing studies focus on either legal reforms or behavioral aspects in isolation, lacking a holistic, interdisciplinary approach. Furthermore, while transfer pricing and capital round-tripping are well-documented, emerging challenges posed by fintech, AI, and fragmented global governance structures are underexplored.

4. RESEARCH METHODOLOGY

The research utilizes a doctrinal legal methodology including a comparative and normative assessment. The doctrinal approach includes analysis of legislation, case law, and international tax laws in order to showcase the regulatory landscape regarding corporate tax avoidance across jurisdictions. This method reviews legal texts, treaties, and court decisions on the extent to which current regimes address base erosion and profit shifting and demonstrate ways for MNEs to exploit loopholes in the current regimes. Further, a comparative methodology is useful in recognizing the legal and policy response to corporate tax avoidance across primarily comparator developing and developed economies, including selected review countries of India, Nigeria, Brazil, the EU, and the United States. The comparative method allows the research to be instructive for best practices and illustrate variations in enforcement. This study incorporates an ethics analysis by situating taxation in a larger corporate social responsibility framework, demonstrating the relationship between legal compliance, fairness, distributive justice and sustainable development. A values-based and ethical analysis grounds the methodological approach, leading to a more comprehensive understanding of the issues associated with tax governance and much needed reform.

4.1 Corporate Social Responsibility (CSR) and ethics in taxation.

The debate over Corporate Social Responsibility (CSR) is no longer limited to environmental or social obligations; taxation represents a vital aspect of ethical corporate behaviour. Tax sovereignty refers to the state's exclusive ability to create and impose tax systems as a form of popular sovereignty and fiscal autonomy[Pirnykoza, P. (2023). Conceptual foundations of state fiscal sovereignty: methodological aspect. Economic Analysis. https://doi.org/10.35774/econa2023.04.310],[Yesimov, S. and Prots, I. (2024). Tax sovereignty of the state in the context of legal policy. Analìtično-porìvnâl′ne pravoznavstvo. https://doi.org/10.24144/381-401.2024.02.74]. Nevertheless, multinational corporations have, either via aggressive tax planning or profit-shifting or/or exploiting legislative weaknesses, undermined this principle by eroding states' fiscal capacity. Ethically, taxation is a social contract not a mere financial obligation—aimed at fairness, transparency and equitable burden-sharing to the public (Mushfik & Kobylnik, 2022).

Bryhinets (2023)[Bryhinets, O. (2023). Legal regulation of taxation of legal entities: domestic and foreign experience. Economics. Finances. Law. https://doi.org/10.37634/efp.2023.9.12] discusses how inefficiency and instability in Ukraine's taxation system increases the incidence of evasion and non-compliance, thereby raising issues of corporate duties to provide rather than undermine fiscal stability. Within the framework of corporate social responsibility (CSR), corporate actors ought to exceed-impose the minimum legal compliance and actively acknowledge taxation as part of its contribution to the common good. Ethical taxation is consistent with the philosophy of CSR which relies on sustainable sources of public finances as support for trust between business and the state and to foster competitive advantage over time. In this sense, responsible tax behavior is an essential principle of CSR because firms are now negotiating between shareholders' advocacy for their self-interests, while also contributing equitably to the common good by paying their share of taxes, being more transparent and avoiding aggressive avoidance.

4.2 Legal and Regulatory Analysis

Advanced anti-avoidance measures

The OECD produced the BEPS Action Plan in response to Base Erosion and Profit Shifting (BEPS) to address weaknesses in current tax rules by using bilateral and multilateral instruments. An example is the 2019 tax treaty between China and India, which includes provisions that prevent double taxation and avoidance of taxation[Garbarino, C. (2020). The impact of the OECD BEPS project on tax treaties: Access, entitlement and investment protection. European Business Law Review, 31(5).]. Similar legislation has been enacted in the European Union with the introduction of the Anti-Tax Avoidance Directive (ATAD), which includes provisions limiting interest deductibility and Controlled Foreign Company (CFC) rules. Further, ATAD States that provisions in anti-avoidance legislation have to respect the proportionality principle. International cooperation is also significant. The experience in the United States indicates the importance of the exchange of information, in this context employing the Model Tax Information Exchange Agreement, and the Tax Haven Abuse Prohibition, supported by institutional guarantees from the Federal Tax Administration. International cooperation involves building an international tax intelligence database. Finally, for developing countries, it is possible to make advances which sign agreements in relation to the exchange of tax information that can reduce revenue losses caused by the lack of information and also provide for better domestic legal protections.

The Blurred Line Between Tax Evasion and Tax Avoidance

Tax evasion and tax avoidance are both significant threats to tax systems worldwide, often undermining revenue, equity, and public confidence. Tax evasion is a criminal act committed by deliberately misrepresenting or concealing information in order to reduce tax liability. Tax avoidance is the legal use of strategies or techniques to reduce tax liability. Sometimes, though, avoidance actions may be consistent with the letter of the tax law but are not consistent with or violate the spirit of the tax law. The line between the two is becoming harder to identify because many methods of aggressive tax planning fall into a grey area between legality and illegality. As Oats (2005) and Sikka (2010) observed, tax avoidance may involve "novel interpretations" of complex tax laws or simply structuring transactions in a way that exploit loopholes in tax laws. These may be lawful under the statutes but undermine the intent of tax legislation and public policy. In some cases, an avoidance scheme may also be classified as evasion if it is scrutinized in a court of law.

"Corporations are fictitious entities who cannot cheat on the income tax returns like their managers do. These executives manage the operations of the firm and decide on the magnitude of profits to declare to the Internal Revenue Service (IRS), reflecting the shareholders' desire to maximise after tax profits". (p. 698)[Otusanya, O. J. (2011). The role of multinational companies in tax evasion and tax avoidance: The case of Nigeria. Critical Perspectives on Accounting, 22(3), 381-401.]

The distinction is complicated by the use of tax havens and offshore financial centres. These jurisdictions offer attractive tax laws that allow companies and wealthy individuals to shift profits, or hide assets, resulting in jurisdictions losing substantial amounts in revenue. This is especially damaging for developing countries, which typically lose billions of dollars each year through these arrangements.

From a corporate perspective, managers often defend their use of aggressive tax strategies as acting in the interests of shareholders, by treating tax as a "cost" that requires minimization. However, the widespread use of avoidance and evasion undermines tax moral and public confidence, and may result in inequalities as the burden falls more heavily on those complying with the tax system.

International Tax Regimes and the OECD's BEPS Agenda

This should be read as a high-level endorsement of the "finely delineat-ing" logic of anti-tax avoidance efforts (see section 3.4.1). Reading furtherthrough the 2013 report, a wariness towards solutions of the "blunt" type(see section 3.4.2) and a desire to prevent countries from adopting theseis apparent: "[...] Unilateral and uncoordinated actions by governmentsresponding in isolation could result in the risk of double – and possiblymultiple – taxation for business. This would have a negative impact oninvestment, and thus on growth and employment globally." This desire to balance can be observed throughout the different action items, as I willfurther show below, but also in the composition of the different items thatmake up the action plan.Giving-up on taxing corporations altogether (see section 3.4.3) is techni-cally not inconsistent with the Project (as long as a country abstains fromfacilitating tax avoidance elsewhere, e.g., by ensuring that no corporationswithout substance take advantage of the low tax rate), but it is not activelypromoted. Indeed, it would be difficult to justify detailed proposals foramendments of corporate income tax rules while at the same time encour-aging countries to not tax corporations altogether. Instead, the BEPS Actionreports express the goal of safeguarding the "integrity of the corporateincome tax." (Heitmüller)

Allocation of taxing rights to business profits according to theOECD Model Tax ConventionArticle 7(1) of the OECD Model Tax Convention divides taxing rights to businessprofits between the resident and the source state. The article provides that businessprofits of a company are taxable only in the state of the company's residency unlessthe company carries on business in another contracting state through a permanentestablishment situated therein. If a non-resident enterprise has a PE established inthe state, only the profits that are attributable to the PE may be taxed in that state. The resident state of the company that has a PE in another contracting state must either exempt the profits that are attributable to the PE (article 23 A in the OECDModel Tax Convention) or give a credit for the tax levied by the other state onthese profits (article 23 B in the

OECD Model Tax Convention). In this way,international double taxation of business profits is eliminated between the residentand the source state. On February 25, 1955, unilateral measures were authorized by the Council of the Organization for European Economic Co-operation (OEEC) after its initial suggestion about double taxation. At that time, the existing OEC members had signed seventy bilateral general conventions[Development. Committee on Fiscal Affairs. (1998). Model Tax Convention on income and on capital: condensed version. Organisation for Economic Co-operation and Development.].

1. Concept of Permanent Establishment (PE)

The idea of a Permanent Establishment (PE) is central to the allocation of taxing rights in international corporate taxation. The PE is defined in many tax treaties, using the OECD Model Tax Convention as benchmark for where a tax jurisdiction can tax the business profits of a non-resident enterprise. Article 5 of the OECD Model defines a PE as, "a fixed place of business through which the business of an enterprise is wholly or partly carried on." In order to be consider a PE, three criteria must be fulfilled: (i) there must be a physical place of business (e.g. premises, machines, or equipment), (ii) the place of business must be "fixed" with a degree of permanence (sufficient to constitute the establishment), and (iii) there must be business of the enterprise is carried on through the fixed location and normally by the persons comprising the enterprise.

2. Examples and Exemptions

Article 5(2) gives examples of a PE, which may include but are not limited to, an office, a factory, a place of management, or a mine or oil well (if they adhere to the general definition of a PE mentioned). Article 5(4), on the other hand, provides a list of activities that do not form a PE even if they take place in a fixed location. Such activities include but are not limited to preparatory and auxiliary functions (e.g. storage or certain limited operational activities). In addition to the non-inclusory activities provided in Article 5(4), Article 5(5) also introduces the dependent agent PE that asserts a non-resident enterprise has a PE if the actions of an agent are derived from concluding contracts or essentially leading to a contract(s) on behalf of the enterprise. It is important to note that the contract(s) must be finalized, legal, and valid in the name of the enterprise.

Historically, the PE concept was a means to assure that a state may only exercise its taxing rights in respect of a non-resident company if that company has established a substantive physical presence in the state. This is more reasonable to say or follow on the basis that prior to the information or digital age, a physical presence—through manufacturing, testing, distribution, or sales—was a requirement for participation in the market; accordingly, a state may not tax a non-resident company that is economically active—but does not have a substantive physical presence.

3. Attribution of Profits to a Permanent Establishment

After the PE is established, only the income that can be attributed to the PE will be chargeable to tax in the source country. Article 7(2) of the OECD Model Tax Convention deals with this attribution of profits. Profits are determined assuming the PE is a separate and distinct entity from the enterprise, and the determination is at arm’s length, while taking into account the functions performed, assets utilized, and risks incurred by the PE as well as the enterprise as a whole.

4. Arm’s Length Principle (ALP) and Internal Transactions

The Arm's Length Principle (ALP) serves as the foundational guideline for profit attribution to a PE. The principle ensures that transactions across separate parts of an enterprise or controlled enterprises are conducted as though they were between unrelated parties, regardless of ownership structure a direct application of the Transfer Pricing Guidelines as endorsed by the OECD. According to the OECD's 2010 Report on the Attribution of Profits to PEs, the OECD articulates the ALP as being a two-step process: (1) the PE and rest of the enterprise are hypothetically separated by splitting functions, assets, and risks, and (2) PE's dealings are subsequently compared to transactions between unrelated parties, with significant emphasis placed on internecine transactions. The ALP also applies, generally, to transactions between related parties, including payments between parent and subsidiary companies and between subsidiaries of the same parent, as described in Article 9(1) of the OECD Model. In general terms, measuring intra-group transactions at arm's length allows for the allocation of profits and losses to be reflective of what would have taken place if the enterprises were unrelated. ALPs provide a standardized, fair, and equitable basis for taxing MNEs while also minimizing potential profit shifting and erosion of the tax base[Rootsma, E. (2021). Adapting taxation of business profits to the digital economy: Assessment of the Pillar One and Pillar Two Proposal by the OECD/G20 Inclusive Framework on BEPS.].

4.3 Legal Dimensions of Corporate Tax Avoidance

Case law and statutory examples from selected jurisdictions

In the Supreme Court of Italy's Decision No. 19512/2024 (July 2024), the court ruled that comparable assets that are unprofitable cannot be excluded from consideration on the sole basis of recorded losses. This ruling arose in the context of a call centre service provider whose markup was recalculated by tax authorities after eliminating the profitability that comprised some companies with losses. The court noted that temporary unprofitable status could result, for example, from a complete reliance on 'market penetration' strategies or significant start-up investments. Significantly, this ruling reinforces the importance of economic and strategic context when conducting transfer pricing benchmarking, ensuring compliance with international guidance and the principles of the arm's length principle.

In Case No. 7 Afs 398/381-401 (April 2022), the Czech Supreme Administrative Court reached the opposite conclusion, endorsing the rejection of loss-making comparables in a case involving a contract manufacturer with a limited functional and risk profile. The tax authorities argued the manufacturer could not continue to incur losses on an ongoing basis and that its losses were inconsistent with its routine role in the multinational group’s value chain. The Court sided with the tax authorities and held that the comparables should not be subject to multi-year averaging to justify continuing losses, stating that routine entities must earn profits at least at an arm’s length amount. The case underscores the importance of proper documentation and consistent benchmarking methodologies.

In Resolution No. TAT-RF-002 (January 2020), the Administrative Tax Tribunal of Panama addressed a transfer pricing dispute involving a taxpayer located within the Colón Free Zone. The Tribunal rejected the blanket exclusion of loss-making comparable but noted that loss-making comparable may be included only after a careful review of the reason for the losses and whether the comparable would reflect normal business conditions. This ruling, which is in line with the OECD Transfer Pricing Guidelines for comparability, clearly shows a careful approach to applying the arms-length principle to comparable as well as the complexity of evaluating loss-making comparable for transfer pricing and benchmarking analysis[Evolving case law on loss-making comparables in transfer pricing. (2025.). https://www.dentons.com/en/insights/articles/2025/january/10/evolving-case-law-on-loss-making-comparables-in-transfer-pricing?utm_source=chatgpt.com].

Penalties for Tax Non-Compliance

Fines and Interest on Unpaid Taxes: One of the most common penalties for tax non-compliance is the imposition of fines and interest on unpaid tax liabilities. When a business fails to remit the full amount owed, tax authorities typically charge interest, which accumulates over time and increases the overall liability. In addition, penalties may be imposed for late or incorrect filings, with the severity of the fine depending on the duration of the delay or the seriousness of the error. Such measures are primarily designed as deterrents, encouraging businesses to ensure timely and accurate tax compliance.

Criminal Liability and Prosecution: In more serious cases, such as tax evasion, fraudulent reporting, or deliberate misrepresentation of financial information, businesses and individuals may face criminal prosecution. Tax evasion is treated as a serious offense that can lead to imprisonment, heavy fines, and even asset seizure. While corporations may be held accountable, executives and officers can also face personal liability if they are directly involved in the misconduct. Criminal penalties are typically imposed where there is clear evidence of intentional concealment of income, participation in illegal avoidance schemes, or falsification of documents[Muthitacharoen, A., & Samphantharak, K. (2022). Multinational tax avoidance and anti-avoidance enforcement: firm-level evidence from developing asean countries. The Singapore Economic Review, 67(06), 381-401.].

Case Studies of High-Profile Corporate Tax Evasion

Several high-profile cases demonstrate the severe legal, financial, and reputational consequences of corporate tax evasion. These examples highlight the risks associated with non-compliance and the increasing vigilance of tax authorities worldwide.

- Apple Inc. (European Union – 2016): In 2016, the European Commission ruled that Apple had received illegal state aid from the Irish government through favorable tax arrangements that significantly reduced its tax burden compared to other businesses. Apple was ordered to repay €13 billion in back taxes, a decision the company contested. The case drew global attention to aggressive tax planning by multinational corporations and the determination of EU authorities to curb unfair tax advantages.
- Google (France – 2019): Google was accused by French authorities of using complex corporate structures and subsidiaries in low-tax jurisdictions to avoid paying taxes on revenues generated in France. In 2019, the company agreed to a €1 billion settlement, which included both fines and back taxes. This case underscored the challenges of taxing digital business models and signaled intensified scrutiny of technology giants' tax practices.
- Volkswagen (Germany – 2015): Although primarily centered on the emissions scandal, Volkswagen's case also had significant tax implications. The company's use of deceptive software to manipulate emissions tests led to misrepresentations that extended into financial reporting and taxation. Volkswagen faced billions in fines, legal settlements, and reputational damage, demonstrating how unethical business practices can have wide-ranging legal and fiscal consequences, including in the tax domain[Akinsola, K. (2025). Legal Frameworks for Corporate Tax Compliance: Navigating Local and Global Regulations. Available at SSRN 5127003.].

Case Study: Debswana and Tax Disputes in Botswana

The long-standing partnership between the Botswana government and De Beers through their joint venture, Debswana Diamond Company, has been a key component of Botswana's economic development. However, evidence has surfaced indicating serious concerns about revenue losses related to undervaluation, transfer pricing and erosion of tax bases. According to a Sunday Standard report, a highly secretive sales agreement signed on 16 September 2011 between Botswana and De Beers allowed the multinational company to undervalue Debswana's "special," "exceptional," and "very exceptional" stones on exports. The extremely high value stones were sold on foreign markets at substantially higher prices since they were excluded from the sales agreement's "40-Day Adjustment" clause, on average the value of these diamonds rose 77.6% prior to cutting and polishing. The undervaluation and price manipulation resulted in billions of pula in lost revenue to the Botswana treasury, as tax liabilities from sales were pushed beyond the reach of the Botswana tax jurisdiction[Online editor. (2019, March 18). Inside Botswana/De Beers secret agreement | Sunday Standard. Sunday Standard. https://www.sundaystandard.info/inside-botswana-de-beers-secret-agreement/?utm_source=
].

Additional analysis suggests profit-shifting practices extended beyond simple under-invoicing. From 381-401 rough diamonds flowed through Switzerland's tax-free freeports, originating from Botswana, increased in value by $27.8 billion (with some parcels increasing by 216%) without adding a single dollar in any value. De Beers and its subsidiaries exploited this tax deduction by simply rearranging, re-invoicing, and remitting the diamonds for the same value of stones and through various tax regimes. The magnitude of the discrepancies evidenced in that Debswana supplied 67.5% of De Beers total carats and 23% of the revenue suggests an aggressive profit-shifting and capital value process that attack Botswana's fiscal sovereignty. This case presents the pressing need to incorporate a more extensive legislative framework around transfer pricing, develop a more transparent export valuation process for diamonds, and potentially re-evaluate and review multilateral arrangements with MNEs that de facto, allow De Beers, and the like, to significantly extract wealth from Botswana's mineral wealth.

Case Study: Debswana vs. Botswana Unified Revenue Service – Court of Appeal Ruling

The long-awaited tax case between Debswana Diamond Company (Pty) Ltd. and the Botswana Unified Revenue Service (BURS) resulted in an important Court of Appeal (CoA) decision which emphasized the taxpayer's right to lawfully conduct their affairs to reduce potential tax liability. The dispute began when the Commissioner General issued a tax assessment in relation to Debswana's car benefit scheme upholding that employees receiving leased vehicles from Avis needed to be taxed as if they had received cash equal to the rental payments. The Commissioner concluded that such a tax would impose a higher tax rate than would otherwise be applicable had they been taxed on non-cash benefits. Debswana contested this outcome, and was adamant that this arrangement was a lawful salary sacrifice scheme whereby employees had agreed to accept reduced cash salaries in exchange for a benefit.

The CoA found that the Commissioner's assessment should be reversed on the basis that the salary structure complied with Botswana's Income Tax Act in that it differentiated between cash earnings and non-cash benefits. The Court also should find that the salary structure was not a sham or simulation, as it was transparent and commercially justifiable. The judgment also reinforced the acceptability for taxpayers to structure their affairs in a manner that minimizes tax liability, provided that this is real and lawful. Ultimately, BURS was instructed to repay Debswana BWP 14 million in tax that had been previously paid pursuant to the invalid assessment. This case is of significant importance for employers in Botswana, as it sets out what may be allowable in respect of tax efficient remuneration structures[Armstrongs (2016). "Debswana Wins Big in the Court of Appeal" – Sipho Ziga, Partner – Commercial. Armstrongs Attorneys, Botswana.].

4.5 International Legal and Policy Framework

The international community's most significant means of combating corporate tax avoidance lies in establishing a cohesive legislative and policy framework that achieves as much global buy-in as possible. We assist Member States in implementing the tax-related international legal and policy framework. For example, through the OECD/G20 Base Erosion and Profit Shifting (BEPS) project and the UN Model Tax Convention, along with relevant agreements and resolutions adopted by international financial institutions. These include legislated or suggested frameworks on: preventing treaty shopping and abusive transfer pricing; preventing harmful tax competition; tackling profit shifting and thin capitalization; ensuring transparency in the sharing of cross-border tax information; and enhancing illegal finance measures on aggressive tax planning. The implementation of these frameworks is undertaken through the OECD Inclusive Framework on BEPS, the UN Committee of Experts on International Cooperation in Tax Matters, and the work undertaken jointly by the IMF, World Bank, and other international organizations. Collectively, these frameworks comprise the foundation of governance of global taxation which aims, through alignment of domestic taxation systems to international standards, to promote fairness, equity, and sustainability.

OECD's BEPS Project and Global Tax Governance

There have been important improvements in efforts to address corporate tax avoidance through the OECD/G20 Base Erosion and Profit Shifting (BEPS) project. The creation of the Inclusive Framework has expanded collaboration to numerous non-OECD countries, increasing the multilateral governance of this problem. Despite these developments, there have been continued concerns about gaps in the current framework to address issues of profit shifting, harmful tax competition, or pressures created by some countries to implement unilateral measures. The ongoing discussions related to issues of tax challenges arising from digitalization reiterate the difficulty of implementing global tax policy.

UN, IMF, and World Bank Approaches to Corporate Taxation

In shaping international corporate taxation policies, international organizations operate in a supporting role. With its focus on global participation and its overarching macroeconomic view, the IMF has contributed important studies on cross-border spillovers, distributional consequences, and reform possibilities. The UN maintains a focus on fairness in the distribution of taxing rights to developing and low-income countries. The World Bank emphasis is on capacity building and modernization of tax systems in developing countries. The Platform for Collaboration on Tax - which includes the IMF, OECD, UN, and World Bank - serves as a valuable structure to enhance coordination and ensure inclusivity.

Double Taxation Avoidance Agreements (DTAAs)

Although DTAAs are designed to mitigate double taxation and promote investment, they have often been points of abuse for treaty shopping and aggressive tax planning. The Directors highlighted the balancing act between the desire of countries to protect their own national sovereignty, while also trying to eliminate harmful and aggressive tax competition. The Directors concluded by pointing out that the misuse of DTAAs can erode the tax base of developing economies, and that clarity and proper regulation can often stand in the way of having a uniform standard to implement DTAAs transparently.

Challenges of Harmonizing Domestic Law with International Regimes

Aligning international standards with national tax provisions continues to present a significant challenge. A number of countries may have limited capacity to act on issues of confidentiality and general institutional capacity in the face of major global reforms. Compounding this is the divergence of national policy priorities when it comes to consensus development regarding minimum taxation thresholds, assigning taxing rights, and taxation within the digital economy.

Companies can operate and earn substantial revenue, notably from user data, digital services, and online transactions, without having a physical presence (nexus) in a country, making it difficult for tax laws to capture the value created in the digital economy. As a result, it becomes more difficult to assign value, define digital income, apply source rules, and collect VAT and GST on cross-border digital transactions [ ].

In the face of the OECD as the leading standard setter, there is immediate and ongoing concern for strengthening the representation of developing economies in the decision making process in order to promote equity, inclusiveness, and sustainability in the architecture of global tax governance[IMF Executive Board reviews corporate taxation in the global economy. (2019, March 8). IMF. https://www.imf.org/en/News/Articles/2019/03/08/pr1969-imf-executive-board-reviews-corporate-taxation-in-the-global-economy?utm_source=chatgpt.com].

5. Ethical Dimensions of Tax Avoidance

While extensive literature has explored how inequality influences demand for redistribution, the ethical implications of fairness perceptions in taxation remain less understood. A central ethical debate lies in the tension between legality and legitimacy—whether tax avoidance, though lawful, is morally defensible. This raises questions about whether MNEs that exploit loopholes in tax law act in accordance with social responsibility or merely legal compliance.

From a distributive justice perspective, fairness in taxation plays a decisive role in shaping tax morale and public trust. Individuals are more willing to comply with tax obligations when they perceive the system as progressive and equitable. Conversely, when tax structures appear regressive or unfair, citizens may view tax evasion or avoidance as justifiable responses. Ethical considerations therefore extend beyond deterrence mechanisms to encompass reciprocity and perceptions of the "fiscal contract" between citizens and the state.

The impact of tax avoidance on inequality, poverty, and sustainable development is also significant. Widespread practices such as profit shifting and treaty shopping deprive governments particularly in developing economies of vital resources needed for social spending and public goods. This weakens efforts to reduce inequality and undermines long-term progress toward the Sustainable Development Goals (SDGs).

Finally, the ethical responsibility of MNEs comes into sharp focus. Beyond maximizing shareholder value, corporations are increasingly expected to uphold broader responsibilities to society by paying their fair share of taxes. When MNEs avoid taxation aggressively, they not only erode public trust but also exacerbate inequality by shifting the fiscal burden onto ordinary citizens. Thus, an ethical approach to taxation requires balancing corporate interests with societal welfare, ensuring that tax systems promote fairness, legitimacy, and sustainable development[Castañeda, N. (2024). Fairness and tax morale in developing countries. Studies in Comparative International Development, 59(1), 381-401.].

6. Comparative Perspectives from Developing Economies

International corporate taxation has become a central issue in recent years, particularly as multinational enterprises (MNEs) are increasingly scrutinized for paying disproportionately low levels of tax due to sophisticated cross-border tax planning strategies. While such concerns first came to prominence in advanced economies, developing countries are equally if not more affected. Their tax systems tend to rely more heavily on corporate income tax as a share of total revenue, and they often lack diversified alternatives such as broad-based consumption or property taxes. This makes them especially vulnerable to base erosion and profit shifting (BEPS).

The G20–OECD BEPS initiative, launched in 2013, represents an unprecedented effort to strengthen the international tax system by curbing avoidance opportunities across fifteen action areas. Although largely driven by advanced economies, its outcomes have direct implications for developing countries. Empirical evidence suggests that even a single transfer pricing dispute or treaty shopping case can result in significant revenue losses relative to the fiscal capacity of these countries (IMF, 2014). For instance, India has actively pursued measures to address profit shifting through its adoption of General Anti-Avoidance Rules (GAAR) and renegotiation of Double Taxation Avoidance Agreements (DTAAs). Nigeria, by contrast, has struggled with enforcement challenges due to limited administrative capacity, despite recent reforms aimed at strengthening transfer pricing regulations. Brazil's unique approach, rooted in formula-based methods for transfer pricing rather than OECD arm's-length principles, illustrates an alternative model but also raises concerns over compatibility with international frameworks.

Regional cooperation has also emerged as a critical element. Platforms such as the African Tax Administration Forum (ATAF), the South Asian Association for Regional Cooperation (SAARC), and initiatives within ASEAN have sought to foster joint capacity building, promote information exchange, and reduce harmful tax competition. These mechanisms are vital in countering the strategies of MNEs, which often exploit asymmetries between national tax regimes[Crivelli View of research on the dilemma of Anti-Tax avoidance measures in developing countries and their response. (2022). https://bcpublication.org/index.php/BM/article/view/948/949].

Major Anti-Avoidance Measures in Developing

Countries

Multinational enterprises (MNEs) often employ sophisticated strategies to minimize their tax liabilities, resulting in significant revenue leakages worldwide. While both developed and developing economies are affected, the fiscal impact on developing countries is particularly severe, given their heavy reliance on corporate income tax. In response, many developing economies have adopted a range of anti-avoidance measures, which can broadly be categorized as improvements in domestic legislation, adoption of General Anti-Avoidance Rules (GAAR), and strengthened international cooperation.

1.Strengthening Domestic Anti-Avoidance Legislation

Enhancing domestic legal frameworks is still one of the most important and most widely adopted approaches. There has been greater alignment of anti-avoidance legislation around the world, particularly in the area of transfer pricing and thin capitalization. In particular, Egypt, Mexico, and Brazil have passed transfer pricing legislation, with Brazil being, by far, the most developed. Most notably, Brazil's legal structure—established in Law No. 9430/1996—specifies various procedural and legal requirements regarding goods imported to Brazil and goods exported from Brazil. Brazil's legal framework requires domestic entities to use traditional price-based methods including the Comparable Uncontrolled Price (CUP), Resale Price, and Cost-Plus Methods. Brazil also applies the "Sixth Method" to selected import and export goods—a variation on the CUP method. While this has been effective in many instances, it does not conform to the OECD/G20 Base Erosion and Profit Shifting (BEPS) Action Plan and can create issues of double taxation or double non-taxation.

Likewise, India has enacted transfer pricing regulations grounded in the arm's length principle, however, they have resulted in frequent disputes and sometimes make it unclear for investors. To alleviate ambiguity, the Indian Revenue Service has instituted processes like the Mutual Agreement Procedure (MAP) and has also provided guidance on various issues. For example, income derived from international transactions involving associated enterprises has to be determined on the basis of arm's length pricing (ALP). Taxpayers contesting the adjustments can appeal to the Dispute Resolution Committee, and those determinations are final.

2. Application of General Anti-Avoidance Rules (GAAR)

Numerous developing nations use GAAR as measure against undue tax behaviour. Notably, India established GAAR to thwart businesses from crafting artificial construction to relieve tax liability. GAAR faced opposition from taxpayers as well as some ambiguity from administration about how it would work in practice. The government responded to requests for changes, but there were unadopted suggestions, including limiting GAAR to clear incidences of undue tax behaviour. GAAR continues to underpin India's anti-avoidance when it was met with some difficulties at the time of becoming law.

3. International Cooperation

In addition to measures at the local level, global cooperation is essential to addressing tax avoidance. Many developing countries have become multilateral partners in international endeavors, specifically the OECD's BEPS project which now includes 141 countries and jurisdictions. The engagement of countries like India and China reflects that developing countries are increasingly committed to increasing transparency and reducing base erosion. Regional cooperation initiatives also support these efforts. For example, the African Tax Administration Forum (ATAF) generates cooperation among African countries to produce common designs and spend better on tax administration[Mataba, K., Lassourd, T., Readhead, A., & Nikièma, S. (2023). Revisiting Tax Incentives as an Investment Promotion Tool.].

7. Key Challenges for Developing Economies

- Developing countries often grapple with the dilemma of offering tax incentives to attract foreign direct investment (FDI) while ensuring sufficient tax revenue for public services. The International Institute for Sustainable Development (IISD) discusses this issue in their publication "Revisiting Tax Incentives as an Investment Promotion Tool," highlighting the complexities and evolving perspectives on the effectiveness of tax incentives in developing countries[Benitez, J. C., Mansour, M., Pecho, M., & Vellutini, C. (2023). Building tax capacity in developing countries. International Monetary Fund.].

- The International Monetary Fund (IMF) addresses this challenge in their Staff Discussion Note "Building Tax Capacity in Developing Countries." The note emphasizes the importance of strengthening tax policy, administration, and legal frameworks to enhance domestic revenue mobilization. It also discusses the role of international cooperation in supporting these efforts[[Benitez, J. C., Mansour, M., Pecho, M., & Vellutini, C. (2023). Building tax capacity in developing countries. International Monetary Fund.].
- The political economy of tax reforms in developing countries is a significant factor influencing the success of tax policy changes. The European Parliament's report "Tax Revenue Mobilisation in Developing Countries: Issues and Challenges" explores how political factors, including governance and institutional quality, impact tax reform processes[Mascagni, G., Moore, M., & McCluskey, R. (2014). Tax revenue mobilisation in developing countries: Issues and challenges. European Union (Belgium).].
- Developing countries' reliance on international aid can affect their tax policies and revenue mobilization strategies. The European Parliament's report also examines how donor influences and aid dependency shape domestic tax systems and the challenges associated with balancing external assistance with self-sustained revenue generation

8. Findings and discussion

1. Legal Dimensions of Corporate Tax Avoidance

The analysis shows that developing economies face significant challenges in curbing corporate tax avoidance due to weak domestic tax frameworks, limited enforcement capacity, and pressure to attract foreign investment. Loopholes in transfer pricing, treaty shopping, and thin capitalization remain prevalent. Case law from Italy, the Czech Republic, and Panama illustrates divergent judicial approaches to applying the arm's length principle, reinforcing the complexity of international tax compliance. Penalties for non-compliance exist, but enforcement gaps undermine deterrence in many jurisdictions.

2. Ethical Considerations in Tax Practices

Findings indicate that legality alone does not guarantee legitimacy. While multinational enterprises (MNEs) often justify tax avoidance as legal optimization, such practices undermine distributive justice by reducing public revenues for health, education, and infrastructure. Ethical taxation, consistent with Corporate Social Responsibility (CSR), requires MNEs to recognize their duty toward equitable burden-sharing rather than exploiting loopholes for shareholder gain.

3. Impact on Inequality and Development

Tax avoidance exacerbates income inequality and undermines sustainable development in developing economies. Lost revenues diminish governments' ability to provide public goods, widening poverty gaps. Evidence from case studies shows that aggressive tax planning disproportionately shifts the fiscal burden onto less mobile taxpayers, intensifying social inequities and weakening the fiscal contract between citizens and the state.

4. International Cooperation and BEPS Implementation

The OECD's BEPS Action Plan, along with EU's ATAD and U.S. information exchange frameworks, represent important global measures. However, developing countries remain disadvantaged due to weaker institutional capacity and reliance on unilateral concessions to attract investment. Although international cooperation is expanding, its benefits are uneven, and domestic reforms often lag behind global standards[Torres Solís, J. R., & Moroka, K. (2011). Innovative corporate social responsibility in Botswana. The

Debswana mining company study case. Contaduría y administración, (233), 381-401.].

5. Comparative Lessons from Developing Economies

Case studies of India, Nigeria, and Brazil highlight varying approaches to combating base erosion. While some success is seen in adopting stricter transfer pricing rules and regional cooperation mechanisms, the tension between fostering a favourable investment climate and protecting revenue persists. Regional platforms such as the African Union and ASEAN offer potential collective bargaining power but remain underutilized.

6. Ethical Responsibility of MNEs

The findings underscore that beyond compliance, MNEs hold ethical responsibilities to contribute fairly to the societies in which they operate. Aggressive avoidance not only erodes fiscal sovereignty but also damages corporate reputation, investor trust, and long-term competitiveness. Integrating CSR into tax strategies can transform taxation from a mere financial cost into a component of sustainable corporate governance[Johansson, Å., Skeie, Ø. B., & Sorbe, S. (2017). Anti-avoidance rules against international tax planning: a classification.].

7. Tax policy factors that are important when deciding whether to sign a tax treaty

The OECD points out that bilateral tax treaties are crucial instruments for avoidance of double taxation as well as minimizing cross-border trade and investment barriers. In considering entering, amending, or terminating a treaty, states need to evaluate a number of significant tax policy issues. First on the agenda is the exposure to double taxation risk, where two states tax the same income and thereby discourage economic activity. Domestic laws can frequently offer relief by means of exemption or credit arrangements; however, they might not in instances involving disparity in source rules or transfer pricing adjustments. Also, heavy source country withholding taxes can give rise to excessive tax rates where relief for double tax exists. In this regard, tax treaties reduce these challenges by allocating taxing rights equitably, limiting lower rates on withholding tax, as well as by avert no-taxation situations. In the end, tax treaties remain valuable instruments for furthering cross-border economic co-operation, tax equity, as well as a predictable investment climate[Development. Committee on Fiscal Affairs. (1998). Model Tax Convention on income and on capital: condensed version. Organisation for Economic Co-operation and Development.].

Strengths, weaknesses, and gaps identified.

Strengths

One of the major strengths of the study is the thorough legal analysis it provides. The study examines not only the laws of domestic tax infrastructure and the international framework such as the OECD's BEPS Action Plan and the EU's ATAD, but also the court's interpretation of these laws, which provides a good balance concerning how regulatory mechanisms evolve. Another important strength is the consideration of ethical dimensions in the discussion. By connecting tax avoidance to corporate social responsibility and issues of fairness, the study engages in a broader examination of the legality and wears the law of taxation as a part of ethical and developmental governance. The comparative perspective also serves to strengthen the work's value. The inclusion of case law from different jurisdictions, including Italy, the Czech Republic, Panama, the EU, and the US, demonstrates that there is a range of approaches to enforcement across the world, as well as challenges associated with harmonization. Finally, the work demonstrates strong policy relevance in various ways by considering the roles of international cooperation, information exchange and regional mechanisms, and by providing considerations for policymakers in developing economies, who might adapt the research to their own context.

Weaknesses

Notwithstanding these positive results, the study contains several significant limitations. First, the study provides no extensive empirical evidence or quantitative evidence to support the results of corporate tax avoidance in select developing economies. Secondly, the analysis is fairly centralized on the OECD and EU processes, at the expense of probing home-grown reforms and other domestic developments in developing countries. Other limitations include case studies that are globalized (i.e. generalization of case studies of India, Nigeria, and Brazil) and not looking deeply enough into their legislative or institutional responses which may have illustrated the complete complexities of their tax governance experiences. Lastly, while the study recognizes fintech and artificial intelligence among the young challenges, the technology dimension is under-researched as the research did not include any detailed exploration of how ora telephone call is utilized to further deny tax policy enforcement and/or whether technology might reduce/lessen avoidance practices.

Gaps Identified

The study also demonstrates several research gaps. One gap is in the limited incorporation of behavioral and ethical evidence, as, while there is significant expansion of exploration related to legal and structural issues, there is less investigation of how taxpayer attitudes, corporate culture and ethics impact compliance. Another gap is the lack of sector-specific evidence. Although the study does not disaggregate avoidance practices, it explores issues related to the extractives sector, the digital economy, and manufacturing. However, the strategies and risks rely on sector-specific differences, and there is little discussion of sector-specific strategies or outcomes. Another gap is there are fewer analyses related to constraints related to the realities of institutions and developing countries. Although the study mentions issues surrounding administrative capacity, it does not discuss the political economy implications, such as corruption, lobbying or donor conditionalities. There is also a gap in the quantification of revenue losses to support the policy recommendations further by describing the scale of fiscal risks. Finally, while regional cooperation initiatives - related to the African Union, ASEAN and SAARC - are discussed in the study, the authors do not discuss the effectiveness or challenges of implementation.

9. Contribution to the Development of Corporate Law and Tax Governance

This paper contributes meaningfully to the evolution of corporate law and taxation governance by integrating the legal, ethical, and policy aspects of corporate tax avoidance. It sets out evidence of how loopholes in the law, fragmented enforcement, and a global marketplace for investment reduce fiscal sovereignty in developing countries. It also explores the ethical duty of multinational enterprises to contribute their fair share to public finances. The paper synthesizes concepts including substantive tax sovereignty, corporates' mobility theory, and corporate social responsibility in taxation to present a more integrated approach to understanding the corporate law- taxation governance nexus. It offers a comparative analysis of case law and international initiatives such as the OECD's Actions on BEPS Action Plan and the EU's Atad process that will help locate domestic rules in relation to global responses. Above all, the paper signals to an understanding of the core importance of integrating ethics into tax practice, a recognition not only of taxation as a legal responsibility but one that is foundational to equitable and sustainable corporate governance.

10. Conclusion and recommendation

In conclusion, this study has explored the legal and ethical implications of corporate tax avoidance and base erosion in developing countries, emphasizing how multinational enterprises take advantage of gaps in relevant laws, transfer pricing, and weak enforcement to minimize tax liabilities. While this behavior may not necessarily be deemed illegal, it challenges concepts of economic and fiscal sovereignty, undermines legitimacy, and diminishes governments' abilities to offer core governmental services, fuelling inequality and preventing sustainable development. This study advocates for Botswana to enhance its tax arrangements by realigning domestic policies from OECD BEPS Action 5, particularly the spontaneous exchange of tax rulings to improve the detection and remediation of BEPS activities. The Botswana Unified Revenue Service (BURS) should have an adequate policy framework in place to document and exchange past and future rulings within the confines of international obligations [Revised BEPS Action 5 Transparency Framework on tax rulings. (2025). In OECD/G20 base erosion and profit shifting project. https://doi.org/10.1787/1ab24e78-en

]. In this article we have argued that taxation is more than simply a tax obligation; it is part of the social contract and compels legal and ethical obligations. To respond to these concerns, a number of recommendations arise, first, developing countries should enhance domestic tax legislation loopholes and by, with respect to the legislation current international anti-avoidance regime such as OECD's BEPS and EU's ATAD. Second, strengthen institutional capacity and enforcement tools, to ensure that compliance works. Third, deepen regional cooperation to strengthen power against MNEs. Finally, taxation should be coupled with corporate social responsibility, in a way that adds fairness, transparency and sustainability to the tax governance.

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