

CORRUPTION, TAX EVASION, AND THE DISTORTION OF JUSTICE: GLOBAL CHALLENGES AND INTERNATIONAL RESPONSES

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I

INTRODUCTION

In recent decades, manifold leaks and investigations have revealed million-dollar cases of corruption and tax evasion, as well as tax avoidance, perpetrated both at local and transnational levels not only by fraudsters and organized criminal groups but also by high-net-worth individuals and multinational companies.¹ These phenomena, which have received particular attention in white-collar and economic crime studies,² are global problems exerting a devastating impact on the rule of law, the economy, and society. They generate inequalities and development barriers, which have repercussions borne significantly by developing countries and the more socio-economically marginalized members of society.³ Although exact figures may be debated, it is

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1. See, e.g., Shu-Yi Oei & Diane Ring, *Leak-Driven Law*, 65 UCLA L. REV. 532, 536 (2018) (studying leaks that led U.S. authorities to investigate tax evasion and design new tax laws); Rachel Brewster & Samuel W. Buell, *The Market for Global Anticorruption Enforcement*, 80 LAW & CONTEMP. PROBS., no. 1, 2017, at 193 (focusing on enforcement actions against international corruption committed by multinational companies).

2. See, e.g., William Tupman, *The Characteristics of Economic Crime and Criminals*, in RESEARCH HANDBOOK ON INTERNATIONAL FINANCIAL CRIME 3, 7 (Barry Rider ed., 2015) (explaining the concept and categories of economic crime, including corruption); Barry Rider, *The Wages of Sin – Taking the Profit Out of Corruption – A British Perspective*, 13 PENN STATE INT’L L. REV. 391, 391 (1995) (arguing the importance of targeting the laundering of the proceeds of corruption, “an ‘economic crime’ par excellence!”); Doreen McBarnet, *Whiter than White Collar Crime: Tax, Fraud Insurance and the Management of Stigma*, 42 BRIT. J. SOCIO. 323, 342 (1991) (suggesting a rethinking about the definition of white-collar crime in light of the distinction between tax evasion and tax avoidance).

3. See Branislav Hock, *Policing Fiscal Corruption: Tax Crime and Legally Corrupt Institutions in the United Kingdom*, 85 LAW & CONTEMP. PROBS., no. 4, 2022, at 161 (discussing how tax crimes contribute to inequality); Julius O. Otusanya, *Corruption as An Obstacle to Development in Developing Countries: A Review of Literature*, 14 J. MONEY LAUNDERING CONTROL 387, 388 (2011) (exploring how corruption impedes advancement in developing countries); Alex Cobham & Petr Janský, *Global*

unquestionable that considerable economic resources—trillions of dollars annually—are being lost due to corrupt behaviors and tax evasion worldwide.⁴ Accordingly, the fight against corruption and tax evasion is a primary concern for national governments and the international community. Governments and scholars have even metaphorically spoken of a war against tax evasion and corruption to mark the importance, as well as the difficulty, of this political, cultural, and legal battle.⁵

Despite the common harms that countries face from corruption and from fraudulent tax practices, a notable gap exists in international legal responses to these two related but distinct global crimes. Although characterized by weaknesses or ineffectiveness, anti-corruption strategies are governed and advanced through a multilevel approach. Indeed, international conventions provide a common legal framework on anticorruption for state parties.⁶ In contrast, there is no international legal instrument to counter serious tax evasion and tax avoidance behaviors from a criminal law perspective, apart from some pieces of legislation adopted within the European Union (EU).⁷ Given that national responses to tax evasion are marked by differences that enable tax dodging and hinder international cooperation, the absence of binding

Distribution of Revenue Loss from Corporate Tax Avoidance: Re-Estimation and Country Results, 30 J. INT'L DEV. 206, 206 (2018) (highlighting that phenomenon of corporate tax avoidance generates a loss of approximately \$500 billion annually, with greater losses in low-income countries in Latin America, the Caribbean, and Sub-Saharan Africa).

4. See, e.g., Matthew Stephenson, *It's Time to Abandon the "\$2.6 Trillion/5% of Global GDP" Corruption-Cost Estimate*, GLOB. ANTICORRUPTION BLOG (Jan. 5, 2016), <https://globalanticorruptionblog.com/2016/01/05/its-time-to-abandon-the-2-6-trillion5-of-global-gdp-corruption-cost-estimate/> [<https://perma.cc/7U68-7A2P>] (explaining that international organizations' claim that global cost of corruption amounts to \$2.6 trillion appears incorrect); Rita de La Feria, *Tax Fraud and Selective Law Enforcement*, 47 J. L. & SOC'Y 240, 240 (2020) (discussing how scale of tax fraud is difficult to estimate but data are useful to provide a rough idea about dimension of the problem). See also Alan Rappeport, *Tax Cheats Cost the U.S. \$1 Trillion per Year, I.R.S. Chief Says*, N.Y. TIMES (Apr. 13, 2021), <https://www.nytimes.com/2021/04/13/business/irs-tax-gap.html> [<https://perma.cc/S9FK-ZMF3>] (focusing on the I.R.S.'s estimation about the costs of tax cheats in the US and the lack of resources to counter these behaviors).

5. See Monti, *Contro evasione fiscale e corruzione è guerra*, ITALIA OGGI, (Nov. 12, 2012), <https://www.italiaoggi.it/archivio/monti-contro-evasione-e-corruzione-e-guerra-201211121008295922> [<https://perma.cc/FU5K-7A8Q>] (detailing Italian Prime Minister Mario Monti's fight against tax evasion and corruption in 2012); Ben W. Heineman Jr. & Fritz Heimann, *The Long War Against Corruption*, 85 FOREIGN AFFS. 75, 76 (2006) (asserting that international actors can only sustain the anticorruption movement by "turning rhetoric into action").

6. See generally Jan Wouters, Cedric Ryngaert & Ann Sofie Cloots, *The International Legal Framework against Corruption: Achievements and Challenges*, 14 MELBOURNE J. INT'L L. 205 (2013) (providing an overview of the current international legal framework); Lorenzo Pasculli & Nicholas Ryder, *The Global Anti-Corruption Framework: Lights, Shadows and Prospects*, in CORRUPTION, INTEGRITY AND THE LAW: GLOBAL REGULATORY CHALLENGES 3 (Nicholas Ryder & Lorenzo Pasculli eds., 2020) (same).

7. See generally TAX CRIMES AND ENFORCEMENT IN THE EUROPEAN UNION: SOLUTIONS FOR LAW, POLICY, AND PRACTICE (Umut Turksen et al. eds., 2023) (on file with authors). At the international level, there are multilateral or bilateral agreements for cooperation in criminal matters, but these instruments have limited effectiveness in countering tax crimes on a global scale.

international legal responses to tax crime can precipitate serious distortions of justice and warrants further attention.⁸

This article analyzes corruption and tax evasion as interconnected phenomena in order to critically examine the different criminal policy strategies and legal instruments adopted at the international level for corruption as compared to tax crimes. Recognizing the harms from tax crime, this article aims to stimulate a discussion about bridging the international legal gap in tax and embracing adoption of an international convention to prevent and counter tax crime. Of course, this international approach is not without tensions; the vast majority of tax rules are domestic whereas tax practice is increasingly transnational in nature.⁹

Existing legal literature includes studies of different countries' treatments of comparable crimes to ascertain whether differences in national legal systems can be justified or instead represent gaps in law enforcement practices across states.¹⁰ This article innovatively deploys this methodological approach at the global level to assess whether the divergent international treatments of tax evasion and corruption can be justified or whether an international tax convention is needed. Beyond the use of this new version of a comparative methodology, this article also expands on prior literature by relying on more comprehensive definitions of corruption and tax fraud. Although corruption and tax evasion have been analyzed as interconnected phenomena from various perspectives,¹¹ such studies have not explored the inherent complexity of their interrelations because they adopt a definition of corruption that is limited to bribery and a definition of tax crime that omits important potential tax abuses.¹² Not only should both terms be defined to encompass a broader range of behaviors but their actual component conduct shows their close connections to each other. Corruption appears to have more conceptual and theoretical affinities with tax evasion¹³ than offenses such

8. See, e.g., ORG. FOR ECON. CO-OPERATION & DEV., *Country Chapters, in FIGHTING TAX CRIME – THE TEN GLOBAL PRINCIPLES* (2d ed. 2021) (revealing huge differences in how tax crimes are defined and treated across countries). See generally Turksen et al. eds., *supra* note 7 (arguing there are significant differences even between the EU Member States, where the level of harmonization between national legal systems should be stronger).

9. Diane Ring, *International Tax Relations: Theory and Implications*, 60 TAX L. REV. 83, 83 (2007).

10. See Lisa Marriott, *Justice and the Justice System: A Comparison of Tax Evasion and Welfare Fraud in Australia and New Zealand*, 22 GRIFFITH L. REV. 403, 403 (2013) (comparing welfare fraud and tax fraud in order to explore why one offense is prosecuted more significantly or punished more severely than the other in Australia and New Zealand).

11. See, e.g., Sheetal K. Chand & Karl O. Moene, *Controlling Fiscal Corruption* (International Monetary Fund Working Paper 1997/100, Aug. 1997), <https://www.imf.org/en/Publications/WP/Issues/2016/12/30/Controlling-Fiscal-Corruption-2315> [<https://perma.cc/2N9J-LV2M>] (focusing on corruption in tax administration). See also Odd-Helge Fjeldstad & Bertil Tungodden, *Fiscal Corruption: A Vice or a Virtue?*, 31 WORLD DEV. 1459 (2003) (discussing the concept of fiscal corruption).

12. See Diane Ring & Costantino Grasso, *Beyond Bribery: Exploring the Intimate Interconnections Between Corruption and Tax Crimes*, 85 LAW & CONTEMP. PROBS., no. 4, 2022, at 2–3 (proposing broader notions of corruption and tax abuse).

13. See *id.* at 3 (discussing corruption and tax crimes as crimes of the powerful with several foundational affinities).

as money laundering¹⁴ and transnational organized crime.¹⁵ Despite these connections between corruption and tax crime, it is corruption that has received significant international attention over the past sixty years. The criminal policies in place to combat corruption, with all their potential and limitations, can be considered among the oldest and most advanced, and certainly a worthy model against which to evaluate international treatment of tax crimes.¹⁶

To achieve these goals, this article, which builds *inter alia* on the research carried out within the project VIRTEU,¹⁷ is divided into five parts. After this introduction, Part II argues that corruption and tax evasion are interconnected phenomena on a global scale and together generate significant socio-economic distortions. Although these phenomena are conceptually and phenomenologically different, corruption may enable tax evasion, and tax evasion may enable corruption. Therefore, crime control strategies necessarily require an integrated approach: both crimes must be kept under control on a global scale. Part III compares and analyzes the international criminal policy responses to corruption and tax evasion, highlighting the asymmetrical legal approaches to these phenomena—for example, how the anti-corruption area seems overregulated whilst the field of anti-tax evasion seems under-regulated. Part IV discusses the possibility of introducing a binding international convention to prevent and punish fraudulent, serious tax evasion, filling the current legal gap and ensuring a comprehensive transnational criminal policy for white-collar crimes. Finally, Part V provides a short conclusion aimed at stimulating future discussion about criminalizing tax evasion and fostering cooperation in criminal tax matters on a global scale.

14. Money laundering is classified as an economic crime that has a strict interrelation with both corruption and tax evasion. But it is possible to highlight the instrumental nature of such an offense, which serves the purpose of converting ill-gotten profits into clean money. See Adam K. Weinstein, *Prosecuting Attorneys for Money Laundering: A New and Questionable Weapon in The War on Crime*, 51 LAW & CONTEMP. PROBS., no. 1, 1988, at 369, 370 (describing how the Money Laundering Act of 1986 was an effort to cut off criminal enterprises' access to "clean" money); NATIONAL AND INTERNATIONAL ANTI-MONEY LAUNDERING LAW: DEVELOPING THE ARCHITECTURE OF CRIMINAL JUSTICE, REGULATION AND DATA PROTECTION (Benjamin Vogel and Jean-Baptiste Maillart eds., 2020) (exploring the criminal responses to money laundering from comparative and international perspectives).

15. Organized crime may be considered a manifestation of other crimes, including corruption and tax evasion. See Jay S. Albanese, *Deciphering the Linkages Between Organized Crime and Transnational Crime*, 66 J. INT'L AFFS. 1, 1 (2012) (discussing how "transnational criminal enterprises" are involved in "trafficking, fraud, and corruption on an international scale").

16. About the long history of anti-corruption, see generally ANTICORRUPTION IN HISTORY: FROM ANTIQUITY TO THE MODERN ERA (Ronald Kroeze, Andre Vitoria & Guy Geltner eds., 2018).

17. Vat Fraud: Interdisciplinary Research on Tax Crimes in the European Union (VIRTEU) was a two-year international research project funded by the European Anti-Fraud Office (OLAF) of the European Commission, which aimed at exploring the interconnections between tax crimes and corruption. See VIRTEU, CORP. CRIME OBSERVATORY, <https://www.corporatecrime.co.uk/virteu> [<https://perma.cc/9YTY-P6SN>] (last visited Sept. 3, 2022). All the documents produced as well as all the video recordings of the events organized over the course of the project are available online on The Corporate Crime Observatory website, which serves as the long-term repository of the project outcomes.

II

CORRUPTION AND TAX EVASION AS GLOBAL CRIMES

The exploration and comparison of international legal responses to tax evasion and to corruption are rooted in the assumption that these phenomena are both global crimes.¹⁸ It should be noted that the definitions of corruption and tax evasion are generally contested, and it does not seem possible to identify commonly accepted definitions at the international level.¹⁹ Such a definitional problem is not limited to corruption and tax evasion but seems to be a recurring global issue, as demonstrated, for example, by the more than 200 definitions of organized crime currently identified.²⁰ For this reason, international conventions do not generally define these offenses but merely criminalize certain conduct.²¹ Bribery represents one of the best-known and most recurring forms of corruption,²² but the types of corruption are multiple and can affect both the public and private sectors. Identifying an exhaustive list is challenging.²³ Similarly, there are many definitions of tax evasion, which, from the OECD perspective, is a term “generally used to mean illegal arrangements where liability to tax is hidden or ignored.”²⁴ Beyond different definitions across legal systems, it appears difficult to identify an exhaustive list of conduct.²⁵ Moreover,

18. As regards corruption, *see generally* Pasculli & Ryder, *supra* note 6. Concerning tax evasion, *see generally* DAVID S. KERZNER & DAVID W. CHODIKOFF, *INTERNATIONAL TAX EVASION IN THE GLOBAL INFORMATION AGE* (2016). Regarding tax avoidance, *see* Nubia Evertsson, *Corporate Tax Avoidance: A Crime of Globalization*, 66 *CRIME L. & SOC. CHANGE* 199, 199–216 (2016).

19. As regards corruption, *see* Costantino Grasso, *The Dark Side of Power: Corruption and Bribery within the Energy Industry*, in *RESEARCH HANDBOOK ON EU ENERGY LAW AND POLICY* 237, 238 (Rafael Leal-Arcas & Jan Wouters eds., 2017) (illustrating the challenges in adopting a legal definition of corruption). Concerning tax evasion, *see* *ORG. FOR ECON. CO-OPERATION & DEV., Glossary of Tax Terms*, *CTR. FOR TAX POL'Y & ADMIN.*, <https://www.oecd.org/ctp/glossaryoftaxterms.htm> [<https://perma.cc/CG6T-NMNH>] [hereinafter *Glossary of Tax Terms*] (stating that tax evasion is a “term that is difficult to define”).

20. Donato Vozza & Salvatore Coluccello, *Transnational Organized Crime and UN Sustainable Development Goals*, in *PEACE, JUSTICE AND STRONG INSTITUTIONS* 949, 949 (Walter L. Filho et al. eds., 2021).

21. *See, e.g.*, Wouters, Ryngaert & Cloots, *supra* note 6, at 33 (noting that Council of Europe’s Criminal Law Convention on Corruption has not been able to reach a common definition of corruption).

22. *See, e.g.*, G.A. Res. 58/4, Art. 15, U.N. Convention Against Corruption (Oct. 31, 2003) [hereinafter *U.N. Convention Against Corruption*] (defining and criminalizing, by the way, the bribery of national public officials, the bribery of foreign public officials and officials of public international organizations, and the bribery in the private sector).

23. *See* Ring & Grasso, *supra* note 12, at 2–3 (arguing, for example, how the legal definitions of corruption fail to capture some relevant cases of corrupt activities). *See also* Wouters, Ryngaert & Cloots, *supra* note 6, at 33 (listing the types of corruption, including, among others, bribery and graft, kleptocracy, misappropriation, non-performance of duties, influence peddling, acceptance of improper gifts, protecting maladministration, abuse of power, manipulation of regulations, electoral malpractice, rent-seeking, clientelism and patronage, illegal campaign contributions).

24. The definition of tax evasion should also include more serious cases such as tax fraud. As argued by the OECD, “[t]ax fraud is a form of deliberate evasion of tax which is generally punishable under criminal law.” *See Glossary of Tax Terms*, *supra* note 19.

25. *See generally* *ORG. FOR ECON. CO-OPERATION & DEV., FIGHTING TAX CRIME – THE TEN GLOBAL PRINCIPLES* (2d ed. 2021) (listing tax evasion behaviors criminalized within states and

tax evasion may concern different taxes and there may be some cases of evasion which give rise to a criminal offense and others which give rise to an administrative offense.

With both corruption and tax crime, it is possible to identify a grey area of conduct represented by behaviors that, although unethical, are not commonly criminalized.²⁶ Corrupt practices may also involve issues such as conflicts of interest, revolving doors, and lobbying;²⁷ tax abuses may include aggressive tax avoidance.²⁸ Furthermore, all these phenomena can be interconnected.²⁹ Although the line between tax avoidance and tax evasion as well as that between bribery and conflicts of interest may be rather thin, these phenomena are treated significantly differently in national legal systems, where the grey area is generally not criminalized and might even be considered a licit practice.³⁰ This part of the article adopts a broader definition of these criminal phenomena because the legal

classifying them between tax non-compliance, intentional tax offences, and specific offences).

26. See Ring & Grasso, *supra* note 12, at 38–39 (discussing the gray areas of corrupt practices and of tax abuses).

27. See, e.g., Susan Rose-Ackerman, *Corruption and Conflicts of Interest*, in CORRUPTION AND CONFLICTS OF INTEREST: A COMPARATIVE LAW APPROACH 3, 3 (Jean-Bernard Auby, Emmanuel Breen & Thomas Perroud eds., 2014) (describing the term conflicts of interest in relation to its two forms, first, conflicts between parts of government, and second, conflicts between public roles and private financial issues). See also David Coen & Colin Provost, *Revolving Doors*, in THE PALGRAVE ENCYCLOPEDIA OF INTEREST GROUPS, LOBBYING AND PUBLIC AFFAIRS 1170, 1170 (Harris Phil et al. eds., 2022) (defining the term revolving door as “career pathways frequently navigated by public sector officials looking to join the private sector and vice versa”); Anne Skorkjær Binderkrantz & Alberto Bitonti, *Lobbying*, in THE PALGRAVE ENCYCLOPEDIA OF INTEREST GROUPS, LOBBYING AND PUBLIC AFFAIRS 832, 832 (Harris Phil et al. eds., 2022).

28. *Glossary of Tax Terms*, *supra* note 19 (“Tax avoidance” is a “term that is difficult to define but which is generally used to describe the arrangement of a taxpayer’s affairs that is intended to reduce his tax liability and that although the arrangement could be strictly legal it is usually in contradiction with the intent of the law it purports to follow”).

29. See Marjorie E. Kornhauser, *The “Invisible Government” and Conservative Tax Lobbying 1935–1936*, 81 LAW & CONTEMP. PROBS., no. 2, 2018, at 167 (“In the United States, tax lobbying is nearly irresistible because both taxation and lobbying hold special places in American democracy and the American psyche.”); Brian Kelleher Richter, Krislert Samphantharak & Jeffrey F. Timmons, *Lobbying and Taxes*, 53 AM. J. POL. SCI. 893, 893 (2009) (“While individual firms amass considerable benefits, the costs of lobbying-induced tax breaks appear modest for the government.”); Martin Hearson, *Transnational Expertise and the Expansion of the International Tax Regime: Imposing ‘Acceptable’ Standards*, 25 REV. INT’L POL. ECON. 647, 654 (2018) (“Today, a large proportion of tax advisers in the private sector have experience working in national revenue authorities, while the senior management of the OECD secretariat’s Centre for Tax Policy and Administration combines officials recruited from the private and public sectors.”).

30. See, e.g., Stuart P. Green, *What is Wrong with Tax Evasion?*, 9 HOUS. BUS. & TAX L.J. 221, 222–23 (2009) (clarifying that the distinction between tax evasion and tax avoidance is generally not clear); JANE G. GRAVELLE, CONG. RSCH. SERV., R40623, TAX HAVENS: INTERNATIONAL TAX AVOIDANCE AND EVASION 1 (2022) (“Tax avoidance is sometimes used to refer to a legal reduction in taxes, whereas evasion refers to tax reductions that are illegal. Both types are discussed in this report, although the dividing line is not entirely clear.”). See also Jean-Bernard Auby, Emmanuel Breen & Thomas Perroud, *Introduction*, in CORRUPTION AND CONFLICTS OF INTEREST: A COMPARATIVE LAW APPROACH xiv, xiv (Jean-Bernard Auby, Emmanuel Breen & Thomas Perroud eds., 2014) (discussing the interaction(s) between conflicts of interest and corruption around the globe).

definitions not only vary from one jurisdiction to another but also appear to be too limited to capture all the relevant aspects of such practices.

The geography of these phenomena demonstrates that they represent a widespread problem across the globe. Relevant examples of corruption range from the *Watergate scandal* in the US³¹ to the *Lava Jato scandal* in Latin America,³² from the *Zuma case* in South Africa³³ to *Coalgate* in India,³⁴ from *Clean Hands* in Italy³⁵ to the *Royal Commission into the New South Wales Police Service* in Australia,³⁶ from *Lockheed bribery scandals* of the 20th century³⁷ to the *FIFA scandal* of the 21st.³⁸ Evidence of tax abuse has been demonstrated by a significant number of investigations and leaks ranging from the *Al Capone case* in the US³⁹ to the *McDonald's case* in France,⁴⁰ from the *cum-ex scandal* in Germany⁴¹ to the *MultiChoice case* in Nigeria,⁴² from *USB and LGT Leaks* to *Pandora Papers*.⁴³ These heterogeneous cases represent only a sampling of questionable, if not criminal, tax practices.

The global nature of these phenomena lies in their ability to impact several countries simultaneously. Globalization appears to be one of the factors that has transformed and amplified corrupt practices and tax evasion: although these phenomena are ancient, they have undergone significant developments in the

31. KEITH W. OLSON, *WATERGATE: THE PRESIDENTIAL SCANDAL THAT SHOOK AMERICA* 1 (2003).

32. See generally Paul F. Lagunes & Jan Svejnar, *Introduction*, in *CORRUPTION AND THE LAVA JATO SCANDAL IN LATIN AMERICA* 2, 2 (Paul F. Lagunes & Jan Svejnar eds., 2020).

33. Trevor Budhram & Nicolaas Geldenhuys, *Corruption in South Africa: The Demise of a Nation? New and Improved Strategies to Combat Corruption*, 31 S. AFR. J. CRIM. JUST. 26, 28–29 (2018).

34. Akhil Gupta, *Changing Forms of Corruption in India*, 51 MOD. ASIAN STUD. 1862, 1875 (2017).

35. Donatella Della Porta & Alberto Vannucci, *Corruption and Anti-Corruption: The Political Defeat of 'Clean Hands' in Italy*, 30 W. EUR. POL. 830, 835 (2007).

36. DAVID DIXON, *A CULTURE OF CORRUPTION: CHANGING AN AUSTRALIAN POLICE SERVICE* 3 (1999).

37. Frank Badua, *Laying Down the Law on Lockheed: How an Aviation and Defense Giant Inspired the Promulgation of The Foreign Corrupt Practices Act of 1977*, 42 ACCT. HIST. J. 105, 105 (2015).

38. Jake Elijah Struebing, *Federal Criminal Law and International Corruption: An Appraisal of the FIFA Prosecution*, 21 NEW CRIM. L. REV. 1, 2 (2018).

39. Gabriel S. Mendlow, *Divine Justice and the Library of Babel: Or, Was Al Capone Really Punished for Tax Evasion*, 16 OHIO ST. J. CRIM. L. 181, 191 (2018).

40. Julie Gallois, *Fraude fiscale: une amende d'intérêt public record prononcée contre le groupe McDonald's pour une CJIP controversée*, DALLOZ-ACTUALITE (June 22, 2022), <https://www.dalloz-actualite.fr/flash/fraude-fiscale-une-amende-d-interet-public-record-prononcee-contre-groupe-mcdonald-s-pour-une-#.Yt195nbMKUk> [https://perma.cc/EV86-C6XY].

41. RICHARD S. COLLIER, *BANKING ON FAILURE: CUM-EX AND WHY AND HOW BANKS GAME THE SYSTEM* 39–41 (2020).

42. Anthony Osa-Brown, *Nigeria Settles \$4.4 Billion Tax Dispute with MultiChoice*, BLOOMBERG (Mar. 9, 2022), <https://www.bloomberg.com/news/articles/2022-03-09/nigeria-settles-4-4-billion-tax-dispute-with-multichoice> [https://perma.cc/DXF2-B8BW].

43. Shahjahan Bhuiyan, *The Pandora Papers Opens up Pandora's Box: Integrity in Crisis*, PUB. INTEGRITY 1, 3–5 (2022).

modern era.⁴⁴ Some authors have spoken of a real “eruption” of such problems.⁴⁵ The dimension of these phenomena beyond the borders of individual states has been emphasized mainly through leaks or enforcement actions, which in recent years have also intensified public attention. International corruption is a widespread and significant phenomenon, as demonstrated by enforcement actions carried out in recent decades by the U.S. government and other states through extraterritorial enforcement of anti-corruption legislation.⁴⁶ In contrast, it is possible to identify a tendency in public policy discourse to underestimate the international dimension of tax evasion committed by individuals and corporations, and the corresponding need for internationally cooperative enforcement efforts.

The different approach used to counter tax abuse also seems to be related to the nature of the actors involved in such practices. Behaviors aimed at gaining tax benefits abroad are more easily deemed tax avoidance when perpetrated by multinational corporations, whereas when natural persons are involved, such practices are more likely characterized as tax evasion.⁴⁷ The different legal labeling of the same conduct suggests injustice at play and reveals a broader problem in business regulatory decision-making.⁴⁸ Another asymmetry can be identified in the different approaches used by domestic jurisdictions. For example, in recent years, French authorities have instituted a strategy aimed at countering what is commonly considered transnational aggressive tax avoidance practices by labeling them as tax fraud. On June 16, 2022, the Tribunal of Paris validated the Deferred Prosecution Agreement (*convention judiciaire d'intérêt public*) between the French Financial Public Prosecutor's Office (*Parquet National Financier*) and McDonald's, imposing on the US food industrial giant, which shifted its profits from France to Luxembourg, penalties for more than €1.2 billion.⁴⁹ The primary enforcement challenges include proof of illegal conduct

44. See, e.g., Patrick Glynn, Stephen J. Kobrin & Moisés Naim, *The Globalization of Corruption*, in CORRUPTION AND THE GLOBAL ECONOMY 7, 7, 12 (Kimberly A. Elliott ed., 1997) (exploring the impact of globalization on corruption); Jayoti Das & Cassandra DiRienzo, *The Nonlinear Impact of Globalization on Corruption*, 3 INT. J. BUS. FIN. RES. 33, 42 (2009) (arguing that the relationships between globalization and corruption are not linear).

45. See Glynn, Kobrin & Naim, *supra* note 44, at 7–9 (explaining why corruption has erupted internationally); Reuven Avi-Yonah, *International Tax Avoidance – Introduction*, 7 ACCT., ECON., & L. 1, 1 (2017) (describing tax evasion and tax avoidance as a “hot topic,” as demonstrated, for example, by the Panama Papers).

46. BRANISLAV HOCK, EXTRATERRITORIALITY AND INTERNATIONAL BRIBERY: A COLLECTIVE ACTION PERSPECTIVE 2–3 (2020); Kevin E. Davis, *Multijurisdictional Enforcement Games: The Case of Anti-Bribery Law*, in RESEARCH HANDBOOK ON CORPORATE CRIME AND FINANCIAL MISDEALING 151, 151 (Jennifer Arlen ed., 2018).

47. See Gravelle, *supra* note 30, at 1 (“A multinational firm that constructs a factory in a low-tax jurisdiction rather than in the United States to take advantage of low foreign corporate tax rates is engaged in avoidance, whereas a U.S. citizen who sets up a secret bank account in the Caribbean and does not report the interest income is engaged in evasion. There are, however, many activities, particularly by corporations, that are often referred to as avoidance but could be classified as evasion.”)

48. See Ring & Grasso, *supra* note 12, at 27 (explaining the distortions to the political decision-making process caused by the influence of business actors).

49. See Eva Joly, *VIRTEU International Final Conference – Day 1 – Panel 4*, YOUTUBE (June 26,

committed abroad—often in tax havens—and obstacles to international cooperation between authorities.

These global phenomena generate harms on a global scale. Traditionally, corruption and tax evasion have been presented as conduct that, unlike violent crimes, are victimless crimes or crimes with remote harm.⁵⁰ Although several works in the literature suggest that tax evasion and corruption may benefit society,⁵¹ the prevailing literature supports the view that they exert significant damage and produce widespread victimization. As argued by Alldridge, tax evasion marks the failure of citizenship and represents forms of fraud and theft.⁵² Tax evasion impairs state revenue and needed investments in society;⁵³ corruption generates significant distortions in the use of public resources to the detriment of society.⁵⁴ Corruption also damages democracies and the rule of law.⁵⁵ Recent studies have highlighted the interconnections between tax evasion and rule of law.⁵⁶ Institutional corruption and conflicts of interest in tax law policymaking are a perfect illustration of how corruption can have perverse effects on the development of effective policies against tax abuse as well as affect the rule of law and generate a distortion of justice.⁵⁷ Existing literature has highlighted the disruptive effects that corruption and tax evasion have on the economy and international business,⁵⁸ with disadvantages for the private and

2022), <https://www.youtube.com/watch?v=nZ1VSpUE6Gg&t=421s> [<https://perma.cc/Y9FQ-V9AT>] (stating that the Tribunal of Paris validated the Deferred Prosecution Agreement by imposing on McDonald's the largest tax penalties in French history). See also MINISTÈRE DE LA JUSTICE, *La convention judiciaire d'intérêt public (CJIP)*, <http://www.justice.gouv.fr/publications-10047/cjip-13002/> [<https://perma.cc/8JMB-VXMA>] (providing the Tribunal of Paris' validation order).

50. PETER ALLDRIDGE, *CRIMINAL JUSTICE AND TAXATION* 17 (2017). See also Vincenzo Ruggiero, *Corruption in Italy: An Attempt to Identify the Victims*, 33 *HOW. J. CRIM. JUST.* 319, 319 (1994) (“Criminological analysis of corruption is rare, perhaps because this type of offending is regarded as a victimless behaviour.”).

51. See, e.g., Lorenzo Pasculli & Nicholas Ryder, *Corruption and Globalisation: Toward an Interdisciplinary Scientific Understanding of Corruption as a Global Crime*, in *CORRUPTION IN THE GLOBAL ERA: CAUSES, SOURCES AND FORMS OF MANIFESTATION* 3, 11 (Nicholas Ryder & Lorenzo Pasculli eds., 2020) (explaining that “some authors suggest that corruption could be beneficial to society”).

52. See ALLDRIDGE, *supra* note 50, at 18–19 (characterizing the various wrongs in tax evasion).

53. Clemens Fuest & Nadine Riedel, *Tax Evasion, Tax Avoidance and Tax Expenditures in Developing Countries: A Review of the Literature*, 1, 37 (U.K. Dep't for Int'l Dev. Report, 2009).

54. Alfredo Del Monte & Erasmo Papagni, *Public Expenditure, Corruption, and Economic Growth: The Case of Italy*, 17 *EUR. J. POL. ECON.* 1, 2 (2001). See also Paolo Mauro, *Why Worry About Corruption?*, *INT'L MONETARY FUND* (1997) (analyzing public corruption's causes and consequences).

55. See Pasculli & Ryder, *supra* note 6, at 11 (explaining how corruption undermines governmental integrity).

56. See generally MARCELO BERGMAN, *TAX EVASION AND THE RULE OF LAW IN LATIN AMERICA* (2021) (showing how tax compliance is interconnected to the social norms that underpin the rule of law).

57. See Ring & Grasso, *supra* note 12, at 38–39 (illustrating the adverse effects of corrupt practices in the area of taxation). See also Hamish Russell & Gillian Brock, *Abusive Tax Avoidance and Responsibilities of Tax Professionals*, 17 *J. HUM. DEV. & CAPABILITIES* 278 (2016) (arguing that tax professionals significantly contribute to abusive tax avoidance and benefit greatly from its persistence).

58. See generally Salman Bahoo, Ilan Alon & Andrea Paltrinieri, *Corruption in International Business: A Review and Research Agenda*, 29 *INT. BUS. REV.* 1 (2020) (examining the literature about the effect of corruption in international business transactions).

public sectors. Moreover, both tax evasion and corruption have indirect effects on the protection of human rights, particularly in developing countries.⁵⁹

In conclusion, tax evasion and corruption are interconnected phenomena on a global scale and generate similar concerns. Although these phenomena are conceptually and phenomenologically different, each may enable the other.⁶⁰ This is why crime control strategies necessarily require an integrated approach: both crimes must be tackled globally to prevent them from reinforcing each other.⁶¹ Against this background, the next step is to assess whether these global crimes are addressed by adequate global legal responses.

III

THE ASYMMETRY OF THE INTERNATIONAL LEGAL RESPONSES TO CORRUPTION AND TAX EVASION FROM A CRIMINAL LAW AND JUSTICE PERSPECTIVE

As both corruption and tax evasion generate harm on a global scale, one would expect adequate international responses countering both phenomena would be in place. However, this expectation is frustrated. The response to tax evasion does not match the scale of the response to corruption. Building on the theoretical framework used in the existing literature to analyze and categorize states' legal responses, this article compares: (a) the main legal instruments, (b) the main preventive and punitive measures, and (c) the main initiatives adopted in the private sector and society to counter corruption and tax evasion.⁶² This part of the article assembles a complex mosaic and, by focusing on the three above-

59. See PHILIP ALSTON & NIKKI REISCH, *TAX, INEQUALITY, AND HUMAN RIGHTS* (2019) (exploring the interconnections between tax abuses and human rights). See also Ina Kubbe & Morten Koch Andersen, *Tax Injustice and Corruption? The Adverse Effects That Tax Evasion and Tax Avoidance Exert on Human Rights*, CORP. CRIME OBSERVATORY (2022), www.corporatecrime.co.uk/virtue-reports (exploring the interconnections between fiscal corruption and human rights violations).

60. See, e.g., James Alm, Jorge Martinez-Vazquez & Chandler McClellan, *Corruption and Firm Tax Evasion*, 124 J. ECON. BEHAV. & ORG. 146, 161 (2016) (“Our basic estimation results provide consistent evidence that corruption is a driver of evasion” and, more specifically, “that corruption of tax officials is a statistically and economically significant determinant of tax evasion”); Hichem Khlif, Achraf Guidara & Khaled Hussainey, *Sustainability Level, Corruption and Tax Evasion: A Cross-Country Analysis*, 23 J. FIN. CRIME 328, 345 (2016) (finding that high levels of corruption may reduce compliance of tax rules).

61. Alm, Martinez-Vazquez & McClellan, *supra* note 60, at 162 (“These results indicate that governments seeking to attack tax evasion—and increase their tax revenues—should first ensure that their tax administration is honest.”).

62. See Stefano Manacorda, *Towards an Anti-Bribery Compliance Model: Methods and Strategies for a “Hybrid Normativity”*, in PREVENTING CORPORATE CORRUPTION 3 (Stefano Manacorda et al. eds., 2014) (analyzing the current criminal policy to counter corruption based on hard law/soft law, public/private initiatives, and preventive and punitive measures); Margot Cleveland et al., *Trends in the International Fight Against Bribery and Corruption*, 90 J. BUS. ETHICS 199, 199 (2009) (proposing a model based on “hard law and soft law legislation” and “enforcement and compliance components” to assess the progress in reducing bribery at international level); Elizabeth K. Spahn, *Implementing Global Anti-Bribery Norms: From the Foreign Corrupt Practices Act to the OECD Anti-Bribery Convention to the U.N. Convention Against Corruption*, 23 IND. INT’L & COMP. L. REV. 1 (2013) (detailing the justifications for globalizing Foreign Corrupt Practices Act values and OECD’s enforcement).

mentioned research topics, presents a macro-analysis of criminal policy trends and legal instruments that highlights asymmetries in corruption and tax evasion law.

The first key asymmetry in the responses to corruption and tax evasion concerns the number of international organizations engaging in the fight against these phenomena and in the quantity of hard and soft law adopted to date. The fight against corruption is characterized by the involvement of multiple organizations, including the United Nations,⁶³ the Organization for Economic Co-operation and Development,⁶⁴ the International Chamber of Commerce,⁶⁵ the Organization of American States,⁶⁶ the Council of Europe,⁶⁷ the World Bank,⁶⁸ and the International Monetary Fund.⁶⁹ Moreover, tools to counter corruption have been adopted by industry through initiatives to foster self-regulation based on anti-corruption compliance programs and codes of ethics.⁷⁰ There is also dialogue and partnership between organizations of the public and private sectors, such as the G20 and B20 initiatives.⁷¹ Since the role of each organization has already been extensively and critically analyzed in the existing literature, this work focuses on hard law.

In the area of anti-corruption, states have adopted a multitude of international conventions and peer review monitoring systems.⁷² The main international conventions for countering corruption are the United Nations Convention Against Corruption (UNCAC), adopted by the United Nations on 31 October 2003,⁷³ and the OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions (hereinafter, OECD Anti-Bribery Convention).⁷⁴ A plethora of additional multilateral, anti-corruption legal instruments have been adopted in other regional settings, from America to

63. See, e.g., *UNODC's Action against Corruption and Economic Crime*, U.N. OFF. ON DRUGS & CRIME <https://www.unodc.org/unodc/corruption/> [<https://perma.cc/P84W-B6H4>].

64. See, e.g., *Anti-Corruption & Integrity Hub*, ORG. FOR ECON. CO-OPERATION & DEV., <https://www.oecd.org/corruption/integrity-forum/hub/> [<https://perma.cc/5P7Y-2G9Z>].

65. See, e.g., INT'L CHAMBER OF COM., *ICC Rules on Combating Corruption*, <https://iccwbo.org/publication/icc-rules-on-combating-corruption/> [<https://perma.cc/U8KH-6UAP>].

66. See, e.g., *Actions against Corruption*, ORG. OF AM. STATES, <https://www.oas.org/en/topics/corruption.asp> [<https://perma.cc/UKQ5-7LXX>].

67. See, e.g., *Group of States against Corruption*, COUNCIL OF EUR., <https://www.coe.int/en/web/greco> [<https://perma.cc/5JB3-5BU4>].

68. See, e.g., Susan Rose-Ackerman, *The Role of the World Bank in Controlling Corruption*, 29 L. & POL'Y INT'L BUS. 93 (1997); STEFANO MANACORDA & COSTANTINO GRASSO, *FIGHTING FRAUD AND CORRUPTION AT THE WORLD BANK: A CRITICAL ANALYSIS OF THE SANCTIONS SYSTEM* (2018).

69. See, e.g., Robert Klitgaard, *Engaging Corruption: New Ideas for the International Monetary Fund*, 2 POL'Y DESIGN & PRAC. 229 (2019).

70. See generally Manacorda, *supra* note 62.

71. Paul Kett, *The Role of the G20 and B20 in the Fight Against Corruption*, in PREVENTING CORPORATE CORRUPTION 287, 287 (Stefano Manacorda, Francesco Centonze & Gabrio Forti eds., 2014).

72. Manacorda, *supra* note 62, at 8.

73. *U.N. Convention Against Corruption*, *supra* note 22.

74. ORG. FOR ECON. CO-OPERATION & DEV., *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and Related Documents* (Dec. 17, 1997).

Europe, from Africa to the Arab peninsula.⁷⁵ These binding international instruments have the potential to harmonize domestic and international criminal law responses to corruption,⁷⁶ but face challenges in their practical implementation, including detection, investigation, prosecution, and conviction.

The United States retains a predominant role in driving change in enforcement strategies and its efforts have eventually generated a market for global enforcement.⁷⁷ The enforcement of international anti-corruption laws always requires meaningful enforcement at the local level and international cooperation, and the adoption of international legal instruments does not guarantee an effective fight against such offenses. Legal, procedural, structural, and financial obstacles may have a significant negative impact on the capacity of legal instruments to fight corruption.⁷⁸ At the international and regional levels, a series of peer review mechanisms aimed at monitoring the implementation of anti-corruption legal instruments have been adopted.⁷⁹ They seek to increase transparency,⁸⁰ create pressure from other states and public opinion, and promote effective knowledge in the fight against corruption.⁸¹ These peer review

75. See, e.g., ORG. OF AM. STATES, *Inter-American Convention against Corruption* (Mar. 29, 1996), https://www.oas.org/en/sla/dil/inter_american_treaties_B-58_against_Corruption.asp [<https://perma.cc/LLB9-Y6VF>]; COUNCIL OF THE EUR. UNION, *Convention Drawn Up on the Basis of Article K.3(2)(c) of the Treaty on European Union on the Fight against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union* (May 26, 1997), <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A41997A0625%2801%29> [<https://perma.cc/AV32-CKE6>]; COUNCIL OF EUR., *Criminal Law Convention on Corruption* (Jan. 27, 1999), <https://rm.coe.int/168007f3f5> [<https://perma.cc/VT4Z-HFKL>]; COUNCIL OF EUR., *Civil Law Convention on Corruption* (Nov. 4, 1999), <https://rm.coe.int/168007f3f6> [<https://perma.cc/UD62-9KLLK>]; AFR. UNION, *African Union Convention on Preventing and Combating Corruption* (July 12, 2003), <https://anticorruption.au.int/sites/default/files/files/2021-06/combatingcorruptionconventiona5v2enreduced.pdf> [<https://perma.cc/4WAH-3MHT>].

76. See Donato Vozza, *Exploring Voluntary and Mandatory Compliance Programmes in the Field of Anticorruption*, in *CORPORATE COMPLIANCE ON A GLOBAL SCALE: LEGITIMACY AND EFFECTIVENESS* 313, 315 (Stefano Manacorda & Francesco Centonze eds., 2022) (highlighting how international instruments have pushed state parties to adopt or enhance corporate liability for foreign bribery).

77. See Brewster & Buell, *supra* note 1, at 193, 212.

78. Nicholas J. Lord, *Responding to Transnational Corporate Bribery Using International Frameworks for Enforcement: Anti-Bribery and Corruption in the UK and Germany*, 14 *CRIMINOLOGY & CRIM. JUST.* 100, 103 (2014).

79. See Lorena Bachmaier Winter, *Fighting Corruption in Europe: The Role of the Council of Europe in Monitoring Corruption*, in *SOCIETY OF RULE OF LAW, NATIONAL GOVERNANCE AND GOVERNMENT AUDIT* 274 (Wang & Wei eds., 2015); Hortense Jongen, *The Authority of Peer Reviews Among States in the Global Governance of Corruption*, 25 *REV. INT'L POL. ECON.* 909, 909 (2018).

80. See Costantino Grasso, *The Troubled Path Towards Greater Transparency as a Means to Foster Good Corporate Governance and Fight Against Corruption in the Energy Sector*, in *HANDBOOK OF ENERGY FINANCE: THEORIES, PRACTICES AND SIMULATIONS* 363, 382 (Stéphane Goutte & Duc Khuong Nguyen eds., 2020) (illustrating challenges that countries face in adopting effective transparency regimes in the area of corruption).

81. Hortense Jongen, *Peer Review and Compliance with International Anti-Corruption Norms: Insights from the OECD Working Group on Bribery*, 47 *REV. INT. STUD.* 331, 333 (2021). See also U.N. OFF. ON DRUGS & CRIME, *Implementation Review Mechanism*, <https://www.unodc.org/unodc/en/corruption/implementation-review-mechanism.html> [<https://perma.cc/Q6EJ-JYRM>]; EUR. COMM'N, *2022 Rule of Law Report*,

mechanisms have different criteria for their assessment and carry different consequences. Compared to other mechanisms, the peer review monitoring system developed by the OECD Working Group on Bribery⁸² is considered the most advanced because it assesses whether the law enforcement authorities of the States Parties actually investigate, prosecute, and convict in cases of bribery involving natural and legal persons.⁸³ The peer pressure that such an evaluation may generate has led to significant changes in the domestic approach of various countries. For example, it led the United Kingdom to adopt the “failure of commercial organizations to prevent bribery” offense, as provided by section 7 of the Bribery Act 2010.⁸⁴ However, such a peer review mechanism does not necessarily promote compliance with international conventions. This criticism is even more valid with respect to other review mechanisms adopted at the international level.⁸⁵ Indeed, peer review mechanisms are generally insufficient to support internal reforms in the absence of political will.⁸⁶

Looking at the criminal-policy strategies to curb domestic and international corruption, one of the main problems is paradoxically related to the coordination of the activities of international organizations, especially considering the existence of overlapping legal instruments, peer review monitoring mechanisms, and initiatives. Additionally, the multiple sources of this fragmented international legal framework have produced overregulation due to the lack of coordination among the various international bodies.

Conversely, in the realm of tax evasion, the opposite problem prevails through an absence of international legal instruments. Combating international tax fraud requires the adoption of varied law enforcement strategies that do not rely exclusively on criminal sanctions.⁸⁷ This would be consistent with the

https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2022-rule-law-report_en [<https://perma.cc/8PEJ-NQW8>]; COUNCIL OF EUR., *How Does GRECO Work?*, <https://www.coe.int/en/web/greco/about-greco/how-does-greco-work> [<https://perma.cc/LR9V-PY3Z>].

82. ORG. FOR ECON. CO-OPERATION & DEV., *Country Monitoring of the OECD Anti-Bribery Convention*, <https://www.oecd.org/corruption/countrymonitoringoftheoecdanti-briberyconvention.htm> [<https://perma.cc/Z6TX-LKSL>].

83. Jongen, *supra* note 81, at 333 (The OECD Working Group on Bribery “peer review offers a most-likely case to trigger processes of transparency, to exert pressure, and to promote learning about how to fight foreign bribery effectively”).

84. See generally Barry Rider, *Bribery and Corporate Responsibility*, 16 J. FIN. CRIME 197, 197 (2009) (showing how, before the introduction of the Bribery Act, “the view of many, including the Organisation for Economic Co-operation and Development review team,” was that the United Kingdom had “a long way to go in establishing a credible enforcement capability for the laws that we have”). See also Peter Alldridge, *The U.K. Bribery Act: The Caffeinated Younger Sibling of the FCPA*, 73 OHIO ST. L.J. 1181, 1201 (2012) (detailing the United Kingdom’s pressure to criminalize corporations bribing abroad under the OECD convention and listing Section Seven of the Bribery Act).

85. Jongen, *supra* note 81, at 349.

86. *Id.*

87. Ken Devos, *The Role of Sanctions and Other Factors in Tackling International Tax Fraud*, 42 COMMON L. WORLD REV. 1, 21 (2013) (explaining that sanctions play a key role in countering international tax fraud, but there are also other factors that are relevant, such as multilateral audits and information sharing).

international approach of proportionality and subsidiarity that the international community—typically the OECD, but also the G20 and the United Nations—pursued for tax by focusing on double tax treaties, base erosion and profit shifting, and the exchange of information between tax administrations.⁸⁸ From such a perspective, the introduction of a United Nations Tax Convention, recommended by various international organizations,⁸⁹ could represent a breakthrough in preventing tax abuse and illicit financial flows.⁹⁰ However, binding international instruments to combat tax evasion are limited and lack criminal law response. A primary initiative in the area of criminal law is the development of the Ten Global Principles for Fighting Tax Crime (hereinafter, TGP) by the OECD, a guide that aims through the adoption of ten general principles to promote the fight against tax crimes.⁹¹ In conjunction with these TGP, the OECD did adopt a Tax Crime Investigation Maturity Model, which should help countries assess whether they are actually implementing the TGP

88. See, e.g., ORG. FOR ECON. CO-OPERATION & DEV., *What Is BEPS?*, <https://www.oecd.org/tax/beps/about/#mission-impact> [<https://perma.cc/S943-Y2K4>] (explaining the Inclusive Framework on Base Erosion and Profit Shifting developed by the OECD and G20); ORG. FOR ECON. CO-OPERATION & DEV., *Exchange of Information* (2022), <https://www.oecd.org/tax/exchange-of-tax-information/> [<https://perma.cc/DGL5-SZ3X>] (listing the relevant instruments to foster the exchange of information in tax matters); UNITED NATIONS, *Thematic Areas*, <https://www.un.org/development/desa/financing/what-we-do/ECOSOC/tax-committee/thematic-areas> [<https://perma.cc/PG3D-TK54>] (illustrating the main areas of taxation covered by the United Nations). See also Diane Ring, *Democracy, Sovereignty and Tax Competition: The Role of Tax Sovereignty in Shaping Tax Cooperation*, 9 FLA. TAX REV. 556 (2009) (discussing the tensions between “the problems of tax competition and the solution of tax cooperation”); Diane Ring, *Developing Countries in an Age of Transparency and Disclosure*, 2016 BYU L. REV. 1767 (2016) (providing an ample overview of transparency and disclosure in tax enforcement).

89. See, e.g., FIN. TRANSPARENCY, ACCOUNTABILITY, & INTEGRITY, *Financial Integrity for Sustainable Development, Report of the High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda* (2021), https://factipanel.org/docpdfs/FACTI_Panel_Report.pdf [<https://perma.cc/PFW5-96GS>] (recommending that “International tax norms, particularly tax transparency standards, should be set out through an open and inclusive legal instrument with universal participation; to that end, the international community should initiate a process for a UN Tax Convention”). See also TAX JUST. NETWORK, *UN Secretary General Signals Support for UN Tax Convention* (2022), <https://taxjustice.net/press/un-secretary-general-signals-support-for-un-tax-convention/> [<https://perma.cc/42EV-PPN7>] (including the main national and international initiatives to support the establishment of a UN Tax Convention).

90. See Tove Maria Ryding, *Proposal for a United Nations Convention on Tax*, EUR. NETWORK ON DEBT & DEV. (2022), <https://assets.nationbuilder.com/eurodad/pages/2852/attachments/original/1654678410/un-tax-convention-final.pdf?1654678410> [<https://perma.cc/3QLA-BD4C>] (illustrating a proposal for a United Nations Convention on Tax, produced by the European Network on Debt and Development and supported by the Global Alliance for Tax Justice, aimed at enhancing transparency and fostering tax cooperation and standards at the international level). See also Alex Cobham, *A Draft UN Tax Convention: Building Momentum*, TAX JUST. NETWORK (2022), <https://taxjustice.net/2022/03/10/a-draft-un-tax-convention-building-momentum/> [<https://perma.cc/Y6BP-E9X4>] (illustrating the initiatives calling for the introduction of a UN Tax Convention and emphasizing that “these reforms of the international governance of tax and financial regulation are long overdue”).

91. See ORG. FOR ECON. CO-OPERATION & DEV., *supra* note 25. See also UMUT TURKSEN, *COUNTERING TAX CRIME IN THE EUROPEAN UNION: BENCHMARKING THE OECD’S TEN GLOBAL PRINCIPLES* (2021) (examining how the European Union can utilize the OECD’s Ten Global Principles as minimum standards in combatting tax crime).

on the basis of established indicators.⁹² This is a self-assessment exercise to diagnose possible gaps in combatting tax crimes.⁹³ The OECD TGP and the Tax Crime Investigation Maturity Model are the main tools developed at the international level to counter tax evasion through criminal law and appear to be the outcomes of a preliminary step toward the internationalization of criminal policy against tax crimes. Alongside these instruments, the OECD has developed a series of publications that include recommendations to develop technological solutions to counter tax evasion and tax fraud,⁹⁴ strengthen inter-agency cooperation between tax authorities and anti-corruption authorities,⁹⁵ and increase the awareness among tax auditors of money laundering.⁹⁶

There is one exception at the regional level, represented by EU law, to the general absence of international legal tools to counter tax evasion through criminal law. The EU has traditionally suffered from transnational value added tax (VAT)⁹⁷ fraud and customs fraud that strain the public budget and undermine freedom, security, and justice.⁹⁸ To curb this fraud, the EU, despite its limited competence in criminalization of tax abuses, has adopted criminal law measures. More specifically, the EU has adopted a binding legal act, the PIF Directive, which imposes on the Member States the criminalization of fraud against the EU's financial interests.⁹⁹ The EU has also established the European Public Prosecutor's Office (EPPO)¹⁰⁰ to investigate serious cross-border value-added

92. ORG. FOR ECON. CO-OPERATION & DEV., *Tax Crime Investigation Maturity Model* (2020), <https://www.oecd.org/tax/crime/tax-crime-investigation-maturity-model.pdf> [https://perma.cc/S7CN-FBZP].

93. *Id.* (“Self-assessment through the Maturity Model is a purely voluntary exercise. The Model does not set any new global minimum standards which the jurisdictions are expected to follow.”).

94. ORG. FOR ECON. CO-OPERATION & DEV., *Technology Tools to Tackle Tax Evasion and Tax Fraud* (2017), <https://www.oecd.org/tax/crime/technology-tools-to-tackle-tax-evasion-and-tax-fraud.pdf> [https://perma.cc/BBQ9-WMGA].

95. ORG. FOR ECON. CO-OPERATION & DEV. & THE WORLD BANK, *Improving Co-operation Between Tax Authorities and Anti-Corruption Authorities in Combating Tax Crime and Corruption* (2018), <https://www.oecd.org/tax/crime/improving-co-operation-between-tax-authorities-and-anti-corruption-authorities-in-combating-tax-crime-and-corruption.pdf> [https://perma.cc/7V35-MCD7].

96. ORG. FOR ECON. CO-OPERATION & DEV., *Money Laundering and Terrorist Financing Awareness Handbook for Tax Examiners and Tax Auditors* (2019), <https://www.oecd.org/tax/crime/money-laundering-and-terrorist-financing-awareness-handbook-for-tax-examiners-and-tax-auditors.pdf> [https://perma.cc/7ENN-SJM6].

97. See EUR. COMM'N, *What is VAT?*, https://taxation-customs.ec.europa.eu/what-vat_en [https://perma.cc/HHK5-HK7Q] (explaining that the Value Added Tax (VAT), in the European Union is a general, broadly based consumption tax assessed on the value added to goods and services).

98. See generally Marie Lamensch & Emanuele Ceci, *VAT Fraud: Economic Impact, Challenges and Policy Issues* (2018), [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/626076/IPOL_STU\(2018\)626076_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/626076/IPOL_STU(2018)626076_EN.pdf) [https://perma.cc/248V-W9MP]; MARIUS-CRISTIAN FRUNZA, *VALUE ADDED TAX FRAUD* (2018).

99. Directive 2017/1371, of the European Parliament and of the Council of 5 July 2017 on the Fight Against Fraud to the Union's Financial Interests by Means of Criminal Law, 2017 O.J. (L 198) 29. Maria Kaiafa-Gbandi, *The Protection of the EU's Financial Interests by Means of Criminal Law in the Context of the Lisbon Treaty and the 2017 Directive (EU 2017/1371) on the Fight Against Fraud to the Union's Financial Interests*, 12 ZEITSCHRIFT FÜR INTERNATIONALE STRAFRECHTSDOGMATIK 575, 575 (2018).

100. Council Regulation 2017/1939 (L 283) 1 (EU). See also LORENA BACHMAIER WINTER, *THE*

tax fraud and customs fraud,¹⁰¹ has developed an institutional framework composed of different agencies—in particular, OLAF, Europol, Eurojust¹⁰²—to foster cooperation and fight against tax fraud, has enhanced judicial and police cooperation in tax criminal matters based on the principle of mutual trust between the member states,¹⁰³ and has adopted a Whistleblowing Directive to ensure reporting person protection.¹⁰⁴ Nevertheless, this EU legal framework faces challenges for several reasons. Firstly, the PIF Directive only requires the criminalization of transnational fraud with a value of at least ten million euros.¹⁰⁵ Secondly, the EPPO, which began in 2021, plays a crucial role in countering serious forms of fraud,¹⁰⁶ such as transnational VAT fraud with a value of at least ten million euros, and customs fraud, but the limited scope of its competence may adversely impact the common fight against these crimes.¹⁰⁷ Thirdly, the existence of different law enforcement and judicial agencies offers an important tool for combating fraud within the EU. However, the presence of multiple actors carries a need for greater coordination of activities. The Whistleblowing Directive is impeded by its rather limited scope; it only applies to breaches of EU law. Moreover, there is an issue with its implementation by the Member States.¹⁰⁸ Fourthly, the judicial and police cooperation instruments adopted in recent decades in the EU contain specific clauses to ensure that cooperation cannot be

EUROPEAN PUBLIC PROSECUTOR'S OFFICE: THE CHALLENGES AHEAD (2018) (providing a detailed overview of the EPPO and its inception stemming from the Council Regulation of 2017); Valeria Sico, *EPPO Cross-Border Investigation in VAT Fraud* (VIRTEU International Final Conference, Panel 2), CORP. CRIME OBSERVATORY, at 14:45 (June 23, 2022), <https://www.corporatecrime.co.uk/virteu-final-conference-day1-panel2> [<https://perma.cc/BCA4-R4ZL>] (explaining the EPPO's role in investigating and prosecuting VAT fraud cases).

101. HANS-HOLGER HERRNFELD ET AL., EUROPEAN PUBLIC PROSECUTOR'S OFFICE 772 (2021).

102. See OLAF, *European Anti-Fraud Office*, https://anti-fraud.ec.europa.eu/index_en [<https://perma.cc/PJ92-QGBG>] (including information about the role and activities of OLAF); EUROJUST, *European Union Agency for Criminal Justice Cooperation*, <https://www.eurojust.europa.eu/> [<https://perma.cc/LQ3V-LWZL>] (including information about the role and activities of Eurojust); EUROPOL, *The European Union Agency for Law Enforcement Cooperation*, <https://www.europol.europa.eu/> [<https://perma.cc/QSF3-D4FR>] (including information about the role and activities of Europol).

103. See, e.g., Lorena Bachmaier Winter, *Cross-Border Investigation of Tax Offences in the EU: Scope of Application and Grounds for Refusal of the European Investigation Order*, 7 EUR. CRIM. LAW REV. 46 (2017).

104. Directive 2019/1937, of the European Parliament and of the Council of 23 October 2019 on the Protection of Persons Who Report Breaches of Union Law, 2019 O.J. (L305) 17. See Vigjilencja Abazi, *The European Union Whistleblower Directive: A 'Game Changer' For Whistleblowing Protection?*, 49 INDUS. L.J. 640 (2020) (analyzing the Whistleblower Directive within the existing EU rules).

105. VIRTEU National Workshop - Bulgaria, Session 2, CORP. CRIME OBSERVATORY, at 1:07:10 (June 29, 2021), www.corporatecrime.co.uk/virteu-workshop-bulgaria (discussing how tax experts in Bulgaria believe that such a threshold could not capture some of the most relevant tax fraud).

106. See generally THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE AT LAUNCH (Katalin Ligeti, Maria João Antunes & Fabio Giuffrida eds., 2020).

107. See, e.g., Danilo Ceccarelli, *The EPPO and the Fight Against VAT Fraud: A Legal Obstacle in the Regulation?*, 1 EUCRIM 47, 47 (2021).

108. See Costantino Grasso & Liemertje Julia Sieders, *The New Harmonized European Legal Framework for the Protection of Whistleblowers: The EU Whistleblowing Directive*, in WHISTLEBLOWERS: VOICES OF JUSTICE (forthcoming).

refused in the case of tax offenses due to existing differences in tax law,¹⁰⁹ but nevertheless, there are still significant cooperation issues due to such differences. In short, the existing binding legal framework for combating tax evasion in the EU appears to be the most advanced on a transnational scale but is also in an embryonic stage and remains hampered by limited tax harmonization at the EU level.¹¹⁰

The second level of asymmetry concerns the types of preventative and punitive measures that the above-mentioned international instruments have included to counter, respectively, corruption and tax offenses. For the sake of comparison, two instruments will be considered: the UNCAC and the TGP. In the area of anti-corruption, UNCAC appears superior because it covers both domestic and foreign bribery whereas the OECD Anti-Bribery Convention is limited to the latter. Also, analysis of the UN's convention here will be limited to the principles; there will be no deep dive into the rules included in the legal provisions because the TGPs consist of a series of principles that are not as detailed as the UNCAC's articles. The UNCAC is a convention composed of seven parts, including general provisions (Part I), preventive measures (Part II), criminalization and law enforcement (Part III), international cooperation (Part IV), asset recovery (Part V), technical assistance and information exchange (Part VI), and a mechanism for implementation (Part VII).¹¹¹ The TGPs call on states to criminalize and develop strategies against tax crimes (Principles 1 and 2), to provide competent authorities with adequate investigative and seizure powers (Principles 3 and 4), to define the organization to fight tax crimes clearly and invest adequate resources in crime investigation (Principles 5 and 6), to ensure that tax crimes are predicate crimes to money laundering (Principle 7), to ensure effective inter-agency cooperation between tax and other enforcement authorities (Principle 8), to develop international cooperation mechanisms at the investigation and prosecution stage (Principle 9), and to design the rights of taxpayers who are suspected of having committed tax crimes (Principle 10).¹¹²

From a general perspective, the contents of these instruments seem to follow a common pattern of directions and objectives. Nevertheless, when comparing

109. See, e.g., Council Framework Decision 2002/584/JHA, 2002 O.J. (L 190) 4 (“Article 4. Grounds for optional non-execution of the European arrest warrant. The executing judicial authority may refuse to execute the European arrest warrant: 1. if, in one of the cases referred to in Article 2(4), the act on which the European arrest warrant is based does not constitute an offense under the law of the executing Member State; however, in relation to taxes or duties, customs and exchange, execution of the European arrest warrant shall not be refused on the ground that the law of the executing Member State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing Member State”). As regards the fraud against the EU's financial interests, the abovementioned Council Framework Decision ensures a derogation to the double incrimination under Art. 2(2).

110. See *Taxation: Towards Fair, Efficient and Growth-Friendly Taxes*, EUR. UNION, https://european-union.europa.eu/priorities-and-actions/actions-topic/taxation_en [<https://perma.cc/VW3T-Y7XN>] (explaining the EU competences in the area of taxation).

111. *U.N. Convention Against Corruption*, *supra* note 22 (including specific legal provisions—Arts. 12 and 13—about the private sector and participation of society).

112. ORG. FOR ECON. CO-OPERATION & DEV., *supra* note 25.

the principles expressed in the TGP to counter tax offenses and the principles extrapolated from the UNCAC legal provisions to counter corruption, a series of significant differences may be identified. Apart from the basic consideration that, in contrast to the UNCAC, the TGP are lists of principles constituting mere recommendations rather than an international convention, it is possible to highlight *inter alia* that the TGP do not endorse the principles expressed in the UNCAC about promoting the participation of the private sector and civil society in the fight against corruption. Yet, the private sector plays a crucial role in voluntary tax compliance. Moreover, the TGP require protection of suspects' rights but do not recognize as a general principle the protection of reporting persons as envisaged by the UNCAC.¹¹³ This is a significant limitation, as whistleblowers have a crucial role in unveiling tax dodging.¹¹⁴ These brief examples show that TGP seem to disregard certain key instruments in the area of prevention that should play a central role in combatting tax evasion, as they do in combatting corruption.

The third level of asymmetry relates to the involvement of the private sector in the fight against corruption and tax evasion. Domestic and international corruption is often committed by corporations, and these firms, as a result of international anti-corruption law, are now exposed in many countries to corporate criminal liability and debarment—which excludes a company from future government procurement and contracts.¹¹⁵ In relation to corporate criminal liability, many legal systems have provided laws aimed at ensuring the effective adoption of corporate compliance programs¹¹⁶ and have also introduced special regulations in the enforcement phase regarding internal investigations,¹¹⁷ self-reporting,¹¹⁸ and settlements—including deferred prosecution agreements.¹¹⁹ For corporate crime, the strategies commonly aim at deploying a stick-and-carrot approach so that many anti-corruption initiatives have been developed to

113. *U.N. Convention Against Corruption*, *supra* note 22 (including a specific legal provision—Art. 33—about the protection of reporting persons).

114. *See, e.g.*, David W. Chodikoff, *Whistleblowers and the Evidentiary Challenges in Offshore Tax Evasion Cases*, 65 *CANADIAN TAX J.* 637 (2017); Karie Davis-Nozemack & Sarah J. Webber, *Lost Opportunities: The Underuse of Tax Whistleblowers*, 67 *ADMIN. L. REV.* 321 (2015); Dennis J. Ventry Jr., *Whistleblowers and Qui Tam for Tax*, 61 *TAX LAW.* 357 (2008); Tony Porter & Karsten Ronit, *Whistleblowing as a New Regulatory Instrument in Global Governance: The Case of Tax Evasion*, 31 *CAMBRIDGE REV. INT'L AFFS.* 537 (2018). For a direct experience of whistleblowing in the area of tax abuses, see Charles Middleton, *VIRTEU Roundtable Discussion – “Whistleblowing, Reporting, and Auditing in the Area of Taxation”*, *CORP. CRIME OBSERVATORY*, at 17:36 (Feb. 26, 2021), <https://www.corporatecrime.co.uk/virtue-whistleblowing> [<https://perma.cc/5WCJ-F65H>].

115. *See* Manacorda, *supra* note 68 (exploring the debarment procedures adopted at the international level by the World Bank in the fight against corruption).

116. *See, e.g.*, Voza, *supra* note 76.

117. *See* Jennifer Arlen & Samuel W. Buell, *The Law of Corporate Investigations and the Global Expansion of Corporate Criminal Enforcement*, 93 *S. CAL. L. REV.* 697, 700 (2020) (exploring the law of corporate investigations).

118. *Id.* (discussing self-reporting in corporate criminal enforcement).

119. *See, e.g.*, Costantino Grasso, *Peaks and Troughs of the English Deferred Prosecution Agreement: The Lesson Learned from the DPA between the SFO and ICBC SB Plc*, 5 *J. BUS. L.* 388, 389 (2016) (illustrating the introduction of deferred prosecution agreements in England and Wales).

enhance compliance and ethics-related programs, even as debate over how to validate effective compliance methods continues.¹²⁰

With corruption considered a “collective problem,” industry has developed “collective actions” to counter corruption in partnership with public authorities.¹²¹ However, these public-private partnerships in the regulatory and enforcement phase have generated further problems due to potential conflicts of interests that may emerge from the close cooperation between actors that should serve the public interest and players that tend to safeguard their own private interests.¹²² Turning to tax crimes, the absence of international instruments—other than the EU example—aimed at ensuring the enforcement of corporate liability for tax offenses on a global scale seems to be matched by a limited embrace on the part of corporations of corporate tax compliance programs, ethical conduct, and collective action. There is a focus on corporate social responsibility in the area of tax avoidance, but even on this point regulations are lacking.¹²³ Moreover, although professionals play a key role in preventing and in facilitating illegal (or non-ethical) conduct in tax matters, further studies focused on their role, and the opportunities to encourage this sector as an information hub for crime control beyond and before money laundering are needed.¹²⁴

120. See Brandon L. Garrett & Gregory Mitchell, *Testing Compliance*, 83 LAW & CONTEMP. PROBS., no. 4, 2020, at 47.

121. See *Fighting Corruption through Collective Action: A Guide for Business*, WORLD BANK INST., 4 (2008),

https://www.globalcompact.de/migrated_files/wAssets/docs/Korruptionspraevention/Publikationen/fighing_corruption_through_collective_action.pdf [<https://perma.cc/L3ZL-GW5B>] (“‘Collective action’ is a collaborative and sustained process of cooperation between stakeholders. It increases the impact and credibility of individual action, brings vulnerable individual players into an alliance of like-minded organizations and levels the playing field between competitors. Collective action can complement or temporarily substitute for and strengthen weak local laws and anti-corruption practices.”). See also Branislav Hock, *Policing Fiscal Corruption: Tax Crime and Legally Corrupt Institutions in the United Kingdom*, 85 LAW & CONTEMP. PROBS., no. 4, 2022, at 176 (exploring fiscal corruption from a collective action perspective). See also Mark Pieth, *Collective Action and Corruption*, in PREVENTING CORPORATE CORRUPTION 93 (Stefano Manacorda, Francesco Centonze & Gabrio Forti eds., 2014) (exploring the attempts of companies to harmonize compliance programs and exploring anticorruption declarations, principle-based initiatives, integrity pacts, and certifying business coalitions). See also Anna Persson, Bo Rothstein & Jan Teorell, *Why Anticorruption Reforms Fail—Systemic Corruption as a Collective Action Problem*, 26 GOVERNANCE 449 (2013).

122. See generally Brandon L. Garrett, *TOO BIG TO JAIL: HOW PROSECUTORS COMPROMISE WITH CORPORATIONS* (2014) (about the current limits of corporate investigations and prosecutions in the US); Miriam H. Baer, *Three Conceptions of Corporate Crime (and One Avenue for Reform)*, 83 LAW & CONTEMP. PROBS., no. 4, 2020, at 1, 4 (calling to reduce reliance on these settlements in the US); Samuel W. Buell & Brandon L. Garrett, *Two Decades of Corporate Criminal Enforcement*, 83 LAW & CONTEMP. PROBS., no. 4, 2020, at i, ii.

123. See, e.g., Burcin Col & Saurin Patel, *Going to Haven? Corporate Social Responsibility and Tax Avoidance*, 154 J. BUS. ETHICS 1033, 103 (2019); Prem Sikka, *Smoke and Mirrors: Corporate Social Responsibility and Tax Avoidance*, 34 ACCOUNT. F. 153 (2010); John Hasseldine & Gregory Morris, *Corporate Social Responsibility and Tax Avoidance: A Comment and Reflection*, 37 ACCOUNT. F. 1, 10–11 (2013); Prem Sikka, *Smoke and Mirrors: Corporate Social Responsibility and Tax Avoidance—A Reply to Hasseldine and Morris*, 37 ACCOUNT. F. 15, 24–25 (2013).

124. See generally Marco Battaglini et al., *Tax Professionals: Tax-evasion Facilitators or Information Hubs?* (Nat’l Bureau of Econ. Rsch., Working Paper No. 25745, 2019).

Despite all asymmetries, NGOs and investigative journalists have assumed a crucial role in unveiling malpractice in taxation and corruption. Together, they have moved public opinion in the area of white-collar crime and raised awareness about both tax evasion and corruption as well as other interconnected practices considered border-line by lawmakers, but strongly affecting public interests—including tax avoidance, lobbying, conflicts of interest, and revolving doors.¹²⁵ The activism of NGOs in the area of anti-corruption has mainly manifested itself since the 1990s with one of the leading organizations, *Transparency International*,¹²⁶ developing both the *Global Corruption Barometer*¹²⁷ and the *Corruption Perceptions Index*.¹²⁸ Activism in the area of combating tax evasion and avoidance, as well as money laundering, started mainly with the *Tax Justice Network*¹²⁹ in the 2000s, whose accomplishments include, among others, the development of the *Financial Secrecy Index*¹³⁰ and *Corporate Tax Haven Index*.¹³¹ Today, these indexes should be read together to obtain important information about corruption and secrecy and to secure a full awareness of these problems.¹³² For instance, Switzerland and Luxembourg are ranked best in the *Corruption Perceptions Index*. Nonetheless, they are also ranked among the top for their secrecy by the *Financial Secrecy Index* and among top tax havens by the *Corporate Tax Haven Index*. This seems to reveal an intimate relationship between corruption and tax abuses, which are interconnected phenomena, and shows that such problems have a clear transnational dimension.

Furthermore, the *Corporate Tax Haven Index* has clearly shown that most tax havens are OECD states. This is critical considering the OECD is currently developing the most relevant initiatives in the area of taxation at international level.¹³³ Investigative journalists, in particular, the *International Consortium of*

125. Indira Carr & Opi Outhwaite, *The Role of Non-Governmental Organizations (NGOs) in Combating Corruption: Theory and Practice*, 44 SUFFOLK U. L. REV. 615, 622 (2011); Carlo Bertì, Roxana Bratu & Sofia Wickberg, *Corruption and the Media*, in A RESEARCH AGENDA FOR STUDIES OF CORRUPTION 107 (Alina Mungiu-Pippidi & Paul M. Heywood eds., 2020).

126. TRANSPARENCY INT'L, *What We Do*, <https://www.transparency.org/en/what-we-do> [<https://perma.cc/FXS7-K6YH>]. Nowadays, NGOs engaged in the fight against corruption are clearly numerous.

127. TRANSPARENCY INT'L, *Global Corruption Barometer*, <https://www.transparency.org/en/gcb> [<https://perma.cc/W2WJ-KHCH>].

128. TRANSPARENCY INT'L, *Corruption Perceptions Index*, <https://www.transparency.org/en/cpi/2021> [<https://perma.cc/6V4C-5C48>].

129. TAX JUST. NETWORK, *What We're Fighting For*, <https://taxjustice.net/take-back-control/> [<https://perma.cc/9PU4-PE3C>]. However, many other organizations are currently active in this field. See, e.g., GLOBAL ALLIANCE FOR TAX JUSTICE, *About GATJ*, <https://globaltaxjustice.org/about-gatj/> [<https://perma.cc/8MNM-VKDN>].

130. TAX JUST. NETWORK, *Financial Secrecy Index*, <https://fsi.taxjustice.net/> [<https://perma.cc/KDH7-ST33>].

131. TAX JUST. NETWORK, CORPORATE TAX HAVEN INDEX (2021).

132. See Maifra Martini, *Building a Fuller Picture: The Financial Secrecy Index & CPI*, TRANSPARENCY INT'L (Feb. 19, 2020), <https://www.transparency.org/en/blog/building-a-fuller-picture-the-financial-secrecy-index-cpi> [<https://perma.cc/ZV8J-8CU2>] (analyzing the intersection of the Financial Secrecy Index and the Corruption Perceptions Index).

133. See *What We're Fighting For*, *supra* note 129 (“OECD countries are responsible for enabling

Investigative Journalists,¹³⁴ have had a major role in raising public awareness and triggering public investigations against rampant phenomena thanks to their investigations and dissemination of leaks.¹³⁵ In the absence of significant legislative interventions in tax matters, it is mainly thanks to NGOs, journalists, whistleblowers, and leakers that global public awareness of tax evasion and tax avoidance has grown.

In conclusion, over the past decades, various initiatives have taken place in the public and private sectors to fight corruption, but initiatives to fight tax evasion have remained limited. Starting in the 1990s, anti-corruption became central to the international agenda, building on the *Watergate Scandal*¹³⁶ and on the ability of the US to influence anti-corruption initiatives internationally and to forestall its competitive disadvantage through its liability regime: the Foreign Corrupt Practices Act (FCPA).¹³⁷ By contrast, tax evasion and aggressive tax avoidance, which are generally recognized as universal problems that erode public revenues for essential services and adversely affect the economic and social system, have been underestimated historically at the international level. Transnational attention to tax evasion and avoidance emerged only following recent data leaks in the 2010s that revealed essential information about offshore structures and led to criminal investigations of high-net-worth individuals and multinational companies.¹³⁸

The emergence of these leaks has prompted the public to reflect on the distortionary impact of these mechanisms, an impact that far exceeds that of evasion activities pursued by ordinary taxpayers. In response to these cases, some countries have adopted new policies to strengthen offshore tax enforcement, such as the *Foreign Account Tax Compliance Act* adopted by the United States in 2010.¹³⁹ The OECD has devoted more attention to combatting tax crimes through

nearly half of these tax losses.”).

134. INT’L CONSORTIUM OF INVESTIGATIVE JOURNALISTS, *About ICIJ*, <https://www.icij.org/about/> [<https://perma.cc/6YWE-ZJUG>].

135. See Will Fitzgibbon, *VIRTEU International Final Conference, Panel 4, The Obscure Dimension of Financial Flows in Europe: Lesson Learned from Investigative Journalist Reports*, CORP. CRIME OBSERVATORY (June 23, 2022), <https://www.corporatecrime.co.uk/virteu-final-conference-day1-panel4> [<https://perma.cc/4A97-GG6F>] (discussing increased public awareness of tax evasion and tax havens).

136. OLSON, *supra* note 31.

137. See Alejandro Posadas, *Combating Corruption under International Law*, 10 DUKE J. COMP. & INT’L L. 345, 348 (2000) (“In the early 1970s corruption became an issue of international concern as a direct result of political events in the United States.”); Elitza Katzarova & Jessica Ansart, *The Americanization of International Anti-Corruption: The Influence of the FCPA on the OAS and OECD Conventions, in THE TRANSNATIONALIZATION OF ANTI-CORRUPTION LAW* 1, 31 (Régis Bismuth et al. eds., 2021); Sean J. Griffith & Thomas H. Lee, *Toward an Interest Group Theory of Foreign Anti-Corruption Laws*, 2019 U. ILL. L. REV. 1227, 1227 (2019) (explaining that “after the Foreign Corrupt Practices Act (‘FCPA’) was enacted in 1977, U.S. businesses pressured the government to urge foreign governments to ratify multilateral anti-corruption treaties to bind foreign companies to similar anti-bribery restrictions”).

138. See Oei & Ring, *supra* note 1 (examining effect of widespread data leaks on transnational efforts to curb tax evasion).

139. *Id.* For other reforms, see Diane Ring, *The 2021 Corporate Transparency Act: The Next Frontier of U.S. Tax Transparency and Data Debates*, 18 PITT. TAX REV. 249 (2021) (discussing other reforms

the TGPs and Tax Crime Investigation Maturity Model, but these tools are non-binding, and their assessment is on voluntary bases.

Comparing the evolutionary stages, it is possible to argue that, at the global level, the fight against tax evasion is about forty years behind the progress that has been made in countering corruption.¹⁴⁰ In the international anti-corruption arena, one of the most advanced debates concerns the establishment of an International Anti-Corruption Court,¹⁴¹ intended to counter grand corruption. However, the policy discussions about fighting tax crime are currently limited to TGPs. Similarly, at the research level, international instruments regarding prevention and punishment of corruption are well explored in the literature, whereas efforts to use criminal law to curb tax evasion at the international level remains largely an under-explored topic.

IV

TOWARDS FILLING THE GAP: AN INTERNATIONAL CONVENTION AGAINST TAX CRIMES?

The significant asymmetry between international responses to corruption and tax evasion shapes the available strategies to counter these global and interconnected crimes. To balance the asymmetry and fill the resulting gap, this article proposes the introduction of an international Convention Against Tax Evasion (“CATE”), including a peer-review monitoring system. As noted, the TGPs and the Tax Crime Investigation Maturity Model represent important milestones in the fight against tax crimes. Still, these are mere principles, and their assessment is conducted by countries on a voluntary basis, without significant impact on the improvement of domestic legal frameworks.¹⁴² These tools developed by the OECD provide a foundation for considering a move from a “comprehensive guide to fighting tax crimes”¹⁴³ to a common, binding, international response to tax crimes.

Countering tax crimes is typically viewed by governments as an internal problem. Thus, the introduction of an international convention to counter tax crimes might be considered as a needless effort.¹⁴⁴ Based on the principle of subsidiarity, an international instrument to counter tax crimes would be justified

designed to bolster offshore tax enforcement).

140. See Barry Rider, *Policing Corruption and Economic Crime - How Can We Do It Better?*, 10 FRONTIERS L. CHINA 625, 636 (2015) (arguing that there “have been significant developments in the efficacy of transnational criminal justice in large measure spurred on by important international instruments such as the United Nations Convention against Corruption”).

141. See, e.g., Devika Dhir, *An Accountability Deficit: The Case for an International Anti-Corruption Court*, 26 AUCKLAND U. L. REV. 207, 211 (2020); Mark L. Wolf, *The World Needs an International Anti-Corruption Court*, 147 DAEDALUS 144 (2018) (advocating for an International Anti-Corruption Court).

142. ORG. FOR ECON. CO-OPERATION & DEV., *supra* note 25.

143. *Id.*

144. This argument was discussed also about the introduction of the UNCAC to counter corruption. See John Sandage, *Global Corruption and the Universal Approach of the United Nations Convention against Corruption*, 53 OSGOODE HALL L.J. 7, 12 (2015).

only if it is necessary to achieve goals that cannot be met by national authorities by themselves. Taking into consideration this principle, the adoption of an international convention which binds States Parties against tax crimes is justified on multiple grounds. As previously discussed, tax evasion—like corruption—is a global problem. Despite this, current statistics on the fragmented investigation and prosecution of tax crimes show diffuse, ineffective enforcement.¹⁴⁵ One of the most striking examples is Malta. It is one of the countries with the highest secrecy levels and is considered a tax haven;¹⁴⁶ and yet Malta does not have a single criminal conviction for tax evasion.¹⁴⁷

From an operational perspective, there are significant issues in detecting, investigating, prosecuting, and convicting tax crimes due to inadequate legal frameworks and limited resources, specialized staff, information-sharing, inter-agency cooperation, technology, and training.¹⁴⁸ Moreover, tax crimes have an increasingly transnational scope and require an international response. Many taxpayers exploit weaknesses in existing law and enforcement systems, including tax havens,¹⁴⁹ offshore centers,¹⁵⁰ and free ports,¹⁵¹ to perpetrate tax evasion and tax avoidance. Fraudsters, including criminal organizations, elude justice or hide assets by exploiting current weaknesses in administrative and criminal cooperation mechanisms between countries.¹⁵² The differences between the legal frameworks of various jurisdictions hinder transnational cooperation and ultimately distort justice. An improved response to tax crimes must be driven at the international level, since national governments have not been sufficiently successful in improving their substantive criminal tax law or their tax enforcement mechanisms.¹⁵³

The introduction of a CATE would aim to secure the criminalization of serious tax evasion conduct, strengthen preventive measures against tax evasion by recognizing the participation of industry and society (including non-governmental organizations, journalists, and citizens), improve the efficiency of

145. ORG. FOR ECON. CO-OPERATION & DEV., *supra* note 8.

146. See *Financial Secrecy Index*, *supra* note 130.

147. Umut Turksen et al., *Report on Conviction Rates in Selected Member States*, 787098 PROTAX EU H2020 PROJECT 1, 37.

148. See generally VIRTEU, CORP. CRIME OBSERVATORY (2021), <https://www.corporatecrime.co.uk/virtue> [<https://perma.cc/4A97-GG6F>] (providing videos of workshops on select European jurisdictions highlighting such common issues in the fight against corruption).

149. See Gravelle, *supra* note 30 (discussing tax haven abuse).

150. See Douglas J. Workman, *The Use of Offshore Tax Havens for the Purpose of Criminally Evading Income Taxes*, 73 J. CRIM. L. & CRIMINOLOGY 675 (1982) (analyzing issues of taxpayers illegally manipulating offshore transactions to avoid tax liability); Tracy A. Kaye, *Innovations in the War on Tax Evasion*, 2014 BYU L. REV. 363, 363 (2014) (“Offshore tax evasion is a global problem that requires a global solution.”).

151. See Paul M. Gilmour, *Freeports: Innovative Trading Hubs or Centres for Money Laundering and Tax Evasion?*, 25 J. MONEY LAUNDERING CONTROL 1, 63 (2021) (arguing freeports create a potential for money laundering and tax evasion).

152. See generally TAX CRIMES AND ENFORCEMENT IN THE EUROPEAN UNION, *supra* note 7.

153. Ring & Grasso, *supra* note 12 at 45–46 (exploring the current obstacles in the criminalization and enforcement of tax evasion and stressing the importance of a supranational check).

investigations and prosecutions against such crimes through the provision of common minimum rules, and ensure more meaningful international cooperation, including cross-border investigation, prosecution, and asset recovery. Additionally, a multilateral convention would exert greater effect vis-à-vis state parties due to its binding force, as it would require governments to take measures to prevent and punish tax evasion through the promotion of effective international cooperation mechanisms. A peer review monitoring mechanism could then ensure effective implementation of the convention and further strengthen the response to tax crimes.

It is necessary to consider the risk of over-criminalization that currently exists at the international level, with consequent negative effects on domestic legal systems. However, the area of taxation does not seem to be affected by such a risk since it seems to be one of those areas experiencing under-criminalization and widespread impunity. At the same time, the criminalization of illegal conduct by an international convention should still reflect principles of proportionality. A major hurdle in establishing a CATE would be the need to reach a consensus on the scope and content of the legal provisions of the convention, starting with the definition of the offenses to be criminalized. The international community could opt between a “maximum intervention,” which would consist of defining and criminalizing specific tax evasion conduct, and a “minimum intervention,” which would consist of introducing mechanisms for international cooperation among states, deferring the definition of tax crimes to domestic law. In that regard, one of the most troublesome issues would be the criminalization of aggressive corporate tax avoidance strategies. Both options would have advantages and disadvantages. Adopting a “maximum intervention” approach, an international convention defining tax offenses would have the effect of harmonizing criminal law responses and leveling the playing field, ensuring that the proper functioning of international cooperation mechanisms is not frustrated by differing choices on criminalization. But this common legal framework approach would face significant resistance in a world characterized by different legal traditions, asymmetric distribution of economic power, and tensions due to tax competition and hegemonic perspectives.

An international convention adopting a “minimum intervention” approach that does not define tax offenses would have the effect of being able to reach political consensus more easily, but would have less impact on countering tax crimes and leveling the playing field internationally. The convention would merely facilitate international judicial cooperation in criminal tax matters, possibly providing for application to tax crimes punishable under the domestic legal system with a minimum penalty defined by agreement among states. Irrespective of the approach adopted, one may envisage that, due to subsidiarity and proportionality, such a convention would not cover tax evasive practices that may be considered merely “internal” to one state. However, the experience gained with the UNCAC demonstrates that, if there is sufficient political will, the international community may also prioritize combating criminal phenomena at the domestic level. A further significant aspect relates to the definition of the

material scope of tax offenses and the convention's thresholds for criminalization. In most countries, tax offenses can be prosecuted administratively and/or criminally on the basis of different thresholds of criminalization. The harmonization process related to such a threshold would also be difficult given how thresholds vary across legal systems, and even in the same country may be subject to significant variations following different political views.¹⁵⁴

An international convention would most likely not intervene in the area of tax administration, as this would represent a significant and insurmountable obstacle to reaching consensus, as demonstrated at the level of the European Union.¹⁵⁵ In addition, the question remains open as to how the private sector might respond to the establishment of mandatory rules of international law that either impose other forms of corporate liability or require additional investments by companies to strengthen domestic compliance.

Irrespective of the legal and practical problems, the lack of political will seems to be the main obstacle to the adoption of an international convention aimed at countering tax crimes at the global level. As a result, the development of such an international convention would first require the identification of one or more appropriate international forums of discussion, such as the UN or OECD, that can host debates among society, policymakers, and industry aimed at raising awareness of the harmful effects of such practices and of the importance of countering them on a global scale. However, many states—including many OECD countries—seem to be jealous of their sovereignty in criminal tax matters, and national and international tax evaders benefit from the resulting lack of common global regulation. The history of other international conventions demonstrates how achieving consensus among states around the criminalization and enforcement of crimes is difficult but not impossible. Public opinion, with the support of strong government administrations such as the United States and industry lobbies aimed at leveling competitive disadvantages and advantages, plays a crucial role in the development of international conventions.¹⁵⁶

The development of an international convention requires the building up of a consensus around certain general principles, such as those developed by the OECD. The process appears to be long, especially given the difficulties that have emerged in developing common institutional mechanisms and rules for combating tax crimes in regional areas such as the European Union, where the level of legal harmonization is relatively high, and trust among countries is

154. See Pietro Sorbello & Stephen Holden, *Developing a Working Model to Fight Fiscal Corruption: The Nexus at Which Tax Crimes and Corruption Meet*, 85 LAW & CONTEMP. PROBS., no. 4, 2022, at 199 (illustrating how in the Italian legal system the thresholds of criminalization of tax crimes have been frequently amended following different directions).

155. See Directive 2017/1371, *supra* note 99 (establishing that the structure and functioning of the tax administrations of the EU Member States are not affected by this Directive).

156. See Ian Tennant, *Fulfilling the Promise of Palermo? A Political History of the UN Convention Against Transnational Organized Crime*, 2 J. ILLICIT ECONOMIES & DEV. 53, 60–61 (2021) (stressing this difficulty even in relation to the criminalization of transnational organized crime).

expected to be more established. Moreover, unlike other international conventions that were developed in the “golden era” of cooperation at the international level,¹⁵⁷ the current historical period is characterized by new interstate political and military conflicts that are significantly undermining trust between states and preserving the fragmentation of the legal framework. Despite these major barriers to short or medium-term success, the problem is sufficiently serious to justify the continued study of a common international legal framework to fight tax crimes at the global level. Moreover, the recent proposals of introducing a UN Tax Convention could be an opportunity to also reflect on an international legal framework for countering tax offenses.¹⁵⁸

V

CONCLUSIONS

The international legal responses to corruption and tax evasion are asymmetrical, despite the fact that these are common and interconnected global crimes. This article has detailed the lack of international policies to fight tax evasion and the scarcity of initiatives by the private sector, even though there are increasing efforts to globally combat tax evasion and tax avoidance through non-criminal initiatives such as information sharing and pursuit of a global minimum tax. This gap between the anti-corruption and anti-tax crime efforts at the international level might be explained on the basis of various factors, including when the relevant scandals emerged, the contrasting perceptions of corruption and tax evasion in public opinion, the different political will of leading nations in the international arena such as the United States, and the competing priorities of lawmakers’ agendas at the national and international level.

A parallel to the UNCAC, which was adopted to counter corruption, is still missing to counter tax evasion offenses domestically and internationally. Thus, the article argues that a promising solution may lie in the introduction of a Convention Against Tax Evasion (CATE). Building on the work done by the OECD countries and taking into account the interests of other nations, a CATE has as its main objective the development of an effective anti-tax evasion strategy. The convention would also offer the opportunity to send a clear message to corporate players and other sophisticated taxpayers who currently exploit the fragmentation of the international landscape about a new-found willingness to prevent and counter such illicit behavior.

157. *Id.*

158. See *U.N. Convention on International Tax Cooperation (Draft Resolution)*, <https://documents-dds-ny.un.org/doc/UNDOC/LTD/N22/622/29/PDF/N2262229.pdf?OpenElement>. [<https://perma.cc/GX4H-JMNN>] (including a draft resolution, dated 10 October 2022, and tabled at the UN General Assembly’s Economic and Financial Committee, for the establishment of a U.N. Convention on International Tax Cooperation); TAX JUST. NETWORK, *UN Tax Convention Proposed at General Assembly (2022)*, <https://taxjustice.net/press/un-tax-convention-proposed-at-general-assembly/> [<https://perma.cc/9R8L-GRX9>] (commenting on the beginning of a discussion in the United Nations on the establishment of a UN tax convention).