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**COMMENTARY**

*Behind the Numbers: The Good, the Bad and the Ugly of Corporate Tax Avoidance*

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Multinational companies navigate a maze of legal loopholes to minimize tax liabilities, a strategy balancing profitability and ethics. While these maneuvers are legal, they face criticism for bypassing financial obligations meant for public benefit. International bodies have aimed to curb such practices with limited success.

Tax avoidance strategies, though legally sound, often encounter ethical dilemmas.<sup>1</sup> Ethical theories, like deontological ethics, may view such tax avoidance as immoral for exploiting legal loopholes, while consequentialist ethics may judge differently based on outcomes.<sup>2</sup>

Public opinion is split on whether tax payments fall under a company's social responsibilities. While some argue corporations should pay taxes where they operate, others believe their economic contributions like job creation and technological advancement suffice.<sup>3</sup>

Tax havens offer minimal or zero tax liability to foreign entities.<sup>4</sup> They do not require businesses to operate or individuals to reside in their country to receive tax benefits.<sup>5</sup>

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<sup>1</sup> Mark Beasley et al, *Make Tax Planning a Part of Your Company's Risk Management Strategy*, HARV. BUS. REV. (Nov. 13, 2020) <https://hbr.org/2020/11/make-tax-planning-a-part-of-your-companys-risk-management-strategy>.

<sup>2</sup> Hansrudi Lenz, *Aggressive Tax Avoidance by Managers of Multinational Companies as a Violation of Their Moral Duty to Obey the Law: A Kantian Rationale*, SPRINGER LINK (Dec. 19, 2018) <https://link.springer.com/article/10.1007/s10551-018-4087-8>.

<sup>3</sup> *Corporate Social Responsibility*, SAYLOR ACAD. (2023) <https://learn.saylor.org/mod/book/view.php?id=62096&chapterid=51001>.

<sup>4</sup> CFI Team, *Tax Haven*, CORP. FIN. INST. (2023) <https://corporatefinanceinstitute.com/resources/economics/what-is-tax-haven/>.

<sup>5</sup> *Id.*

Moreover, they provide other advantages, such as attractive secrecy rules—like skipping some regulations or keeping tax plans quiet, and relaxed regulations—like eased data protection or employment laws.<sup>6</sup>

However, this choice has attracted significant negative public attention. Companies like Microsoft, Apple, and Hewlett Packard have faced criticism from Congress for their tax strategies, with Apple notably being labeled a “U.S. tax dodger” by the Senate Permanent Subcommittee on Investigations.<sup>7</sup> Additionally, the public frequently scrutinizes companies, “naming and shaming” them for illegal, unfair, or immoral tax practices.<sup>8</sup>

The Paradise Papers spotlighted many multinationals, like Apple and Nike, utilizing tax havens.<sup>9</sup> While legal, these strategies have been criticized for their global economic impact; notably the economies of the countries where these corporations operate.<sup>10</sup> Amazon bills through low-tax Luxembourg, Starbucks uses its Swiss subsidiary for bean pricing, and Fiat Chrysler uses intra-group loans from its Luxembourg branch all leading to regulatory challenges.<sup>11</sup> In response, some companies have embraced corporate social responsibility, with firms like Starbucks and Nike volunteering additional taxes.<sup>12</sup>

National and international bodies have implemented recent legislative reforms to curb tax avoidance. In 2021, the United States and President Biden introduced the “Made in America” tax plan, implementing tax reforms to address profit shifting and offshoring incentives.<sup>13</sup>

Internationally, the Organization for Economic Co-operation and Development (OECD) adopted the 15-point Action Plan on Base Erosion and Profit Shifting (BEPS), involving over 135 countries and jurisdictions to tackle tax avoidance, improve the coherence of international tax rules, and ensure a more transparent tax environment, aiming

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<sup>6</sup> *Tax Havens and Secrecy Jurisdictions*, TAX JUST. NETWORK (Nov. 14, 2020) <https://taxjustice.net/topics/tax-havens-and-secrecy-jurisdictions/>.

<sup>7</sup> Mark Beasley et al, *Make Tax Planning a Part of Your Company’s Risk Management Strategy*, HARV. BUS. REV. (Nov. 13, 2020) <https://hbr.org/2020/11/make-tax-planning-a-part-of-your-companys-risk-management-strategy>.

<sup>8</sup> Simone de Colle & Francesco Scarpa, *Ethical Analysis of Tax Avoidance*, ENCYC. OF BUS. AND PRO. ETHICS (Nov. 9, 2021) [https://doi.org/10.1007/978-3-319-23514-1\\_1091-1](https://doi.org/10.1007/978-3-319-23514-1_1091-1).

<sup>9</sup> Scilla Alecci, *Multinationals Shifted \$1 Trillion Offshore, Stripping Countries of Billions in Tax Revenues*, *Study Says*, INT’L CONSORTIUM OF INVESTIGATIVE JOURNALISTS (Apr. 1, 2021) <https://www.icij.org/investigations/paradise-papers/multinationals-shifted-1-trillion-offshore-stripping-countries-of-billions-in-tax-revenues-study-says/>.

<sup>10</sup> Ruud Mooij & Li Liu, *At a Cost: The Real Effects of Transfer Pricing Regulations*, IMF ECON. REV. 68, 268–306 (Jan. 23, 2020) <https://doi.org/10.1057/s41308-019-00105-0>.

<sup>11</sup> Nubia Evertsson, *Corporate Tax Avoidance: A Crime of Globalization*, CRIME LAW SOC. CHANGE 66, 199–216 (Apr. 26, 2016) <https://doi.org/10.1007/s10611-016-9620-z>.

<sup>12</sup> Doron Narotzki, *Corporate Social Responsibility and Taxation: An Evolving Theory*, SOC. SCI. RSCH. NETWORK (May 2, 2016) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2773033&download=yes](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2773033&download=yes).

<sup>13</sup> Department of the Treasury, *The Made in America Tax Plan* (Apr. 2021) [https://home.treasury.gov/system/files/136/MadeInAmericaTaxPlan\\_Report.pdf](https://home.treasury.gov/system/files/136/MadeInAmericaTaxPlan_Report.pdf).

to make the international tax system fairer.<sup>14</sup> However, challenges such as resistance from stakeholders and geographical constraints persist.

Efforts to close tax loopholes and introduce a global minimum corporate income tax offer hope for more equitable tax revenue distribution.<sup>15</sup> Countries with low or no corporate tax may need to reevaluate their stance to prevent loss of taxing rights.<sup>16</sup>

Corporate tax avoidance is complex and straddles between legality and ethics. Companies legally reduce tax liabilities but aggressive strategies face ethical challenges. The use of tax havens by giants like Amazon and Starbucks has prompted scrutiny and reputation damage. International efforts to curb these practices are ongoing, and evolving public perception might influence corporate tax strategies in the future which depends on legislative reforms that close loopholes and may implement a global minimum corporate tax. Evolving public perception may prompt corporations to reassess tax strategies in light of social responsibilities and reputational impact, emphasizing the importance of balancing profitability with economic fairness and accountability.

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<sup>14</sup> *International Collaboration to End Tax Avoidance*, OECD (July 11, 2023) <https://www.oecd.org/tax/beps/>.

<sup>15</sup> Dan Harsha, *Closing Loopholes and Raising Revenue*, HARV. KENNEDY SCH. (Aug. 16, 2022) <https://www.hks.harvard.edu/faculty-research/policy-topics/business-regulation/closing-loopholes-and-raising-revenue-new-tax>.

<sup>16</sup> *Plan for Global Minimum Tax and Corporate Alternative Minimum Tax CSC*, CORPTAX (2023) [https://go.corptax.com/global-minimum-tax-tool?utm\\_source=bing&utm\\_medium=cpc&utm\\_campaign=603378259&utm\\_content=1340307064441673&utm\\_term=global%20minimum%20corporate%20tax&msclkid=cb010b4600c3106a7fee6e5236bf2634](https://go.corptax.com/global-minimum-tax-tool?utm_source=bing&utm_medium=cpc&utm_campaign=603378259&utm_content=1340307064441673&utm_term=global%20minimum%20corporate%20tax&msclkid=cb010b4600c3106a7fee6e5236bf2634).