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CORPORATE SOCIAL RESPONSIBILITY AND TAX AVOIDANCE REGULATION: A TWO-WAY INTERPLAY

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ABSTRACT. *Corporate social responsibility, increasingly framed through environmental, social and governance practices, remains under-integrated within corporate taxation. This article analyses the two-way interplay between responsibility norms and the legal regulation of tax avoidance. It argues that responsibility is neither wholly extra-legal nor purely voluntary, while tax law alone is constrained by definitional indeterminacy, limits of legal design and enforcement, structural arbitrage opportunities, business lobbying and weaknesses in public accountability. Responsibility norms can strengthen tax governance and transparency; legal rules can, in turn, discipline responsibility initiatives through disclosure and accountability. Their interaction provides a more credible framework for constraining aggressive avoidance and strengthening corporate accountability in taxation.*

KEYWORDS: corporate social responsibility, ESG, tax avoidance, tax governance, anti-avoidance rules, business lobbying, tax transparency.

I. INTRODUCTION

The idea that companies have a responsibility to the broader community – commonly referred to as corporate social responsibility ("CSR") and, more recently, as environmental, social and governance ("ESG") – has become a baseline expectation of company conduct.[1] This is reflected in widespread reporting, particularly by large companies, and in corporate reputations increasingly tied to demonstrable social and environmental performance.[2]

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[1] D. McBarnet, "Corporate Social Responsibility Beyond Law, Through Law, For Law: The New Corporate Accountability" in D. McBarnet, A. Voiculescu and T. Campbell (eds.), *The New Corporate Accountability: Corporate Social Responsibility and the Law* (Cambridge 2007), 48–50.

[2] Studies show that approximately 90 per cent. of S&P 500 companies published a CSR or sustainability report in 2019, compared with around 20 per cent. in 2011. A 2024 global survey found that 96 per cent. of the world's largest 250 companies and nearly 80 per cent. of the top 100 companies in each of 58 jurisdictions published sustainability reports. T. Stobierski, "15 Eye-Opening Corporate Social Responsibility Statistics", available at https://online.hbs.edu/blog/post/corporate-social-responsibility-statistics (last accessed 15 July 2026); KPMG, "The Move to Mandatory Reporting: Survey of Sustainability Reporting 2024", 7,

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Yet corporate taxation remains a conspicuous blind spot within mainstream CSR/ESG practice, despite growing calls from governments, international organisations and civil society for responsible tax practice in response to persistent multinational tax avoidance.

This raises the question whether public and policymaker concerns about corporate tax behaviour are directed at companies exploiting tax-minimisation opportunities, or at the tax law system in which this is possible. The article addresses this question by analysing the relationship between corporate responsibility and the legal regulation of tax avoidance. It does so against a renewed focus on corporate tax practices reflected in international anti-avoidance and transparency initiatives following the 2008 global financial crisis.[3] The analysis is primarily legal and institutional, drawing on selected jurisdictional developments to examine corporate governance and anti-avoidance doctrine. The endurance of aggressive avoidance exposes the limits of tax law in design, drafting and implementation, as well as the institutional settings in which loopholes persist. Improving corporate accountability requires a two-way interaction between responsibility norms and legal regulation because neither works alone.

The article develops this analysis in three ways. First, it reframes corporate responsibility not as a departure from law, but as a spectrum of governance practices that interact with legal interpretation and enforcement and operate across ethical and quasi-regulatory dimensions. It clarifies how the responsibility concept relates to law in a domain governed by the principle

available at https://assets.kpmg.com/content/dam/kpmgsites/xx/pdf/2024/11/the-move-to-mandatory-reporting-web-copy.pdf.coredownload.inline.pdf (last accessed 15 July 2026).

[3] High-profile controversies involving multinational companies, including Starbucks and Apple, increased public scrutiny of tax avoidance in the years following the 2008 crisis, see "Starbucks, Google and Amazon Grilled Over Tax Avoidance", *BBC News*, available at https://www.bbc.com/news/business-20288077 (last accessed 15 July 2026); "Apple 'Among Largest Tax Avoiders in US' – Senate Committee", *BBC News*, available at https://www.bbc.com/news/business-22600984 (last accessed 15 July 2026); C. Fuest et al., "ZEW Discussion Paper 13-078: Profit Shifting and 'Aggressive' Tax Planning by Multinational Firms: Issues and Options for Reform", available at https://www.econstor.eu/bitstream/10419/85265/1/770512054.pdf (last accessed 15 July 2025); A. Ting, "iTax – Apple's International Tax Structure and the Double Non-Taxation Issue" [2014] British Tax Review 40. Concerns over revenue losses and distributional effects contributed to the launch of the OECD/G20 base erosion and profit shifting ("BEPS") project in 2012–13 and a broader agenda of international tax transparency; see OECD, "Action Plan on Base Erosion and Profit Shifting", available at https://www.oecd.org/content/dam/oecd/en/publications/reports/2013/07/action-plan-on-base-erosion-and-profit-shifting_g1g30e67/9789264202719-en.pdf (last accessed 15 July 2026); OECD, "Transfer Pricing Documentation and Country-by-Country Reporting – Action 13: 2015 Final Report", available at https://www.oecd.org/content/dam/oecd/en/publications/reports/2015/10/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report_g1g58cf0/9789264241480-en.pdf (last accessed 15 July 2026); Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (entered into force 1 July 2018); OECD, "Standard for Automatic Exchange of Financial Account Information in Tax Matters: Second Edition", available at https://www.oecd.org/content/dam/oecd/en/publications/reports/2017/03/standard-for-automatic-exchange-of-financial-account-information-in-tax-matters-second-edition_g1g73eb6/9789264267992-en.pdf (last accessed 15 July 2026).

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of legality,[4] illustrating why the familiar characterisation of responsibility as extra-legal and voluntary is analytically unstable in the tax context and in broader corporate governance settings.[5] Second, it explains why tax law alone often struggles to contain aggressive avoidance, focusing on the contested definitional boundaries of "tax avoidance", the limits of anti-avoidance measures and the institutional dynamics that shape lawmaking and implementation, with constitutional implications. Third, it develops the two-way account of interaction. On one side, responsibility norms can complement law by shaping corporate tax governance and increasing demand for credible transparency. On the other, legal rules can discipline CSR/ESG initiatives by strengthening disclosure and accountability mechanisms, including the informational basis and standards on which ratings and market stewardship assess responsibility performance. Persistent avoidance reveals systemic deficiencies that law alone cannot resolve. Integrating tax governance into responsibility practice can thus help enhance corporate accountability without collapsing legality into morality.

The article proceeds as follows. Section II examines the corporate responsibility framework, including the shift from CSR to ESG, and critiques the conventional characterisation of responsibility as extra-legal and voluntary. Section III analyses the concept of tax avoidance and the limits of anti-avoidance rules, and outlines why avoidance persists across time and jurisdictions, highlighting the legal and institutional issues that extend beyond the technical operation of tax rules. Section IV sets out the two-way interplay and draws out its implications, showing that responsibility norms and legal regulation can, when aligned, reinforce each other to improve responsible tax governance. Section V concludes.

II. Corporate Responsibility Framework

A. Corporate Responsibility and Governance

This section draws on two strands of corporate responsibility theory – stakeholder approaches and the team production model – to extract governance implications relevant to corporate tax behaviour. The purpose

[4] D. de Cogan, A. Brassey and M. Hen, "The Rule of Law and Taxation" in D. de Cogan, A. Brassey and M. Hen (eds.), *Tax, Public Finance and the Rule of Law* (Oxford 2025); J.N.E. Varuhas, "The Principle of Legality" [2020] C.L.J. 578. For a succinct statement of the legality requirement in taxation in a European context, see Court of Justice of the European Union, "Research Note: Scope of the Principle of the Legality of Taxation", at [2], available at https://curia.europa.eu/site/upload/docs/application/pdf/2024-04/ndr_scope_of_the_principle_of_the_legality_of_taxation_particularly_in_relation_to_value_added_tax_en.pdf (last accessed 15 July 2026).

[5] For the extra-legal and voluntary framing, see Commission of the European Communities, "Green Paper: Promoting a European Framework for Corporate Social Responsibility", at [20], available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52001DC0366 (last accessed 27 July 2026); Commission of the European Communities, "Communication Concerning Corporate Social Responsibility: A Business Contribution to Sustainable Development", 5–6, available at https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0347:FIN:en:PDF (last accessed 27 July 2026); see also McBarnet, "Corporate Social Responsibility".

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is not to provide an exhaustive survey of responsibility theory, but to identify the normative and institutional foundations for treating tax governance as part of responsible corporate conduct.

Corporate purpose debates are commonly framed in terms of shareholder primacy and stakeholder theory.[6] Stakeholder approaches require decision-makers to consider the interests of groups affected by corporate activity beyond shareholders, including employees, consumers and communities.[7] The "triple bottom line" theory develops this perspective by assessing corporate performance across profits, people and planet, and by locating corporate decision-making within broader social and environmental expectations.[8] These ideas have informed sustainability benchmarks, including the Global Reporting Initiative ("GRI"), which now includes a dedicated tax standard, as well as reporting frameworks used in ESG assessment.[9] In the tax context, stakeholder-oriented approaches support treating corporate tax practices as relevant to corporate responsibility evaluation because of their effects on public revenue, distributive outcomes and legitimacy, rather than as a purely technical matter of compliance.

The team production model ("TPM"),[10] which has been influential in corporate law scholarship,[11] similarly conceptualises the company

[6] The two competing perspectives have been developed over the corporate purpose debates; see A.A. Berle and G.C. Means, *The Modern Corporation and Private Property* (New York 1933); E.M. Dodd, Jr., "For Whom Are Corporate Managers Trustees?" (1932) 45 Harvard Law Review 1145, 1148; S.M. Bainbridge, "Director Primacy: The Means and Ends of Corporate Governance" (2003) 97 Northwestern University Law Review 547, 561; W.W. Bratton and M.L. Wachter, "Shareholder Primacy's Corporatist Origins: Adolf Berle and the Modern Corporation" (2008) 34 Journal of Corporation Law 99, 152; D. Millon, "Theories of the Corporation" [1990] Duke Law Journal 201, 221–28.

[7] Millon, "Theories of the Corporation"; M.M. Blair and L.A. Stout, "Director Accountability and the Mediating Role of the Corporate Board" (2001) 79 Washington University Law Quarterly 403; D.S. Lund, "Toward a Dynamic View of Corporate Purpose", available at https://www.ecgi.global/sites/default/files/working_papers/documents/towardadynamicviewofcorporatepurpose.pdf (last accessed 15 July 2026).

[8] J. Elkington, *Cannibals with Forks: The Triple Bottom Line of 21st Century Business* (Oxford 1997); J. Elkington, "25 Years Ago I Coined the Phrase 'Triple Bottom Line': Here Is Why It's Time to Rethink It", *Harvard Business Review*, available at https://hbr.org/2018/06/25-years-ago-i-coined-the-phrase-triple-bottom-line-heres-why-im-giving-up-on-it (last accessed 15 July 2026); A. Owusu-Kwarteng and S.L. Jack, "International Development and Corporate Sustainability" in A. Rasche et al. (eds.), *Corporate Sustainability: Managing Responsible Business in a Globalised World*, 2nd ed. (Cambridge 2023), 536–37.

[9] Global Reporting Initiative, "GRI 207: Tax 2019", available at https://www.globalreporting.org/standards/standards-development/topic-standard-for-tax-gri-207/#:~:text=The%20GRI%20207%3A%20Tax%202019,the%20finalization%20of%20the%20Standard (last accessed 15 July 2026). Examples of ESG reporting frameworks include the ISSB's IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information and the IFRS's SASB Standards (investor-oriented industry metrics). See also Task Force on Climate-related Financial Disclosures, "Final Report: Recommendations of the Task Force on Climate-related Financial Disclosures", available at https://assets.bbhub.io/company/sites/60/2021/10/FINAL-2017-TCFD-Report.pdf (last accessed 15 July 2026); European Commission, "Corporate Sustainability Reporting", available at https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en (last accessed 15 July 2026).

[10] M.M. Blair and L.A. Stout, "A Team Production Theory of Corporate Law" (1999) 85 Virginia Law Review 247, 274–81. TPM is often considered to overlap with stakeholder theory; see J.W. Stoelhorst, "Value, Rent, and Profit: A Stakeholder Resource-based Theory" (2023) 44 Strategic Management Journal 1488.

[11] See generally B.R. Cheffins and R. Williams, "Team Production Theory across the Waves" (2021) 74 Vanderbilt Law Review 1583, 1600.

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as a cooperative enterprise in which multiple stakeholders, including shareholders, managers and employees, make "firm-specific investments" and bear "significant risks".[12] It provides a governance rationale for protecting stakeholder interests through institutional arrangements, including board-level structures designed to address responsibility-related risks.[13] The increasing allocation of CSR or sustainability oversight to board committees in large companies is consistent with the broader institutionalisation of responsibility within corporate governance.[14] However, TPM faces a recurring difficulty for corporate responsibility: where responsibility standards are not legally mandated, questions arise about enforceability and board discretion.[15] Those questions are especially salient for tax practices that may be formally lawful yet normatively contested.

These theories support a conception of responsible tax governance grounded in corporate governance practice. Boards or other decision-makers oversee tax strategy and attend to broader stakeholder impacts, including effects on public revenue, while also committing to credible reporting and disclosure. The more recent shift from CSR to ESG, with an emphasis on data and measurability, strengthens the informational basis on which responsibility performance is assessed and enables a more measurable analysis of the interaction between responsibility norms and the legal regulation of tax avoidance. This is attributable to the increasing operationalisation of responsibility through standardised disclosures, ratings metrics and investor stewardship practices.

B. From CSR to ESG

The term ESG first appeared in a 2004 UN report related to the UN Global Compact, a voluntary framework for implementing universal sustainability principles.[16] It has since developed into a framework for translating corporate responsibility into decision-useful, investor-facing information structured around ESG factors.[17] Unlike CSR's value-led orientation,[18]

[12] Blair and Stout, "Team Production Theory", 253; Blair and Stout, "Director Accountability", 445.
[13] Blair and Stout, "Team Production Theory", 276–80.
[14] E.S. Khoo, L. Chen and G.S. Monroe, "Shareholder Election of CSR Committee Members and Its Effects on CSR Performance" (2023) 50 Journal of Business Finance and Accounting 716, 717–18; EY Center for Board Matters, "How Board Committee Responsibilities and Structures Are Changing", available at https://www.ey.com/content/dam/ey-unified-site/ey-com/en-us/insights/board-matters/documents/ey-how-board-committee-responsibilities-and-structures-are-changing.pdf (last accessed 15 July 2026), which reports increased incorporation of sustainability/ESG/CSR oversight into S&P 500 board committee remits.
[15] Millon, "Theories of the Corporation", 203–05.
[16] The Global Compact, "Who Cares Wins: Connecting Financial Markets to a Changing World", available at https://documents1.worldbank.org/curated/en/280911488968799581/pdf/113237-WP-WhoCaresWins-2004.pdf (last accessed 15 July 2026); see also E. Pollman, "The Making and Meaning of ESG" (2024) 14 Harvard Business Law Review 403.
[17] Pollman, "Meaning of ESG", 413–23.
[18] R.Y.C. Seow, "Clarifying CSR and ESG: Causes of Conflation, Consequences, and Pathways to Conceptual Clarity" (2025) 394 Journal of Environmental Management 127468; M. Kaźmierczak, "A Literature Review on the Difference between CSR and ESG" (2022) 162 Scientific Papers of Silesian University of Technology Organisation and Management Series 275; S.L. Gillan, A. Koch and L.T.

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ESG places greater emphasis on standardised metrics, comparability and (financial) materiality, and is implemented through disclosure standards, ratings methodologies and investor stewardship.[19]

The UN-supported Principles for Responsible Investment ("PRI"), launched in 2006, accelerated the scaling-up of investor stewardship around ESG.[20] The move from CSR to ESG has also been accompanied by standard-setting initiatives from bodies such as the Sustainability Accounting Standards Board ("SASB") and the Task Force on Climate-related Financial Disclosures ("TCFD"), which provide industry-specific material disclosure topics and a market-led framework for climate-related reporting, respectively.[21] ESG has further been reinforced by regulation, including the EU's Corporate Sustainability Reporting Directive ("CSRD"), which makes sustainability reporting mandatory for in-scope companies.[22] At the same time, ESG remains a flexible and contested term. In practice, it is used to describe a range of approaches to integrating sustainability factors into investment analysis and risk management; it is sometimes treated as synonymous with, or a subset of, CSR or sustainability and it has also been characterised as a preference or activity.[23]

The global spread of ESG reflects a shift from value-laden responsibility claims towards a more standardised and increasingly regulated sustainability architecture. The shift has been driven by demand for comparable, decision-useful information in capital markets, the integration of sustainability into corporate risk governance and fiduciary disclosure, and the growing strengthening of disclosure through both private standard-setting and public regulation.[24] ESG's prominence has also been reinforced by ratings methodologies and investor stewardship, notwithstanding continuing debates about its conceptual clarity and concerns about greenwashing or other sustainability arbitrage.[25]

Starks, "Firms and Social Responsibility: A Review of ESG and CSR Research in Corporate Finance" (2021) 66 Journal of Corporate Finance 101889.

[19] A. Tsang, T. Frost and H. Cao, "Environmental, Social, and Governance (ESG) Disclosure: A Literature Review" (2023) 55 The British Accounting Review 101149; G. Strampelli, "ESG, Sustainability Disclosure, and Institutional Investor Stewardship" (2024) 81 Washington and Lee Law Review Online 405.

[20] For more information, see "About the PRI", available at https://www.unpri.org/about-PRI (last accessed 15 July 2026). The information shows PRI has more than 5,000 signatories from around the world.

[21] IFRS, "Understanding the SASB Standards", available at https://www.ifrs.org/issued-standards/sasb-standards/understanding-sasb-standards/ (last accessed 15 July 2026); TCFD, "Final Report".

[22] European Parliament and Council Directive (EU) No 2464/2022 (OJ 2022 L 322 p.15); T. Pantazi, "The Introduction of Mandatory Corporate Sustainability Reporting in the EU and the Question of Enforcement" (2024) 25 European Business Organization Law Review 509.

[23] Pollman, "Meaning of ESG", 424–33.

[24] Tsang, Frost and Cao, "ESG Disclosure"; M.M. Schanzenbach and R.H. Sitkoff, "Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by a Trustee" (2020) 72 Stanford Law Review 381; H.B. Christensen, L. Hail and C. Leuz, "Mandatory CSR and Sustainability Reporting: Economic Analysis and Literature Review" (2021) 26 Review of Accounting Studies 1176.

[25] Pollman, "Meaning of ESG", 434–48; L.A. Bebchuk and R. Tallarita, "The Illusory Promise of Stakeholder Governance" (2020) 106 Cornell Law Review 91.

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The significance of this shift for tax governance is that although ESG frameworks are increasingly metric-driven, tax-related indicators are often weakly represented in responsibility ratings and stewardship practice.[26] GRI has introduced a tax standard that provides a template for tax governance and jurisdictional reporting disclosures, but uptake remains optional.[27] Where ratings providers incorporate tax-related information, weighting is often limited and methodologies differ materially across providers, which risks responsibility assessments being presented without meaningful consideration of corporate tax practices.[28]

C. Corporate Responsibility and Law

Despite the wide acceptance of CSR and later ESG,[29] both concepts remain unsettled. Their interpretation and implementation vary across jurisdictions and industries.[30] CSR, in particular, is often characterised as voluntary action beyond legal obligations, leaving its effectiveness open to debate, and it is sometimes regarded as incompatible with directors' duties as understood in shareholder-primacy terms.[31]

1. Is responsibility extra-legal?

At first glance, applying CSR/ESG to taxation appears to sit uneasily with the principle of legality, which requires that tax liabilities be determined by law and that tax administrations act within the law.[32] This prompts a recurring challenge. If corporate responsibility is understood as going beyond compliance, it may be taken to imply paying more tax than legally required, assuming full disclosure – a notion that is difficult to reconcile with the structure of tax assessment. For example, where tax

[26] D.A. Chaim and G. Parchomovsky, "The Missing 'T' in ESG" (2024) 77 Vanderbilt Law Review 789; Strampelli, "Sustainability Disclosure".

[27] Q. Arnaud and S. Giordano-Spring, "Tax Disclosure Strategies and Reputational Risks: An Exploration based on the Standard GRI 207" (2024) 470 Journal of Cleaner Production 143278; GRI, "Topic Standard for Tax (GRI 207)", available at https://www.globalreporting.org/standards/standards-development/topic-standard-for-tax-gri-207/ (last accessed 15 July 2026).

[28] Chaim and Parchomovsky, "Missing 'T' in ESG"; F. Berg, J. Kölbel and R. Rigobon, "Aggregate Confusion: The Divergence of ESG Ratings" (2022) 26 Review of Finance 1315.

[29] The concepts have been promoted by international organisations, including the United Nations and the OECD, and through initiatives such as the UN Global Compact. Many large companies now incorporate responsibility considerations into core business strategy; see Stobierski, "Statistics"; and KPMG, "Survey 2024".

[30] Pollman, "Meaning of ESG"; A. Okoye, "Theorising Corporate Social Responsibility as an Essentially Contested Concept: Is a Definition Necessary?" (2009) 89 Journal of Business Ethics 613; V.K. Rangan, L. Chase and S. Karim, "The Truth about CSR" (2015) 93 Harvard Business Review 40.

[31] McBarnet, "Corporate Social Responsibility", 23; D. Rönnegard and N.C. Smith, "Shareholder Primacy as an Impediment to Corporate Social Responsibility" in M.C. Coutinho de Arruda and B. Rok (eds.), *Understanding Ethics and Responsibilities in a Globalizing World* (Cham 2016); H. Tjio, "Sustainable Directors' Duties and Reasonable Shareholders" (2024) 25 European Business Organization Law Review 333.

[32] de Cogan, Brassey and Hen, "Rule of Law"; Varuhas, "Principle of Legality"; Court of Justice of the European Union, "Research Note".

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law permits separate calculation of taxable income within a multinational group and allows deductible intra-group payments that shift profits to a low-tax jurisdiction affiliate, a tax return that claims those deductions may correctly reflect the taxpayer's legal liability. A decision to forgo deductions to which the taxpayer is legally entitled can therefore resemble a voluntary payment rather than compliance in any legal sense.[33] This leaves open the question whether socially responsible companies should make financial contributions to the government that the law does not require.

The overpayment position assumes a formalistic account of compliance. A better view in the literature distinguishes voluntary overpayment from responsibility understood as tax governance, including managing arbitrage risks, exercising interpretative prudence in legally indeterminate areas and providing credible and transparent disclosure of tax positions.[34] A commitment to the spirit or intent of the law may require restraint from exploiting literal loopholes. Such restraint is not extra-legal, but reflects a contested understanding of compliance where the law is indeterminate and must be applied purposively.[35] Where legal requirements are ambiguous, responsibility norms can guide internal tax governance, including the appropriate aggressiveness of tax strategy, the structures to avoid and the disclosure to make, without suggesting that the norms themselves determine legal liability.

The extra-legal perception is not unique to tax and has been debated in company law. In many common law jurisdictions, directors' duties are framed as duties to the company, and courts typically afford substantial discretion as to how directors pursue the company's interests.[36] The association between corporate decision-making and short-term shareholder profit maximisation is therefore often a matter of business

[33] House of Lords Select Committee on Economic Affairs, "Tackling Corporate Tax Avoidance in a Global Economy: Is a New Approach Needed?", available at https://publications.parliament.uk/pa/ld201314/ldselect/ldeconaf/48/48.pdf (last accessed 15 July 2026); K. Campbell and D. Helleloid, "Starbucks: Social Responsibility and Tax Avoidance" (2016) 37 Journal of Accounting Education 38.

[34] R. Persson Österman, "Perspectives on Corporate Taxation from a Sustainable Business Perspective" in S. Arvidsson (ed.), *Challenges in Managing Sustainable Business: Reporting, Taxation, Ethics and Governance* (Cham 2018); H. Gribnau, "Why Social Responsible Corporations Should Take Tax Seriously" in K.K.E. Elgaard et al. (eds.), *Fair Taxation and Corporate Social Responsibility* (Copenhagen 2019); C. Allen and R. Krever, "ESG(T)? Should and Can Tax Performance Be a Factor in Evaluating the Ethical, Moral and Social Performance of Corporations?" (2024) 22 eJournal of Tax Research 444.

[35] H. Gribnau, "Corporate Social Responsibility and Tax Planning: Not by Rules Alone" (2015) 24 Social and Legal Studies 225; Persson Österman, "Perspectives on Corporate Taxation"; *Barclays Mercantile Business Finance Ltd. v Mawson (Inspector of Taxes)* [2004] UKHL 51, [2005] 1 A.C. 684, at [28]–[33], [36], [39].

[36] A.-G. Jallai, "Good Tax Governance: International Corporate Tax Planning and Corporate Social Responsibility – Does One Exclude the Other?" (PhD thesis, Tilburg University, 2020), 61–65; A.-G. Jallai and H. Gribnau, "Aggressive Tax Planning and Corporate Social Irresponsibility: Managerial Discretion in the Light of Corporate Governance", available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3119552 (last accessed 15 July 2026); McBarnet, "Corporate Social Responsibility", 23–24.

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culture or market expectations, rather than legal mandate, and it varies across jurisdictions.[37] In the UK, the Companies Act 2006 codifies an "enlightened shareholder value" approach, requiring directors to "promote the success of the company for the benefit of its members as a whole", while having regard to specified stakeholder and community factors.[38] Although weakly enforceable as a "have regard" duty, the provision offers a legally recognised governance vocabulary within which responsibility claims can be framed.[39] This statutory framing also resonates with broader corporate purpose debates in the UK, particularly the British Academy's "Reforming Business for the 21st Century" project, which argues that the corporation should be understood as created to perform "a public function" and aimed at producing "profitable solutions" to social and environmental problems while generating profits in the process.[40]

A further reason the extra-legal characterisation is unstable is that statutory meaning is constituted through interpretation, which does not occur in isolation from the social and economic context. In tax avoidance disputes, courts interpret statutory provisions purposively and evaluate the relevant arrangements in that light, even if legislative purpose is sometimes ambiguous or contested.[41] Characterising responsibility as beyond law can therefore obscure how legality operates through interpretation, corporate governance and disclosure, rather than being reducible to a purely formalistic account of tax compliance.[42]

Furthermore, responsibility is often implemented through soft law and self-regulatory mechanisms, including voluntary initiatives such as the UN Global Compact[43] and, in the ESG context, reporting standards, ratings methodologies and stewardship expectations.[44] These mechanisms

[37] L.A. Stout, "New Thinking on 'Shareholder Primacy'" (2012) 2 Accounting, Economics, and Law 1; M.J. Roe, *Political Determinants of Corporate Governance: Political Context, Corporate Impact* (Oxford 2003); A. Kokkinis, "Shareholder Short-termism in the UK: The Kay Review and the Potential Role of Corporate Law" (2014) 11 Corporate Ownership and Control 166; R.S. Avi-Yonah, "Corporate Taxation and Corporate Social Responsibility" (2014) 11 New York University Journal of Law and Business 1.

[38] Companies Act 2006, s. 172(1).

[39] Ibid., at s. 172 (Explanatory Notes); C.A. Williams and J.M. Conley, "An Emerging Third Way? The Erosion of the Anglo-American Shareholder Value Construct" (2005) 38 Cornell International Law Journal 493, 500.

[40] The British Academy, "Reforming Business for the 21st Century: A Framework for the Future of the Corporation", 24, available at https://www.thebritishacademy.ac.uk/documents/76/Reforming-Business-for-21st-Century-British-Academy.pdf (last accessed 21 July 2026).

[41] I. Lindsay, "Tax Avoidance and Two Aspects of the Rule of Law" in de Cogan, Brassey and Hen (eds.), *Tax, Public Finance and the Rule of Law*; J. Freedman, "Interpreting Tax Statutes: Tax Avoidance and the Intention of Parliament" (2007) 123 L.Q.R. 53; *Barclays Mercantile Business Finance v Mawson* [2004] UKHL 51, at [32]–[36], [39].

[42] McBarnet, "Corporate Social Responsibility", 9–12; Jallai and Gribnau, "Aggressive Tax Planning", 1–2; Tsang, Frost and Cao, "ESG Disclosure", 16–17.

[43] "About the UN Global Compact", available at https://unglobalcompact.org/about (last accessed 21 July 2026); P.J. Buckley, "Can Corporations Contribute Directly to Society or Only through Regulated Behaviour?" (2018) 6 (Supp. 1) Journal of the British Academy 323, 347.

[44] See Section II(B).

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do not enforce tax liabilities in the manner of hard law. Rather, they exert quasi-regulatory effects, shaping corporate governance practices through disclosure, market evaluation and reputational discipline,[45] and they may give rise to litigation risk indirectly where statements and commitments are relied upon in regulatory, consumer or shareholder claims.[46]

Against this backdrop, equating CSR, in particular, with paying more tax than the law requires is misleading.[47] Responsibility in taxation is better understood as a spectrum of tax governance practices concerned with compliance and risk, involving a broader consideration of how profits are generated and how tax obligations are fulfilled. It includes alignment with economic substance, credible and transparent disclosure of material tax risks and positions, consistency with published tax strategy and restraint from arrangements that are primarily tax-motivated or rely on opaque structures.[48] In this sense, responsibility requires caution even where particular techniques are formally lawful.[49] Where avoidance outcomes are contrary to legislative purpose, the remedy lies in closing legislative loopholes and improving the tax system, rather than relying on voluntary or excess tax payments.

These considerations show that viewing corporate responsibility as extra-legal is an oversimplification. It is better understood as a continuum of expectations, ranging from ethics, through quasi-regulation, to binding law.

2. Is responsibility voluntary?

Corporate responsibility is commonly characterised as voluntary, in the sense that companies adopt CSR/ESG policies and initiatives even where no mandatory rule compels them.[50] This voluntary framing is closely linked to the extra-legal view.

The characterisation is increasingly difficult to sustain in practice. Responsibility initiatives are often shaped by external social and market

[45] K. Campbell and D. Vick, "Disclosure Law and the Market for Corporate Social Responsibility" in McBarnet, Voiculescu and Campbell (eds.), *New Corporate Accountability*; Berg, Kölbel and Rigobon, "Aggregate Confusion".

[46] B. Ballan and J.J. Czarnezki, "Disclosure, Greenwashing, and the Future of ESG Litigation" (2024) 81 Washington and Lee Law Review 545; K. Mallin, "Government-Mandated ESG Disclosure: It's Not Easy Being Green" (2024) 61 Houston Law Review 855.

[47] Allen and Krever, "ESG(T)?", 446; Gribnau, "Corporate Social Responsibility", 236–37; C. HJI Panayi, "Is Aggressive Tax Planning Socially Irresponsible?" (2015) 43 Intertax 544.

[48] OECD, "OECD Guidelines for Multinational Enterprises on Responsible Business Conduct", at [126]–[130], available at https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/06/oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct_a0b49990/81f92357-en.pdf (last accessed 21 July 2026); GRI, "GRI 207", Disclosures 207-1, 207-2; H. Gribnau, "Sustainable Tax Governance: A Shared Responsibility" (2024) 22 eJournal of Tax Research 492, 511–12.

[49] A.-G. Jallai, "Ethical Standards for Tax Planning by Corporations" in R.F. van Brederode (ed.), *Ethics and Taxation* (Singapore 2020).

[50] Commission of the European Communities, "Green Paper"; Commission of the European Communities, "Communication", 5.

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pressures, not altruism.[51] Reputational discipline, consumer and civil society scrutiny, and investor expectations for responsible corporate conduct can make "voluntary" commitments costly to ignore.[52] Intermediaries, including reporting frameworks, ratings methodologies and stewardship practices, further translate responsibility into comparative evaluations that affect companies' access to capital and market standing.[53] The Starbucks tax controversy in the UK illustrates how tax practices can become a focal point for public claims about corporate responsibility and how reputational concerns can generate concrete pressures for tax transparency and responsible conduct.[54] While some responsibility initiatives may appear self-motivated, to the extent they are adopted to enhance a company's competitive advantage and create long-term value, they are more market-driven than purely voluntary.[55]

Moreover, the boundary between voluntary practice and legal obligation is increasingly blurred in today's legal and business environment. Responsibility-related lawsuits and shareholder activism can impose financial and reputational costs, as well as legal consequences, on companies that neglect or misstate responsibility commitments, particularly where these intersect with due diligence or disclosure obligations.[56] Strategic uses of private law by public regulators and civil society may also provide an alternative means to give legal effect to responsibility commitments.[57]

Nevertheless, caution is required. The reliability of responsibility reporting and the trustworthiness of ratings remain subject to debate.[58] As the discussion of TPM suggests, it can also be difficult, absent legal mandates, to ensure responsibility policies are prioritised over short-term

[51] McBarnet, "Corporate Social Responsibility", 12; M. Kitzmueller and J. Shimshack, "Economic Perspectives on Corporate Social Responsibility" (2012) 50 Journal of Economic Literature 51, 51–52, 65–67.

[52] McBarnet, "Corporate Social Responsibility", 15–19, 22; Kitzmueller and Shimshack, "Economic Perspectives", 66–67, 75; D.P. Baron, "Private Politics, Corporate Social Responsibility, and Integrated Strategy" (2001) 10 Journal of Economics and Management Strategy 7.

[53] Tsang, Frost and Cao, "ESG Disclosure"; Strampelli, "Sustainability Disclosure"; L. Lu, "Regulating ESG Rating Firms as the Gatekeepers for Sustainable Finance" (2024) 19 Capital Markets Law Journal 184.

[54] House of Commons Committee of Public Accounts, *HM Revenue and Customs: Annual Report and Accounts 2011–12* (HC 716, 2012), at [7]–[8]; Campbell and Helleloid, "Starbucks".

[55] McBarnet, "Corporate Social Responsibility", 21–22; R.G. Eccles, I. Ioannou and G. Serafeim, "The Impact of Corporate Sustainability on Organizational Processes and Performance" (2014) 60 Management Science 2835.

[56] Ballan and Czarnezki, "Disclosure"; S. Kolaric, "The Impact of Climate Litigation and Activism on Stock Prices: The Case of Oil and Gas Majors" (2023) 18 Review of Managerial Science 3141; J. Sinnig and D.A. Zetzsche, "The EU's Corporate Sustainability Due Diligence Directive: From Disclosure to Mandatory Prevention of Adverse Sustainability Impacts in Supply Chains" (2025) 16 European Journal of Risk Regulation 628.

[57] Such uses can include private litigation, contractual control and innovative applications of law; see D. McBarnet and P. Schmidt, "Corporate Accountability through Creative Enforcement: Human Rights, the Alien Tort Claims Act and the Limits of Legal Impunity" in McBarnet, Voiculescu and Campbell (eds.), *New Corporate Accountability.*

[58] McBarnet, "Corporate Social Responsibility", 25–27; Tsang, Frost and Cao, "ESG Disclosure"; Berg, Kölbel and Rigobon, "Aggregate Confusion".

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business opportunities. Investor stewardship, particularly by large institutional investors, does not necessarily engage rigorously with tax conduct in investment decisions.[59] Responsibility narratives may also be invoked to forestall or dilute necessary legal regulation.[60] In taxation, high responsibility ratings do not necessarily signal responsible tax governance,[61] emphasising the need not to treat CSR/ESG as a substitute for universal and enforceable legal regulation.[62]

The growing adoption of responsibility practices reflects indirect pressure from social and market forces, which can complement legal regulation. What was once considered "voluntary" is now frequently demanded, if not by law, then by markets and evolving social expectations.[63] The next section turns to tax avoidance and shows how legal regulation can be constrained in practice, suggesting a potential role for responsibility norms in shaping tax governance.

III. Tax Avoidance and Legal Regulation

A. Defining Tax Avoidance

A recurring difficulty in tax law is defining what constitutes tax avoidance. Confusion often arises from the interchangeable use of related terms such as tax evasion, tax avoidance, tax mitigation or minimisation, and tax planning.[64] In legal terms, tax evasion is clearly illegal as it involves fraud or deliberate misrepresentation of income, deductions or other relevant matters. Tax avoidance, by contrast, refers to arrangements that are technically or formally lawful, though potentially challengeable under anti-avoidance doctrines where they frustrate legislative intent.[65]

Tax mitigation, minimisation, and planning share similarities as they involve taxpayer behavioural responses to legislative provisions (or omissions) that reduce tax, including reliance on incentives and concessions deliberately provided by the legislature (e.g. tax credits for research and development investment or corporate group relief).[66] A long-standing presumption is that taxpayers are entitled to arrange

[59] McBarnet, "Corporate Social Responsibility", 24–27; Chaim and Parchomovsky, "Missing 'T' in ESG".
[60] H. Kim, J. Macey and K. Underhill, "Does ESG Crowd In or Out Public Support for Regulation?" [2025] American Law and Economics Review 1; N. Malhotra, B. Monin and M. Tomz, "Does Private Regulation Preempt Public Regulation?" (2019) 113 American Political Science Review 19.
[61] Chaim and Parchomovsky, "Missing 'T' in ESG"; Gribnau, "Sustainable Tax Governance".
[62] D. Vogel, *The Market for Virtue: The Potential and Limits of Corporate Social Responsibility* (Washington, DC 2005), 3–4.
[63] McBarnet, "Corporate Social Responsibility", 1; Kitzmueller and Shimshack, "Economic Perspectives".
[64] G.S. Cooper, "Conflicts, Challenges and Choices: The Rule of Law and Anti-Avoidance Rules" in G.S. Cooper (ed.), *Tax Avoidance and the Rule of Law* (Amsterdam 1997); J. Freedman, "Defining Taxpayer Responsibility: In Support of a General Anti-Avoidance Principle" [2004] British Tax Review 332, 345–46.
[65] Freedman, "Defining Taxpayer Responsibility", 347–53; M. Gammie, "Tax Avoidance and the Rule of Law: The Experience of the UK" in Cooper (ed.), *Tax Avoidance*, 205.
[66] OECD, "Action Plan"; J. Freedman, "Tax and Corporate Responsibility" (2003) 695 Tax Journal 2.

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their affairs in a tax-efficient way within the law.[67] The conceptual difficulty arises where arrangements are structured primarily to fit legal forms so as to secure a tax advantage by exploiting gaps in the rules, producing outcomes that appear inconsistent with the policy of the relevant provisions.[68] However, this criterion for identifying unacceptable avoidance remains unclear because a transaction may take several legal forms, and a particular form that places the transaction outside a charging provision or within a lower-taxed provision may still be acceptable, even if unconventional.[69]

From the perspective of corporate responsibility, this indeterminacy matters for assessing which tax-efficient practices, such as reliance on tax incentives or concessions, can plausibly be characterised as socially responsible. Where legally sanctioned tax benefits are available, taxpayers are ordinarily entitled to claim them; likewise, where more than one method for establishing arm's length prices in cross-border related party transactions is legally permitted, taxpayers may select among legally recognised methods appropriate to the facts, even where this yields a tax advantage. The difficulty lies in identifying when a formally available arrangement becomes abusive or inconsistent with legislative intent.

Approaches to defining unacceptable tax avoidance thus tend to focus on the legal form of an arrangement, the state of mind or purpose of the taxpayer, and/or the extent to which the arrangement is consistent with the legislative intent.[70] Some emphasise the inconsistency between the taxpayer's purpose and the legal form chosen to achieve it,[71] while others examine whether the transaction would have occurred absent a tax benefit.[72] Mixed tests are also used, under which the presence of a legitimate business purpose may bear upon the characterisation of the arrangement.[73]

Empirical work often uses the "effective tax rate" ("ETR") as a proxy for tax avoidance, but it is an imperfect measure. A low ETR may reflect cross-jurisdictional rate differentials, legitimate incentives, consolidation

[67] *Commissioners of Inland Revenue v Duke of Westminster* [1936] A.C. 1 (H.L.); Freedman, "Defining Taxpayer Responsibility", 350; F. Vanistendael, "Judicial Interpretation and the Role of Anti-Abuse Provisions in Tax Law" in Cooper (ed.), *Tax Avoidance*, 131–32.

[68] Acceptable tax mitigation is often described as legitimate tax planning. By contrast, tax avoidance is frequently characterised as aggressive tax planning – a term given prominence in an OECD report; see OECD, "Study into the Role of Tax Intermediaries", 87, available at https://www.oecd.org/content/dam/oecd/en/publications/reports/2008/03/study-into-the-role-of-tax-intermediaries_g1gh8b48/9789264041813-en.pdf (last accessed 24 July 2026).

[69] Cooper, "Conflicts, Challenges and Choices", 28–32.

[70] Ibid., at 28; *W.T. Ramsay Ltd. v Inland Revenue Commissioners* [1982] A.C. 300 (H.L.); *Barclays Mercantile Business Finance v Mawson* [2004] UKHL 51. In an Australian context, see Income Tax Assessment Act 1936 (Cth.), Part IVA, especially section 177D; *Federal Commissioner of Taxation v Hart* [2004] HCA 26, (2004) 217 C.L.R. 216.

[71] Cooper, "Conflicts, Challenges and Choices", 28–29; *W.T. Ramsay Ltd. v Inland Revenue Commissioners* [1982] A.C. 300; *Barclays Mercantile Business Finance v Mawson* [2004] UKHL 51; *Federal Commissioner of Taxation v Hart* [2004] HCA 26.

[72] In the UK, see Finance Act 2013, ss. 207, 208; in Australia, see Income Tax Assessment Act 1936 (Cth.), s. 177CB.

[73] *Federal Commissioner of Taxation v Spotless Services Ltd.* [1996] HCA 34, (1996) 186 C.L.R. 404.

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rules, timing differences or genuine losses, rather than necessarily abusive avoidance.[74]

It is sometimes argued that avoidance may be legal yet "not the act of a good citizen".[75] However, expecting companies to pay taxes according to that moral standard is legally problematic. First, translating such a standard into workable legal criteria and enforceable rules is inherently challenging. Second, if it were codified and enforced, it would cease to operate as a moral expectation and would instead become a legal obligation. This supports the article's argument that responsible tax conduct should not be equated with paying more tax than the law requires.

B. Legal Anti-Avoidance Instruments

1. Domestic anti-avoidance rules

To counter tax avoidance, jurisdictions use both specific anti-avoidance rules and general anti-avoidance rules ("GAARs"). Specific rules – commonly including thin capitalisation, controlled foreign company ("CFC") and transfer pricing rules – target defined transactions, activities or taxpayers. GAARs, by contrast, are drafted in broader terms and applied as a backstop to schemes that escape specific rules.[76] They provide wide latitude for tax administrations to counteract arrangements that, while formally compliant, are considered abusive under the applicable statutory test.[77]

Among specific rules, thin capitalisation rules limit the amount of interest deductions associated with excessive debt financing. CFC rules seek to prevent indefinite deferral of tax on profits accumulated in foreign subsidiaries located in low- or no-tax jurisdictions. Transfer pricing rules aim to ensure that intra-group cross-border transactions are priced at arm's length. During the G20/OECD-led base erosion and profit shifting ("BEPS") project, some jurisdictions introduced additional specific rules, such as hybrid mismatch provisions, which counteract tax benefits obtained by exploiting differences in the legal characterisation of entities or financial instruments across tax systems.[78]

[74] Allen and Krever, "ESG(T)?", 448–50; R.S. Avi-Yonah, "ESG Irony: Why Corporate Tax Avoidance Must Be Considered" (2025) 117 Tax Notes International 739, 742.

[75] P. Stephens, "How to Save Capitalism from Capitalists", *Financial Times*, available at https://www.ft.com/content/c69e7972-79c0-11e6-97ae-647294649b28 (last accessed 24 July 2026).

[76] J. Freedman, "Designing a General Anti-Abuse Rule: Striking a Balance" (2014) 20 Asia-Pacific Tax Bulletin 167.

[77] Ibid.; G. Aaronson Q.C., "GAAR Study: A Study to Consider Whether a General Anti-Avoidance Rule Should Be Introduced into the UK Tax System", available at https://data.parliament.uk/DepositedPapers/Files/DEP2011-1844/DEP2011-1844.pdf (last accessed 24 July 2026).

[78] For example, Australia and the UK enacted hybrid mismatch rules with effect from 1 January 2019 and 1 January 2017, respectively. These rules follow the framework set out in an OECD 2015 Report on BEPS; see OECD, "Neutralising the Effects of Hybrid Mismatch Arrangements, Action 2: 2015 Final Report", available at https://www.oecd.org/content/dam/oecd/en/publications/reports/2015/10/neutralising-the-effects-of-hybrid-mismatch-arrangements-action-2-2015-final-report_g1g58cdf/9789264241138-en.pdf (last accessed 24 July 2026). In an Australian context, see Income Tax Assessment Act 1997 (Cth.),

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Transfer pricing warrants particular attention because the arm's length principle ("ALP") has been the primary standard for allocating profits among jurisdictions in which a corporate group operates.[79] Multinational companies have substantial scope to structure intra-group transactions and allocate risks and returns across group members in ways that affect where profits arise.[80] Tax administrations may adjust intra-group pricing using prescribed methods where the pricing is found not to reflect the ALP.[81] However, the ALP has well-known limitations, including the difficulty of identifying comparable transactions for integrated businesses and intangible-intensive models.[82] These limitations generate interpretative disagreement and enforcement challenges, creating space for companies to exercise tax-governance choices even where their transfer pricing methodology is formally arguable. This matters for corporate responsibility because responsibility norms operate particularly within such legally indeterminate areas.

Despite sustained criticism, ALP-based transfer pricing rules and other specific rules remain important tools for countering abusive tax practices. Their scope, however, is confined to defined categories. GAARs are introduced to address arrangements outside those categories, but they remain controversial in part because the boundary between acceptable tax planning and abusive avoidance is difficult to define with precision.[83]

Different approaches illustrate how GAARs operate against the indeterminate boundary. In the UK, the GAAR applies to "abusive" tax arrangements and turns on the statutory "double reasonableness" test to determine whether arrangements are abusive.[84] The line of authority flowing from *W.T. Ramsay Ltd. v Inland Revenue Commissioners*,

Division 832 (Hybrid Mismatch Rules). In the UK, see Taxation (International and Other Provisions) Act 2010, Part 6A, as inserted by Finance Act 2016, Sched. 10.

[79] The ALP was introduced in OECD Draft Model Tax Convention 1963, art. 9 and subsequently became the dominant international standard for transfer pricing. For the development of the ALP, see R. Collier and J.L. Andrus, *Transfer Pricing and the Arm's Length Principle after BEPS* (Oxford 2017), 50–98.

[80] M.P. Devereux and J. Vella, "Debate: Implications of Digitalisation for International Corporate Tax Reform" (2018) 46 Intertax 550, 551; UN, "Practical Manual on Transfer Pricing for Developing Countries: 2021", xlviii, available at https://financing.desa.un.org/sites/default/files/2023-03/UN%20Manual%20on%20Transfer%20Pricing.pdf (last accessed 24 July 2026).

[81] Transfer pricing methods generally comprise traditional transaction methods (the comparable uncontrolled price, cost plus, and resale price methods) and transactional profit methods (the transactional net margin and profit split methods); see OECD, "OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations", 93–148, available at https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/01/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-2022_57104b3a/0e655865-en.pdf (last accessed 24 July 2026).

[82] M.P. Devereux et al., *Taxing Profit in a Global Economy* (Oxford 2021), 92–93, 100–02; R.S. Avi-Yonah, "Between Formulary Apportionment and the OECD Guidelines: A Proposal for Reconciliation" (2010) 2 World Tax Journal 3, 8; J.P. Choi, T. Furusawa and J. Ishikawa, "Transfer Pricing and the Arm's Length Principle under Imperfect Competition", 9, available at https://www.econstor.eu/bitstream/10419/185501/1/cesifo1_wp7303.pdf (last accessed 24 July 2026).

[83] Aaronson, "GAAR Study", at [1.6]–[1.8], [3.2]–[3.6]; Freedman, "Designing a General Anti-Avoidance Rule", 167–70.

[84] Introduced in Finance Act 2013; HMRC, "Tax Avoidance: General Anti-abuse Rule Guidance", available at https://www.gov.uk/government/publications/tax-avoidance-general-anti-abuse-rules (last accessed 24 July 2026).

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including *Furniss v Dawson*, exemplifies a purposive approach to statutory interpretation in tax law.[85] In Australia, the statutory GAAR targets schemes entered into for a dominant purpose of obtaining a tax benefit, with purpose inferred from specified statutory factors.[86] In EU law, the abuse-of-law concept and the GAAR under the Anti-Tax Avoidance Directive ("ATAD") similarly focus on non-genuine arrangements undertaken to obtain a tax advantage contrary to the object of the applicable tax law.[87] Across jurisdictions, GAARs draw on different indicators – such as the taxpayer's purpose, artificiality of arrangement, reasonableness and sometimes economic substance – to assess avoidance, with varying emphasis.[88] Nevertheless, they commonly rely on purposive interpretation, which parallels CSR/ESG debates about compliance with the letter and spirit of the law. Yet legislative intent may be opaque and tax statutes are not necessarily coherent, making purposive reasoning contestable.[89]

Designing GAARs without overreaching into legitimate business activity is thus challenging.[90] Highly technical drafting[91] may increase legal certainty but can narrow scope and create new avoidance opportunities.[92] More principle-based approaches[93] offer flexibility to address evolving schemes, but raise concerns about legal certainty, administrative discretion and inconsistent application. This trade-off helps explain why legality alone cannot fully eliminate avoidance opportunities in an indeterminate domain, and why responsibility norms may function as complements in practice.

2. International initiatives

Concerns about the limits of domestic anti-avoidance rules were reflected in the BEPS project, particularly Action 13, which made tax transparency a central regulatory strategy through country-by-country ("CbC")

[85] *W.T. Ramsay Ltd. v Inland Revenue Commissioners* [1982] A.C. 300; *Furniss v Dawson* [1984] A.C. 474 (H.L.); Freedman, "Interpreting Tax Statutes", 57; Freedman, "Defining Taxpayer Responsibility", 335.

[86] Income Tax Assessment Act 1936 (Cth.), s. 177D.

[87] Case C-255/02, *Halifax Plc. v Customs and Excise Commissioners* [2006] E.C.R. I-1609; Council Directive (EU) No 1164/2016 (OJ 2016 L 193 p.1), art. 6.

[88] Freedman, "Interpreting Tax Statutes", 75–84.

[89] Gammie, "Tax Avoidance", 203–04; Freedman, "Interpreting Tax Statutes", 54–55, 85–89.

[90] B.J. Arnold, "Policy Forum: Confusion Worse Confounded – the Supreme Court's GAAR Decisions" (2006) 54 Canadian Tax Journal 167; Freedman, "Defining Taxpayer Responsibility"; Y. Xu, "China's General Antiavoidance Rule and Its Commitment to the Exchange of Information" (2018) 91 Tax Notes International 345.

[91] An example is the Australian GAAR, as set out in Income Tax Assessment Act 1936 (Cth.), Part IVA; see G.T. Pagone, "Australian Tax Avoidance: A Comparative Approach", available at https://www.fedcourt.gov.au/__data/assets/pdf_file/0017/46403/201706.pdf (last accessed 24 July 2026).

[92] Royal Commission on Taxation (Kenneth LeM. Carter, chairman), *Report of the Royal Commission on Taxation*, vol. 3 (Ottawa 1966).

[93] The UK GAAR could be considered an example of such an approach. It uses the "double reasonableness test" to circumscribe its application; see Finance Act 2013, s. 207.

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reporting.[94] Under CbC reporting, large multinational companies are required to disclose aggregated, jurisdiction-by-jurisdiction data on the global allocation of income, profit, taxes paid and economic activity, with reports exchanged between relevant tax administrations under information exchange agreements.[95] This measure is designed to enhance transfer pricing and tax-risk assessment, and by making multinational groups' tax outcomes more visible to tax administrations, may have deterrent effects on aggressive tax planning.[96]

However, CbC reports are generally not public and are exchanged only between national tax administrations, which constrains their capacity to support market discipline and civil society scrutiny. Some jurisdictions have moved towards mandatory public CbC reporting.[97] In the EU, the relevant legislative framework requires in-scope undertakings (broadly, groups with consolidated revenues above €750 million and within the EU's scope rules) to publish specified income tax information.[98] Similarly, Australia has legislated to introduce mandatory public CbC reporting.[99] These developments extend transparency from an inter-administration tool into a potential corporate accountability mechanism.

Public CbC reporting has attracted wide debate, including concerns about business confidentiality, reporting costs and potential negative impacts on competitiveness.[100] Given the difficulty of distinguishing legitimate tax planning from abusive avoidance, public disclosure can help discipline corporate tax behaviour by widening external scrutiny and strengthening the informational basis on which tax-related stewardship and responsibility claims are assessed.[101] This matters because tax is often weakly integrated into CSR/ESG assessment frameworks, notwithstanding the introduction of a dedicated GRI tax standard in 2019.[102] More broadly, research has reported mixed findings on the relationship between corporate

[94] OECD, "Transfer Pricing Documentation".

[95] OECD, "Country-by-Country Reporting for Tax Purposes", available at https://www.oecd.org/en/topics/sub-issues/country-by-country-reporting-for-tax-purposes.html (last accessed 27 July 2026). Exchange of CbC reports can be based on the Multilateral Convention on Administrative Assistance in Tax Matters, bilateral tax agreements or tax information exchange agreements.

[96] Ibid.

[97] The UK has imposed public CbC reporting obligations on credit institutions and certain investment companies, but it has not extended such requirements to multinational companies more generally. See The Capital Requirements (Country-by-Country Reporting) Regulations 2013, SI 2013/3118.

[98] Council Directive (EU) No 2101/2021 (OJ 2021 L 429 p.1), arts. 48b.1, 48c, applying for financial years beginning on or after 22 June 2024; first public disclosures from 2026.

[99] Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Act 2024 (Cth.), Sched. 4; reporting periods commencing on or after 1 July 2024.

[100] W. Netjes and D. Freyer, "Tax Transparency Is Here to Stay: An Analysis of the Public CbCR Directive" (2022) 50 Intertax 61; Gribnau, "Sustainable Tax Governance"; R.S. Avi-Yonah, "Should Country-by-Country Reporting Be Public?" (2025) 117 Tax Notes International 1097.

[101] Avi-Yonah, "Should Country-by-Country Reporting Be Public?", 1100; Avi-Yonah, "Corporate Taxation".

[102] GRI, "GRI 207".

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responsibility performance and CSR/ESG reporting, on the one hand, and corporate tax practices, on the other.[103]

Recent OECD/G20 initiatives extend anti-avoidance regulation beyond technical rules by combining transparency with substantive coordination, most notably Pillar Two. This mechanism operates through a top-up tax to ensure that large multinational companies pay an ETR of at least 15 per cent. on a jurisdictional basis.[104] These initiatives illustrate a shift towards regulating corporate tax governance not only through domestic anti-avoidance rules, but through international transparency infrastructure and coordinated minimum-tax constraints on BEPS.

C. Why Tax Avoidance Persists

Despite the range of legal measures adopted to curb unacceptable tax avoidance, the problem has persisted over time and across jurisdictions. Its causes are complex, and the persistence can be traced to three main factors: limits in legal rule design (including drafting constraints and interpretative indeterminacy), structural features of tax systems and institutional dynamics with constitutional implications. The continuing prevalence of avoidance underscores the limits of existing legal and regulatory frameworks.

1. Limits of legislative design

Tax legislation is drafted under constraints of foresight, language and interpretative determinacy. Even where lawmakers identify the mischief to be addressed, it is not realistically possible to specify *ex ante* how tax liability should be calculated for every conceivable factual configuration.[105] Attempts to do so tend to generate complexity while still leaving gaps in coverage and application. The challenge of translating policy intent into sufficiently precise legal language has long been recognised:

> No country has yet succeeded, or is likely to succeed, in framing its tax laws in such a way that it is clear how the tax liability will be calculated on any conceivable set of facts. Even the most accurate draftsman of a law will not

[103] J. Kovermann and P. Velte, "CSR and Tax Avoidance: A Review of Empirical Research" (2021) 18 Corporate Ownership and Control 20; Chaim and Parchomovsky, "Missing 'T' in ESG", 811–13.

[104] OECD, "Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two)", 7, available at https://www.oecd.org/content/dam/oecd/en/publications/reports/2021/12/tax-challenges-arising-from-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two_eed81a23/782bac33-en.pdf (last accessed 24 July 2026).

[105] This cognitive limitation is commonly understood in terms of bounded rationality, see H.A. Simon, *Models of Man: Social and Rational* (New York 1957), 196–279; H.A. Simon, "Theories of Bounded Rationality" in C.B. McGuire and R. Radner (eds.), *Decision and Organization: A Volume in Honor of Jacob Marschak* (Amsterdam 1972), 161–76.

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> always be able to find precise language to convey his meaning and the wisest legislator cannot foresee every possible situation that may arise.[106]

A central design problem is the familiar trade-off between generality and specificity, which is particularly acute in anti-avoidance legislation. Highly detailed provisions can be under-inclusive, failing to capture economically equivalent transactions that fall outside their technical scope.[107] Conversely, broadly framed standards – such as GAARs – may reduce formal gaps but do so at the price of legal uncertainty and higher administrative and compliance costs.[108] This is not a defect that better drafting can simply eliminate; it is a structural feature of regulating adaptive private behaviour through general legal rules.

Legal design is further tested by constantly evolving avoidance techniques. Lawmaking is often reactive, constructed in response to known schemes.[109] The resulting "patching" process can produce layered provisions whose interaction is difficult to predict. The cumulative effect is that tax complexity may increase without generating commensurately tighter or more coherent law.[110] Instead, complexity provides space for divergent understandings and dense rules can create interpretative gaps and characterisation ambiguities that sophisticated advisers are well placed to exploit.[111]

Relatedly, the legislative process may be shaped by public and political salience, with attention focused on highly visible avoidance concerns while less prominent (but equally significant) issues receive less sustained scrutiny and consideration.[112] This can contribute to the proliferation of anti-avoidance rules, adding complexity and, at times, uncertainty and incoherence to the system, particularly where the relationship between overlapping provisions is unclear.[113]

[106] G.S.A. Wheatcroft, "The Interpretation of Tax Laws with Special Reference to Form and Substance" (1965) 50 Cahiers de Droit Fiscal International 1, 7.

[107] L. Kaplow, "Rules versus Standards: An Economic Analysis" (1992) 42 Duke Law Journal 557; Cooper, "Conflicts, Challenges and Choices", 32–33.

[108] Kaplow, "Rules versus Standards"; D.A. Weisbach, "Formalism in the Tax Law" (1999) 66 University of Chicago Law Review 860.

[109] J. Waincymer, "The Australian Tax Avoidance Experience and Responses: A Critical Review" in Cooper (ed.), *Tax Avoidance*, 247–48; Freedman, "Defining Taxpayer Responsibility", 353–57.

[110] C. Evans et al., *Comparative Taxation: Why Tax Systems Differ*, 2nd ed. (Malvern 2025), ch. 10; Freedman, "Interpreting Tax Statutes", 85.

[111] D.A. Weisbach, "Line Drawing Doctrine and Efficiency in the Tax Law" (1999) 84 Cornell Law Review 1627; OECD, "Role of Tax Intermediaries".

[112] C. Jolls, C.R. Sunstein and R.H. Thaler, "A Behavioral Approach to Law and Economics" (1998) 50 Stanford Law Review 1471; Y. Xu, "A Multilateral Option for VAT in International Trade?" (2022) 71 International and Comparative Law Quarterly 857 (noting VAT has been less coordinated than international cooperation for corporate income tax).

[113] Freedman, "Defining Taxpayer Responsibility", 342–48; T. Hoppe, "Arqus Discussion Paper 251: Tax Complexity in Australia: A Survey-Based Comparison to the OECD Average", available at https://www.econstor.eu/bitstream/10419/213370/1/1688594728.pdf (last accessed 24 July 2026).

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Finally, the implementation of anti-avoidance regimes depends on interpretation, and interpretation is itself a source of indeterminacy. Courts can and do apply purposive approaches to interpretation in tax avoidance cases, but case law rarely supplies comprehensive *ex ante* guidance across the full range of variation in commercial operations, and judgments may be inconsistent.[114] The resulting space for disagreement facilitates what is termed "creative compliance", whereby taxpayers adhere to the letter of the law while undermining its intended purpose.[115] On this view, tax avoidance persists not merely because taxpayers (and their advisers) are opportunistic, but because legal design must operate through language that is necessarily general and incomplete, subject to interpretative judgment and often not readily intelligible to non-specialists.

2. Structural features of tax law

Even with careful drafting, tax systems rely on categorisation and line drawing. Economically similar arrangements can be treated differently because the law attaches tax consequences to legal form, source, timing and entity classification.[116] These structural differentials create substitutability where one course of action attracts higher taxes, and another legally available course may produce a lower effective burden.

Familiar examples that can be found in many tax laws include distinctions between debt and equity (deductibility and withholding outcomes may differ), employee and independent contractor classifications (withholding and social contributions may be allocated differently), corporation and partnership treatment (single-level versus two-level taxation), capital gain versus ordinary income (tax rate and base differences), and foreign-source income and domestic-source income treatment (availability of exemptions, deferral or credit mechanisms may differ).[117] In each case, the legal system's need to draw boundaries gives rise to planning opportunities around those categorical boundaries.

This line-drawing feature is amplified in cross-border contexts. Transfer pricing methods, the presence or absence of a permanent establishment, residence and source rules, and differential treatment of offshore and onshore disposals of investments can produce materially different tax outcomes for transactions that are economically similar. The resulting scope for tax arbitrage is thus not solely a product of defective drafting;

[114] Gammie, "Tax Avoidance", 192; Freedman, "Interpreting Tax Statutes", 90.
[115] D. McBarnet, "When Compliance Is Not the Solution but the Problem: From Changes in Law to Changes in Attitude" in V.A. Braithwaite (ed.), *Taxing Democracy: Understanding Tax Avoidance and Evasion* (Aldershot 2003); Freedman, "Interpreting Tax Statutes", 85.
[116] Weisbach, "Line Drawing"; R. Krever, "Taming Complexity in Australian Income Tax" (2003) 25 Sydney Law Review 467, 481–83.
[117] Weisbach, "Line Drawing", 1680–81.

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it is also a consequence of structural features of modern tax systems that combine multiple bases, rates and connecting factors across jurisdictions.

A further structural driver is the pervasive use of the tax system to pursue social and political objectives through exemptions, reliefs and other preferential treatments, which are often labelled as tax expenditures.[118] While such measures may be justified on policy grounds, they also expand the scope of differently taxed alternatives and can generate inefficiency, avoidance opportunities[119] and distributional concerns, particularly where benefits accrue disproportionately to better-resourced taxpayers.[120]

These structural features interact with the limits of legislative design and with the institutional dynamics and accountability constraints that shape how tax rules are made, interpreted and enforced.

3. Public choice and institutional dynamics

Where legislative design leaves rules incomplete or indeterminate, and structural features generate lawful substitutes that enable arbitrage,[121] institutional context becomes a determinant of persistence: it influences which substitutes are introduced or survive, which gaps are tolerated and how rigorously boundaries are regulated.[122] Tax advantages enacted for particular industries or transactions are therefore not merely technical design choices. They also reflect institutional incentives and constraints within which tax law is made, administered and enforced.[123]

Public choice theory provides a useful explanatory frame. It challenges the assumption that public institutions reliably act in the public interest by treating politicians, bureaucrats, voters and organised actors as self-interested agents motivated primarily by personal incentives.[124] In the tax context, it explains that concentrated, well-resourced interest groups

[118] S.S. Surrey, "Tax Incentives as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures" (1970) 83 Harvard Law Review 705; OECD, "Tax Expenditures in OECD Countries", available at https://www.oecd.org/content/dam/oecd/en/publications/reports/2010/01/tax-expenditures-in-oecd-countries_g1ghbcaf/9789264076907-en.pdf (last accessed 26 July 2026).

[119] M. Brooks and J. Head, "Tax Avoidance: In Economics, Law and Public Choice" in Cooper (ed.), *Tax Avoidance*, 63–64; Weisbach, "Line Drawing".

[120] D. Dharmapala, "What Do We Know About Base Erosion and Profit Shifting? A Review of the Empirical Literature" (2014) 35 Fiscal Studies 421, 444–45; M.A. Desai and D. Dharmapala, "Corporate Tax Avoidance and Firm Value" (2009) 91 Review of Economics and Statistics 537.

[121] Weisbach, "Line Drawing"; Freedman, "Interpreting Tax Statutes"; Krever, "Taming Complexity".

[122] P. Pierson, "Increasing Returns, Path Dependence, and the Study of Politics" (2000) 94 American Political Science Review 251; M. Lodge, I. Ayres and J. Braithwaite, "Responsive Regulation: Transcending the Deregulation Debate" in M. Lodge, E.C. Page and S.J. Balla (eds.), *The Oxford Handbook of Classics in Public Policy and Administration* (Oxford 2015).

[123] Freedman, "Defining Taxpayer Responsibility"; Surrey, "Tax Incentives"; C. Evans, J. Freedman and R. Krever (eds.), *The Delicate Balance: Tax, Discretion and the Rule of Law* (Amsterdam 2011).

[124] J.M. Buchanan and G. Tullock, *The Calculus of Consent: Logical Foundations of Constitutional Democracy* (Ann Arbor, MI 1962); J.M. Buchanan, "Constraints on Political Action" in J.M. Buchanan and R.A. Musgrave, *Public Finance and Public Choice: Two Contrasting Visions of the State* (Cambridge, MA 1999), 126–27.

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can disproportionately influence tax legislation and administration by mobilising lobbying resources to secure targeted fiscal benefits such as subsidies and tax cuts, while the costs of such benefits are dispersed across taxpayers who may be rationally ignorant of the details of corporate tax rules and consequences of the benefits.[125] Politicians may be more responsive to well-organised interest groups than to diffuse individual interests, reflecting the incentives generated by political support and other forms of political gain.[126] This need not imply illegality or corruption; influence is often exercised through agenda-setting and technical input into legislative and administrative processes.[127]

On this account, abusive tax avoidance is not only a behavioural response to a given tax structure, but also partly an institutional outcome.[128] Where avoidance opportunities depend on definitions, characterisations and exceptions, powerful actors, particularly multinational companies, have both the incentives and capacity to press for rules that preserve favourable treatment or scope for manoeuvre. In public choice terms, this resembles rent-seeking where resources are devoted to securing or maintaining tax advantages through formally compliant means rather than generating new economic value.[129] The distributive consequence is that the gains to the successful tax-minimising companies (or other entities) are offset by forgone revenue, increased burdens on less mobile or powerful taxpayers or reductions in the provision of social welfare programs.[130]

Public choice theory also helps explain why tax law complexity can be self-reinforcing rather than accidental. Preferential provisions and differentiated treatments create planning choices; anti-avoidance responses introduced to curb abusive behaviour then tend to layer additional complexity through targeted countermeasures, integrity rules and interpretative glosses, rather than prompting comprehensive redesign.[131] This layering dynamic can entrench the very indeterminacy that makes lawful substitutes viable, particularly where the political economy of tax reform favours incremental

[125] Buchanan and Tullock, *Calculus of Consent*, ch. 4; A. Downs, "An Economic Theory of Political Action in a Democracy" (1957) 65 Journal of Political Economy 135; M. Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups* (Cambridge, MA 1965).

[126] Buchanan, "Constraints", 113, 125–26. R.S. Avi-Yonah, "Corporations, Society, and the State: A Defense of the Corporate Tax" (2004) 90 Virginia Law Review 1193, 1237.

[127] C. Elschner and I. Hardeck, "Assessing the Influence of Different Interest Groups on International Tax Policy: Evidence from the BEPS Project" (2022) 39 Contemporary Accounting Research 304; B.K. Richter, K. Samphantharak and J.F. Timmons, "Lobbying and Taxes" (2009) 53 American Journal of Political Science 893.

[128] Brooks and Head, "Tax Avoidance".

[129] J. Slemrod, "The Economics of Corporate Tax Selfishness" (2004) 57 National Tax Journal 877, 894. The theory of rent-seeking can be attributed to G. Tullock, "The Welfare Cost of Tariffs, Monopolies, and Theft" (1967) 5 Western Economic Journal 224.

[130] Slemrod, "Corporate Tax Selfishness", 894; L. Murphy and T. Nagel, *The Myth of Ownership: Taxes and Justice* (Oxford 2002), chs. 4, 5.

[131] Krever, "Taming Complexity", 487–89; Freedman, "Interpreting Tax Statutes".

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change over structural reform.[132] Empirical research has found that companies with higher lobbying expenditures tend to have lower effective corporate tax rates in subsequent years.[133] In practice, favourable design features often survive, notwithstanding repeated reform efforts.[134]

The same dynamics operate procedurally through administration. Administrative capture can arise through interpretative influence over delegated regulations and guidance, through private rulings and negotiated dispute settlements, and through the management of enforcement priorities.[135] In contemporary debates, this can be seen in lobbying against public CbC reporting, in efforts to secure favourable transfer pricing outcomes and in strategies aimed at reducing scrutiny.[136] Institutional capacity matters as well. Political pressures that constrain budgets, staffing and litigation resources can weaken monitoring and tax enforcement, making it harder to counter avoidance effectively.[137]

Internationally, lobbying pressures are amplified. Multinational companies and industry associations have long lobbied heavily on rules governing foreign income, profit allocation, tax reliefs and transfer pricing – particularly in line-drawing areas, where outcomes depend on contestable characterisations and factual assessments.[138] This influence is not new; it can be traced to the formative period of international tax cooperation in the interwar decades and subsequent institutional consolidation of international tax governance.[139] Although international rules have been strengthened through the BEPS project and related reforms, they remain vulnerable where rules and standards are contingent on characterisation

[132] S. Picciotto, "Indeterminacy, Complexity, Technocracy and the Reform of International Corporate Taxation" (2015) 24 Social and Legal Studies 165; M. Beretta, İ. Güçeri and K. Jakobsen, "What Drives Major Tax Reform? Implications for Taxing the Rich" (2023) 39 Oxford Review of Economic Policy 617.

[133] Richter, Samphantharak and Timmons, "Lobbying and Taxes".

[134] Krever, "Taming Complexity", 487; S.G. Speck, "Transforming Tax Expenditures" (2025) 2024 Columbia Business Law Review 623; C. Edwards, "Tax Expenditures and Tax Reform", available at https://www.cato.org/sites/cato.org/files/2023-07/pa-954-update-2.pdf (last accessed 26 July 2026).

[135] S. Peltzman, "Toward a More General Theory of Regulation" (1976) 19 Journal of Law and Economics 211; D. Carpenter and D.A. Moss (eds.), *Preventing Regulatory Capture: Special Interest Influence and How to Limit It* (Cambridge 2014); J.D. Blank and L. Osofsky, "Democratic Accountability and Tax Enforcement" (2024) 61 Harvard Journal on Legislation 251; S. Bagchi, "The Political Economy of Tax Enforcement: A Look at the Internal Revenue Service from 1978 to 2010" (2016) 36 Journal of Public Policy 335.

[136] A. Cobham, P. Janský and M. Meinzer, "A Half-Century of Resistance to Corporate Disclosure" (2019) 25 Transnational Corporations 1; L. Eden and W. Byrnes, "Transfer Pricing and State Aid: The Unintended Consequences of Advance Pricing Agreements" (2018) 25 Transnational Corporations 9.

[137] J.M. Ramseyer and E.B. Rasmusen, "Why Are Japanese Judges So Conservative in Politically Charged Cases?" (2001) 95 American Political Science Review 331; "The Revenue and Distributional Effects of IRS Funding", available at https://budgetlab.yale.edu/research/revenue-and-distributional-effects-irs-funding (last accessed 26 July 2026).

[138] Picciotto, "Indeterminacy"; Elschner and Hardeck, "Influence of Different Interest Groups"; H. Sander, A-L. Scherer and U. Schmiel, "The Arm's Length Principle: An Adequate Means for Taxing Multinational Corporate Groups?" (2026) 16 Accounting, Economics, and Law 301.

[139] S. Jogarajan and N.J. Teo, "The Old UN Ghosts Speak: Quo Vadis, International Tax Regime: From Coordination to Cooperation?" (2025) 53 Intertax 23, 32, 40–41; S. Jogarajan, *Double Taxation and the League of Nations* (Cambridge 2018); N.J. Teo, *The United Nations in Global Tax Coordination: Hidden History and Politics* (Cambridge 2023).

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and administrative judgment or implemented through bilateral practice.[140] Tax planning and profit mobility can shift revenue away from source jurisdictions, raising concerns about inter-nation distributive justice and compounding enforcement demands, particularly for tax administrations in lower-income countries facing resource constraints.[141]

Over time, public institutions may come to reflect private interests as much as public purposes.[142] While corporate tax avoidance is not itself framed as a constitutional issue, the legislative and administrative systems that enable it and the approaches to addressing it have implications for constitutional principles of legality, the rule of law and government accountability. Where sophisticated avoidance structures available chiefly to large multinationals structurally erode the corporate tax base, questions arise about the equality and generality of legal obligations and the credibility of fiscal governance. The accountability concern is more fundamental than the mere fact of revenue loss: the complexity of tax law, the use of tax expenditures that may escape legislative scrutiny, and the administration of tax law through delegated guidance, private rulings and negotiated settlements can obscure policy choices and enforcement standards. That opacity makes it difficult for the legislature and the public to scrutinise the consequences of those choices and to assess whether the law is being administered consistently and even-handedly, weakening the transparency and answerability on which accountability primarily depends.[143]

These constitutional implications also illuminate the limits of adjudication as a primary regulatory institution. Reliance on courts to determine whether tax arrangements cross the boundary into unacceptable avoidance often compels judges to resolve statutory ambiguity, supply coherence to incomplete rules and articulate implicit legislative intent in contested provisions.[144] The legitimacy and intensity of such judicial work vary across jurisdictions and constitutional traditions.[145]

[140] OECD, "Base Erosion and Profit Shifting (BEPS)", available at https://www.oecd.org/en/topics/base-erosion-and-profit-shifting-beps.html (last accessed 26 July 2026); A. Hohmann, V. Merlo and N. Riedel, "Multilateral Tax Treaty Revision to Combat Tax Avoidance: On the Merits and Limits of BEPS's Multilateral Instrument" (2025) 40 Economic Policy 427.

[141] E. Crivelli, R. De Mooij and M. Keen, "Base Erosion and Profit Shifting and Developing Countries", available at https://www.imf.org/external/pubs/ft/wp/2015/wp15118.pdf (last accessed 26 July 2026); P. Dietsch et al., "Tax Competition and Global Background Justice" (2014) 22 The Journal of Political Philosophy 150; N. Tilahun and A.G. Yihdego, "Unsuccessful Implementation of the OECD Transfer Pricing Guidelines in Low Income Countries: The Case of Ethiopia" [2023] British Tax Review 193.

[142] Carpenter and Moss (eds.), *Preventing Regulatory Capture*, 13–15; Elschner and Hardeck, "Influence of Different Interest Groups".

[143] Blank and Osofsky, "Democratic Accountability", 256–57, 289–90; J.D. Blank, "The Timing of Tax Transparency" (2017) 90 Southern California Law Review 449, 458–60; M. Bovens, "Analysing and Assessing Public Accountability: A Conceptual Framework", available at https://dspace.library.uu.nl/server/api/core/bitstreams/f2e58a42-6dac-44e4-8c51-161fb27324df/content (last accessed 26 July 2026).

[144] Freedman, "Interpreting Tax Statutes", 54–56; Cooper, "Conflicts, Challenges and Choices", 17–20.

[145] Freedman, "Interpreting Tax Statutes", 54–55, 76–84; V. Thuronyi, K. Brooks and B. Kolozs, *Comparative Tax Law*, 2nd ed. (Alphen aan den Rijn, N.L. 2016), 54–84, 175. Concerns about

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These institutional constraints help explain why responsibility-based mechanisms, including public disclosure, ratings methodologies and stewardship practices, can become functionally important complements to legal regulation in domains characterised by indeterminacy, arbitrage opportunities and politically shaped design choices.

IV. The Two-Way Interplay

The normative and practical value of corporate responsibility should not be underestimated, given its influence on corporate purpose and business practices. However, CSR/ESG cannot, on its own, secure responsible tax conduct or ensure compliance with both the letter and the intent of the law. Tax law remains the primary source of enforceable obligations determining tax liability, but persistent aggressive avoidance suggests that legal rules alone are often insufficient. Both responsibility norms and the law have their respective merits and constraints, and each can enhance the effectiveness of the other.[146] This section develops the two-way interplay: responsibility norms can shape corporate tax governance and demand credible transparency, while legal regulation can discipline responsibility practice by strengthening disclosure, comparability and accountability. Their interaction can improve tax responsibility in the near term, though it highlights underlying structural drivers of avoidance that require medium- to longer-term legal reform.

A. Legal Regulation for Responsibility Practice

CSR/ESG represents an evolving model of corporate accountability. The responsibility theories noted above emphasise that the purpose of companies extends beyond profit maximisation to delivering long-term value for stakeholders and addressing environmental and social concerns about their operations. Attention to these broader interests can also enhance corporate performance and competitiveness.

However, current responsibility practices remain inadequate in relation to taxation. The shortcomings do not stem from the often-cited extra-legal or voluntary nature of CSR/ESG, but from inconsistencies in responsibility evaluation and in corporate governance policies on tax compliance. As responsibility policies are increasingly enforced through legal mechanisms, tax law has significant potential to strengthen their effectiveness in shaping responsible corporate tax conduct.

separation of powers have been particularly prominent in US debates on textualism and purposivism, whereas European legal systems have traditionally adopted a more purposive approach to judicial interpretation. J.F. Manning, "What Divides Textualists from Purposivists?" (2006) 106 Columbia Law Review 70; European Commission for Democracy Through Law, "Report on the Relations Between Parliament and the Government: Confidence and Responsibility", at [6], available at https://www.coe.int/en/web/venice-commission/-/opinion-1160 (last accessed 26 July 2026).

[146] McBarnet, "Corporate Social Responsibility", 54–56.

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One area of potential improvement concerns the treatment of taxation in CSR/ESG ratings. While there are a range of rating agencies and data providers, evaluation methodologies, data sources and focus areas remain inconsistent, and rating frameworks apply divergent evaluation standards and weightings.[147] The ratings landscape is constantly evolving through consolidation and new regulatory initiatives such as the EU's CSRD, yet many ratings providers still omit tax-related metrics or treat them as marginal.[148] Where tax indicators are included, some studies report a negative association between responsibility scores and effective tax rates, but cross-jurisdictional evidence is mixed and highly sensitive to measurement choices and proxy selection.[149] The main concern is methodological: where tax indicators are absent or weakly weighted, ratings can mislead as to responsibility performance by offering limited visibility of tax governance and transparency. Presented in that way, high ratings may enable companies to deflect scrutiny of tax practices under the guise of social responsibility.

Voluntary tax transparency standards could potentially address this gap. Frameworks such as the GRI tax standard encourage disclosures of tax strategy, governance and CbC-style information, while benchmarks such as the VBDO Tax Transparency Benchmark seek to make tax transparency assessable and comparable for investors.[150] These initiatives warrant careful evaluation. Voluntary disclosure can be uneven, and some companies' published tax statements remain high-level narratives rather than decision-useful accounts of strategy and risk.[151] Nevertheless, where voluntary disclosures provide meaningful tax indicators, they can support scrutiny and reduce the scope for responsibility claims to substitute for transparency.

[147] Rating agencies are private firms and commonly known examples include MSCI, Sustainalytics, S&P Global ESG Scores, and ISS. Chaim and Parchomovsky, "Missing 'T' in ESG", 801–02.

[148] European Parliament and Council Directive (EU) No 2464/2022; E. Avetisyan and K. Hockerts, "The Consolidation of the ESG Rating Industry as an Enactment of Institutional Retrogression" (2017) 26 Business Strategy and the Environment 316; Morningstar Sustainalytics, "The ESG Risk Ratings: Methodology Abstract", 5 (Exhibit 2) (note the absence of tax-specific issues), available at https://www.sustainalytics.com/docs/default-source/default-document-library/sustainalytics_esg-risk-ratings_methodology-abstract.pdf?sfvrsn = 5b778b7f_8 (last accessed 26 July 2026); LSEG (Refinitiv), "Environmental, Social and Governance Scores from Refinitiv" (note that tax appears only within controversy topics), available at https://cdn-blob.investsmart.com.au/documents/refinitiv-esg-scores-methodology%20May%202022.pdf (last accessed 26 July 2026).

[149] Chaim and Parchomovsky, "Missing 'T' in ESG", 809; Avi-Yonah, "ESG Irony", 741; Kovermann and Velte, "CSR and Tax Avoidance"; P. Velte, "Corporate Social Responsibility (CSR) and Tax Avoidance: A Literature Review on Contextual Factors" (2026) Sustainable Development 1; M. Mitroulia et al., "ESG Strategy and Tax Avoidance: Insights from a Meta-Regression Analysis" (2025) 18 Journal of Risk and Financial Management 503.

[150] GRI, "GRI 207"; VBDO, "Tax Transparency Benchmark 2025: A Comparative Study of 51 Dutch and 65 EU Stock-Listed Companies", available at https://vbdo.nl/wp-content/uploads/2025/11/Tax-Transparency-Benchmark-2025.pdf (last accessed 26 July 2026).

[151] Allen and Krever, "ESG(T)?", 459 (noting Vodafone example); Chaim and Parchomovsky, "Missing 'T' in ESG", 818 (noting examples of Shell, BHP, Philips and Vodafone).

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Accordingly, there is a strong case for legal rules that regulate responsibility intermediaries – particularly ratings providers – by requiring methodological transparency and explicit treatment of tax-related metrics, including clear disclosure of how tax indicators affect ratings. At a minimum, relevant metrics should include the share of profits reported in low- or no-tax jurisdictions and their proportion relative to a company's total profits – consistent with the CbC reporting requirements under the BEPS project.[152]

A related issue is the need to expand public CbC reporting. Public disclosure matters because it provides verifiable, comparable inputs for responsibility assessments and reduces the scope for responsibility narratives to substitute for transparency. Although CbC reporting standards have been implemented in many jurisdictions,[153] the reports containing key tax-related information remain non-public in most of them. This limits public understanding and external scrutiny of corporate tax practices. In jurisdictions such as the US, resistance from powerful companies has helped keep CbC reports private[154] and the proportion of US public companies voluntarily disclosing CbC reports remains "remarkably low".[155] By contrast, the EU has introduced legislation mandating public CbC reporting, and other jurisdictions have begun to follow suit.[156]

One commonly cited objection to public disclosure is corporate privacy. However, scholars have argued that the information contained in CbC reports is unlikely to constitute commercially sensitive information or trade secrets as understood in the OECD guidance, and the reports are already prepared under existing legal requirements applicable to large multinationals, so public disclosure need not impose substantial additional compliance costs.[157] Voluntary standards such as the GRI tax standard indicate that disclosure is feasible; legal rules can make comparable elements mandatory, and thereby enhance the reliability and comparability of tax transparency. Mandatory public CbC reporting would provide material information for public scrutiny, strengthen tax transparency and accountability, and reduce the scope for aggressive

[152] OECD, "Transfer Pricing Documentation"; OECD, "Country-by-Country Reporting".
[153] OECD, "Country-by-Country Reporting".
[154] Chaim and Parchomovsky, "Missing 'T' in ESG", 794.
[155] Ibid., at 818.
[156] For example, Australia has enacted public CbC reporting rules via Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Act 2024 (Cth.), which applies to financial years commencing on or after 1 July 2024. Moldova has also adopted public CbC requirements, while Iceland and Norway are implementing the EU Public CbC Directive through incorporation into the European Economic Area ("EEA") Agreement. See KPMG, "Public Country-by-Country Reporting: Implementation State of Play", available at https://assets.kpmg.com/content/dam/kpmgsites/xx/pdf/2026/03/eu-public-cbyc-march-2026.pdf.coredownload.inline.pdf (last accessed 26 July 2026).
[157] Avi-Yonah, "Should Country-by-Country Reporting Be Public?", 1099–100.

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avoidance.[158] In addition, public CbC data could, in principle, support consideration of alternative profit allocation, most notably formulary apportionment,[159] though such reforms raise distinct design and political questions. Resistance from corporate lobbying, particularly by multinational groups, is nevertheless likely given the potential of formulary apportionment to narrow the scope for contesting profit allocation outcomes through transfer pricing methods. Overcoming it will require collective pressure from social and market forces, including investors, to support legislative reform.

A further area for improvement is the regulation of large institutional investors. Investor stewardship is heterogeneous. Although in some jurisdictions, large institutional investors or asset managers have sided with multinational companies' resistance to public CbC reporting and have shown tolerance of aggressive tax planning,[160] in other jurisdictions investor initiatives have developed tax-responsibility engagement guidance and disclosure expectations.[161] Given the considerable influence of large investors over portfolio companies and their bargaining power as controlling or significant shareholders over corporate policy (as discussed above in Section II(A) on TPM), there is a case for targeted regulation. Legal rules could be introduced to require institutional investors to integrate tax-related issues into stewardship guidelines and to publish those policies. Regulations could also require disclosure of how tax considerations are reflected in voting decisions and stewardship engagement with investee companies, underpinned by a "comply or explain" approach to tax transparency expectations.[162]

Scepticism may arise as to political feasibility, especially in light of entrenched corporate lobbying. Nevertheless, civil society pressure, shareholder activism, and data-driven ESG infrastructure may provide countervailing forces that can help strengthen responsible tax governance and align social and legal accountability through legal reform and regulation.

[158] Chaim and Parchomovsky, "Missing 'T' in ESG", 797.

[159] The formulary approach is generally based on assets, payroll and sales disclosed in CbC reports. Avi-Yonah, "Should Country-by-Country Reporting Be Public?", 1101–102.

[160] Chaim and Parchomovsky, "Missing 'T' in ESG", 800, 819–20 (noting examples of BlackRock and Vanguard in the US context).

[161] See e.g. PRI, "Engagement Guidance on Corporate Tax Responsibility: Why and How to Engage With Your Investee Companies", available at https://media.business-humanrights.org/media/documents/files/documents/PRI_Tax-Guidance-2015.pdf (last accessed 26 July 2026); "PRI Response: Australian Treasury Consultation: Strengthening Australia's Multinational Tax Avoidance and Tax Transparency Rules", available at https://treasury.gov.au/sites/default/files/2023-02/c2022-297736-pri.pdf (last accessed 26 July 2026).

[162] "Comply or explain" is a disclosure-based governance approach in which companies are expected to comply with an applicable governance code (or framework) or publicly explain departures from it. It is widely used in corporate governance and stewardship disclosure regimes. Financial Reporting Council, "UK Corporate Governance Code 2024", available at https://media.frc.org.uk/documents/UK_Corporate_Governance_Code_2024_a2hmQmY.pdf (last accessed 26 July 2026); Commission Recommendation 2014/208/EU (OJ 2014 L 109 p. 43), rec. 5; European Parliament and Council Directive (EU) No 828/2017 (OJ 2017 L 132 p. 1), art. 3g(1).

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B. Responsibility Norms for Tax Regulation

Responsibility norms matter for legal regulation of tax avoidance in three ways. First, they shape reform agendas, particularly around transparency. Second, they tighten corporate tax governance beyond technical compliance. Third, they support enforcement where formal legality does not settle questions of acceptability.

Laws are not always as effective as intended in regulating corporate behaviour, in particular in corporate taxation where rules are complex, boundaries are contestable and enforcement is resource constrained. The rise of CSR/ESG and increasing calls to treat taxation as a sustainability and governance issue reflect recognition of those limits, and generate demands that law deliver more than it currently does, or that it be enforced more effectively. In this context, responsibility norms can strengthen legal regulation by shaping agendas for transparency and tax reform, embedding tax governance within corporate decision-making and supporting enforcement where formal legality does not exhaust questions of acceptability.

In recent years, CSR/ESG discourse has reinforced legal developments that expand tax transparency. Many jurisdictions have adopted automatic exchange of information as a new legal standard for tax transparency[163] and legislation mandating public CbC reporting in the EU, Australia and potentially other jurisdictions may further generalise transparency expectations. These developments can shift tax transparency from a specialist compliance issue to a mainstream governance norm, even as substantial challenges in both tax law and enforcement remain.

In jurisdictions such as the EU, sustainability requirements under the CSRD can increase board-level attention to governance, internal controls, and "social" impacts, including where tax is treated as an integrated governance issue.[164] Anti-avoidance rules under the ATAD supply legal boundaries for enforcement.[165] In combination, disclosure-focused accountability can improve internal tax governance, while anti-avoidance rules provide the legal basis for limiting the scope for responsibility narratives to substitute for enforceable standards.

More broadly, the BEPS project, particularly Action 13 on CbC reporting, has created an international transparency framework and minimum standards that support risk assessment and enforcement, and the OECD Guidelines for Multinational Enterprises explicitly extend responsible business conduct expectations to taxation.[166] They illustrate

[163] OECD, "Global Forum on Transparency and Exchange of Information for Tax Purposes", available at https://www.oecd.org/en/networks/global-forum-tax-transparency/resources/aeoi-implementation-portal.html (last accessed 2 August 2026).
[164] European Parliament and Council Directive (EU) No 2464/2022.
[165] Council Directive (EU) No 1164/2016.
[166] OECD, "Guidelines for Multinational Enterprises".

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the two-way dynamic: reporting requirements and minimum standards implemented through domestic law provide an informational and enforcement foundation, and responsibility norms, in turn, shape corporate governance commitments through investor expectations and non-judicial accountability mechanisms such as stewardship and disclosure-based scrutiny.

Responsibility norms can also complement legal enforcement. Even where a tax practice is regarded as unacceptable, enforcement can generally be invoked only where it crosses the legal boundary into unlawfulness. Where clear legal definitions are neither feasible nor advisable, administrative discretion becomes necessary.[167] The regulatory challenge is therefore not to assume that legislative certainty is always attainable, but to manage indeterminacy through accountable administration.[168] Where existing tax laws are internally incoherent or contain multiple differentiated treatments, enforcement becomes harder and avoidance more adaptive,[169] conditions under which responsibility norms can supply governance standards and external pressure that law alone cannot generate.

Additional enforcement mechanisms may thus be required to buttress deterrence against avoidance. One option is to strengthen (or introduce) statutory requirements for taxpayers to disclose marketed tax-promoter schemes to tax administrators. Such disclosure, combined with disclosure of corporate tax positions, can facilitate earlier risk identification and more effective audits. CSR/ESG can also exert pressure on companies through social and market forces by encouraging them to move beyond technical compliance and to align tax governance with legislative intent. This suggests a need to improve legislative drafting so that legislative intent (or a relevant policy objective) is clearer – particularly in preferential provisions, an issue discussed in the following section. By raising reputational risks and increasing public scrutiny, responsibility norms can make aggressive tax planning costlier even where it is arguable whether the arrangement is unlawful or merely exploits the letter of the law.

C. Implications for Reform

The interplay analysed above can improve tax responsibility in the near term by strengthening tax transparency disclosure, improving the comparability of responsibility assessments in respect of tax, and tightening corporate tax governance. But because avoidance persists for structural and institutional reasons, reform must also address the limits of anti-avoidance rules, the

[167] Gammie, "Tax Avoidance", 197; T.A.O. Endicott, *Vagueness in Law* (Oxford 2000), ch. 3.
[168] Gammie, "Tax Avoidance", 197–98; Bovens, "Public Accountability".
[169] Freedman, "Interpreting Tax Statutes", 90; Slemrod, "Corporate Tax Selfishness", 895.

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proliferation of lower-taxed substitutes and tax incentives, and the institutional conditions that entrench complexity and weaken accountability in the design, administration and oversight of the tax system.

Addressing unacceptable avoidance requires legally enforceable anti-avoidance rules. However, as Section III(B) shows, both specific and general rules have limitations and cannot, by themselves, resolve the problem. In jurisdictions with a statutory GAAR, the general rule can be a powerful deterrent, yet it is typically applied as a last resort and with caution. This is due to concerns about its potential impact on legitimate tax planning and the inherent difficulty of distinguishing acceptable from unacceptable tax behaviour with precision. These constraints indicate the need for additional legal measures. Some studies argue that a comprehensive framework for tackling aggressive tax avoidance through alternative means is feasible, and that government hesitation to pursue such reforms reflects more "lethargy or ambivalence" than "a dearth of options".[170]

One area for improvement in substantive tax law concerns the existence of lower-taxed alternatives or substitutes, as illustrated by the examples discussed above. The deliberate adoption of differentiated treatments for activities with similar economic effects may be justified, but such differentiation also creates arbitrage opportunities. A more coherent response is to eliminate unnecessary distinctions and align tax treatments with the underlying economic substance of activities.[171] At the international level, the Pillar One proposal would adopt a partial, sales-based formulary apportionment approach, signalling a shift in how profit allocation in a multi-jurisdictional context may be approached.[172] Although Pillar One (Amount A) has faced continuing uncertainty, formulary apportionment methods remain salient and could gain traction if public CbC reporting becomes widely adopted.[173] Similarly, the agreed global minimum corporate tax rate of 15 per cent. under Pillar Two – already enacted in a growing number of jurisdictions – may reduce the

[170] Cooper, "Conflicts, Challenges and Choices", 42.
[171] Freedman, "Interpreting Tax Statutes", 56.
[172] Pillar One (Amount A) would reallocate a fixed share of an in-scope multinational's "residual profit" to market jurisdictions using a revenue-based allocation key (sales), thereby introducing a form of formulary apportionment into profit allocation. It would also create a new taxable nexus that permits taxation in market jurisdictions where customers and/or users are located, regardless of physical presence. OECD, "Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy", available at https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf (last accessed 22 July 2026); Avi-Yonah, "Should Country-by-Country Reporting Be Public?", 1101–102; J.G. Gravelle, "The OECD/G20 Pillar 1 and Digital Services Taxes: A Comparison", available at https://www.congress.gov/crs_external_products/R/PDF/R47988/R47988.2.pdf (last accessed 26 July 2026).
[173] Avi-Yonah, "Should Country-by-Country Reporting Be Public?", 1101–102.

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appeal of lower-taxed alternatives,[174] although it is unlikely to eliminate profit shifting to low- or no-tax jurisdictions entirely.

Another area requiring improvement is the design and administration of tax incentives or concessions, which can inadvertently contribute to the persistence of tax avoidance. As discussed above, when tax legislation is used to pursue economic, industrial, social or even political objectives, it can open the door to abusive tax practices.[175] Tax incentives may generate desired investment (e.g. investment in artificial intelligence research and development) or behavioural change (e.g. a switch to renewable energy in business activities), but they are often costly, opaque, legally complex and prone to rent-seeking. Properly designed incentives can be used in line with legislative intent and as legitimate planning, but problems arise when incentives are poorly articulated or easily repurposed into avoidance vehicles. While it may be impossible to provide incentives without some risk of abuse, a system designed to prevent every conceivable abuse may also discourage taxpayers from making use of the incentive.[176] A complete removal of incentives is unrealistic, but measures can be taken to improve their design.

First, legislation should state explicitly the intent of each incentive and specify that eligibility is contingent on economic substance rather than legal form alone.[177] As the literature notes, legislative policy or intent of a tax provision is often poorly articulated – or not articulated at all – leaving courts with the difficult task of ascertaining it.[178] A clear statement of legislative intent, coupled with a focus on economic substance, would assist administrators and courts in determining whether an arrangement aligns with the intended purpose of the incentive and, if not, whether it constitutes unacceptable avoidance. Second, the fiscal cost of tax incentives and the identity of beneficiaries should be made transparent and publicly accessible so that responsibility intermediaries (including ratings providers and institutional investors) can evaluate whether incentives operate as intended. This would also raise public awareness of the broader consequences of these tax benefits and facilitate scrutiny of whether policy objectives are being met. Research suggests that beneficiaries may differ from those originally intended and that incentives can result

[174] OECD, "Global Anti-Base Erosion Model Rules (Pillar Two)", available at https://www.oecd.org/en/topics/sub-issues/global-minimum-tax/global-anti-base-erosion-model-rules-pillar-two.html#top (last accessed 26 July 2026); PwC, "Pillar Two Country Tracker", at https://www.pwc.com/gx/en/services/tax/pillar-two-readiness/country-tracker.html (last accessed 22 July 2026).
[175] Krever, "Taming Complexity", 488–89.
[176] L. Mutén, "The Swedish Experiment with a General Anti-Avoidance Rule" in Cooper (ed.), *Tax Avoidance*.
[177] Krever, "Taming Complexity", 503; Freedman, "Interpreting Tax Statutes", 55, 90.
[178] Freedman, "Interpreting Tax Statutes"; Waincymer, "Australian Tax Avoidance Experience".

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from or facilitate rent-seeking.[179] Greater transparency can thus enhance government accountability and the integrity of the tax system.

Broadening the tax base through reforms that address lower-taxed alternatives is another strategy for curbing tax avoidance. The ease with which taxpayers can substitute lightly taxed or untaxed alternatives for taxed forms of income (or returns) contributes to discrimination and arbitrary distinctions between different types and sources of income.[180] If more uniform treatment were applied to income with similar economic characteristics, motivation to seek lower-taxed alternatives would likely diminish.[181] In addition, improving legal drafting to enhance clarity, consistency and readability remains an important goal across jurisdictions, assisting both taxpayers and administrators in compliance and administration.[182]

Most fundamentally, the constitutional significance of tax law should not be understated. Taxation is a central component of constitutional government and provides an indispensable fiscal foundation for the provision of public goods and services, which underpins any well-functioning economy and society.[183] The risks posed by concentrated business lobbying to fiscal integrity warrant attention to institutional safeguards and, where necessary, broader institutional reforms. Such measures should bolster transparency in the design and administration of the tax system, accountability in public administration and scrutiny of lobbying and its consequences for public revenue.

V. Conclusion

This article has examined the interaction between corporate responsibility and corporate tax governance, with a particular focus on tax avoidance. Although corporate responsibility is often portrayed as extra-legal and voluntary, in practice responsibility norms can complement law and regulation by shaping tax governance and transparency, and by reinforcing the policy objectives that tax legislation is intended to achieve.

[179] M. Orihara and T. Suzuki, "Windfalls? Costs and Benefits of Investment Tax Incentives Due to Financial Constraints" (2023) 82 Journal of Corporate Finance 102469; M. Pecho et al., "Managing Tax Incentives in Developing Countries", available at https://www.imf.org/-/media/files/publications/tnm/2024/english/tnmea2024007.pdf (last accessed 26 July 2026).

[180] Brooks and Head, "Tax Avoidance", 63–64.

[181] J. Mirrlees et al., "The Mirrlees Review: Conclusions and Recommendations for Reform" (2011) 32 Fiscal Studies 331, 335–36.

[182] V. Thuronyi, "Drafting Tax Legislation" in V. Thuronyi (ed.), *Tax Law Design and Drafting*, vol. 1 (Washington, DC 1996); J. Shaw, J. Slemrod and J. Whiting, "Administration and Compliance" in S. Adam et al. (eds.), *Dimensions of Tax Design: The Mirrlees Review* (Oxford 2010).

[183] T. Dagan, "Tax and Globalisation: Toward a New Social Contract" (2024) 44 O.J.L.S. 487, 487–90; P.A. Samuelson, "The Pure Theory of Public Expenditure" (1954) 36 Review of Economics and Statistics 387; A. Ebrahim, "Enhancing Domestic Revenue Mobilization in a Reformed International Financial Architecture: Strategies for Developing Countries in a Globalized Tax Landscape", available at https://www.wider.unu.edu/sites/default/files/Publications/Background-note/PDF/bn2025-9-DRM-reformed-IFA.pdf (last accessed 26 July 2026).

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The difficulty of addressing the enduring extent of tax avoidance stems not only from definitional ambiguity and the limits of anti-avoidance rules, but also from structural and institutional dynamics. The persistence of avoidance opportunities reflects, among other factors, the cognitive limitations of legislative design and drafting, the influence of business lobbying and constraints on enforcement capacity. Practices that comply with the letter of the law while frustrating legislative intent expose deeper systemic issues and wider vulnerabilities in tax system design and government oversight within constitutional frameworks, particularly where indeterminacy and substitutes enable arbitrage. Law remains indispensable in determining tax liability and providing enforceable standards, yet it is often insufficient on its own. Socially and economically driven responsibility norms can thus play a complementary role by pressing for responsible – rather than merely technical – compliance and by enabling public and market scrutiny where legality does not settle questions of acceptability.

CSR and ESG initiatives, however, often give inadequate attention to corporate tax behaviour, leaving gaps in ratings methodologies, public CbC reporting and tax transparency disclosures, as well as stewardship practices among influential institutional investors. Tax law can play an important role in shaping and enhancing the effectiveness of responsibility norms through improved disclosure, comparability and discipline in tax practices.

At its core, this article contends that both responsibility norms and legal regulation are essential. Their interaction can align social expectations with legal accountability and advance responsible tax governance. Treating tax avoidance as beyond the scope of corporate responsibility is no longer tenable if corporate claims to social legitimacy are to remain credible.

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