7. From Hegemony to Transatlantic Tax Battle?

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The Hypocritical Hegemon: How the United States Shapes Global Rules against Tax Evasion and Avoidance.


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Over the past decades, the United States has dominated decision making on tax matters in the Organisation for Economic Co-operation and Development (OECD). Democratic and Republican administrations have consistently defended the international tax system’s status quo when reform proposals threatened to increase the foreign tax burden of US multinationals. Thereby US administrations have perpetuated a number of legal principles, including separate entity accounting and the arm’s-length standard, that enable tax avoidance by multinational corporations both in source and residence countries. The United States has enforced change in global tax policy only when a Democratic administration committed to a progressive domestic tax system could shift associated adjustment costs from powerful domestic interest groups onto foreign firms and governments. For this reason, the Obama administration neither offered reciprocal automatic exchange of information (AEI) in bilateral FATCA agreements, nor joined the multilateral AEI agreement. As a result of the Obama administration’s reluctance to introduce new reporting requirements domestically, US financial institutions now benefit from an exclusive competitive advantage in the provision of financial secrecy to foreign investors.

Successive US administrations have been able to defend their redistributive hypocrisy because no other government melds control of comparably sized financial and consumer markets with similar regulatory capacity. Most important, the EU and its member states have so far been unable to overcome regulatory dispersion in tax matters, the crucial prerequisite for harnessing the power of the common market. As long as a check on US hegemony is missing, however, US
multinationals can shift profits out of the common market untaxed, whereas wealth managers in secretive US states can offer European investors anonymity from their local tax offices. The result is a persistent drain of taxable income from the EU to the United States that shifts the overall tax burden in the EU away from multinationals and wealthy individuals and toward local businesses, workers, and consumers. Before presenting this book’s overall conclusions, I will thus use the first part of this final chapter to discuss the most recent developments in transatlantic bargaining over countermeasures to financial secrecy and corporate profit-shifting, and sketch several future scenarios based on the theory developed in chapter 2.

The Future of International Tax Politics

If further progress in the fight against tax evasion and avoidance depends on the EU’s rise to great power status, what are the chances that member states will centralize regulatory authority over direct taxation and sanctions? As the following subsections show, dissatisfaction with nonreciprocal AEI and the BEPS project’s failure to limit tax avoidance in the common market has motivated the European Commission and several member states to push for a common reaction. The EU has since produced an integrated blacklist of third countries not complying with its tax good governance standards and ordered several member states to claw back taxes lost to sweetheart deals granting selective advantages to individual firms. Moreover, finance ministers debate the introduction of a digital services tax (DST) and a common consolidated corporate tax base (CCCTB) to curb profit-shifting in the common market. However, regulatory dispersion and internal conflict continue to limit the effectiveness of already adopted measures and prevent consensus on more far-reaching proposals. Interestingly, resistance from small capital-importing member states may no longer be the biggest obstacle to a robust external taxation strategy. Instead, export-dependent member states such as Germany currently shy away from a confrontation with the United States on tax.

Demanding Reciprocal Information Exchange from the United States

From the outset of negotiations on AEI, the US government refused to provide other countries with the same type of account data it requests from them. Accordingly, neither the bilateral FATCA agreements, nor the Multilateral Competent Authority Agreement (MCAA), which it has not signed, oblige the United States to reciprocate the routine reporting of account information. The result of
this unbalanced distribution of regulatory obligations is a major competitive advantage for US banks in the attraction of hidden capital. For European governments, persistent financial secrecy in the United States implies that tax evaders among their citizens may shift undeclared financial wealth from Switzerland to Nevada to avoid the submission of corrected returns as well as the associated back taxes and fines (Casi, Spengel, and Stage 2018; Hakelberg and Schaub 2018). Still, large EU member states and the OECD remained silent about the nonreciprocity of bilateral FATCA agreements and the US government’s nonparticipation in multilateral AEI during negotiations. Instead, they acknowledged the importance of FATCA for the multilateral process and expressed their understanding for domestic resistance in the United States. In an exemplary statement on the occasion of the MCAA’s signature, German minister of finance Wolfgang Schäuble told reporters:

Without FATCA we would not have seen the same progress on automatic exchange of information in Europe, which underlines the importance of the United States for global economic stability. Congress will have to draw its own conclusions on the progress achieved at the international level, and it will not necessarily appreciate counsel from foreign governments. (Bundesministerium der Finanzen 2014)¹

In fact, large EU member states and the OECD had several reasons not to stress nonreciprocity from the United States. First, there was little the member states and the OECD could do about it. Whereas European financial institutions faced sanctions without the conclusion of FATCA agreements, disunity in the Council of the European Union prevented EU governments from linking nonreciprocity to the imposition of similar costs on US banks. As a senior German tax official explained, “Even if several European countries negotiate with the United States there is still a difference in power. Because we are more interested in market access for our institutions in the United States than the other way around.”² Second, it was far more important for large EU members to impose AEI on traditional secrecy jurisdictions such as Switzerland and Luxembourg. At the time, the largest share of European offshore wealth was managed in these countries and tax officials in large EU member states still believed they did not have a tax evasion problem with the United States (Zucman 2014).³ Accordingly, they refused to delegitimize the political process that was getting them closer than ever to their main goal by criticizing FATCA on fairness grounds. As the head of the OECD’s tax department recently confessed in an interview: “[Ignoring nonreciprocity from the US] was extremely embarrassing, but no one wanted to crash the party” (Besson 2016).

After coercive pressure from the United States had forced Austria and Luxembourg to abandon bank secrecy, however, the dynamic changed. In fact, the
two countries became just as eager as France and Germany to avoid competitive disadvantages by also imposing the standard on third states. This attitude was evident in their eventual support of a mandate for negotiations on an AEI agreement between the Commission and Switzerland and in the wording of European Council conclusions on the adoption of a revised Savings Directive. In these conclusions, EU heads of state and government called on the Commission to conclude negotiations on AEI with third states and report back by the end of 2014. “If sufficient progress is not made,” they requested, “the Commission’s report should explore possible options to ensure compliance with the new global standard” (European Council 2014, 3). Although the Commission has managed to strike AEI agreements with Switzerland, Liechtenstein, San Marino, Andorra, and Monaco since then, the Commission still developed an “external strategy for effective taxation” in response to the Council’s request. The purpose of this strategy is to project transparency and other tax good governance standards practiced in the EU onto third states (European Commission 2016d, 2). In the area of information exchange, tools include a consolidated EU blacklist of noncooperative tax havens, comprising third countries that do not comply with the OECD’s AEI standard, and collective defense measures against jurisdictions that fail to reform despite being listed. As to countermeasures, the Commission proposes “withholding taxes and non-deductibility of costs for transactions done through listed jurisdictions” (European Commission 2016d, 12).

Yet regulatory authority over the blacklist and countermeasures remains dispersed among member states. Whereas the Commission drew up a long list of countries posing a risk to the EU’s tax base, member states set the exact screening criteria, assessed third countries, and decided unanimously on additions to the list (Council of the European Union 2016). Hence, many countries matching the EU’s criteria were not included in the blacklist when its first edition was eventually published in December 2017 (Council of the European Union 2017; Lips and Cobham 2017). Most important, the United States was missing, although the Trump administration had not taken any steps to mitigate nonreciprocity under FATCA, and still had not signed the multilateral AEI agreement. For these reasons, the United States had initially figured on the Commission’s long list of countries failing to respect international transparency standards (European Commission 2016e, 5). Still, EU finance ministers merely included American Samoa and Guam in the final list, albeit with an interesting justification. The ministers concluded that the two US territories in the Pacific “[did] not apply any automatic exchange of financial information, and [had] not signed and ratified, including through the jurisdiction they are dependent on, the OECD Multilateral Convention on Mutual Administrative Assistance” (Council of the European Union 2017, 8–9, emphasis added).
As it seems, actors within the EU still struggle to find consensus on how to address the Trump administration in tax matters. Whereas Valère Moutarlier, the Commission’s director of direct taxation, told the European Parliament the United States would be placed on the blacklist if it did not agree to fully reciprocal AEI by June 2019 (Kirwin 2018), some member states still shy away from an open confrontation in the tax area. They request to make anyblacklisting decision conditional on the outcome of the peer review the OECD’s Global Forum on Transparency and Exchange of Information for Tax Purposes is preparing on AEI implementation by the United States. This is likely to let the Trump administration off the hook as the OECD is already tweaking the compliance criteria to prevent a negative rating (Lips and Cobham 2017; Knobel 2018). This time, however, it is not the small capital-importing member states blocking progress. Instead, several export-dependent member states, including Germany, fear a unilateral decision by the EU to blacklist the United States could stoke the existing trade dispute with the Trump administration, potentially resulting in higher tariffs on cars and other manufactures. Despite internal consensus on AEI and the redistributive consequences of US hypocrisy, German preoccupation with its national export surplus thus prevents the EU from challenging US hegemony in international tax politics.

Against this background, we can conceive of two future scenarios. The US government’s first option is to stick to a logic of pure dominance, which could however fuel doubts about the benefits of the existing order among powerful European interest groups and eventually increase support for a challenge of American hegemony. The second option is to accommodate European criticism through limited concessions, thereby reestablishing the legitimacy of US hegemony over international tax politics (Anderson 2017; Gilpin 1981). If it were to choose the first option, the US government would defend the current level of nonreciprocity despite the naming and shaming this defense could provoke. In the short term, the United States can afford a confrontational strategy, because even if it was eventually blacklisted by the EU, it would not be subject to direct economic sanctions. In the long term, however, sustained hypocrisy from the United States could foster growing frustration among EU elites over the arbitrary use of US power against key sectors of the European economy.

Since the Trump administration reactivated the US sanctions regime against Iran in 2018, forcing EU financial institutions to end transactions with the country despite their legality under European law, manufacturers across the common market have not been paid for their exports (Brüggmann, Atzler, and Wiebe 2018). Likewise, Austrian, Dutch, French, German, and Italian energy companies currently face a threat of US sanctions because of their participation in North Stream 2, a pipeline project with Russia threatening European demand for liquefied
natural gas from the United States (Bidder 2019). Along with depressing the profits of influential business groups, these cases of US coercion also interfere with the strategic interests of EU governments, which want to maintain a deal with Iran, promising investment in exchange for nuclear disarmament, and seek to ease tensions with Russia through economic cooperation. If a future data leak showed—on top of these concerns—that nonreciprocal AEI from the United States abetted tax evasion by named European individuals, demand for countermeasures may eventually be large enough across the political spectrum to overcome the uncertainty linked to a challenge of US hegemony (cf. Lew 2016a).

Instead of adding fuel to the fire, however, a future US government could also pursue the second option through an amendment of its FATCA treaties with EU countries. Currently, the United States commits to report interest and dividends from US sources received by residents of its treaty partners. The main point of criticism is, however, that US financial institutions—unlike foreign banks—are not obliged to look through legal entities when identifying account holders for FATCA purposes (US Treasury 2012a, Art. 2). Therefore, foreign residents can avoid the reporting of their US accounts by transferring formal ownership to a shell company. A future administration could respond to this concern by committing US banks to use beneficial ownership information, which they have to collect since new know-your-customer (KYC) rules entered into force in 2018, in FATCA reporting also. This commitment would send a sign of goodwill to European treaty partners at virtually no cost for the US financial industry, as these rules request the identification of the beneficiaries of a company but not of a trust (FinCEN 2016). As a result, EU governments would leave the negotiating table with a concession from the United States, whereas US wealth managers could preserve their foreign clients’ anonymity by advising them to put their financial wealth into the hands of a trustee. While this scenario would merely be an incremental step toward universal financial transparency, it could focus regulatory attention on the Anglo-Saxon trust, which—as well as abetting tax evasion\(^5\)—also perpetuates wealth inequality across generations and shields reckless investors from their creditors (Harrington 2016).

### The Prospects for Tackling Tax Avoidance by Multinationals

In the fight against tax evasion, the EU was able to overcome its internal divisions because the US government imposed the AEI on recalcitrant member states through FATCA. Still, regulatory dispersion remains in the implementation of defensive measures against noncompliant third countries, particularly the United States, as a result of a fear of retaliation among export-dependent member states
like Germany. In the fight against tax avoidance, the main challenge for the EU is not to wrestle concessions from the US administration. Instead, member states have to prevent multinationals from shifting profits out of the common market untaxed. To this end, finance ministers currently debate the introduction of a DST and have relaunched discussions on a CCCTB. At the same time, the European Commission has used its executive powers in competition policy to push corporate tax havens in the EU toward more cooperation. Still, the DST is bound to fail as Germany fears repercussions for European firms in the United States. Likewise, member states hesitate to pool administrative authority over the definition of the corporate tax base, as they face considerable uncertainty over the redistributive impact of such a decision. Ironically, the Trump administration’s tax reform of 2017, which dramatically reduces the tax burden of US multinationals, may provide arguments for adoption of the CCCTB.

As discussed in chapter 6, large EU members had hoped the OECD’s base erosion and profit shifting (BEPS) project would limit tax avoidance in the common market, in particular by US multinationals dominating the digital economy. Yet the Obama administration’s successful defense of the status quo prevented the desired outcome. Therefore, member states began to discuss two countermeasures to profit-shifting that could be adopted at the EU level without involvement of the United States. The less ambitious measure, originally proposed by France and further elaborated by the European Commission, is a DST of 3 percent on the revenues created from the sale of online services in the common market. The measure’s main objective is to make firms that provide services online taxable in all EU member states although the firms do not need a physical presence there to access customers. As such, the measure is a departure from the international tax system’s benefits principle, which links a country’s right to tax a company to the presence of a permanent establishment on its territory. From the perspective of the Commission, however, this is the only means to prevent distortion of competition between local and digital service providers as long as meaningful reforms cannot be achieved at the OECD level (European Commission 2018).

Because US tech companies dominate the provision of digital services in the common market and could claim credits on their US taxes for additional taxes paid to EU countries, the Trump administration interpreted the measure as an unfair revenue grab (Thomas 2018). Accordingly, US Treasury Secretary Steven Mnuchin (2018) announced firm opposition to “proposals by any country to single out digital companies,” insisting in OECD discussions on the matter that income, not sales, was the appropriate base for the taxation of any type of corporation (Rappeport et al. 2018). Whereas the French government was unimpressed by the US response, the scientific advisory council to the German ministry of finance soon fell into line, arguing that a DST would set a dangerous precedent
inviting the United States and China to also tax German manufacturers on their local sales. As the revenue loss precipitated by retaliatory measures would by far exceed the gains from a DST, the measure should be abandoned (Wissenschaftlicher Beirat 2018). As a result, Olaf Scholz, Germany’s social-democratic minister of finance, withdrew support from the Commission’s proposal, forcing France into a compromise on a stripped-down version of the tax that will be introduced only if the OECD does not provide a global solution to the taxation of digital services by 2020 (Mühlauer 2018). Once more, German dependence on exports prevented the EU from introducing countermeasures to tax dodging against the will of the United States.

The second, more ambitious measure, adoption of the CCCTB, is still pending and would introduce unitary taxation and formulary apportionment in the EU. In contrast to the international tax system, which is based on separate entity accounting and the arm’s-length standard, the Commission’s CCCTB proposal provides for the consolidation of the profits and losses made by the EU branches of a multinational group, a method often applied in federal state systems (European Commission 2016a, Art. 4–7). That is, no matter in which national subsidiary a multinational concentrates revenue from EU sources, it is always included in the group’s consolidated income tax statement. Accordingly, the current incentive for profit shifts between EU subsidiaries disappears. Instead, the group’s consolidated profit is divided among member states based on a formula that includes sales, workforce, payroll, and tangible assets but explicitly excludes intangible assets (European Commission 2016a, Art. 28 & 34). As a result, member states that host a multinational’s research and development and production sites, or that account for a lot of its turnover, also receive the largest share of the group’s income, which these member states can then tax at their preferred rate.

To prevent companies from moving headquarters, assets, or activities outside the scope of the CCCTB, the Commission’s proposal also includes several safeguards. A provision for exit taxation would enable member states to withhold 100 percent of the market value of any asset a multinational shifts to a subsidiary in a third country (European Commission 2016b, Art. 29). A common set of controlled foreign company (CFC) rules would, moreover, empower (or oblige) national tax authorities to include nondistributed profits of subsidiaries in corporate tax havens in the parent company’s tax base (European Commission 2016b, Art. 59). Finally, a harmonized interest barrier would prevent companies from artificially inflating the cost of foreign borrowing to minimize tax payments in the EU (European Commission 2016b, Art. 13). The consistent application of these provisions across the EU would ensure that no member state provides a tax-free channel for profit shifts to third countries, thereby preventing an erosion of
the CCCTB. Hence, its introduction would finally realize the BEPS project’s initial objective: a realignment of taxation with real economic activity.

The European Commission pitched its proposal to member states in 2016. From its perspective, the introduction of an effective countermeasure to corporate tax avoidance would demonstrate the EU’s ability to protect ordinary Europeans from the redistributive consequences of globalization. Hence, the measure could bolster the legitimacy of a union facing Brexit and other right-wing populist backlashes against European integration (Morgan 2017). Moreover, the measure would complete the common market in corporate taxation by removing the need to file income tax statements in every member state. To persuade governments in the Council, Margarete Vestager, the Danish social-liberal commissioner for competition, and Pierre Moscovici, the French socialist commissioner for taxation and customs, try to unsettle the opportunity structures of particularly tax-competitive member states and mobilize business support through targeted incentives.

For the unsettling, Vestager uses the Commission’s executive powers in competition policy against selective tax advantages member states granted to individual firms. Her directorate has to date instructed Ireland, Luxembourg, and the Netherlands to claw back a total of €13.3 billion in foregone tax payments from Amazon, Apple, Fiat, and Starbucks, with further decisions impending (European Commission 2017a). By qualifying selective tax advantages as illegal state aid, the Commission creates uncertainty over the validity of these sweetheart deals among multinationals, thereby reducing the attractiveness of corresponding offers made by member states. Accordingly, government officials from the targeted member states have repeatedly criticized the Commission’s investigations for reducing business confidence (Lamer 2017a). In contrast, Commissioner Moscovici argues that “legal certainty will come from common rules across the EU to tackle fraud” (Lamer 2017b). Therefore, member states willing to restore business confidence should support the CCCTB.

Along with swinging the stick, however, the Commission also reminds business of the carrots included in the proposal. In particular, the Commission emphasizes the administrative relief achieved through the replacement of twenty-eight income tax statements with a single statement for the entire European group and the omission of transfer pricing analyses for controlled transactions inside the EU (European Commission 2016b, 2). Moreover, the Commission highlights the incentive for innovation provided by the introduction of a super-deduction, allowing corporations to reduce their taxable revenue by 150 percent of their expenses for research and development (R&D) in member states (European Commission 2016b, Art. 9). Finally, the Commission promises to end the bias against
equity financing created by a focus on interest deductions in national tax codes. To this end, the Commission proposes the introduction of an allowance for growth and investment, enabling corporations to also deduct increases in their equity from their taxable base (European Commission 2016b, Art. 11). Together, these measures are supposed to mobilize national business associations in favor of the CCCTB proposal.

When considering responses to a public consultation on the CCCTB, this strategy seems to have had some success. The umbrella organizations of French and German business generally support the proposal because of the reduction in compliance costs and double taxation achieved through a European consolidation of the tax base. Unsurprisingly, these organizations are also in favor of a super-deduction for R&D expenses and the proposed allowance for growth and investment (BDI 2016; MEDEF 2016). Accordingly, the French and German governments also agreed to support the adoption of the CCCTB, coordinating a common position on the Commission’s proposal (Bundesministerium der Finanzen and Ministère de l’Economie et des Finances 2018). From the perspective of Emmanuel Macron (2017), the French president, “fiscal divergence feeds discord among member states, disaggregates national economic models and fragilizes all of Europe.” Therefore, member states should harmonize the corporate tax base and define a binding range for corporate tax rates. Despite general support from the EU’s pivotal member states (cf. Moravcsik 2013; Krotz and Schild 2013), however, the adoption of the CCCTB remains uncertain.

In fact, even France and Germany still hesitate to pool administrative authority over a core state power like corporate taxation at the European level. In their coordinated position on the Commission’s proposal, for instance, they argue against the harmonization of R&D incentives. Instead, member states should retain the right to reward corresponding activities through the provision of tax credits, which should fall outside the scope of the CCCTB (Bundesministerium der Finanzen und Ministère de l’Economie et des Finances 2018). Likewise, the scientific advisory council to the German ministry of finance warns that the proposed allowance for growth and investment would have important spillover effects on national income tax systems, thereby infringing upon member states’ exclusive competence in this area (Wissenschaftlicher Beirat 2017). If tax incentives were not harmonized, however, member states could still use expenditures to lure well-paid jobs in R&D away from one another. Divergence between national rules would continue, undermining the CCCTB’s original intent and perpetuating targeted tax competition among member states.

Beyond the loss of formal regulatory authority, the redistributive consequences of a switch to formulary apportionment also remain a source of concern. Avail-
able estimates vary widely, depending on the data used and the assumptions made. The most recent study, for instance, expects an increase in corporate tax revenue by 8 percent in Germany and a reduction of 86 percent in Ireland (Hentze 2019). In contrast, an earlier study, testing different apportionment factors, predicts declines of 2 to 15 percent for both countries (Devereux and Loretz 2008). Moreover, both studies assume that firms do not adjust their behavior to the CCCTB. This is a simplifying assumption that masks intense debate over the impact of a switch to formulary apportionment on the location of production. Whereas some argue that such a switch provides firms with incentives to shift jobs rather than profits to corporate tax havens (Wissenschaftlicher Beirat 2007, 2017), others maintain that the geographic distribution of facilities, production, and sales—the apportionment factors proposed by the Commission—is not primarily determined by tax concerns (Clausing 2018; Eichner and Runkel 2008). As a result, member states have to overcome fundamental uncertainty when seeking consensus on the formula underpinning the CCCTB.

Finally, US tax reform, which often affects the tax policy choices of other developed countries (Swank 2006), may also impact the likelihood of CCCTB adoption by the EU. Some argue that the reduction of the US corporate tax rate from 35 to 21 percent in 2017 increases competitive pressure on EU member states. Against this background, they should become more reluctant to cede authority over tax incentives and carve-outs to the EU, particularly since the unanimity requirement makes the decision-making process slow and uncertain (Fuest 2018). The misinterpretation of sovereignty as the right to cut, but never raise, taxes when competition commands may thus prevent member states from pursuing the CCCTB. Yet the Trump administration’s tax reform could also have an unintended effect in the opposite direction. So far, US tech companies attribute the rights to the foreign use of their intellectual property (IP) to subsidiaries in Ireland, Luxembourg, and the Netherlands. These lowly taxed branches collect license fee payments from the rest of the EU and accumulate the resulting profits. Since 2018, however, the Trump reform’s global intangible low-taxed income provision enables US firms to repatriate profits from the lease of IP at a reduced rate of 10.5 percent. Moreover, the reform’s provision on foreign-derived intangible income reduces taxes on future income from the export of IP-related services to 3 percent (Pfatteicher et al. 2018). As US tech companies no longer need to shift their IP out of the United States to benefit from tax haven conditions, tax incentives for locating R&D and financing activities in Ireland, Luxembourg, or the Netherlands disappear. By outcompeting EU corporate tax havens, the Trump administration could thus end up raising their interest in common policies that keep the taxable income of US companies in the EU.
Conclusion

US hegemony has marked the politics of international taxation over the past three decades. Whenever the US administration was in favor of change and did not face opposition from powerful domestic interest groups, the administration managed to shape international standards and the domestic tax policies of other governments accordingly, no matter how fundamental the requested changes were for foreign countries. Likewise, the US administration successfully defended the status quo whenever foreign initiatives threatened to increase the tax burden on US business or to erode the virtual tax base of the United States. The preferences and normative claims of other countries mattered only insofar as they determined the strategy used by the US government to enforce its goals or provided additional justification for an already defined policy agenda. When secrecy jurisdictions refused to lift financial secrecy, the Clinton and Obama administrations used economic coercion to break their opposition. When EU governments sought to limit tax avoidance by multinationals from the US and elsewhere, the Bush and Obama administrations withdrew from multilateral initiatives or threatened to reserve against proposals they considered harmful. As such, the politics of international taxation bear great resemblance to bargaining over global financial regulation, which usually leads to the multilateral adoption of the US regulatory model (cf. Helleiner 2014; Simmons 2001).

The source of US power over international tax politics is a unique combination of market size and regulatory capacity. The dominant share of the United States in global demand for capital, goods, and services makes foreign business more dependent on access to the US market than US business is dependent on access to any foreign market. A private bank located in a secrecy jurisdiction, for instance, could not offer its wealth management clients competitive rates of return if the bank had to divest from US assets. If there is no yield, however, the tax advantages linked to the anonymity the jurisdiction provides become pointless from the perspective of the investor. Likewise, a holding company loses its purpose if the US multinational to which it belongs can no longer shift assets and revenues between the United States and the corporate tax haven in which it is located. Therefore, continued access to the US market is a crucial precondition for the business models of both secrecy jurisdictions and corporate tax havens. The US administration can exploit their dependence because it has the regulatory capacity to dictate the terms under which foreign firms transact with US firms and consumers. Under FATCA, the US Treasury may impose a 30 percent withholding tax on payments to foreign banks refusing to report US account holders to the IRS. Even divestment from US assets does not protect a recalcitrant bank from the tax, because the bank still needs access to US dollars and the corresponding
clearing infrastructure to process international transactions. At the same time, the Treasury Department has statutory authority over CFC, transfer pricing, and thin capitalization rules, which have an important impact on the assessment of intragroup transactions for tax purposes.

In contrast, regulatory dispersion prevents the EU from harnessing the power of the common market in bargaining over global tax policy. Under the Lisbon treaty, member states have to make decisions on direct taxation and economic sanctions by unanimity. Hence, individual member states can veto additional reporting requirements for European banks as well as defensive measures against foreign banks or governments that refuse to comply with reporting standards applicable within the union. Because direct taxation is an exclusive competence of member states, individual member states can moreover grant foreign companies access to the common market while applying national tax law. This ability has prevented individual governments from credible threats of market closure, intensified tax competition within the EU, and divided small capital-importing and large capital-exporting member states in bargaining over international taxation at the OECD. In contrast to the situation in policy fields in which the EU has managed to centralize regulatory authority at the supranational level—such as data protection, trade, and product safety—the EU thus remains a taker of global tax norms essentially developed by the United States (cf. Bach and Newman 2007, 2010; Meunier and Nicolaïdis 2006).

Since the EU is unable to check US power, the Obama and Trump administrations have gotten away with a considerable degree of hypocrisy in the implementation of standards they have projected on other countries. After the Obama administration had used bilateral FATCA agreements to spread the principle of AEI across the world, the administration eventually refused to fully reciprocate the automatic reporting of accounts. Moreover, the Obama administration did not join a multilateral agreement on the implementation of the OECD’s AEI standard, which uses FATCA as a model. The unilateral opt-out provides US banks with an exclusive competitive advantage in the provision of financial secrecy to foreign investors, and led to a substantial shift of bank deposits from traditional secrecy jurisdictions into the United States (Casi, Spengel, and Stage 2018; Hakeberg and Schaub 2018). Because the associated export of financial services bolsters the US current account, the hypocritical implementation of AEI can be interpreted as an element in a hegemonic strategy that pushes the burden of deficit reduction onto foreign countries (cf. Gilpin 1981; Oatley 2015). Moreover, sustained US hypocrisy, which can also be observed in the implementation of anti-money-laundering regulation, casts doubt on the significance of international norms for state behavior (Sharman 2011). After all, if compliance is driven by a logic of appropriateness, the creator of a norm should be obligated to consistency.
Yet the powerful can apparently make the powerless follow rules that the powerful themselves do not respect, and get away with doing so over long periods of time.

The need for hypocrisy results from the interaction of party ideology and business power in US domestic politics. For Republican administrations, international tax competition is a welcome justification for regressive tax reform. Accordingly, they have no interest in initiatives that harmonize national tax rules, unless concerns over law enforcement are at stake. As Republican tax policy priorities usually match the preferences of powerful business groups seeking to minimize their tax burden, there is no need to bring about inconsistencies between domestic and international standards. In contrast, Democratic administrations are ideologically committed to a progressive tax system that puts the largest burden onto the strongest shoulders. Hence, they need to ensure that the most potent taxpayers—wealthy individuals and corporations—do not circumvent their fiscal obligations. To this end, Democrats foster international initiatives against tax evasion and avoidance. If such proposals impose costs on powerful business groups, however, the proposals do not survive the domestic policymaking process. Therefore, Democratic administrations need to forge initiatives that shift adjustment costs onto foreign business and powerless domestic actors.

When we look at US international tax policy from this perspective, we understand why FATCA creates new reporting requirements for foreign banks but none for US financial institutions. The Obama administration’s main regulatory goal was to curb tax evasion by US individuals with offshore accounts. This group wields limited structural and discursive power over the political process because of its negligible impact on job creation and the illegality of its tax minimization strategy. In contrast, raising domestic transparency standards to keep US banks from abetting tax evasion by foreign individuals would have provoked resistance from the financial sector. Because of US banks’ large contribution to job creation and international mobility, they can make credible threats of divestment. Moreover, managing the wealth of foreigners is perfectly legal under US law. The financial sector could thus have employed considerable structural and discursive power to kill the entire legislative project. Hence, the Obama administration forced all foreign banks to report data on US account holders to reach its main regulatory goal but spared domestic banks from a meaningful increase in reporting requirements. In the end, nonreciprocity guaranteed the FATCA initiative’s political survival.

Likewise, the interaction between party ideology and business power explains why the Obama administration ended up defending the international tax system’s status quo in bargaining over the BEPS project’s recommendations. Initially, President Obama and Treasury Secretary Geithner were just as committed to fight-
ing profit-shifting as they were to an increase in financial transparency. But their repeated proposals for a reform of CFC regulation failed as a result of opposition from US multinationals. These firms make credible divestment threats because of their substantial share in US employment and stress the legality of their tax avoidance schemes, thereby shifting the blame to legislators writing incoherent tax codes. Hence, these firms exert significant structural and discursive power over the political process. Without a domestic regulatory template, however, the Obama administration lacked a purpose in negotiations on BEPS. At the beginning, this lack opened agenda space for reform proposals by European governments, which hoped to attribute some of the untaxed income of US multinationals to their coffers. As a result, the Obama administration decided that minimizing the foreign tax burden of US multinationals was still better than having EU countries increase their tax take at the expense of the United States. Accordingly, the administration entered into a successful rearguard battle, paring back unorthodox proposals from European governments.

In many cases, the interaction between party ideology and business power can also explain the global tax policy preferences of other developed countries. Yet citizen support for redistribution is dramatically higher in Europe than in the United States (Koos and Sachweh 2017; Svallfors 2006). Moreover, the possibility of long-term corporatist bargains allows center-left governments in Europe to trade regressive tax reform for business support of redistributive spending (Beiramendi and Rueda 2007). Therefore, the fairness concerns of voters may provide a greater barrier to regressive tax reform in EU countries than in the United States, where party preferences over taxation are defined by the most affluent constituents only (Plümper, Troeger, and Winner 2009; Bartels 2009). For this reason, the conservative finance ministers of Germany and the United Kingdom put BEPS on the agenda of the G20 after a series of investigative reports had increased the political salience of corporate tax avoidance in the common market. Depending on the degree of public attention, initiatives for countermeasures to tax evasion and avoidance in EU countries may thus come from center-left governments or conservative governments facing a majority of voters with egalitarian convictions.

Irrespective of the origin of demand for international tax initiatives, however, European governments also adapt their positions to the preferences of powerful domestic interest groups. All governments of small capital-importing EU member states—no matter their ideological leaning—have opposed the introduction of tax standards that went beyond the regulatory status quo at the global level because of expected repercussions for these member states’ financial and legal services sectors. Likewise, Germany has repeatedly blocked EU tax initiatives mainly targeting the US government or US firms to prevent retaliation against
Germany’s export industry. Combined with the veto power conferred upon EU member states by the unanimity requirement in tax matters, narrow sectoral interests have thus prevented meaningful steps toward the European integration of international tax policy. Against this background, the adoption of a CCCTB remains highly uncertain, whereas a switch to qualified majority voting (QMV) in tax matters, which requires an amendment of the Lisbon treaty, can be excluded in the short to medium term (Wasserfallen 2014).

If member states still decided to share their competence over direct taxation, for instance within the context of a grand political bargain for political integration, the principle of “no taxation without representation” would command a thorough overhaul of the current decision-making process. The president of the Commission, which holds the right to initiative and would therefore elaborate the EU’s common tax policy, would have to be elected either directly by European voters or by the European Parliament (EP). As a result, the Commission’s tax policy agenda would be further politicized, responding to party ideology and the fairness concerns of voters. To ensure budgetary authority rests with parliament, as is usually the case in democratic systems, the EP would also have to enter the legislative process on an equal footing with the Council of the European Union. Accordingly, the Council would have to switch to QMV on tax matters to prevent individual member states, and their dominant industry sectors, from vetoing reforms supported by the Commission and an EP majority. The locus of lobbying would shift from national capitals to Brussels, where business power would be greatest for groups that can access deputies from across the EU and threaten them with divestment. Hence, influence will depend on Europeanization.

Explanations of government preferences on global tax policy other than the interaction of business power with barriers to regressive tax reform have important shortcomings. The salience of normative claims by ideological groups greatly depends on the ethical predisposition of government parties. Chapters 3 and 4 demonstrate that the arguments of libertarian lobbyists against the OECD’s harmful tax competition project had no impact on the position of the Clinton administration and resonated only partially with the Bush administration. Republican officials adopted libertarian arguments when they addressed the officials’ normative attachment to competition. Yet they ignored arguments that clashed with their law-and-order instincts. Accordingly, the Bush administration stuck to the OECD’s limited information exchange agenda despite concerns over privacy voiced by libertarian lobby groups. This effect is likely to be similar at the other end of the political spectrum. Normative claims by the Tax Justice Network, a left-leaning nongovernmental organization, for instance, should resonate more with center-left than with conservative governments. Accordingly, ideological groups would have to change voter preferences to a considerable degree to impact the
tax policy choices of governments from the opposite political camp (cf. Emmenegger and Marx 2019).

Likewise, a recent financial crisis is not a good predictor for government preferences on global tax policy, irrespective of the potential causal mechanism one considers. Chapter 3 shows that the Clinton administration adopted new reporting requirements for foreign banks at a time when the federal budget was balanced. Like FATCA a decade later, the Clinton administration’s qualified intermediary program faced little opposition from US finance not because the sector was on the defensive but because the requirements mainly affected foreign banks, thereby creating competitive advantages for US institutions. Moreover, chapter 5 makes clear that President Obama had already defined his tax policy priorities in 2007, before the failure of Bear Stearns and the adoption of the first bailout and stimulus packages. In general, budget constraints are a bad predictor of a government’s global tax policy choices because of the many ways in which these constraints can be addressed. A spending cut or a hike in indirect taxes could be just as effective as an increase in tax compliance. Hence, it is more important to know how the government party generally wants to distribute the burden of financing the state among different social groups. Finally, a recent financial crisis may increase the political salience of revelations showing that wealthy individuals and multinational corporations do not pay their fair share of tax. So far, however, popular demand for change has not enabled the implementation of reforms opposed by powerful interest groups in the United States, the international tax system’s hegemonic power. Proponents of tax justice will thus have to find ways to change the calculus of US multinationals to further advance their agenda.