GLOBAL TAX DECLUTTERING

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ABSTRACT

Major global players—most prominently the OECD and European Union—have recently begun advocating that countries "declutter" their tax systems to tidy up, repeal, or eliminate pre-existing domestic anti-abuse tax rules. The reasoning is that these country-level rules are now duplicative or burdensome in light of a new global tax agreement spearheaded by the OECD and G20 and multilaterally agreed upon in 2021 by over 140 countries. Yet, this new multilateral regime is still in the process of being rolled out and is entirely untested.

In this article, we examine this recently emergent "tax decluttering movement" and present an analytical framework for understanding it. We show how the recent push for tax decluttering belies a convergence of interests among several powerful actors (international organizations, certain countries and regional blocs, and businesses interests). We argue that tax decluttering holds important political economy implications, including implications for the allocation of tax lawmaking power between the transnational and national levels; for the allocation of power between competing international organizations in global tax policymaking; for competition among countries looking to attract business and investment by reducing tax burdens; and for geopolitical contests among competing blocs and country groups. We ultimately argue that tax decluttering should be done with great caution, in light of its significant risks, and we provide specific suggestions for how legislatures should approach decluttering.

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I. INTRODUCTION

In the years following the 2008 financial crisis, a new global tax reform project spearheaded by the Organisation for Economic Co-Operation and Development ("OECD") and G20 was negotiated and agreed upon by over 140 countries.[1] Focused on combating tax avoidance by large multinational businesses, this tax reform project represents an unprecedented act of multilateral coordination and global tax integration.[2] Yet, before this new multilateral regime has been fully rolled out and tested by participating countries, major global players in tax reform have started to advocate that states "declutter" their tax systems' pre-existing anti-abuse rules.[3] Beginning at the OECD, decluttering talk has also been occurring at increasing volume at the European Union ("EU") and in other quarters.[4]

What is this "decluttering"?[5] The general claim is that countries should

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[1] *See, e.g.*, Ruth Mason, *The Transformation of International Tax,* 114 AM. J. OF INT'L L. 352, 352 (2020) (arguing BEPS "reflected . . . and operationalized meaningful changes in the participants, agenda, institutions, norms, and legal instruments of international tax"); Tsilly Dagan, *Globe: The Potential Costs Of Cooperation,* 51 INTERTAX 638, 639 (2023) ("new tax deal is certainly an impressive accord of cooperation and a major accomplishment for the OECD"); Rebecca M. Kysar, *The Global Tax Deal and the New International Economic Governance*, TAX L. REV. (forthcoming 2025) (examining the rise of multilateralism in international tax); Stephanie Soong, *Global Tax Reform Deal a "Stunning Achievement," Clausing Says*, TAX NOTES TODAY INT'L 236-2 (2021) (U.S. Treasury deputy assistant characterizing the BEPS project as "'really a stunning achievement. . . . what many have called the most significant economic agreement of the entire century so far.'"); Lilian Faulhaber, *Taxing Tech: The Future of Digital Taxation*, 39 VA. TAX REV. 145 (2019); Itai Grinberg, *The New International Tax Diplomacy*, 104 GEORGETOWN L. J. 1137 (2016) (asking whether the BEPS project's architecture adopted from international financial law will be successful). *See also* Reuven Avi-Yonah & Young Ran (Christine) Kim, *The International Tax Revolution: Introduction*, in THE INTERNATIONAL TAX REVOLUTION (forthcoming Cambridge University Press 2024-25) (question who the new international tax deal with address inter-nation equity);

[2] *See* sources cited *supra* note 1.

[3] *See, e.g.*, Elodie Lamer, *Time to Declutter the Corporate Tax System, OECD Official Says*, 111 TAX NOTES INT'L 204 (July 10, 2023); Elodie Lamer, *EU Finance Ministers to Discuss Decluttering, Competitiveness*, 117 TAX NOTES INT'L 477 (Jan. 10, 2025); Daniel Bunn, *Weeding the Garden of International Tax*, Tax Foundation (July 19, 2023) (noting the OECD's call for decluttering and contending that "countries that have legacy provisions for taxing multinationals (like controlled foreign corporation rules), should eliminate any duplication between those rules and their new minimum tax rules.").

[4] *See, e.g.,* EC, Platform for Tax Good Governance: Agenda for Friday 13 September 2024 (items for discussion include "Decluttering the tax architecture and legislation"), https://taxation-customs.ec.europa.eu/document/download/c4c3c679-0815-4fc8-8c54-27e3d21365bc_en?filename=20240913%20Agenda%20final_3.pdf; Lamer, *Time to Declutter, supra* note 3; Lamer, *EU Finance Ministers Discuss*, *supra* note 3.

[5] *See supra* note 3.

"tidy up," repeal, or trim back obsolete, duplicative, or burdensome domestic (i.e., country-level) tax laws in light of the emergence of a newer, multilateral, tax regime that targets the same activities.[6] The domestic tax laws in question include longstanding anti-abuse rules that were designed to address cross-border tax reduction and profit shifting strategies, but also include compliance and enforcement rules such as information reporting requirements.

In this article, we examine this recently emergent "decluttering" discourse and present an analytical framework for understanding it. We argue that while the idea of simplifying or cleaning up obsolete laws is not new, there are distinctive political economy aspects to the current tax decluttering movement that result in a unique set of implications and risks. These include (1) implications for the allocation of tax lawmaking power between the transnational and national levels (because a powerful international organization—the OECD—is recommending decluttering of what are, fundamentally, domestic tax laws of nation states), (2) implications for the allocation of global tax policymaking power between competing international organizations ("IOs") (with the OECD potentially using decluttering as a way to shore up its power over the global tax agenda against growing United Nations ("UN") influence), (3) implications for competition among countries looking to attract business and investment by reducing tax burdens; and (4) implications for geopolitical contests among competing blocs and country groups.

We argue that while decluttering discourse seems to be motivated by different, though overlapping, concerns and constituencies, we are seeing elements of an "interest convergence" among various actors and groups, including IOs, nation states, regional blocs, and multinational businesses.[7] This creates the potential for a transformative moment in global and transnational tax policy, the extent and consequences of which will only become clear over the next several years.

Finally, we propose an analytical framework for evaluating calls for tax

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[6] Long before international tax decluttering was on the table, popular culture across the globe was exploring the truly domestic dimensions of tidying up and decluttering. Marie Kondo, THE LIFE-CHANGING MAGIC OF TIDYING UP: THE JAPANESE ART OF DECLUTTERING AND ORGANIZING (2014).

[7] For the landmark use of the term "interest convergence", see Derek A. Bell, Jr. *Brown v. Board of education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980) (framing the school desegregation case as the product of "interest convergence."). In this tax context, various alignments and purported alignments favoring "decluttering" may emerge. *See*, *e.g.*, Bunn, *supra* note 3 (urging decluttering while citing a 2023 UNCTAD report for the proposition that "countries in Africa and developing countries in Asia," suffer weaknesses in cross-border investment and that the new cross border tax rules will increase the cost of direct investment and reduce the amount of foreign direct investment).

decluttering, arguing that decluttering carries significant political economy risks and has important structural implications for relationships between and among international organizations, nation states, and geopolitical blocs. We ultimately suggest that tax decluttering should be done with great caution, given its risks, and we provide specific suggestions for how legislatures should approach decluttering.

To be sure, states and taxpayers regularly engage in discussions over tax reform, and those discussions inevitably include demands for simplification. This article does not claim that the move to clean up old laws is an entirely novel phenomenon. However, what does makes the current calls for tax law decluttering worthy of particular attention is the global dimension of the conversation, the effort to link domestic reforms to global commitments, the underlying tussle between competing IOs, and the ways in which many of the political economy strands that have dominated contemporary global tax policy debates have now re-emerged in a regional and national decluttering guise and are shaping domestic, regional, and transnational agendas in that guise.[8] Moreover, the momentum for global tax policymaking remains strong at both the OECD and now the UN, so the normative and practical challenges faced by domestic tax systems in light of increasingly transnational tax rulemaking will not end with decluttering but will likely be ongoing. Thus, the political economy dynamics we have identified will likely extend beyond the current decluttering context and should be carefully scrutinized.

In Part II, we describe the global tax order that has emerged in the wake of the 2008 financial crisis, which is the prelude to decluttering, and then describe the rise of decluttering discourse at the OECD and EU.[9] This post-2008 global multilateral tax reform project was crafted under the auspices of the OECD with the support of the G20; but recently, competing visions and initiatives have emerged at the UN, setting the stage for potentially conflicting centers of global tax power.[10] In Part III, we describe the political economy underlying this sudden interest in tidying up.[11] We discuss the key stakeholders supporting decluttering and outline the various motivations underlying such support.[12] We also describe sources of resistance to decluttering.[13] In Part IV, we show that the recent tax decluttering discourse

[8] For exploration of another national-level issue arising from globalized tax policy, see Tsilly Dagan, *Substantive Tax Sovereignty Under Globalization*, 29 TILBURG L. REV. 1 (2024) (articulating a vision of "substantive tax sovereignty" that may be imperiled by globalization of tax regimes).

[9] *See* i*nfra* Part II.A and II.B.

[10] *See* Shu-Yi Oei & Diane Ring, *The Conflictual Core of Global Tax Cooperation*, 16 WORLD TAX J. 4 (2024).

[11] *See* i*nfra* Part III.A and III.B.

[12] *Id*.

[13] *See infra* text accompanying notes 115-117.

does not fit well into existing theoretical frameworks for understanding statutory obsolescence and legislative cleanup and also does not fit neatly into existing categories of statutes that could be regarded as truly obsolete or duplicative.[14] In fact, careful analysis of the types of tax laws being considered for decluttering shows that it is the specific tax rule's perceived burdensomeness and duplication of the new and untested regime, rather than actual obsolescence, that is at the heart of contemporary tax decluttering discourse.[15]

In Part V, we propose a framework for analyzing and evaluating the risks and benefits of decluttering and its wide-ranging structural implications.[16] In brief, we show that dismantling existing domestic tax laws of nation states based on burdensomeness carries significant consequences for the allocation of taxing authority between the national and transnational levels, for the allocation of power between competing IOs, and for geopolitical competition among nation states and blocs.[17] In Part VI, we provide some normative prescriptions regarding how national legislatures should approach decluttering to mitigate its risks.[18]

II. Background: The Emerging Decluttering Movement

It is well known that in the wake of the 2008 economic and financial crisis, the world saw the emergence of increased multilateral coordination among nation states in international taxation—what many view as a new global tax order.[19] It is also well known that in recent years, competing global tax reform initiatives are being developed under United Nations auspices, in no small part due to dissatisfaction with the OECD-based tax reforms. Yet, even before the OECD's transformational new global tax reforms have been fully rolled out—and just as global tax negotiations at the UN are heating up—major players have begun to call for "decluttering" of existing tax regimes. This Part describes those post-2008 developments in international tax reform and global tax coordination, which preceded and led up to the current interest in decluttering. It then traces and describes the rise of decluttering discourse at the OECD, EU, and elsewhere.

A. Global Tax Reform: The Prelude to Decluttering

[14] *See infra* Part IV.A and IV.B.
[15] *See infra* Part IV.C.
[16] *See infra* Part V.
[17] *See infra* Part V.C.
[18] *See infra* Part VI.
[19] *See* sources cited *supra* note 1.

During the 2008 crisis and its aftermath, revelations regarding cross-border tax avoidance by multinational enterprises ("MNEs") became increasingly visible to the public, leading to widespread outcry. Nation states perceived an increasing need for coordinated action to combat these tax base erosion and profit shifting ("BEPS") behaviors and strategies employed by MNEs to minimize or eliminate their tax liabilities. As a result, the post-2008 period saw the creation of a multilateral tax reform project spearheaded by the OECD at the behest of the G20, the "OECD/G20 BEPS Project" or "BEPS Project."[20]

Specifically, in 2012, G20 leaders charged the OECD with advancing a solution to ensure that multinationals pay their fair share of taxes.[21] In response, the OECD created a proposed BEPS Action Plan in 2013, and delivered final recommendations in 2015.[22] In 2016, recognizing the need (and demand) for greater involvement of developing countries,[23] the OECD established the "BEPS Inclusive Framework," to allow developing countries to participate on an "equal footing" with OECD and G20 countries in the development and implementation of standards to combat BEPS.[24] As of May 2024, the Inclusive Framework had 143 members.[25] Countries joining the Inclusive Framework were required to commit to work together to tackle BEPS, to implement fifteen anti-BEPs Actions laid out by the OECD, and to

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[20] For discussion of the OECD and G20's role, see Allison Christians, *Taxation in a Time of Crisis: Policy Leadership from the OECD to the G20*, 5 NW. J. L. & SOC. POL'Y 19 (2010). *See also* OECD, Base erosion and profit shifting (BEPS), https://www.oecd.org/en/topics/policy-issues/base-erosion-and-profit-shifting-beps.html (last visited Jan. 29, 2025).

[21] G20, G20 Leaders Declaration, ¶ 48 (June 2012); G20 Final Communiqué, Meeting of Finance Ministers and Central Bank Governors, ¶ 21 (Nov. 2012).

[22] OECD, ACTION PLAN ON BASE EROSION AND PROFIT SHIFTING (2013), 11, https://www.oecd.org/ctp/BEPSActionPlan.pdf; OECD, BEPS FINAL REPORTS: EXPLANATORY STATEMENT 2015 at 4 (2015), https://www.oecd.org/ctp/beps-2015-final-reports.htm.

[23] OECD, SECRETARY GENERAL TAX REPORT TO G20 FINANCE MINISTERS AND CENTRAL BANK GOVERNORS (Feb. 2016) at 8-9 (discussing creation of the IF to implement BEPS measures after they were already developed and endorsed by the G20 in November 2015), https://www.oecd.org/en/publications/oecd-secretary-general-tax-report-to-g20-finance-ministers-and-central-bank-governors-shanghai-china-february-2016_f21de125-en.html; OECD, INCLUSIVE FRAMEWORK IN BEPS: PROGRESS REPORT JULY 2016-JUNE 2017 (June 2017) at 1-7, (discussing IF's creation), https://www.oecd.org/content/dam/oecd/en/publications/reports/2017/07/inclusive-framework-on-beps-progress-report-july-2016-june-2017_438b6d9f/60eb0b86-en.pdf.

[24] OECD, INCLUSIVE FRAMEWORK PROGRESS REPORT, *supra* note 23 at 1, 3-4.

[25] OECD, Inclusive Framework on Base Erosion and Profit Shifting, https://www.oecd.org/tax/beps/ (describing the BEPS project) (last visited Jan. 29, 2025); OECD, Members of the OECD/G20 Inclusive Framework on BEPS (updated 28 May 2024), https://www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf.

pursue "rapid" implementation of the "four minimum standards" out of the fifteen Actions.[26] Thus, what was initially an OECD/G20 initiated project has expanded to involve many more countries.

The BEPS project can be described as proceeding in two broad phases: In its first phase (roughly 2012-2019), the project delineated the above-mentioned 15 Actions to be undertaken to counteract tax base erosion and profit shifting behaviors, and shortly thereafter created the "Inclusive Framework."[27] Importantly, the very first Action, BEPS Action 1, was to address the challenges to taxation presented by the difficult-to-tax digital economy.[28] However, as a result of commentator input regarding the impossibility of "ring fenc[ing]" the digital economy and treating it separately, that BEPS work was ultimately carried over to the project's second phase, a decision with lasting impacts.[29]

The second and ongoing phase of the OECD/G20 BEPS Project (roughly 2019-present) involves more substantively transformational work on a "two pillar" solution to address challenges posed by the digital economy and to impose a global minimum tax.[30] All but a small handful of the original BEPS Inclusive Framework member countries have joined the OECD's Two Pillar Solution to Address the Tax Challenges Arising from Digitalisation of the

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[26] OECD, INCLUSIVE FRAMEWORK PROGRESS REPORT, *supra* note 23 at 7. These minimum standards are (1) the assessment of harmful tax practices and engagement in mandatory exchange of tax rulings and practices; (2) the adoption of minimum standards to combat treaty shopping; (3) the adoption of transfer pricing documentation, including a country-by-country (CbC) reporting package to facilitate information reporting by MNEs headquartered in that country; and (4) the adoption of minimum standards for treaty disputes and arbitration. *See* OECD, Base erosion and profit shifting (BEPS), Key messages: Monitoring and supporting implementation of the BEPS measures, https://www.oecd.org/en/topics/policy-issues/base-erosion-and-profit-shifting-beps.html (last visited Jan. 29, 2025).

[27] OECD, Inclusive Framework on Base Erosion and Profit Shifting, https://www.oecd.org/tax/beps/ (describing the BEPS project) (last visited Jan. 29, 2025).

[28] OECD, ADDRESSING THE CHALLENGES OF THE DIGITAL ECONOMY, ACTION 1- 2015 REPORT (2015), https://www.oecd.org/en/publications/2015/10/addressing-the-tax-challenges-of-the-digital-economy-action-1-2015-final-report_g1g58cdd.html.

[29] *Id.* at 11.

[30] OECD/G20 Base Erosion and Profit Shifting Project, *Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy* (Oct. 8, 2021) [hereinafter "Statement on a Two-Pillar Solution"], https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf; OECD/G20 Base Erosion and Profit Shifting Project, *Tax Challenges Arising from Digitalisation of the Economy—Global Anti-Base Erosion Model Rules (Pillar Two)* (Dec. 20, 2021) [hereinafter "Pillar 2 Model Rules"], https://www.oecd-ilibrary.org/taxation/tax-challenges-arising-from-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two_782bac33-en.

Economy that was agreed to in October 2021.[31] The pillars are generally referred to as "Pillar One" and "Pillar Two."

Pillar One will reallocate certain amounts of MNE taxable income to so-called "market jurisdictions" (i.e., jurisdictions in which consumers or end-users of digital services or products are located). This move (if adopted) will effectively expand certain countries' jurisdiction to tax the profits from MNEs that make sales into that country but do not have a permanent physical presence there, thus fundamentally changing where MNEs pay tax. Pillar One will only apply to MNEs with global revenues of more than €20 billion and profitability above 10 percent, which is around the 100 "biggest" MNE groups. It is well understood that the impact will largely be on US MNEs.[32] The new taxing right is envisioned to apply to 25 percent of the in-scope MNE's residual profits (i.e., profits above 10 percent), which will be taxed according to a new formula based on where a company's customers are located. Pillar One is comprised of two parts, "Amount A" and "Amount B."[33] Amount A creates and coordinates a new reallocation of taxing rights over MNE profits to jurisdictions where consumers of digital services are located.[34] In the absence of meaningful measures to address the digital economy in the first round of the BEPS reforms (through Action 1),[35] various countries had unilaterally enacted or planned to enact digital services taxes ("DSTs") to more effectively tax the digital economy. These countries agreed to put their DSTs on hold while the Pillar One Amount A solution is pursued.[36] Amount B is intended to be a rule that simplifies transfer pricing rules and reduces compliance costs, which is envisioned to benefit developing countries.[37]

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[31] OECD/G20 Base Erosion and Profit Shifting Project, *Statement on a Two-Pillar Solution*, *supra* note 30 (noting 139 members had agreed as of 9 June 2023).

[32] *See, e.g.,* Congressional Research Service, *The OECD/G20 Pillar 1 and Digital Services Taxes: A Comparison,* R47988 at Summary (April 1, 2024) R47988 (observing that "[e]vidence suggests that both Pillar 1 and DSTs fall disproportionately on U.S. firms"), https://crsreports.congress.gov/product/pdf/R/R47988.

[33] *See* OECD, Fact Sheet Amount A: Progress Report on Amount A of Pillar One, https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/cross-border-and-international-tax/pillar-one-amount-a-fact-sheet.pdf (last visited Jan. 29, 2025).

[34] I*d*.

[35] *See supra* notes 28 and 29 and accompanying text.

[36] *See, e.g.*, Tim Shaw, *OECD Reports 'Significant Progress' on Pillar One as Members Extend Digital Services Tax Delay,* FEDERAL TAX THOMSON REUTERS (April 18, 2023), https://tax.thomsonreuters.com/news/oecd-reports-significant-progress-on-pillar-one-as-members-extend-digital-services-tax-delay/.

[37] *See, e.g.,* OECD, OECD/G20 BASE EROSION AND PROFIT SHIFTING PROJECT, PILLAR ONE – AMOUNT B, INCLUSIVE FRAMEWORK ON BEPS (2024), at 3, https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/02/pillar-one-amount-b_41a41e1e/21ea168b-en.pdf.

Pillar Two, by contrast, is a global minimum tax, with the goal of ensuring that large MNE groups with operations or subsidiaries in multiple countries pay a total effective minimum tax rate of 15% somewhere in the world.[38] Importantly, Pillar Two only covers large MNEs with consolidated annual revenues of €750 million.[39] At their core, the Pillar Two Global Anti-Base Erosion ("GloBE") rules allocate revenue of in-scope MNE groups across those countries in which they operate. The GloBE accomplishes the allocation of their revenue through three main ordering rules that establish a priority of taxing rights to collect the agreed-upon 15% minimum tax.[40] Very generally, the "machinery" of Pillar Two is designed to ensure that some jurisdiction will impose a 15% minimum tax (or enough additional tax to bring the total effective tax rate up to 15%), even if both the "source" jurisdiction and the ultimate parent jurisdiction decline to tax. Introduction of this backstop level of taxation in the GloBE regime eliminates the incentive for countries to under-tax MNE income at source (or as the parent jurisdiction).[41] An important feature of the Pillar Two GloBE rules is that they will render effectively irrelevant certain existing domestic tax rules of various countries (including low corporate tax rates), regardless of whether those countries themselves adopt the GloBE rules. In short, the new rules enable countries, through their own domestic implementation of a global tax plan, to create effects on the tax systems and policies of other countries in an unprecedented way.[42]

Certain distinctive political economy features—bearing on which countries will likely benefit from the two-pillar reform work—have become apparent as the two-pillar project has unfolded. These features have served as catalysts in the rise of another international body in global tax policymaking, the UN. Understanding the factors contributing to the UN's growing involvement is crucial for contextualizing and understanding the

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[38] OECD, OECD/G20 BASE EROSION AND PROFIT SHIFTING PROJECT, TAX CHALLENGES ARISING FROM DIGITALISATION OF THE ECONOMY – GLOBAL ANTI-BASE EROSION MODEL RULES (PILLAR TWO), INCLUSIVE FRAMEWORK ON BEPS (2021) at 7, 60, 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.

[39] *Id.*

[40] *See* OECD, *Pillar Two Model Rules*, *supr*a note 30.

[41] *See* Ruth Mason, *A Wrench in GLOBE's Diabolical Machinery*, 107 TAX NOTES INT'L 1391 (Sept. 19, 2022). Pillar Two's mechanics have raised various legal questions. *See, e.g.,* Fadi Shaheen, *Is the UTPR a 100 % Tax on a Deemed Distribution?*, 112 TAX NOTES INT'L 313 (2023).

[42] *Id.* Without doubt, countries have been influencing the tax systems of other countries for decades. For example, the debate over tax competition reflects the reality that the choice of tax rates (and other tax system features) in one country can have a powerful effect on the ability of another country to fully exercise its "sovereignty" in designing its own tax system.

OECD- and EU-based decluttering movement: First, estimates suggest that the bulk of the revenue gains from the two pillars are expected to come from Pillar Two.[43] Second, developed countries are expected to be the primary beneficiaries of Pillar Two's revenue gains.[44] Third, the work on Pillar Two is much further along than that of Pillar One, with multiple countries having adopted Pillar Two, and beginning the process of changing their domestic laws to comply with its terms.[45] An important corollary of the foregoing points is that developing countries were expected to see more benefits from Pillar One, but Pillar One (which was expected to generate less revenues than Pillar Two to begin with) needs to be implemented by multilateral treaty, which the US has been disinclined to sign, so work on it seems to have stalled.[46] Thus, not surprisingly, the design of the Pillars in terms of expected revenue benefits, as well as how the trajectory of the reform has unfolded, have given rise to significant criticism and dissatisfaction from developing country voices (countries themselves, NGOs, and country groupings). Collectively, they contend that developing country concerns and priorities

[43] The January 2024 Pillar Two revenue estimate stands at USD155-192 billion per year; in contrast the Pillar One Amount A estimate (October 2023) stands at USD 9.8-22.6 billion per year (2017-2021)_or USD17.4-31.7 billion 2021). *See, e.g.,* Felix Hugger et al, The Global Minimum Tax and the Taxation of MNE Profit," OECD Working Papers No. 68, January 2024, at 12, 52, https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/01/the-global-minimum-tax-and-the-taxation-of-mne-profit_2c3d9f9d/9a815d6b-en.pdf; Pierce O'Reilly et al., Update to the Economic Impact Assessment of Pillar One: OECD/G20 Base Erosion and Profit Shifting Project," OECD Working Papers No. 66, (2023) at 8 (¶6), https://www.oecd-ilibrary.org/taxation/tax-challenges-arising-from-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two_782bac33-en.

[44] *See, e.g.,* Hugger et al, *supra* note 43 at 49, ¶105 and Fig. 15 ("Results show broad gains across all jurisdictional groups, with higher gains for high income jurisdictions relative to lower and upper middle income…. Low income jurisdictions also gain from GMT but given that they account for small share of global GDP and have a relatively small tax base, revenue gains are more volatile and more strongly affected by profit shifting assumptions compared to other jurisdictions groups.").

[45] *See, e.g.,* BDO Global, Pillar Two- Status of Implementation Around the World, (tracking countries' implementation of Pillar Two), https://www.bdo.global/en-gb/insights/tax/international-tax/pillar-two-updates-status-of-implementation-around-the-world (last visited Jan. 29, 2025); OECD, Pillar One Update from the Co-Chairs of the Inclusive Framework on BEPS, (Jan. 13, 2025), Tax Notes Doc. 2025-1223, https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/beps/pillar-one-update-co-chair-statement-inclusive-framework-on-beps-january-2025.pdf.

[46] *See* White House, Memorandum for the Secretary of the Treasury, The United States Trade Representative, The Permanent Representative of the United States to the Organization for Economic Co-operation and Development, "The Organization for Economic Co-operation and Development (OECD) Global Tax Deal (Global Tax Deal), Jan, 20, 2025, https://www.whitehouse.gov/presidential-actions/2025/01/the-organization-for-economic-co-operation-and-development-oecd-global-tax-deal-global-tax-deal/.

have not been accorded sufficient weight in the design of the BEPS reforms.[47]

These developing country-centered complaints about substance, outcomes, and process have prompted calls for a change in the location of global tax reform work, with many developing country voices (led by the UN Africa group) calling for a shift in venue of global tax policymaking power from the OECD to the UN, the latter being perceived as more friendly to developing country concerns than the OECD. The move to the UN has been in the works for a few years now, but significant steps forward have taken place since late 2022. In November 2022,[48] the Second Committee of the UN

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[47] *See, e.g.,* Suranjali Tandon, *Policy Note: Assessing the Impact of Pillar Two on Developing Countries*, 50 INTERTAX 923 (2022) (arguing Pillar Two will generate limited revenue gains for developing countries, while restricting their ability to offer tax incentives), http://doi.org/10.54648/TAXI2022094; Oluwakemi Gbadebo & Omojo Adefila, *The Global Two-Pillar Solution: Why Nigeria Said No*, 109 TAX NOTES INT'L 1825,1825-27 (2023) (noting "potential negative effects on revenue generation"); Seydou Coulibaly, "Revenue Effects of the Global Minimum Corporate Tax Rate for African Economies," South Centre Tax Cooperation Policy Brief (2022), ("the global minimum tax deal is unlikely to increase tax revenue for African economies"), https://www.southcentre.int/wp-content/uploads/2022/11/TCPB26_Revenue-Effects-of-the-Global-Minimum-Corporate-Tax-Rate-for-African-Economies_EN.pdf; Stephanie Soong, *Multilateralism Crisis Mustn't Spread to Tax, Colombian Adviser Says*, 112 TAX NOTES INT'L 720 (2023) (tax experts noting complexity of the two-pillar solution); African Tax Administration Forum, "A New Era of International Tax Rules — What Does this Mean for Africa?," (Oct 2021), ("[I]n ATAF's view, for [a global minimum tax] to be effective, the minimum effective rate needed to be at least 20% rather than 15% if it is to stem artificial profit shifting out of Africa as most African countries have a statutory corporate income tax rate of between 25% and 35%. Multinationals will only be disincentivized from such profit shifting in Africa if all its profits are taxed at least at 20% no matter in which jurisdiction the profits are reported."), https://www.ataftax.org/a-new-era-of-international-taxation-rules-what-does-this-mean-for-africa; Afton Titus, *Pillar two and African Countries: what should their response be? The case for a regional one*, 50(10) INTERTAX 2022) (urging African countries to consider regional responses in the face of Pillar Two).Even preceding the OECD's Two Pillar Project, and the subsequent UN Framework, scholars and policy makers urged the Global South to remake the global tax framework. *See, e.g.,* Steven A. Dean, *A Constitutional Moment in Cross-Border Taxation,* 1 J. ON FINANCING FOR DEVELOPMENT 1 (2021) (arguing that this is a prime moment to revamp the underlying structure of international tax established 100 years ago); Yariv Brauner, *Serenity Now! The (Not So) Inclusive Framework and the Multilateral Instrument*, 26 FLA. TAX. REV. 489 (2022) (critiquing the ability of the Inclusive Framework structure to provide meaningful engagement for non-OECD countries even before the Two Pillar project). For a data drive examination of the framework of international tax, see Elliot Ash & Omri Y. Marion, *The Making of International Tax Law: Empirical Evidence from Tax Treaties*, 24 FLA. TAX REV. 151 (2020) (using natural language processing to compare tax treaties, and concluding in part that UN Model presently is having little observable effect).

[48] UN Meetings Coverage, Generally Assembly/Second Committee, "Concluding Its Session, Second Committee Approves 11 Draft Resolutions, Including Texts on Women's Development, Global Tax Cooperation, Entrepreneurship," GA/EF/3579 (Nov. 23, 2022), https://press.un.org/en/2022/gaef3579.doc.htm.

General Assembly adopted a resolution introduced by a group of African countries regarding the need for a truly inclusive international tax framework, and this resolution was adopted by the UN General Assembly in December 2022.[49] In December 2023, there was a vote at the UN adopting a resolution[50] to establish an ad hoc committee to create a Framework Convention. And in December 2024, the UN General Assembly adopted Terms of Reference for a UN Framework Convention on International Tax Cooperation.[51] Negotiations on the framework convention and other decisions about draft early protocols began in February 2025.[52]

The emergence of decluttering discourse has occurred with the foregoing events and reforms as its immediate backdrop. Three important points emerge from the above discussion: First, the post-2008 global tax order has been characterized as a significant move in the direction of multilateral cooperation among countries, many of which have at this point agreed to amend their domestic tax laws to comply with the new global minimum tax framework. Second, not all countries have been entirely happy with the new framework's design and negotiated terms, and even countries (including developing countries) that have formally signed on to the framework have expressed dissatisfaction. Third, there has been a move—led by some key developing countries— to shift the locus of global tax reform work from the OECD to the UN, the latter being regarded by some countries as a forum more likely to prioritize developing country concerns. In summary, decluttering discourse is heating up just as Pillar Two implementation is afoot *and* as the new UN engagement with global tax policymaking is underway.

B. The Rise of Decluttering at the OECD and EU

1. Decluttering Talk at the OECD

Evidence of an OECD interest in "tidying up" existing corporate tax rules

[49] UN General Assembly, Resolution adopted by the General Assembly on 30 December, 2022, "Promotion of inclusive and effective international tax cooperation at the United Nations," A/RES/77/244, https://documents.un.org/doc/undoc/gen/n23/004/48/pdf/n2300448.pdf.

[50] UN General Assembly, Resolution adopted by the General Assembly on 22 December 2023, "Promotion of inclusive and effective international tax cooperation at the United Nations, A/RES/78/230, https://docs.un.org/en/A/C.2/78/L.18/Rev.1

[51] UN General Assembly, Resolution adopted by the General Assembly on 24 December 2024, "Promotion of inclusive and effective international tax cooperation at the United Nations," A/RES/79/235 (Dec. 31, 2024), https://docs.un.org/en/A/RES/79/235.

[52] UN Department of Economic and Social Affairs, Financing for Sustainable Development, "Intergovernmental Negotiations for UN Framework Convention on International Tax Cooperation – Key Upcoming Events, (noting Organizational Session being held in February 2025), https://financing.desa.un.org/inc (last visited Jan. 30, 2025).

in light of Pillar Two can be traced to at least May 2022. In a May 20, 2022 report to the G-7 Finance Ministers and Central Bank Governors, the OECD recommended that "[a]gainst the backdrop of the Two-Pillar Solution and other changes to the international tax landscape, countries should eliminate or modify existing rules and measures addressing essentially similar risks which have become duplicative."[53] The report noted that:

> "Duplicative rules and measures complicate the international tax architecture and increase the compliance burden for taxpayers, without any commensurate benefits for the corporate income tax system or for tax administrations. Tax administrations that need to use limited resources to review redundant filings or compliance with redundant rules are less likely to work efficiently. In addition, duplicative rules and measures may adversely affect growth and investment and put jurisdictions at a competitive disadvantage"

and that

> "Given the addition of several new rules and standards in recent years at international, regional and domestic level, there may now be overlapping rules and obligations that largely address the same or similar risks. Often no comprehensive analysis is undertaken on which existing rules or obligations could be standardised, simplified or removed with the introduction of a new standard or regime."[54]

The report recommended that

> "[w]hen countries introduce or adopt new rules or filing requirements, an impact assessment should be performed to determine which existing rules and obligations would no longer seem needed, could be refocused, revised, simplified or standardised."[55]

The report's language suggests a focus on the problem of redundancy in light

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[53] OECD, Tax Co-operation for the 21st Century*: OECD, Report for the G7 Finance Ministers and Central Bank Governors* (May 2022), at 6, https://web-archive.oecd.org/temp/2024-05-24/630799-tax-co-operation-for-the-21st-century-oecd-report-g7-may-2022-germany.htm.

[54] *Id.* at 17.

[55] *Id.* at 17.

of newly emerging rules and standards, the burdens it creates for tax administrations, and its negative effects on economic growth and investment. Notably, this report comes not even one year after the October 2021 agreement on the two-pillar solution. Thus, just a few months after the October 2021 agreement, the OECD was already talking about cleaning up and removing potentially redundant existing tax rules.[56] Interestingly, the proposed solution appears to ask that countries perform impact assessments *at the time the new rule is introduced or adopted* to determine what existing rules are no longer needed. At a minimum, the recommendation does not explicitly contemplate that it might be valuable to wait and see how the new, complex global rules actually function in practice before doing the decluttering. But of course is not clear that is feasible for countries to assess redundancy at the time of the new rule's enactment, when much may be unknown about how the rule will operate in reality.

Notably, in offering its recommendation for review and decluttering of existing rules, the OECD is explicitly targeting not only substantive tax and anti-abuse rules but also "filing requirements."[57] Although there is a strong and intuitive appeal to calls for a reduction in unnecessary "paperwork", it is well known that reporting requirements can be an important backstop in income tax enforcement, particularly in a cross-border context.[58] For example, rules that require taxpayers to report foreign financial assets or accounts (e.g., the Foreign Account Tax Compliance Act ("FATCA") in the US and the Common Reporting Standard developed by the OECD), report information on income, assets, expenses on a country-by-country basis (e.g., BEPS Action 13), or report ownership of a controlled foreign corporation (e.g., Form 5471 for US persons), all provide tax administrations with important information for tax compliance and enforcement purposes. Therefore, suggestions that some such reporting is redundant and can be eliminated deserve as much attention as parallel claims regarding substantive tax provisions.

Following the May 2022 report, the OECD's international tax decluttering message gradually made its way into tax news. The first reference in the widely read Tax Notes periodical appeared in a September

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[56] OECD, "Statement on a Two Pillar Solution," *supra* note 30.

[57] *See*, *e.g.*, Lamer, *Time to Declutter*, *supra* note 3 (reporting that OECD representative John Peterson identified mandatory disclosure rules as an example of the kinds of disclosures that should now be re-evaluated in light of Pillar Two).

[58] *See, e.g*., Leandra Lederman, *Statutory Speed Bumps: The Roles Third Parties Play in Tax Compliance*, 60 STAN. L. REV. 695 (2007) (exploring the impact of information reporting and related features in the context of the US tax system); Susan C. Morse, *Ask for Help, Uncle Sam: The Future of Global Tax Reporting*, 57 VILL. L. REV. 529 (2012) (exploring the implications of the then-emerging FATCA system for the future of global information reporting).

2022 article on Achim Pross, deputy director of the OECD Centre for Tax Policy and Administration's international cooperation and tax administration division. Pross, speaking at the IFA Congress on Sept 7, 2022, was quoted as suggesting that countries implementing Pillar Two might want to clean up their tax rules in light of the impending global minimum tax framework.[59] Pross was quoted as saying "What are the sorts of rules you no longer need? Can you go into the attic? Can you declutter some of these rules that target low-tax outcomes that pillar 2 is addressing so you avoid duplicate rules?"[60] Maintaining this theme the following year, Pross reiterated on June 9, 2023, while speaking at a Swedish Ministry of Finance Conference, that Pillar Two presented an opportunity to "declutter" existing country anti-avoidance rules that might be duplicative.[61]

That same month, another OECD official, John Peterson (also of the OECD's Centre for Tax Policy and Administration), was quoted as offering similar advice. Speaking at a conference organized by Business at OECD, ICC, and BusinessEurope, Peterson suggested that countries take a look at existing rules on BEPS issues—including controlled-foreign corporation ("CFC") rules, hybrid mismatch rules, and the interest deduction limitation rule—that have accumulated over time and examine whether they are still needed after Pillar Two.[62] Peterson stated that "There's a tremendous scope here for us to engage in some innovative, useful thinking about decluttering the corporate tax system once we have implemented these [Pillar Two] rules."

Additional detail about the specific tax rules OECD officials promote decluttering is helpful at this juncture, to illuminate decluttering's underlying priorities and assumptions:

The three major types of provisions identified by Peterson—CFC rules, hybrid mismatch rules, and interest deduction limitation rules) all target tax base erosion strategies that corporate taxpayers have traditionally deployed to shift income to low tax jurisdictions and report income there, often on a deferred timetable (or never). Countries across the globe have long included versions of these rules in their domestic law. CFC rules, for example, target circumstances in which a parent corporation establishes a wholly (or majority) owned subsidiary (the controlled foreign corporation or "CFC") in

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[59] Stephanie Soong, *OECD Mulling Permanent GLOBE Safe Harbors*, 107 TAX NOTES INT'L 1280 (2022).

[60] *Id*. (emphasis added).

[61] Stephanie Soong, *Time to Declutter Tax Systems Amid Pillar 2 Adoption, Pross Says*, 110 TAX NOTES INT'L 1660 (2023) ("One of the benefits of having a common set of rules under pillar 2 is that countries avoid many different sets of rules, Pross added. 'There is a question whether you could have a spring [cleaning] of antiavoidance rules . . . and declutter a bit,' he said.").

[62] Lamer, *Time to Declutter*, *supra* note 3.

a low-taxed foreign jurisdiction and seeks to earn passive, mobile, or related party income in that subsidiary.[63] Absent any CFC rules, the low-or-no tax subsidiary's income would be taxed only in that low-or-no-tax jurisdiction and would typically not be distributed to the parent (thus forestalling parent country taxation). But when in place, CFC rules in the parent jurisdiction require much of the income generated by the CFC to be reported immediately by the parent on its home country return, regardless of whether actually distributed from the CFC to the parent corporation. Thus, CFC rules render efforts to shift income to low-tax jurisdictions through foreign subsidiaries unsuccessful in covered scenarios.

Hybrid mismatch and interest deduction limit rules have traditionally served a similar function as CFC rules. Hybrid structures and transactions (e.g. a financial instrument treated as debt in country X and equity in country Y) enable taxpayers to reduce their effective tax rate by strategically deploying the mismatch in jurisdictional treatment. Thus, deductions could be secured in country X (which treats the instrument as debt), without corresponding taxation incurred on the receipt of payment in country Y (which treats the instrument as stock, giving rise to potentially reduced- or non-taxation). Likewise, interest limitation provisions aim to curb tax deductions for cross-border interest payments that could inappropriately or artificially reduce taxable income in the payor's jurisdiction where the (perhaps related) recipient bears little or no tax in the payee's jurisdiction.

In summary, at their core, these three anti-tax base erosion rules are tools that help enforce the statutory corporate rate in the enacting jurisdiction. The OECD pitch to countries that they should consider "decluttering" these regimes is premised on the assumption that the newly embraced, but not yet in-force, Pillar Two rules would render redundant such existing domestic measures. This pitch has been broadly delivered. The fact that these ongoing OECD references to both the value and the timeliness of decluttering were being reported in the tax press ensured that both the language and the idea were not simply OECD position statements available to those attending events or reading reports. Rather, the idea was widely shared with the broader international tax community. This messaging continued as the 2024 effective start date for Pillar Two in many jurisdictions was on the horizon. At a July 2023 meeting of the OECD/G20 BEPS Inclusive Framework, a "stakeholder" session featured discussion of decluttering the tax system.[64]

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[63] *See*, *e.g*., I.R.C. §§ 951-962 (US CFC rules).

[64] Stephanie Soong, *Autonomous Business Activities Exempt From OECD Amount A Tax Rules*, 111 TAX NOTES INT'L 445 (2023); *see also* OECD/G20 BEPS Project, Outcome Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (July 11, 2023) (outcome statement issued at conclusion of BEPS Inclusive Framework meeting and inviting stakeholder comments),

The idea that introduction of a minimum tax on multinationals' global income could obviate the need for other anti-deferral or base erosion regimes is perhaps not altogether surprising. In the wake of the enactment of the US Global Intangible Low-Taxed Income ("GILTI") regime[65]—itself the immediate predecessor of the OECD Inclusive Framework Pillar Two global minimum tax—decluttering was raised. In October 2021, Robert Goulder applied Marie Kondo's teaching to ask in the US context "Does subpart F still provide any sparks of joy?" and to ask whether GILTI should replace Subpart F. Goulder argued that "The optimal version of GILTI is the one that renders subpart F wholly obsolete, such that we may thank it for its service to the country and promptly retire it. The urge to declutter calls for no less."[66] Goulder outlined the enhancements to GILTI that would make it a plausible option. But importantly, he ultimately concluded that the time had not yet arrived for decluttering. Of course, there are critical differences between decluttering debates in the domestic context (e.g., US GILTI) and the global context (OECD/IF Pillar Two) even though they exhibit similar features. These differences are discussed in Part III of this article.

2. Decluttering Talk at the EU

By 2023, references to decluttering had surfaced in discussions and statements at the EU and elsewhere.[67] Many of the comments and actions came from the EU's executive arm, the European Commission ("EC").[68] In September 2023, the head of the EC's directorate-general for taxation and customs was quoted in the tax press as indicating that the EC would be in favor of decluttering corporate tax rules once implementation of Pillar Two has happened.[69]

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https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/beps/outcome-statement-on-the-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2023.pdf.

[65] I.R.C. § 951A.

[66] Robert Goulder, *Thinking Heretical Thoughts: Should GILTI Replace Subpart F?*, 104 TAX NOTES INT'L 97 (Oct 4, 2021). *See also* Robert Goulder, *A Random Walk Through the Purple Book: 2022 Edition*, 105 TAX NOTES INT'L 967 (Feb 21, 2022) (discussing decluttering the tax system by "turning tax perks into entitlements").

[67] Elodie Lamer, *European Commission Gets Mixed Messages Regarding Tax Wish List*, 114 TAX NOTES INT'L 437 (2024) ("The implementation of pillar 2 of the OECD's global tax reform plan as part of its promise to declutter the tax system will likely influence future EU initiatives.").

[68] EC, "About the European Commission," ("The European Commission is the EU's main executive body."), https://commission.europa.eu/index_en (last visited February 13, 2025).

[69] Stephanie Soong, *Slow EU Adoption Is a Challenge, Says EU Official*, 111 TAX NOTES INT'L 1755 (Sept. 25, 2023).

Importantly, discussions in the EU about the opportunity to declutter were not identical to OECD decluttering discourses. EU discussions of decluttering referenced not just the onset of Pillar Two, but an arguably increasing desire to streamline regulation of business and improve competitiveness.[70] Around March 2023, the EC had committed to reducing reporting burdens to help long-term competitiveness.[71] From October through December 2023, the EC held a public consultation on administrative burdens and rationalization of reporting requirements, which drew 193 comments/feedback.[72] This consultation was not limited to specific fields but rather reflected an overarching goal of improving the competitiveness of EU business. During the consultation, stakeholders, including business groups, responded with specific tax decluttering recommendations, advising the EC that some tax measures—including some anti-avoidance provisions—will no longer be needed once Pillar Two is implemented.[73]

From 7 May 2024 to 30 July 2024, the EC held another public consultation on Directive 2011/16/EU (Directive on Administrative Cooperation – DAC6), which provides for exchange of tax related information (automatic, on-request, and/or spontaneous) between member state competent authorities. During the consultation, which was part of the broader decluttering agenda,[74] stakeholders complained about mandatory tax reporting being onerous, burdensome, and pointless.[75] As was the case with

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[70] *See, e.g.,* Divya Chowdhury & Lisa Pauline Mattackal, *European executives joins Trump's call for action on deregulation*, REUTERS (Jan. 24, 2025) (reporting EU businesses leaders advocacy at Davos for deregulation in order to remain competitive), https://www.reuters.com/world/davos-european-executives-join-trumps-call-action-deregulation-2025-01-24/ .

[71] *See* Elodie Lamer, *EU To Assess Rationalization of Tax Reporting Requirements*, 112 TAX NOTES INT'L 574 (2023); European Commission, Long-term competitiveness of the EU: looking beyond 2030 (March 16, 2023), https://commission.europa.eu/system/files/2023-03/Communication_Long-term-competitiveness.pdf .

[72] European Commission, Administrative Burden – Rationalisation of Reporting Requirements, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13990-Administrative-burden-rationalisation-of-reporting-requirements_en (last visited Jan. 30, 2025).

[73] Elodie Lamer, *Pillar 2 Makes Some Tax Measures Redundant, EU Stakeholders Say,* 112 TAX NOTES INT'L 1577 (2023); Elodie Lamer, *European Commission to Focus on Decluttering as Mandate Ends*, Tax Analysts, 2023 TNTI 248-1 (Dec. 29, 2023).

[74] European Commission, Cooperation on Direct Taxation – Evaluation, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13678-Cooperation-on-direct-taxation-evaluation_en (last visited Jan. 30, 2025).

[75] *See, e.g.,* Elodie Lamer, *Stakeholders Oppose Aggressive Tax Plan Reporting Under DAC6,* 115 TAX NOTES INT'L 925 (2024); *see also* Elodie Lamer, Stakeholders Push for Tighter Implementation of EU Tax Rules, 115 TAX NOTES INT'L 928 (2024) ("European tax attorneys' and advisers' groups expressed concern about inconsistencies in member states'

the OECD's recommendations, stakeholder commentary touched on not only the substantive tax rules but also discussed the need to declutter reporting and filing requirements. In December 2024, the EC ultimately published a report regarding the public consultation findings, which showed most respondents to be critical of the DAC6 reporting requirements.[76]

In addition, in June 2024, the EC announced an initiative to evaluate the anti-tax-avoidance-directive ("ATAD"),[77] which was a 2016 directive implementing some of the BEPS 1.0 proposals (including interest expense deduction limitations, CFC rules, general anti-abuse rules, and hybrid mismatch rules).[78] Particularly relevant to decluttering in the wake of Pillar Two, the areas under scrutiny for potential revision in the 2024 initiative included tax anti-avoidance and CFC rules.[79] The EC opened a consultation period on ATAD from 31 July 2024 through 11 September 2024, receiving 49 comments.[80] Some of these comments specifically argued that CFC and

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implementation of EU tax directives during a public consultation that is expected to help inform the European Commission's assessment of the directive on administrative cooperation (DAC1-6) in line with promises to declutter reporting requirements….' Many DAC measures have been implemented as minimum standards across the EU, which contributes to fragmented implementation, increasing compliance costs and uncertainty for taxpayers,' the American Chamber of Commerce to the European Union said in its feedback. It added that the 'fragmentation is particularly visible in the implementation of DAC 4 (country-by-country reports) and DAC 6 (reportable cross-border arrangements presenting . . . a potential risk of tax avoidance).'"). Momentum was also building to revisit the DAC6 information reporting obligations. *See* Elodie Lamer, *DAC 6 Galvanizes Criticism, EU Report Shows,* 117 TAX NOTES INT'L 126 (2025), https://www.taxnotes.com/tax-notes-today-international/base-erosion-and-profit-shifting-beps/dac6-galvanizes-criticism-eu-commission-report-shows/2024/12/24/7pgvz?highlight=declutter*.

[76] EC, Second Evaluation of Directive 2011/16/EU On Administrative cooperation in Direct taxation and its amendments, (Dec. 18, 20240), https://op.europa.eu/en/publication-detail/-/publication/e1c2f017-bd5a-11ef-91ed-01aa75ed71a1/language-en; *see also* Lamer, *DAC 6 Galvanizes*, *supra* note 75.

[77] Elodie Lamer, *EU Commission to Assess Anti-Tax-Avoidance Directive*, 114 TAX NOTES INT'L 1668 (June 10, 2024).

[78] EC Tax and Customs Union, "Anti-Tax Avoidance Directive," https://taxation-customs.ec.europa.eu/taxation/business-taxation/anti-tax-avoidance-directive_en (last visited Jan 30, 2025); KPMG, "EU Anti -Tax Avoidance Directive," (September 2024), https://assets.kpmg.com/content/dam/kpmgsites/xx/pdf/2022/08/eu-anti-tax-avoidance-directive-meber-state-implementation-overview.pdf.

[79] EU, Evaluation of the Anti-Tax Avoidance Directive (ATAD) – Council Directive (EU) 2016/1164 of 12 July 2016 as amended by Council Directive (EU) 2017/952 of 29 May 2017, (July 31, 2024), https://op.europa.eu/en/publication-detail/-/publication/00fabfa7-4f22-11ef-acbc-01aa75ed71a1/language-en.

[80] EC, Anti-Tax Avoidance Directive (ATAD) Evaluation, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14287-Anti-tax-Avoidance-Directive-ATAD-evaluation_en (last visited Jan. 30, 2025); *see also* Sarah Paez, *EU Evaluating Whether Anti-Tax Avoidance Rules Need Changes*, 2024 TNTI 147-4 (2024), https://www.taxnotes.com/tax-notes-today-international/tax-avoidance-and-evasion/eu-

interest deduction limitation rules were now redundant in light of Pillar Two.[81]

But even before this ATAD consultation, it was already clear that decluttering was an important item on the EC agenda,[82] reflecting a more pro-business, pro-competitiveness posture as the new Commission turned over.[83] The previous EC's term ended in October 2024, with the new Commission taking office for a five-year term and announcing that it aims to be more business friendly.[84] In fact, the "dilution" of tax competencies in the EU is

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evaluating-whether-anti-tax-avoidance-rules-need-changes/2024/08/01/7kjqp.

[81] *See, e.g.,* Elodie Lamer, *NGOs and Companies Brace for Fight Over EU's Decluttering Agenda*, 115 TAX NOTES INT'L 2076, 2076 (2024), ("During a recent public consultation on the review of the anti-tax-avoidance directive, several stakeholders said pillar 2 of the global corporate tax reform plan has made the controlled foreign corporation and interest deduction limitation rules redundant."); Elodia Lamer, *EU Countries Application of Tax Rules is Erratic Observers Say*, 115 TAX NOTES INT'L *1867 (2024).*

[82] *See Elodie Lamer, European Commission Expands Tasks of Good Governance Platform,* 2024 TNTI 113-2 (2024), https://www.taxnotes.com/tax-notes-today-international/corporate-taxation/european-commission-expands-tasks-good-tax-governance-platform/2024/06/11/7kc4t?highlight=declutter*; Lamer, *NGOs and Companies*, *supra* note 81; EC, Summary Record of the Meeting of the Platform for Tax Good Governance, Aggressive Tax Planning & Double Taxation (Feb. 29, 2024), https://taxation-customs.ec.europa.eu/document/download/7b2df7a5-1818-4679-ac9b-56643410049d_en?filename=20240229%20TCG%20Platform%20-%20Summary%20Record%20-%20draft%20for%20consultation.pdf. *See also* Elodie Lamer, *EU Commission's Draft Directives face Uphill Battle, Report Says,* 114 TAX NOTES INT'L 1959, 1960 (2024) (June 2024 report noting that "member states would also 'particularly welcome initiatives to declutter existing EU legislation and administrative procedures,' "); https://www.taxnotes.com/tax-notes-today-international/corporate-taxation/eu-commissions-draft-directives-face-uphill-battle-report-says/2024/06/18/7kcxz?highlight=declutter*; Elodie Lamer, *Next EU Commission Expected to Explore Behavioral Taxation,* 115 TAX NOTES INT'L 78, 78 (2024) ("The focus of the next commission is also expected to extend to competitiveness and decluttering, mainly regarding reporting requirements, including for tax reporting. The commission is already examining whether provisions of the anti-tax-avoidance directive duplicate the minimum tax directive and should be amended. The commission is reportedly looking at controlled foreign corporation rules, the interest limitation rule, and exit tax provisions."), https://www.taxnotes.com/tax-notes-today-international /corporate-taxation/next-eu-commission-expected-explore-behavioral-taxation/2024/06/27/7kdqj?highlight=declutter*.

[83] See Elodie Lamer, *EU Official Promises a More Business-Friendly Commission*, 115 TAX NOTES INT'L 375 (2024), https://www.taxnotes.com/tax-notes-today-international/corporate-taxation/eu-official-promises-more-business-friendly-commission/2024/07/12/7kgqr?highlight=declutter*; Elodie Lamer, *Where Will Taxation Fit in the New European Commission*, 115 TAX NOTES INT'L 1854 (2024), https://www.taxnotes.com/tax-notes-today-international/harmonization/where-will-taxation-fit-new-european-commission/2024/09/09/7l5zg?highlight=declutter*.

[84] *See* Elodie Lamer, *EU's von der Leyen Offers Pro-Business Agenda for Second Term*, 115 TAX NOTES INT'L 591 (2024), https://www.taxnotes.com/tax-notes-today-international/corporate-taxation/eus-von-der-leyen-offers-pro-business-agenda-second-

reflected in incoming EC President Ursula von der Leyden's decisions regarding allocation of competencies in the next Commission: EU tax policy will now be under the climate commissioner's portfolio and tax competencies will be spread out over other commissioner's portfolios.[85]

C. Decluttering Elsewhere

Decluttering discourse has not been limited to the OECD and EU. The German Ministry of Finance released a draft bill in 2023 partially limiting or reducing its CFC regime with the arrival of Pillar Two. Among the changes, the draft would amend the threshold for what constitutes "low" taxation of a CFC (thereby triggering additional German tax under their CFC rules) from 25% to 15%.[86] These changes became effective for 2024, along with a similar reduction in the "low" tax threshold as applied to the royalty deduction limitation.[87]

By contrast, other jurisdictions appear less interested in, or more hesitant regarding, decluttering. International tax decluttering is unlikely to be a top agenda item in the United States, for example, given other tax

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term/2024/07/19/7kh9c?highlight=declutter*; Mario Draghi, "The future of European competitiveness – Part A/ A competitiveness strategy for Europe," (September 2024) (known as the Draghi Report), https://commission.europa.eu/document/download/97e481fd-2dc3-412d-be4c-f152a8232961_en?filename=The%20future%20of%20European%20competitiveness%20_%20A%20competitiveness%20strategy%20for%20Europe.pdf; Elodie Lamer, *Taxation Diluted in von der Leyen's New European Commission*, 115 TAX NOTES INT'L 2079, 2079 (2024) ("Though his competence is broader than taxation, Dombrovskis is likely to have a big impact on tax legislation, as he will be asked to "stress test the EU acquis with a view to eliminate overlaps and contradictions," von der Leyen wrote in his mission letter. That role fits into the decluttering agenda that the commission promised stakeholders on the tax front."), https://www.taxnotes.com/tax-notes-today-international/corporate-taxation/taxation-diluted-von-der-leyens-new-european-commission/2024/09/18/7lm5k?highlight=declutter*.

[85] *See, e.g.*, Lamer, *Taxation Diluted*, *supra* note 84.

[86] *See* Takato Masuda, "Should Countries Declutter Their CFC Legislation Once They Adopt the Global Minimum Tax?," Kluwer International Tax Blog (July 28, 2023), https://kluwertaxblog.com/2023/07/28/should-countries-declutter-their-cfc-legislation-once-they-adopt-the-global-minimum-tax/; Baker McKenzie, Germany: Substantial changes proposed to German corporate taxation, (Sept. 11, 2023), https://insightplus.bakermckenzie.com/bm/tax/germany-substantial-changes-proposed-to-german-corporate-taxation.

[87] *See* EY, "German Federal Council approves BEPS 2.0 Pillar Two implementation bill together with other tax bills," (Dec. 21, 2023), https://globaltaxnews.ey.com/news/2023-2112-german-federal-council-approves-beps-20-pillar-two-implementation-bill-together-with-other-tax-bills#:~:text=This%20reduction%20from%20the%20current,the%20taxation%20of%20foreign%20activities.

priorities.[88] Likewise, Japan's Ministry of Finance of Japan noted in September 2022 that they would not be downsizing or eliminating their CFC rules with the arrival of Pillar Two, because they serve different purposes: the CFC regime targets the abusive use of foreign subsidiaries that lack real business activity (or similar strategies) whereas the Pillar Two global minimum tax sets a global baseline on the rate to the bottom of corporate rates.[89] The Tax Commission reiterated this position in its June 2023 report.[90] Despite the view that the global minimum tax does not justify decluttering, the Japanese government recognized the significant compliance costs of the new Pillar Two regime and the value of reducing administrative burdens by coordinating the reporting required under both Japan's CFC and its global minimum tax rules.[91] That said, the prospect for more streamlined unified reporting may be limited due to the important differences in the kinds of information required in each.[92] For example, Japan's CFC rules need entity-based income data from tax reporting whereas the global minimum tax rules require country-by-country income from accounting information.[93]

Importantly, country-level conversations regarding Pillar Two-related decluttering are taking place alongside ongoing domestic discussions

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[88] *But see* Elodie Lamer, *Tax Decluttering Not a Priority in the U.S., USCIB's Minor Says*, 117 TAX NOTES INT'L 178, 178 (2025) ("Rick Minor, senior vice president and international tax counsel at the business council, told Tax Notes in an EU-focused interview that he doesn't expect tax decluttering to be 'a priority in the United States with all the other tax legislative issues at hand this year and beyond in the next Congress.' "), https://www.taxnotes.com/tax-notes-today-international/base-erosion-and-profit-shifting-beps/tax-decluttering-not-priority-u.s-uscibs-minor-says/2024/12/30/7ph11?highlight=declutter*.

[89] *See* Masuda, *supra* note 86 (referencing Japan Tax Association, Shakai Keizai no Henka to Zeisei, OECD/G20 "BEPS Houkatsuteki Wakugumi" "Futatsu no Hashira" no Goui 167 (2022)).

[90] *Id.* (citing The Tax Commission, Wagakuni Zeisei no Genjo to Kadai – Reiwa Jidai no Kozo Henka to Zeisei no Arikata 232 (2023), available at https://www.cao.go.jp/zei-cho/shimon/5zen27kai_toshin.pdf). Masuda describes the Tax Commission as "a tax policy advisory body established by the Japanese government." *Id*. *See also* Takato Masuda, *Japan Steadily Adopts Global Minimum Tax but Still Has Work to Do*, BLOOMBERG DAILY TAX REPORT: INTERNATIONAL (Aug. 10, 2023), https://news.bloombergtax.com/daily-tax-report-international/japan-steadily-adopts-global-minimum-tax-but-still-has-work-to-do.

[91] *See* Masuda, *supra* note 86 (citing (citing The Tax Commission, Wagakuni Zeisei no Genjo to Kadai – Reiwa Jidai no Kozo Henka to Zeisei no Arikata 232 (2023), available at https://www.cao.go.jp/zei-cho/shimon/5zen27kai_toshin.pdf)).

[92] *Id*. (citing KPMG Tax Corporation, Reiwa 4 Nendo Naigai Ittai no Keizaiseityousenryaku Kouchiku ni kakaru Kokusaikeizai Chousajigyo, 277 (2023), a report which is the product of a research project conducted by KPMG Japan based on the research contract with the METI, available at https://www.meti.go.jp/policy/external_economy/toshi/kokusaisozei/r4itakuhoukokusyo.pdf).

[93] *Id*.

of simplification and deregulation more broadly.[94] Accordingly, the OECD's tax decluttering moment could potentially intersect with such domestically driven non-tax ones. For example, the US regularly sees various calls for deregulation and spring cleaning outside of the tax context, stemming a generalized preference for less regulation.[95] The election in November 2024 of Donald Trump for his second term as president has increased expectations for a combination of deregulation and tax reductions.[96] Another example revealing the general interplay between and among countries' calls for tax decluttering and broader deregulation comes from India. In November 2024, India's Chief Economic Advisor, Anantha Nageswaran, emphasized the need for India to make itself more attractive to investment.[97] Nageswaran noted the importance of "opening up our imagination and thinking in terms of global scales" and stated that "[w]e need to remove the fear of growth, and for that, deregulation is the answer."[98] India does not have a CFC regime,[99] but in 2017 it introduced a thin capitalization rule[100] that disallows interest expense that exceeds a formula and overall threshold.[101] In short, broader trends towards competitiveness, simplification, and paring back of regulations appear to be interacting with Pillar Two-related tax decluttering;

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[94] *See* Chowdhury & Mattackal, *supra* note 70.

[95] *See, e.g.*, James Broughel, *Recipe for a Regulatory Spring Cleaning*, WALL ST. J. (Nov. 25, 2024), https://www.wsj.com/opinion/recipe-for-a-regulatory-spring-cleaning-c5ec2752?st=wJRSHL&reflink=article_email_share. For an examination of deregulation in the United States, with a particular focus on the income tax regime, see Steven A. Dean, *Tax Deregulation*, 86 N.Y.U. L. REV. 388 (2011).

[96] *See, e.g.*, Jeanna Smialek & Ana Swanson, *High on Hope, Wall St. Hears What It Wants From Trump*, N.Y. TIMES (Dec. 17, 2024), https://www.nytimes.com/2024/12/17/business/economy/trump-wall-street-promises.html; Richard Rubin, *Tax Cuts take Lead Over Deficit Worries in GOP's Internal Fight*, WALL ST. J. (Dec. 16, 2024), https://www.wsj.com/politics/policy/republican-tax-cuts-budget-deficit-plan-f9e58e80; Lewis Krauskppf, *Wall Street girds for Trump 2.0: Tariffs, tax cuts and volatility*, REUTERS (Nov. 6, 2024), https://www.reuters.com/markets/us/wall-street-girds-trump-20-tariffs-tax-cuts-volatility-2024-11-06/.

[97] *See India must focus on growth, deregulation to attract investment: Chief Economic Advisor*, THE ECONOMIC TIMES (English Edition) (Nov. 13, 2024), https://economictimes.indiatimes.com/news/economy/indicators/india-must-focus-on-growth-deregulation-to-attract-investment-chief-economic-advisor/articleshow/115260491.cms?from=mdr.

[98] *Id*. (quoting Chief Economic Advisor Anantha Nageswaran).

[99] *See, e.g.*, S. Vasudevan, Karanjot Singh Khurana, Prachi Bhardwaj & Sanjhi Agarwal, "Practice Guide: India," Part 6.5, Chambers and Partners, March 19, 2024.

[100] India Income Tax Act of 1961, Section 94B (added in 2017). *See, e.g.*, Vikas Vasal, "Thin capitalization rules – limitation on interest expenses, Media Article, Grant Thornton (Oct. 28, 2021), https://www.grantthornton.in/insights/blogs/thin-capitalisation-rules-limitation-on-interest-expenses/?utm_source=chatgpt.com.

[101] *See, e.g.*, S. Vasudevan, Karanjot Singh Khurana, Prachi Bhardwaj & Sanjhi Agarwal, "Practice Guide: India," Part 2.5, Chambers and Partners, March 19, 2024.

this may suggest that tax decluttering will be viewed with greater favorability and enthusiasm going forward, though whether this will occur remains to be seen.[102]

III. THE POLITICAL ECONOMY OF TIDYING UP

From the above description, it is clear that a decluttering moment has arrived, generally centered at the OECD and EU, but not only there. Moreover, it is possible to identify some clear targets of the decluttering impetus, namely, interest expense deduction limitations, CFC rules, general anti-abuse rules, and hybrid mismatch rules. These are all tax anti-abuse rules that have long existed to prevent tax avoidance by multinational businesses through inter-jurisdictional profit shifting, arbitrage, and other tax strategies. Having established a picture of tax decluttering, this Part now turns to analysis.

Current discussions of decluttering are certainly not the first time interest has been expressed in cleaning up defunct laws, either in general or in tax specifically.[103] In tax law, there are well known instances of older regimes being repealed when newly enacted ones render them obsolete. For example, in the United States, after adding several anti-deferral regimes to the tax laws over a period of decades (including foreign personal holding company,[104] passive foreign investment company,[105] foreign investment company,[106] and CFC[107]) Congress determined that they sufficiently overlapped in their regulatory reach such that the foreign personal holding company regime could be eliminated. Congress did so in 2004 with the expectation that this would reduce confusion from unnecessary regulatory overlap.[108]

However, the current decluttering talk at the OECD and EU exhibits key political economy features that are distinct from exclusively domestic decluttering and that hold important new lessons for global regulation and coordination projects. This part discusses two such features: (1) the specific mix of stakeholders and constituencies advocating decluttering, and (2) the

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[102] *But see* Lamer, *supra* note 88 ("Rick Minor, senior vice president and international tax counsel at the business council, told Tax Notes in an EU-focused interview that he doesn't expect tax decluttering to be 'a priority in the United States with all the other tax legislative issues at hand this year and beyond in the next Congress.' ").

[103] As discussed in Part III.B, below, a broad legal literature on obsolete or outdated laws dates back decades. *See* Part III.B, *infra*. *See also* Shu-Yi Oei & Diane M. Ring, *"Slack" in the Data Age*, 73 ALABAMA L. REV. 47 (2021).

[104] I.R.C. §§ 551-558.

[105] I.R.C. §§ 1291-1298.

[106] I.R.C. §§ 1246-1247.

[107] I.R.C. §§ 951-964.

[108] The American Jobs Creation Act of 2004, Sec. 413.

fact that the current decluttering movement would advance multiple, interconnected goals and might ultimately gain momentum through a unique convergence of interests.

A. Stakeholders in the Decluttering Movement

Perhaps unsurprisingly, the same types of stakeholders that have driven other aspects of the debate over Pillar Two have been involved in the current decluttering discussions, whether through supporting, resisting, or otherwise opining on whether and what laws need to be decluttered. These actors include international organizations and blocs such as the OECD and EU, individual countries, large multinational businesses, the business community generally (e.g., trade and professional groups), tax advisors,[109] and NGOs and think tanks (such as the Tax Foundation).

As discussed in Part II, the OECD and EU and EC have obviously been heavily involved in advancing a decluttering agenda.[110] But other actors have been actively commenting on decluttering as well. The September 2024 meeting of the EC's Platform for Tax Good Governance[111] offers a window onto some of these other actors. The EC Summary of Record of the meeting described business groups as generally (and unsurprisingly) supportive of simplification and decluttering. The Summary noted that one business association "argued that high compliance costs and complexity are frequently seen as barriers to the functioning of the Single Market" and stated that

> "[t]here are several areas where removal, simplification or the amendment of rules could be sought, particularly in light of the implementation of the Pillar 2 Directive on a global minimum tax. Most notably, this concerns the Anti-Tax Avoidance Directives (ATAD) (e.g. Controlled Foreign Corporation rule, interest limitation rule and exist tax were

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[109] For example, Deloitte's EU tax policy leader, Roberta Poza Cid, wrote: "There is an overlap of some of the anti-avoidance rules, especially CFC, with Pillar Two." Saim Saeed, *EU Pivot from Tax Avoidance Crackdown Concerns Advocacy Groups*, BLOOMBERG DAILY TAX REPORT INT'L (Jan. 6, 2025).

[110] *See supra* Part II.B.

[111] The European Commission website describes the Platform for Tax Good Governance as "a group of experts that assists the Commission in

- developing initiatives to promote good governance in tax matters in third countries
- tackling aggressive tax planning, and
- identifying and addressing double taxation."

EC, Platform for Tax Good Governance, https://taxation-customs.ec.europa.eu/document/download/c4c3c679-0815-4fc8-8c54-27e3d21365bc_en?filename=20240913%20Agenda%20final_3.pdf.

> mentioned), as well as the Directives on Administrative Co-operation in the field of taxation (DAC)." [112]

The EC Summary also noted that "another business representative stressed that any efforts to improve the EU tax landscape should consider the wider geopolitical context and have the attractiveness of the EU at its core," arguing that "[p]re-existing rules with similar objectives should be eliminated and not merely tweaked, as this would only create additional compliance costs", "that the decluttering exercise should not exclude large companies," that "it will be important to define what 'decluttering' means and understand the impacts on businesses of different sizes," and that "the introduction of new anti-abuse rules should be limited, before there is an understanding of the gaps left by Pillar 2."[113] Other business speakers "provided additional arguments about the rising compliance costs of new regulations, problems with tax governance, and the risks of increasing reporting obligations while only a small part of the reported information is used in practice."[114]

The Summary described commentary by academics and NGOs as more cautious and equivocal regarding decluttering than business groups, noting that "several members from academia and NGOs called for caution before dismantling existing anti-avoidance measures without proper evaluation, as this might create loopholes and opportunities for tax abuse."[115] One academic argued that "many of the measures [such as Pillar Two] have only come into effect in recent years and it would be premature to assess the costs for companies without tangible evidence" and that there is a "need for a proper economic study of the areas where simplification should take place."[116] An NGO representative urged that new anti-avoidance initiatives that are under negotiation "should be given due consideration."[117]

More generally, interested actors are continuing to express their views on decluttering in different arenas. For example, the European Network on Debt and Development ("Eurodad"),[118] an NGO, has challenged calls for

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[112] EC, "Summary Record of the Meeting of the Platform for Tax Good Governance held on 13 September 2024," Part 3, https://taxation-customs.ec.europa.eu/document/download/68ff9a79-ea7c-4cdd-97ba-8fd4ecbd6904_en?filename=20240913%20PTGG%20-%20Summary%20Record%20-%20final_3.pdf.

[113] *Id*. Based on other reporting, the business group offering this input was BusinessEurope. Lamer, *NGOs and Companies Brace for Fight*, *supra* note 81 at 2076.

[114] EC, "Summary Record" *supra* note 112 at Part 3.

[115] *Id.*

[116] *Id.*

[117] *Id.*

[118] Eurodad describes itself as "a network of 60 European NGOs in 28 countries" that works "to ensure that the financial system at the global and European levels is democratically controlled, environmentally sustainable, contributes to poverty eradication and delivers human rights for all." Eurodad, "About Eurodad," (last visited Jan. 19, 2025),

decluttering: "It's very uncertain what Pillar Two is and what it will become once it's implemented. And so starting to remove anti-avoidance mechanisms in the name of Pillar Two seems irresponsible."[119] By contrast, BusinessEurope, an organization that advocates for the interests of companies in Europe, has continued its decluttering advocacy in 2025. Its report entitled "Reboot Europe – Europe's Economic Success, Everyone's Business," urged the EU to "[p]romote a stable and globally competitive tax policy framework (avoiding new regulatory burdens, reducing tax and legal uncertainties, and mitigating double taxation risks) and review direct and indirect tax incentives supporting the green transition."[120]

Other groups offer their own takes: The Tax Foundation/Europe (the European side of the American think tank by the same name) considers the EU burdened by a "complicated web of inefficient and overlapping anti-avoidance rules," but notes that "[b]efore decluttering other anti-avoidance policies or adding yet new rules, European policymakers should decide if Pillar Two is serving its purposes , and if not, look to reform it immediately."[121] Meanwhile, the US Council for International Business's ("USCIB") senior VP acknowledged that decluttering was not likely to be on the U.S. tax agenda given the host of issues demanding Congressional attention in 2025 and noted "[o]ur ask, still modest, is that the global tax landscape not be further cluttered with new initiatives that are ahead of their time or threaten economic growth and cross-border investment."[122]

In summary, beyond just the OECD, EU, and EC, various actors have different interests with respect to international taxation and have expressed

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https://www.eurodad.org. Member NGOS include Christian Aid, the Bretton Woods Project, and various national Oxfam organizations.

[119] Saim Saeed, *EU Pivot from Tax Avoidance Crackdown Concerns Advocacy Groups*, BLOOMBERG DAILY TAX REPORT INT'L (Jan. 6, 2025) (quoting Eurodad spokesperson on tax policy, Tove Maria Ryding).

[120] BusinessEurope, *Reboot Europe – Europe's Economic Success, Everyone's Business*, (January 2025) at 10, https://rebooteurope.eu/app/uploads/2025/01/2025-01-15-reboot-europe-europes-economic-success-everyones-business-january-2025-compressed.pdf.

[121] Sean Bray, Tax Foundation, *Europe Needs Good Tax Policy, Not Buzzwords, to Grow Its Economy,* BLOOMBERG DAILY TAX REPORT (Jan. 8, 2025), https://news.bloombergtax.com/daily-tax-report/europe-needs-good-tax-policy-not-buzzwords-to-grow-its-economy. A few months earlier, The Tax Foundation offered general advice to countries post-Pillar Two enactment: "Decluttering the tax code to weed out ineffective policies and move towards a simpler international environment will benefit all partes." Izabella Sara & Sean Bray, *Pillar Two's Unintended Consequences,"* Tax Foundation (Aug. 22, 2024), https://taxfoundation.org/blog/pillar-two-unintended-consequences/.

[122] Lamer, *supra* note 88 at 178 (quoting Minor, but noting that he was speaking in this individual capacity). The USCIB, however, featured this interview on its own website, under the headline "USCIB Highlights Low Priority of Tax Decluttering in the US," (Jan. 2, 2025), https://uscib.org/uscib-highlights-low-priority-of-tax-decluttering-in-the-us/.

different views on decluttering. With these varied viewpoints and constituencies in mind, we now summarize the key goals of the decluttering movement.

B. The Decluttering Movement's Multiple Converging Goals

A critical feature of the current tax decluttering movement is the multiplicity of goals across various constituencies that decluttering is likely to advance. The remainder of this Part identifies the potential goals of decluttering's advocates and demonstrates that they cut sufficiently in the same direction that they will likely generate significant momentum in favor of decluttering in the near future.

1. Decluttering as Shoring Up the Global Tax Deal

First and most obviously, decluttering can be interpreted as being advanced by the OECD as a way to shore up the global tax deal, in particular Pillar Two's substantive design and mechanism—the global minimum tax and the "machinery" through which it is effectuated.[123] It is likely not an accident that the advice to countries to declutter has emerged just as Pillar Two is being adopted by many countries. Eliminating "redundant" tax rules can be seen as cutting off the fall-back option of existing domestic tax base protection rules, thus helping ensure Pillar Two's chances of success. A related potential and longer-term benefit is the prospect that eliminating supposedly redundant existing domestic tax base protection rules across the board can open the door for Pillar Two to be applied more broadly to smaller companies once the initial "proof of concept" has been successfully implemented for large multinationals.

2. Decluttering as Shoring Up the OECD's Work against Growing UN Influence

Relatedly, from the standpoint of IO power, decluttering can also be seen as a defense of the OECD's work and the OECD's role in overseeing and directing global tax reform, most notably against the UN's growing influence. The decluttering movement comes not only at a time when Pillar Two adoption is underway, but also at a time when many NGOs and developing country actors are advocating for global tax policy terms more favorable to developing countries *and* for a shift in venue of such policymaking to the UN. As noted in Part II, these actors see the UN as a venue more friendly to

[123] *See* Mason, *supra* note 41.

developing country interests than the OECD.[124] From the standpoint of OECD power, there is a real risk that current disillusionment with the OECD could lead to disaffection and disinterest in what some consider to be significant and valuable reform work, as well as a decline in the OECD's institutional relevance in the global tax arena. But if Pillar Two thrives and its national adoption spreads, this success would help boost OECD influence and power over global tax matters vis à vis the UN. Decluttering could potentially support this goal by (1) removing fallback options consisting of existing domestic anti base erosion rules (as discussed above) and/or (2) ensuring that the addition of Pillar Two to the regulatory mix does not overwhelm business taxpayers or tax administrations, thus bolstering business support of, compliance with, and acquiescence to Pillar Two.

3. Decluttering as Shoring up Tax Multilateralism and Transnationalism

A third possible interpretation, related to the first two, is to see decluttering as a move that shores up the transnationalism and multilateralism that has become characteristic of global tax policymaking in the post-2008 era. While tax law and policy have long had international aspects (for example, through the longstanding bilateral tax treaty regime), it is widely understood that the post-2008 OECD/G20 BEPS reforms (particularly its second phase BEPS 2.0) involve a greater degree of coordination and multilateralism and allow nation states to affect the tax laws and policies of other nation states in unprecedented ways.[125] Now, with Pillar Two becoming

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[124] *See, e.g.*, UN General Assembly Resolution December 2022, *supra* note 49 (UN's adoption of global tax cooperation resolution initiated by several African states); "ATAF tax's approach to simplifying the OECD's digitalization proposal – Logan Wort," ATAF Communications, (16 Feb. 2022) (Logan Wort, executive secretary at the African Tax Administration Forum ("ATAF"), reporting: "After we told the OECD we didn't think developing countries or African countries' discussions were being heard at meeting [re Pillar One], we insisted on developing our own set of proposals), https://www.ataftax.org/itr-global-tax-50-2021-22-logan-wort. *See also*, Assaf Harpaz, *International Tax Reform Who Gets a Seat at the Table?*, 44 U. PA J. OF INT'L L. 1007, 1057-1058 (2023) (viewing UN as a more favorable venue for developing countries); Irma Johanna Mosquera Valderrama, "About the BEPS Inclusive Framework and the role of the OECD," *GlobalTaxGov* (19 Nov. 2019), https://globtaxgov.weblog.leidenuniv.nl/2019/11/19/about-the-beps-inclusive-framework-and-the-role-of-the-oecd/ (discussion various barriers experienced by developing countries in participating in the IF).

[125] For examinations of BEPS 2.0 as a notable feat of global tax coordination, see, e.g., Dagan, *supra* note 1 ("new tax deal is certainly an impressive accord of cooperation and a major accomplishment for the OECD"); Mason, *supra* note 1 at 352 (arguing "BEPS opened international tax to the G20, bringing a much-needed emerging-economy perspective to international tax."); Allison Christians & Laurens van Apeldoorn, TAX COOPERATION IN AN UNJUST WORLD (Oxford University Press, 2021) (noting that BEPS cooperation has moved international tax in valuable directions); Soong, *supra* note 1 (U.S. Treasury deputy assistant

adopted, a move to declutter supposedly duplicative existing national tax rules may be seen as a move that buttresses transnational regimes over national-level ones serving similar functions. Achieving priority for transnationalism is clearly of interest to the OECD because it reinforces the authority of transnationally-acting IOs over global tax policy, though possibly at the expense of nation state sovereignty.[126] It is also of interest to those developed countries (most notably European countries) that have supported a transnational solution to the cross-border tax base erosion problem in light of the inadequacies of existing unilateral and bilateral measures in combating profit shifting to low-tax or no-tax jurisdictions.

4. Decluttering as a Pro-Competitiveness Turn

Turning more squarely from the OECD to the interests of the EU, nation states, and business interests, another political economy aspect of the current decluttering movement is its shift of focus towards economic competitiveness, rather than prevention of tax base erosion. Specifically, the objective is to make tax regimes, whether national or regional, more competitive in attracting business and investment by eliminating administrative burdens imposed on businesses. The focus on decluttering in the EU appears to have gained momentum precisely because it fits with the overarching pro-business vision of the incoming EU leadership.[127] Reflecting this perspective, much of the decluttering discourse from the EU side has, as noted, emphasized business-friendliness, simplification, and increasing

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characterizing the BEPS project as "'really a stunning achievement'"). For discussions of how BEPS 2.0 may particularly impact countries' design of domestic law, see e.g., Mason, *supra* note 41 at 1392-93 (explaining how Pillar Two includes a "failsafe," the UTPR taxing right, that enables other countries to step and tax if a parent company's jurisdiction does not ensure that their multinationals pay an ETR of 15 % globally); Lucas De Lima Carvalho, *The UTPR: A Symptom of Malleably Sovereignty?*, 115 TAX NOTES INT'L 871 (2024) (challenging the UTPR from a sovereignty perspective).

[126] For a consideration of state sovereignty in taxation and objections to BEPS 2.0, see, e.g., De Lima Carvalho *supra* note 125; Anirudh Raghavan, *Shaping the International Tax Cooperation Regime: The U.N.'s Role*, 117 TAX NOTES INT'L 19 (2025); Felipe Yanez, *From the Tax Base Erosion to the Tax Sovereignty Shifting From States to OECD/Inclusive Framework*, 24 *REVISTA DE DERECHO FISCAL* 285–297 (2023).

[127] *See, e.g.,* EC, Press Release, "An EU Compass to regain competitiveness and secure sustainable prosperity," (Jan. 28, 2025), https://ec.europa.eu/commission/presscorner/detail/en/ip_25_339; Saim Saeed, *The EU's Tax 'Decluttering' Is a Big Ask. Here's What is Means,* BNA DAILY TAX REPORT INT'L (Nov., 25, 2024) (mapping how decluttering fits into the new EU Commission's vision for enhancing EU competitiveness and pursuing regulatory simplification), https://www.bloomberglaw.com/product/tax/bloombergtaxnews/daily-tax-report-international/BNA%2000000193-0172-d9b0-a7f3-e3f6045c0001?utm_source=Email_Share.

competitiveness.

These priorities have garnered strong support among member states. At a November 2024 ECOFIN meeting, the EC's commitment to decluttering in the wake of Pillar Two's adoption was reportedly "favored by most finance ministers who spoke during the meeting."[128] The depth of the EC's support is reflected in statements detailing the scope of the Commission's decluttering inquiry: In November 2024, Benjamin Angel, the director of direct taxation at the EC's Directorate-General for Taxation and Customs Union reported that the Commission was, "at the moment, doing a systematic mapping of all existing pieces of direct tax legislation to see how they fit . . .whether we have duplication, whether there are possibilities of simplification, whether we can drop some reporting."[129] Benjamin specifically noted, "we [the EC] really want to go beyond" looking at the interaction between CFC rules and Pillar Two, and that the EC is undertaking "a very serious, systematic examination."[130]

The EU's institutional interest in decluttering to maintain the bloc's competitiveness appears to reflect a deeper shift from prior positions. In the aftermath of the 2008 crisis, EU policymakers joined others around the globe to prioritize preventing tax avoidance and base erosion and ensuring economic stability and tax revenues. Even in 2024, the EU tax agenda included the BEFIT proposal[131] (coordinating corporate tax bases) and the Unshell proposal[132] (targeting inappropriate use of shell entities).[133] But now, the simultaneous embrace of decluttering and competitiveness by the new EU presidency may signal a retreat from these priorities, likely reflecting

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[128] Elodie Lamer, *Discussion of Draghi Report Highlights Divisions on EU Taxation*, 116 TAX NOTES INT'L 1041, 1041 (2024), https://www.taxnotes.com/tax-notes-today-international/corporate-taxation/discussion-draghi-report-highlights-divisions-eu-taxation/2024/11/06/7mzym?highlight=declutter* .

[129] Stephanie Soong, *EU Commission Fully Supports Permanent Pillar 2 Safe Harbor,* 116 TAX NOTES INT'L 852 (Nov. 24, 2024) (quoting Benjamin Angel, EC deputy director of taxation).

[130] *Id.*

[131] EC, "Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT)," COM(202e) 532 final, 2023/0321(CNS) (Sept. 12, 2023), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52023PC0532.

[132] EC, "Proposal for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU," COM(2021) 565 final, 2021/0434(CNC) (Dec. 22, 2021), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52021PC0565. *Cf*, European Court of Auditors, "Special Report 27/2024: Combatting harmful tax regimes and corporate tax avoidance – The EU has established a first line of defence, but there are shortcomings in the way measures are implemented and monitored," (Nov. 28, 2024), https://www.eca.europa.eu/en/publications/SR-2024-27.

[133] *See* Elodie Lamer, *Hungary Assumes EU Council Presidency Amid Climate of Unease*, 115 TAX NOTES INT'L 236 (2024)

economic threats from the developing world and the BRICS. In this sense, decluttering may be seen as a "correction" in the direction of pro-business competitiveness.

5. Decluttering as the Usual Business Call for Simplification and Deregulation

Another interpretation that is obvious but should not be left unstated is that business support for decluttering is an unsurprising variation of a long running theme—that of calls for deregulation and simplification. As discussed in Part III.A.1, business stakeholders have lobbied actively in favor of decluttering and simplification in the EU and beyond, citing overlapping rules duplicative regimes, uncoordinated reporting requirements, and high overall compliance burdens. For example, during the "International Tax Conference" in Munich July 2024, panelists explored whether and how to declutter corporate taxation, with industry advocates (from Germany and France) stressing that Pillar Two is complicated and costly for businesses, and that countries should respond by simplifying tax rules to facilitate business.[134] In particular, the interest deduction limitation rule was identified as a prime target of such reform.[135] Notably, business advocacy of decluttering may be providing an outlet for frustration with Pillar Two and the complexity that it entails for both businesses and tax administrations. As the OECD and BEPS Inclusive Framework continue to release detailed Pillar Two administrative guidance,[136] this complexity is becoming increasingly tangible. Focusing on decluttering directs frustration over Pillar Two's complexity toward an alternative way to reduce tax compliance burdens—by shrinking or eliminating domestic CFC and related regimes. Given the recent momentum in favor of Pillar Two, it is possible that businesses regard decluttering of domestic regimes as a more fruitful lobbying pathway for securing international tax simplification.

6. Decluttering as a Move Towards Reduced Corporation Taxes.

Finally, interest in decluttering may simply reflect a desire to reduce

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[134] Saim Saeed, *Industry Says Ax Duplicate Laws Under Global Minimum Tax Regime,* BLOOMBERG DAILY TAX REPORT (July 11, 2024).

[135] *Id*.

[136] *See, e.g.,* OECD/G20 Inclusive Framework, "Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), Central Record of Legislation with Transitional Qualified Status," (Jan. 13, 2025), https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/global-minimum-tax/administrative-guidance-globe-rules-pillar-two-central-record-legislation-transitional-qualified-status.pdf.

corporate tax on business. This interpretation—which goes beyond simplification and reduction of tax reporting and compliance burdens—was voiced, for example, by Alex Cobham of the Tax Justice Network, who advised Tax Notes that the primary issue "is business exploiting the complete mess that the OECD is making of the tax rules in order to obtain further [tax] cuts (in practice), even before the final effect of any changes can be known."[137] Such a motivation, often unstated, is distinct from a focus on reducing administrative and compliance burdens, which can be framed as duplicative, wasteful, and perhaps without purpose. In contrast, promoting decluttering as an unstated path to lower net taxes through the weakening of anti-abuse regimes is a more problematic normative claim. Certainly, there is disagreement about the optimal level of business taxation. But seeking lower effective tax rates by eliminating anti-abuse rules through decluttering—and hoping that the move enables more aggressive tax planning and/or weaker enforcement and thus lower effective corporate tax rates—would likely strike most observers as an end-run around applicable tax laws. Essentially, this rationale for supporting decluttering suggests a longer-term strategy of weakening corporate tax enforcement and thus reducing tax burdens. Indirectly, it either anticipates that Pillar Two's global minimum tax will fail to ensure a 15% tax is paid by in-scope entities, or it seeks to preserve 15% as both a floor *and a cap* by dismantling national regimes (such as CFC rules or interest deduction limitations) that otherwise might protect a state's corporate tax rate above the 15% threshold.

C. *Summary: A Decluttering Wave*

The six political economy interpretations of decluttering described above reflect our attempt to capture multiple related motivations driving the decluttering phenomenon. We cannot "prove" that these motivations are in play, nor can we rank their relative importance to decluttering's advocates. Moreover, it remains an empirical question whether decluttering will successfully advance its proponents goals.

What we can say is this: There appears to be a clear interest convergence among multiple perspectives: OECD interests in shoring up the global tax deal (and defending against UN legitimacy gains); EU efforts to stay competitive with the U.S., China, and other countries while maintaining or managing domestic welfare state; and business stakeholders interest in reducing administrative burdens (and possibly actual tax burdens). This interest convergence renders tax decluttering a potentially powerful movement.

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[137] Lamer, *NGOs and Companies Brace for Fight*, *supra* note 81.

To be sure, support for decluttering has not been universal. As noted, NGOs have expressed concern about decluttering as a pretext for eliminating or diminishing needed anti-abuse rules.[138] Even the EC has acknowledged that decluttering raises real concerns: At the same meeting at which the EC's Benjamin Angel advocated decluttering, he expressed caution as well, noting that the scope of Pillar Two is limited to the largest multinationals, and that "[w]e really have to be careful with the approach."[139] He observed that the EU would need to balance its goal of simplifying the tax rules with its established commitment to combatting aggressive tax behavior.[140] Moreover, some countries may simply not have decluttering at the top of their legislative agenda due to other priorities, even if they do not oppose decluttering in principle.[141] Finally, the views of the UN and developing countries regarding tax decluttering have yet to surface, but will presumably become clearer as the UN continues to pursue its own international tax reform agenda in 2025 and beyond. It is plausible that despite their articulated objections to the OECD BEPS reforms (including the substantive focus on a minimum tax, the negotiation process, and the design steps)[142], developing countries may not favor limiting anti-abuse rules in advance of seeing Pillar Two in practice.[143]

Nonetheless, what is clear at this stage is that there is strong support in favor of decluttering among powerful key actors—the OECD, EU, and business interests. This suggests the need for an analytical framework for understanding decluttering and evaluating whether and to what extent it is justified. Parts IV and V explain why such a framework does not currently exist in the legal literature and attempt to articulate one.

IV. DECONSTRUCTING DECLUTTERING

Having identified the key political economy elements of the current decluttering movement, we now seek to situate decluttering amid prior legal theory and scholarship, in order to better conceptualize it. But this proves difficult. As this Part will argue, existing literature on statutory obsolescence

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[138] *Id*. (quoting Alex Cobham of the Tax Justice Network). *See also* sources cited *supra* notes 116 -119.

[139] Stephanie Soong, *EU Commission Fully Supports Permanent Pillar 2 Safe Harbor*, 116 TAX NOTES INT'L 852, 853 (2024).

[140] *Id*. at 853.

[141] As discussed above, some business actors expect that decluttering will not be "a priority in the United States with all the other tax legislative issues at hand this year and beyond in the next Congress." Lamer, *supra* note 88.

[142] *See, e.g.,* Oei & Ring, *supra* note 10.

[143] Alternatively, if most decluttering talk is taking place in higher income, higher tax countries, lower income and lower-tax countries could potentially benefit from investment and/or profits that could escape parent jurisdiction taxation once decluttering takes place.

and legislative cleanup does not adequately describe the current decluttering movement and its core challenges and implications. Moreover, current calls for tax decluttering do not fit neatly into obvious descriptive categories of obsolete statutes. This is because what tax decluttering's proponents are seeking goes beyond what is envisioned by longstanding ideas about statutory "cleanup." This Part concludes by setting forth our own descriptive typology of the types of rules to which the OECD and EU's decluttering recommendations might plausibly apply, observing that for the most part, they are not actually obsolete, duplicative, or inconsistent with the new Pillar Two regime.

A. Decluttering's Theoretical Incoherence

On first glance, tax decluttering has clear links to existing literature on statutory obsolescence and separation of powers. But closer examination shows that this literature is of limited applicability, with respect to both its theoretical and conceptual starting point and its descriptive categories.

Existing literature—much of which stems from the constitutional and separation of powers context—confronts the questions of when and how courts may respond to statutory law that is "out of step" or obsolete, and whether there is a constitutional or judicial ground for repealing or sunsetting that law.[144] In the US, for example, an important literature examines whether and when courts should be able to decide that statutory law is obsolete and should be revised or struck down.[145] This question, which has generated sizeable attention, strikes at the heart of the rule of law and separation of powers in a democracy. In his landmark 1982 book, "A Common Law for the Age of Statutes," Calabresi identifies statutory obsolescence as a distinctive problem of the modern legal age and claims that it is a function of two forces: (1) legislative inertia (i.e., the fact that, in reality, the legislature will not readily fix obsolete laws)[146] and court's separation of powers constraints (i.e., the fact that courts cannot directly strike down a statute on the grounds of obsolescence).[147] As law is increasingly specified by statute rather than the more flexible common law, the problem has only grown. Courts, Calabresi contended, have sought to address this problem through methods he

[144] Allison Orr Larsen, *Do Laws Have a Constitutional Shelf Life*, 94 TEX. L. REV. 59, 62 fn. 18 (2015) (discussing constitutional grounds); Guido Calabresi, A COMMON LAW FOR THE AGE OF STATUTE, (Harvard U. Press 1982) (discussing judicial grounds).

[145] Calabresi, *supra* note 144.

[146] For a deeper exploration of why legislatures experience inertia, see Richard Neely, HOW COURTS GOVERN AMERICA (Yale U. Press 1981).

[147] For a book review of Calabresi's volume, see Richard Neely, *Book Review: Obsolete Statutes, Structural Due Process, and the Power of Courts to Demand a Second Legislative Look*, 131 U. PA. L. Rev. 271 (1982).

characterizes as subterfuge[148] such as declaring a statute unconstitutional to stop its application. But, in Calabresi's view, this is even more problematic from a separation of powers standpoint and ultimately is an unacceptable solution to obsolete statutes, particularly when deployed by lower courts.[149] Ultimately, Calabresi favors a solution in which courts exercise powers comparable to those which they have for common law, including the ability to review, modify and even nullify those rules which are obsolete. Cabining this judicial power, legislatures would retaining the ability to revive a statute otherwise rendered inoperable by the courts.[150]

Other scholars have explored alternative framings of judicial action in the face of obsolete statutes and congressional inertia. For example, one offshoot of this inquiry has suggested that statutes may have an implied expiration date (or, per Larsen, "shelf life") under the constitution.[151] Another judicial approach for rendering impotent an obsolete statute, which has long historical roots, has been described in the literature as "desuetude," whereby courts invalidate a statute on the grounds that there has been a long period of intentional nonenforcement. [152] A contemporary U.S. scholar, remarking on the need for a "tool for dealing with dead crimes," offers as a solution "[a] modern American conception of the desuetude principle fit for the statutory age."[153]

Existing literature's court-centric inquiry is potent from a democracy/institutional design perspective, but less apposite to the current discourse on international tax decluttering. First, international tax decluttering does not raise questions of separation of powers within a democracy. Notably, international tax decluttering is calling upon national *legislatures*, not courts, to do decluttering of laws legislatures themselves have enacted. Legislatures of various countries, as elected rulemaking bodies, are tasked in a system of democratic governance with the role of making, revising, and repealing laws and are not limited (as are courts) to acting in more extreme cases such as those in which a rule is widely recognized as obsolete and unconstitutional.[154] This means that legislatures can engage in

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[148] *See, e.g.*, Calabresi, *supra* note 144.

[149] *See id*.at 178-181.

[150] *Id.* at 178-81.

[151] Larsen, *supra* note 144.

[152] *See. e.g*. Joel S. Johnson, *Dealing with Dead Crimes*, 111 GEO. L. REV. 95 (2022) (noting that "[t]he doctrine of desuetude goes back at least as far as Roman law" and exploring its application in the Europe and the United States); Note, *Desuetude*, 119 HARV. L. REV. 2209 (2006) (offering an overview of judicial embrace of desuetude in response to obsolete statutes)._

[153] Johnson, *supra* note 152 at 143.

[154] For discussions of why and how legislatures should review and repeal laws, see, e.g., Anuket Verma, *Repeal of Obsolete Laws*, 3 Jus Corpus L. J. 938 (2022) (examining how

the reform, redesign and elimination of laws with much less justification than courts. This freedom to legislate can of course be exercised ill-advisedly, but whether or not a legislature should exercise it is not a separation of powers matter but rather a matter of good policy.

A second distinction between the current tax decluttering conversation and existing literature is that the genesis of the tax obsolescence at issue is fundamentally global and transnational, not national. Moreover, the call for national legislatures to declutter is also coming from transnational actors (the OECD, EU, and business-interests). The new global tax reform that has created the purported obsolescence of existing rules is the result of concerted recent supra-national tax coordination and policymaking, thereby adding a transnational-national dynamic to the analysis. Thus, the key question is not one of separation of powers within a single country, at least not in the traditional way understood by the existing obsolescence literature.[155] Rather, the recommendation offered by the OECD, and strongly supported by others, is that *national* legislatures evaluate their domestic international tax provisions to identify those rules no longer needed (either at all, or in their current form) with the advent of the *transnationally agreed upon* Pillar Two. Any legislature taking up this challenge is well within its expected scope of functions in doing so. The question is not one of legislative powers but of whether the decluttering is normatively good policy.

That said, there is an important, perhaps inchoate, tension, which raises interesting questions for global tax policymaking: does decluttering advocated by the OECD create a "soft" separation of powers question? This may be one way of characterizing a situation in which the executive branch has negotiated at a transnational level (e.g., Pillar Two), and after that, the OECD urges countries' legislatures to consider decluttering, which would change the total package of anti-abuse provisions that the country would have at its disposal. Such a characterization should not be overstated, but it does help illuminate the complicated interplay in global tax policymaking among IOs, national executive branches, and national legislatures (not to mention other interested actors). We explore this idea in greater depth in Part VI.D.

B. Decluttering's Descriptive Overbreadth

In additional to conceptual differences, the types of domestic tax laws for

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legislative cleanup and repeal of old and obsolete laws can be both good and bad); see also Jonathan Teasdale, "Statute Law Revision: Repeal, Consolidation or Something More," 11 Eur. J.L. Reform 157 (2009); Vrinda Gauer, *Fossilised Laws – India in a Dire Need to Repeal/Amend Its Archaic Laws – An Analysis*, 4(2) INDIAN J. L. & LEGAL RESEARCH 1(2022).

[155] *But see infra* Part VI.d.

which decluttering is currently being advocated also do not fit neatly within the categories of statutes regarded as being obsolete by existing literature and deserving of cleanup. The literature identifies the following types of "obsolete" statutes. (These categories are, of course, not mutually exclusive, and a statute may fall into more than one.)

(1) Statutes that would not be passed today (because they lack majority support) [156]

(2) Statutes that were unique at the time (for example, that were passed in a moment of crisis or constituted forward-looking experimentation that was never embraced)[157]

(3) Statutes that are "increasingly inconsistent with new constitutional developments" (though not actually unconstitutional)[158]

(4) Statutes that reflect facts at time of enactment that are no longer true today[159]

(5) Statutes, where the common law has so changed such that the statute no longer fits it, in its current form[160]

(6) Implied repeal (where there is a later-enacted statute that conflicts with the existing statute)[161]

(7) Statutes where there is implicit repeal through desuetude (i.e., disuse).[162]

In general, the above list does not capture what the OECD and EU decluttering is about. For example, the tax laws that are most under discussion for decluttering (e.g., CFC regimes, interest expenses deduction limits) do not fall under categories (1), (2), (3), (4), (5) or (7) and are not obsolete under those definitions. Rather, the heart of the OECD/EU position is that these other anti-deferral/base erosion rules are likely to be somewhat *duplicative* in their net effect given the global/transnational regime (Pillar Two) that countries are in the process of implementing. But "duplicative" is not the

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[156] Calabresi, *supra* note 144 at 61.*See also* Verma, *supra* note 154 at 940 (discussing examples).

[157] Calabresi, *supra* note 144 at 133.

[158] *Id.* at 61.

[159] *Id.* at 131-32. *See also*, Larsen, *supra* note 144 at 60-61.

[160] Calabresi, *supra* note 144 at 129.

[161] Karen Petroski, *Retheorizing the Presumption Against Implied Repeals*, 92 CALIF. L. REV. 487, 488 (2004). An early framing of the implied repeal issue appeared in the 17th century writing of Sir Edwin Coke. *Id.* at 499-500. For a discussion of implied repeal in the UK context, see Asif Hameed, *Parliament's Constitution: Legislative Disruption of Implied Repeal*, 43 OXFORD J. OF LEGAL STUDIES 429 (2023).

[162] *See, e.g.*, Winston Chew, *The Doctrine of Implied Repeal by Desuetude –A Legal Anachronism or Viable Principle?*, 5 SING. L. REV. 139 (1984).

same as "obsolete" as understood by the separation of powers literature.

One could perhaps argue that tax statutes for which decluttering is being suggested fall under category (6), implied repeal. Here, the claim would be that the introduction of the Pillar Two global minimum tax rules into domestic law essentially repeals or overrides the existing regimes (CFC, interest deduction limitations, and hybrid mismatch rules). But ultimately, this category remains inapposite. Pillar Two is aimed at deterring large multinationals from shifting income to low-tax jurisdictions and engaging in aggressive transfer pricing by imposing a global minimum tax. While this might suggest on the surface that with the arrival of Pillar Two, countries no longer need domestic rules to police problematic deferral or transfer pricing conduct, in reality, the intersection between Pillar Two and existing anti deferral and transfer pricing rules is nuanced, with major gaps inherent in even the basic rule design, never mind in implementation. For example: (1) Pillar Two only applies to multinationals with annual revenue of more than 750 million euros – all others would face no regulation if domestic CFC and other base protecting rules were eliminated; (2) Pillar Two relies on accounting books as the starting point where as CFC rules start with taxable income; and (3) Pillar Two operates on a country by country basis, whereas CFC and other such rules operate on an entity basis.[163] Additional gaps are likely to arise as well once real-life implementation takes place.

In short, it seems aggressive to contend that adoption of Pillar Two is tantamount to implicitly repealing existing domestic CFC and other base protection regimes.[164] Moreover, if confronted with the argument that Pillar Two overrides an existing rule, the correct approach would be to apply traditional later-in-time rules, such as those found in the US and UK.[165] In such cases, the validity of the later-in-time rule (that is, the rule that says the later-enacted law controls) depends on the two statutory provisions (or where applicable, statute and treaty) actually conflicting such that compliance with both is not plausible. However, in no way does compliance with Pillar Two render a taxpayer actually unable to comply with domestic CFC rules.

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[163] OECD, "Pillar 2 Model Rules," *supra* note 30 at 7, 8, 12-18.

[164] Perhaps it is plausible to argue that the facts are now different from when the rules (e.g., CFC) were originally enacted (category (4), with facts understood broadly to include the new legal constraints on base erosion in the form of the Pillar Two global minimum tax). The claim could be that countries would not have enacted their existing menu of base erosion rules had Pillar Two already been in place. Again though, the same observations about the imperfect overlap between Pillar Two and CFC rules listed above would render less than persuasive the argument for repealing or drastically curtailing CFC rules.

[165] *See, e.g.*, Asif Hameed, "Parliament's Constitution: Legislative Disruption of Implied Repeal," 43 OXFORD J. OF LEGAL STUDIES 429 (2023), https://doi.org/10.1093/ojls/gqad004.

The fact that core definitions of obsolete statutes from the literature generally do not align with Pillar Two and existing anti-abuse rules is not surprising. To the extent the obsolete statutes discussion has primarily focused on when courts should have the ability to step outside their traditional roles cabined by separation of powers constraints to effectively repeal a statute, we would expect the definition of "obsolescence" to be a restrained one. Even in theoretical considerations of when a legislature "must" or "should" address an obsolete statute to maintain legal system integrity, we would similarly anticipate that the definition of obsolete would be narrow. In contrast, the OECD and EU advocacy of decluttering in a world with Pillar Two is an exhortation that reflects multiple policy interests, rather than an assertion that repeal and reform are essential for a coherent and fair legal system. This line of advocacy, unsurprisingly, views the category of rules deserving of decluttering as broad, and is focused on duplication and administrative costliness, rather than "obsolescence" more narrowly understood.

C. Recategorizing the Clutter

To this point, the analysis in this Part has revealed that because tax decluttering talk is taking place in a transnational context—in which not only the substance of the rules but also the jurisdictional question of who has power to formulate those rules (e.g., IOs vs nation states) is very much changing and up for grabs—existing literature on constitutionality and separation of powers within individual nation states is of limited value in articulating principles for decluttering. Moreover, the descriptive categories delineated by existing literature are generally not germane to the kinds of tax rules for which decluttering is being envisioned.

What is needed is greater descriptive granularity, which we now try to provide. Within the umbrella of "tax decluttering", we can separate out three major categories of rules involving the combination of existing domestic law and a new transnational rule:

First, there is the case where a new rule is enacted that completely contradicts the existing rule, such that compliance with both is substantively not possible, such the existing rule should be repealed.

Second, there is the case where the new rule overlaps with or may be duplicative of the existing rule, but compliance with both remains technically possible. Here, we can distinguish a few different scenarios:

(a) Compliance with both rules is technically possible but will be extremely difficult and costly (e.g., due to complicated calculations, accounting, recordkeeping, or other regulatory compliance requirements that are vastly different for each rule), such that actually complying is unfeasible;

(b) Compliance with both rules is technically possible and feasible, though it carries increased administrative burdens (e.g., where the new rule requires similar but not identical accounting or calculations as the old rule);

(c) Compliance with both rules is possible with minimal increased administrative costs (e.g., where the taxpayer just needs to file another form using information already collected, or where the new rule actually requires more information than the old rule, so the additional compliance burden does not derive from the continued application of the old rule).

Third, there is the case where the new rule does not substantively overlap with or duplicate the existing rule, but rather complements or supports its goals and underlying policies. Compliance with both is possible and may also give the taxing authority more tools with which to fight tax abuses, but it does carries increased administrative burden.[166]

These categories describe "ideal types." Tax statutes are complex, so in reality, it might well be the case that different parts of a complicated tax statute fall into different categories. This could happen, for example, in where the new rule only applies to entities above a certain income or revenue threshold. Regardless, though, the categories remain useful for thinking through when decluttering is more or less justified.

In applying the above schema to international tax decluttering, we can put Category #1 aside. In the United States, for example, a true Category #1 scenario (i.e., a case where a harmonized reading is actually impossible) would be covered by existing conflict rules, such as the "later in time" rule governing conflicts between statutes and treaties.[167] (That said, decluttering might be advisable as a way to more quickly resolved the conflict, as opposed to waiting for a judicial decision.) More importantly, we have not been able to identify in the current decluttering discourse a national statute for which compliance is actually no longer possible now that Pillar Two exists. This is no surprise. A touted design feature of Pillar Two is that it does not formally compel countries to change any underlying rule; it simply incentivizes them to do so in order to prevent the tax from being picked up by another

[166] Of course, there is also the case where no new rule has been enacted, but the old rule is obsolete for some other reason (e.g., because it reflects facts that are no longer true, or would not be enacted today, or because common law or constitutional developments have changed such that the statute is no longer appropriate in its current form). We mention this fourth category for completeness, but it can be aside for now, as this is not the focus of current tax decluttering.

[167] *See, e.g.*, I.R.C. § 7852(d); Whitney v. ROBEWRTSON, 124 U.S.. 190, 195 (1888). For other cannons of statutory interpretation, see, e.g., Congressional Research Service, "Statutory Interpretation: Theories, Tools, and Trends," R45153 at 54 (April 5, 2018), https://crsreports.congress.gov/product/pdf/R/R45153/2.

jurisdiction.[168]

In fact, most of the drama of current international tax decluttering discourse is happening around Categories #2 (including all its subvariants) and #3. Of these remaining categories, Category #2(a) (compliance with potentially overlapping/duplicative rules is technically possible, but extremely burdensome and costly) presents the strongest argument for decluttering, followed by #2(b) and then #2(c) and finally Category #3. The problem is that it is difficult to divine with certainty into which of the above category a given scenario falls. Decluttering discourse tends to conflate all of these categories. In addition, the political economy of decluttering is such that decluttering's advocates have an incentive to exaggerate *both* the extent to which the tax rules are duplicative *and* the burdens and costs of the rules. Even without the added incentive to exaggerate, both degree of duplication and costs and burdens are difficult to assess at this stage: The degree to which the new and old rules will overlap such that the old rules are no longer necessary is obviously incredibly difficult to determine at this early stage. With respect to compliance costs and burdens, these are not static—taxpayers may have the capacity over time to develop lower-cost systems, technologies and practices—and moreover looking at costs alone yields an incomplete picture, because the benefits of having both regimes apply have not been factored in.[169]

Importantly though, the new global tax reform itself is quite burdensome and costly, prompting the question: Why be concerned about the burden posed by states own existing regimes but be pleased introduce a complex Pillar Two regime. Is the concern over existing domestic rule genuinely one of "burden"? Certainly, counterarguments to this question are possible. The OECD could assert that the choice is not between two effective and burdensome rules (Pillar Two and existing domestic anti-abuse provisions) — but rather between Pillar Two which is global and designed in response to the failure of domestic regimes — and those domestic regimes themselves. This position is not without support, as many countries expressing interest in Pillar Two have deployed domestic regimes with less than satisfactory

[168] Countries cannot be formally compelled to implement Pillar Two, as there is no supra-national body with the ability to force countries to adopt tax rules. That said, the regime was designed to create a mix of incentives (potential for collecting more tax revenue) and disincentives (other countries may pick up potential tax revenue that a country leaves untaxed below 15%). *See, e.g.*, Alan Cole & Cody Kallen, *Risks to the U.S. Tax Base from Pillar Two*, TAX FOUNDATION (August 2023) at 3-4, https://taxfoundation.org/wp-content/uploads/2023/08/Risks-to-the-U.S.-Tax-Base-from-Pillar-Two.pdf.

[169] Furthermore, given resource-constrained tax authorities, it may be the case that the compliance required in real life is "rough" compliance that is less costly than feared. This dynamic has arguably been seen with the application of some U.S. foreign tax credit rules over the years.

results. But the rub for some may come from a sense that the OECD is taking tax burdens much more seriously now than it did in the design phase of Pillar Two.

V. A Better Framework for Understanding Decluttering

Given the uniqueness of the current tax decluttering movement and the limited applicability of existing literature in evaluating it, what is needed is an analysis that highlights the specific political economy risks, benefits, and structural implications of tax decluttering. This Part sets forth such an analysis. Part V.A and V.B examine the political economy risks and benefits of decluttering, arguing that there are significant risks to decluttering, despite the claimed benefits, even in cases where there may be some overlap or duplication between the old and new rules. Part V.C then maps out the important structural implications of decluttering, arguing that decluttering is consequential for allocation of power between competing IOs, allocation of tax lawmaking authority between IOs and countries, and competition among countries and regional blocs of countries. In short, global tax decluttering is deeply strategic and geopolitical. Thus, for political economy reasons, decluttering should be approached cautiously and with a considered assessment of risks, even in most facially compelling case.

A. Decluttering's Risks

Viewed in the abstract, decluttering as a regulatory design concept is inherently neither normatively good nor bad. Any normative evaluation of a move to declutter turns on the motivation for the decluttering, the criteria being used to decide what to declutter, and the content of both the old and the new rule. For example, where decluttering is motivated by a desire to remove unnecessary burdens on taxpayers or tax authorities without compromising compliance, then the decision to eliminate rules may be a sound one (assuming that the substantive rule for which compliance is sought is normatively defensible). In contrast, where decluttering serves to undo rules that ensure taxpayer compliance with existing (and defensible) tax obligations, then a decision to declutter may be more problematic.

But despite being conceptually neutral, once political economy factors are considered, the risks from decluttering start to loom large. Although there may theoretically be benefits, we argue that the risks of decluttering in the current transnational tax context outweigh those benefits. Despite their institutional power to declutter, the legislative decision to do so should be attentive to important political economy risks.

Four broad types of risks emerge when contemplating decluttering

domestic tax rules against the backdrop of global tax reforms:

1. Risks of Acting Too Early and Being Wrong

A first set of risks are risks associated with acting too quickly and too early and thus being wrong about one's assumptions. The OECD/G20 Inclusive Framework's tax reform project is still in the process of being rolled out by countries, all of which are in different stages of adopting new rules or adjusting their existing laws in order to implement Pillar Two. Much is unknown about how the new regime will work in practice. A potential error at this stage includes the risk that even though the old rules may appear duplicative of the new and improved rules, the degree of overlap may prove less than appears at first. This may arise, for example, if details about the application of the two different regimes are not appreciated at the outset, which is not improbable with new and complex tax legislation. Another related error is being wrong about how effective Pillar Two will be in practice. For example, taxpayers may be able to dodge Pillar Two in unexpected ways, rendering the old rules an important backstop. A third potential error is being wrong about the level of compliance burden associated with complying with Pillar Two, or complying with Pillar Two in addition to the domestic tax rule.

Finally, there is also the risk of being wrong about the extent to which other countries will embrace, implement, and comply with the new regime. Not only have some countries not signed the two-pillar agreement, but there are significant risks of defection even by participating states, either on purpose or due to inability to comply. Even countries negotiating in good faith at the global tax table may find that when the agreement "comes home," domestic politics make fulfilment of the negotiated commitment impossible.[170] Another possibility is that countries defect by preferring an alternative solution, such as one put forth by the UN as it continues to pursue a more active role in global tax policy making. The difficulty of accurately knowing or predicting how other countries will behave going forward raises a number of strategic risks and considerations, which we next discuss.

2. Strategic Risks of Domestic Decluttering in a Transnational Context

The prospect of decluttering in the context of an emerging transnational regime layered on top of domestic tax rules is markedly different from legislative cleanup that takes place in the domestic context. For one thing, the

[170] *See*, *e.g.*, Diane Ring, *When International Tax Agreements Fail at Home: A U.S. Example,* 41 BROOKLYN J. INT'L L. 1185 (2016) (focusing on the BEPS 1.0 expectations for states). Arguably this is the US with Pillar Two right now.

risks associated with a single national legislature's decision to declutter (including errors in understanding the new rules, how they will overlap in reality with current rules, and how regulated actors will respond) are multiplied in a global context. But more fundamentally, the transnational-national interaction of new and existing rules and the fact that multiple countries would have to make their decisions while having to consider and respond to the actions and decisions of others raises heightened and arguably novel risks.

More specifically, when a country makes a domestic decluttering decision in the context of globally coordinated tax rulemaking and regimes, then its legislature will need to determine how *other* countries (and their legislatures/enforcers/courts) will respond in the short to medium term. This requires an understanding of both (1) other countries' responses to the new Pillar Two regime (including decisions to comply or to defect) and (2) other countries' decisions whether to declutter their own existing tax rules, either in response to the new regime, or in response to other countries' decisions to declutter.

Other Countries' Responses to Pillar Two. Other countries' responses to the new Pillar Two regime would obviously affect whether existing tax rules are truly duplicative. For example, if other countries are likely to defect from or not comply with the new agreement, then a country should take that prediction into account in deciding whether its domestic tax rules can be safely decluttered. As noted, defection or noncompliance can take several forms. At the most extreme, countries may defect from the OECD project altogether, given efforts to relocate global tax coordination at the UN. Although the UN work is still in its early days, it raises the prospect that if the locus of global tax reform work shifts from the OECD to the UN, countries may disengage from OECD projects. Short of total defection, it is also possible that countries will pursue strategic responses while formally continuing to adopt Pillar Two. For example, countries attentive to remaining or becoming competitive in attracting business and foreign capital have explicitly or implicitly indicated that they may provide new tax or other incentives to preserve their investment appeal.[171] Such incentives would place pressure on the effectiveness of Pillar Two in achieving a 15% effective tax rate on in-scope multinationals, and the Pillar Two rules may need to be revised to account for these tax incentives.[172] All of this would take time and effort—initially to determine which country-level responses are problematic,

[171] *See, e.g.,* Ovais Subhani, *Singapore approves new investment incentives ahead of global minimum tax*, THE STRAITS TIMES, (Nov. 11, 2024) (detailing new tax incentives designed to keep the country attractive for investment).

[172] *See, e.g.,* Mindy Herzfeld, *Pillar 2, State Aid, and Industrial Policy*, 112 TAX NOTES INT'L 329 (2023).

then to rouse sufficient support for revising the Pillar Two rules, and finally to revise and implement the new rules. If countries do effectively employ tax incentives and other strategies to "softly" undercut or defang with Pillar Two, then countries that have decluttered their domestic tax anti-abuse rules on the assumption that Pillar Two will be effective may find themselves unprepared.

Other Countries' Decisions to Declutter. Similarly, other countries' decisions as to whether to declutter their own existing tax rules introduces another risk of a "race to the bottom." After all, one of the political economy reasons for the current decluttering discourse relates to competitiveness in attracting international business and investments. If countries end up in a competition with each other to declutter, and if the new transnational regime (Pillar Two) subsequently fails, then the ability of nation states to prevent tax avoidance and tax base erosion could be severely compromised.

In summary, as individual states review existing CFC, interest expense deduction, and other domestic tax base protection rules to identify measures that sufficiently duplicate the work of Pillar Two, they must navigate a set of factors that are outside their control but are in the control of other states. At core, any decluttering undertaken as a result of Pillar Two not only has to assume that Pillar Two's design will work as intended, but also that other countries will not defect from or otherwise fail to comply with the agreement, surreptitiously work around it, or retaliate or respond to the decluttering moves of other countries in ways that lead to a race to the bottom.

3. One Way Rachet Effect

Another related risk is that, as a matter of political economy, laws once decluttered may not be easy to reinstate. Despite the suggestion in some parts of the regulatory literature that it is easier to pass laws than to motivate Congress to remove old and obsolete laws,[173] this dynamic may be less

[173] *See, e.g.,* Philip K. Howard, "Obsolete Law –The Solutions," THE ATLANTIC (March 30, 2012) (articulating reasons it is easier for Congress to pass new laws than "clean out the stables."), https://www.theatlantic.com/national/archive/2012/03/obsolete-law-0151-the-solutions/255141/. In other contexts, the growth of a regulatory frame may protect some actors from new entrants, and may provide a justification for the existence of the regulatory agency overseeing the enforcement. *See, e.g., id.*; John Stossel, *Government Should Repeal Out of Date Laws*, REASON (Feb. 5, 2020), https://reason.com/2020/02/05/government-should-repeal-out-of-date-laws/. Additionally, in a federal system, depending on the legal issues, effective decluttering may require addressing the issue on both the federal and the state level. *See, e.g.*, Howard M. Wasserman, *Zombie Laws*, 25 LEWIS & CLARK L. REV. 1047, 1058-1070 (2022) (examining this question in the context of laws regarding, petitions, abortion and marriage across subnational governments); Verma, *supra* note 154 (detailing "roadblocks" that India faced in abolishing obsolete laws across all of the state and local government levels). Again, it is not clear that these issues are likely to be particularly relevant in the context of federal income tax decluttering efforts.

applicable in the tax context, particularly regarding anti-abuse provisions.[174] In tax, the far greater risk is that once an old anti-abuse rule has been decluttered, it will be extremely difficult to resurrect that rule in a few years if it is determined that decluttering was ill advised. Such difficulty stems from the power of sophisticated business taxpayers and their ability to lobby against regulation.[175] We may find ourselves in a one-way ratchet, where decluttering of old rules occurs under flawed assumptions, but reinstating them confronts insurmountable political economy hurdles.

4. Risks of Inadequate Pushback Against Decluttering and an Interest Convergence in Favor

Decluttering's risks are exacerbated where powerful constituencies are actively lobbying for decluttering and presenting facts most favorable to their interests, but there is a dearth of countervailing voices. This is clearly the case in the current decluttering moment.

The current calls to declutter old tax regimes are occurring at a moment when there are multiple constituencies whose interests are aligned actively supporting decluttering. OECD and EU officials, anxious about defending and shoring up the OECD's role in global tax policy, and worried about EU competitiveness in the face of threats from the BRICS and other countries, have obviously supported the decluttering move.[176] Multinationals and

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[174] The point regarding the difficulty in eliminating rules also reflects historical experience in dealing with tax benefit provisions such as credits and special deductions. Of course, such provisions are often enacted with built in time limits (typically to meet overall budget-impact/cost requirements for the legislation being passed) but once a tax benefit is in the Code, it can be difficult to repeal them. For example, in the higher education context, a number of tax benefits were added to the code over time, creating a confusing landscape of beneficial provisions. *See, e.g.*, I.R.C. §§ 25A(i), 25A(c), 127, 135, 150, 221, 529 Ultimately, it would have likely made sense to revisit the entire set portfolio of provisions and redraft them in a more coherent and integrated manor, but a strong lobby for that effort did not emerge, and Congress, not surprisingly, did not seek *sua sponte* to allocate its resources to legislature housecleaning and reorganization. *See generally,* Peter D. Lucido, Kenneth A. Winkelman & James M. Fornaro, *Current U.S. tax incentives for higher education expenses*, THE TAX ADVISOR (April 1, 2018), https://www.thetaxadviser.com/issues/2018/apr/current-us-tax-incentives-higher-education-expenses.html.

[175] *See, e.g.,* Bruno Perman Fernandes & Murillo de Oliveira Dias, *Business Lobbying: A Systematic Literature Review*, 7 Econ. & Bus. Q. Revs. 181 (2024); Brian Kelleher Richter, Krislert Samphantharak & Jeffrey F. Timmons, *Lobbying and Tax* 53 Am. J. of Pol. Science 893 (2009) (empirical study based on public financial statements of link between lobbying expenditures and lower effective tax rates).

[176] In advance of a January 2025 meeting of the EU Economic and Financial Affairs Council, Germany and the Netherlands provided a joint paper to the European Commission, advocating that decluttering "be a priority." The paper contends that "Pillar 2' global minimum tax 'will secure a broad level of protection against harmful tax competition and

business groups supporting decluttering have also strongly highlighted the compliance burdens. But they have an obvious incentive to overstate the degree to which the rules overlap as well as the scope of the new regime's reach and sufficiency to handle the tax avoidance problem standing alone.[177]

Meanwhile, less resourced NGOs and developing countries have responded, but these responses have been slower in coming, and fewer in number at this early stage. It is possible that country-level tax authorities and other tax experts may ultimately articulate countervailing considerations more vociferously, but there is likely to be a continuing mismatch in resources and intensity.

In short, this is a moment of an interest convergence between OECD and EU officials and MNE taxpayers and those representing their interests, fueled in part by geopolitics and developments at the UN. The worry is that more thinly resourced NGOs, developing countries and tax agencies will be less agile at responding and objecting to decluttering, as was the case in earlier rounds of global tax negotiations. This dynamic suggests that allowing some time for the new regime to unfold and for balanced perspectives to emerge may be advisable.

B. Decluttering's Potential Benefits

To be sure, we should not disregard the potential benefits of decluttering. However, at present, these benefits are uncertain and warrant scrutiny.

1. Removing Excessive Burdens on Taxpayers and Governments

Additional regulation creates increased compliance obligations and new burdens for both regulated parties and governments. Presumably, the expectation in enacting a new rule is that despite these costs, the regime has value, however measured. To the extent that new rules render existing ones clearly unnecessary, the continued existence of both (with their two sets of burdens) means that the burdens increase but the benefits may not.[178]

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aggressive tax planning,' and some EU antiabuse rules should be simplified or abolished." Elodie Lamer, *Germany and Netherlands Identify EU Tax Rules to Amend or Revoke*, 117 TAX NOTES INT'L 472, 472 (2025) (quoting portions of the report).

[177] As suggested above, this determination may benefit from more than a reading of the words of the rule, and may need to see the regime in action. Additionally, if a new regime completely duplicates an existing one, that fact raises the question of why Congress decided to adopt it or why Congress did not simply make a few expanding adjustments to the existing regime.

[178] Burdens can also include the realistic capacity of the regulated to comply with all rules current in place. This is related to the cost aspect of burden, but suggests that at some

Failure to address growing burdens that lack commensurate benefits can have a range of effects: If the rules regulate commerce, then increased burdens may disincentivize new enterprise, discourage investment, and lead parties to move operations and functions out of the jurisdiction, with no added benefits. From the perspective of governments and tax administrations, duplicative rules can lead to inefficient diversion of resources away from other priorities without corresponding enforcement gains. In short, there are surely some circumstances where decluttering may be justified in the face of overregulation.

Yet, how beneficial or burdensome a rule is may not be immediately clear, nor universally agreed upon. There may be disagreement among taxpayers, governments, and third-party observers as to the benefits of both new and existing regimes. The costs may also not be static, as taxpayers and tax authorities develop mechanisms for managing the new burden. Moreover, it is challenging to isolate any particular regulatory burden as the causal factor leading to business decisions (such as relocating to another jurisdiction). In short, it is very difficult to say with certainty whether genuine overburdening of regulated parties is actually occurring. Moreover, in the specific context of the BEPS reforms, the Pillar Two rules are new enough that their benefits and burdens—a well as their actual overlaps with existing rules—are unlikely to be fully appreciated at this stage.

2. Rule of Law Considerations

Excessive regulatory burdens can give rise to rule of law concerns. Where laws regulating conduct multiply, are duplicative, and include poorly drafted or outdated provisions, this can jeopardize the credibility and fairness of the legal system. Potential problems include: the inability to know, anticipate and comply with all rules that could be enforced; a likely lack of uniform application of the law; and potential abuses of power where laws are intentionally enforced unevenly.[179] These harms may be compounded in contexts in which not all regulated parties are equally positioned to manage these risks, whether by virtue of size, financial resources, tax literacy, business sophistication, government or professional connections, or other

level, what is really at stake is whether any of the regulated parties can under plausible conditions meaningfully comply with all obligations. Additionally, increasing the number of rules applicable in a given area increases the technical overlap of definitions, priorities, and other rule intersections that will demand further regulatory detail and complexity to resolve.

[179] For a fuller examination of the risks inherent in a world with extensive and potentially obsolete rules, see Shu-Yi Oei & Diane M. Ring, *“Slack” in the Data Age*, 73 ALABAMA L. REV. 47 (2021); Mila Sohoni, *The Idea of “Too Much” Law,* 80 FORDHAM L. REV. 1585 (2012); William Stuntz, *The Pathological Politics of Criminal Law*, 100 MICH. L. REV. 505 (2001).

characteristics.

While rule of law considerations should be taken seriously, hastily decluttering in the transnational context also raises rule of law and sovereignty concerns. The decluttering of domestic tax laws motivated by a desire to buttress an emerging (though contested) transnational regime raises questions about sovereign authority. This includes, specifically, questions regarding where the power to determine national tax policies should be situated and whether the process of getting to transnational accord is legitimate.[180]

3. Taxpayer Privacy and Data Considerations

As discussed above, some of the tax rules in question concern reporting of taxpayer parties' information to the government, as opposed to governing substantive outcomes.[181] For these types of informational rules, having overlapping regulatory regimes can exacerbate the privacy and data risks to regulated parties.[182] When additional reporting obligations are put in place, the government is likely collecting more data than before. If the old and new regimes actually are duplicative of one another, then the increased risks to taxpayer data will not be offset by benefits from the new regime (because the new regime is not adding anything new).

These risks are compounded if the government is not equipped to use the data it collects, rendering its collection potentially irrelevant,[183] or worse, is unable to effectively protect the data from hacks, leaks, and breaches.[184] Furthermore, where the government has collected extensive data, but does

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[180] *See, e.g.,* Tandon, *supra* note 47; .De Lima Carvalho *supra* note 125; Raghavan, *supra* note 126; Yanez, *supra* note 126.

[181] *See supra* notes 57 and 58 and accompanying text.

[182] *See, e.g.,* Federal Communications Commission, Data Breach Reporting Requirements, 47 CFR part 64 ¶ 31 (Feb. 12, 2024) (citing CCA (Competitive Carriers Association) comments: "Indeed, over-reporting of such information outside the law enforcement context can introduce additional data security risks and privacy concerns), https://www.federalregister.gov/documents/2024/02/12/2024-01667/data-breach-reporting-requirements?utm_source=chatgpt.com; James Rundle, *Companies Grapple With Expanding Cyber Rules,* THE WALL ST. J. (Aug. 30, 2024) (in the context of growing reporting requirements for data breaches, noting the argument that a "proliferation of reporting requirements sucks up crucial resources in the middle of a crisis.").

[183] To the extent that the government's inability to use the data for enforcement is not widely known, it is possible that the reporting requirements themselves might substantially curb undesired behavior by the regulated parties.

[184] For example, in December 2024, the US Department of Treasury reported a major data breach to the US Senate. Aditi Hardikar, Ass't Secretary for Management, U.S. Department of the Treasury, Letter to Chairman Brown and Ranking Member Scott (Dec. 30, 2024), https://legacy.www.documentcloud.org/documents/25472740-letter-to-chairman-brown-and-ranking-member-scott/.

not regularly use all of it in enforcement, there is the potential for more selective and uneven enforcement actions.[185]

In short, the addition of new regulatory regimes—including tax reforms that result in more taxpayer information being given to governments—means more incursions into taxpayer privacy, and hence more privacy risks. It is possible that decluttering old rules that overlap with of are duplicative of new ones can help alleviate these risks.

4. Building Support for the Reform

Decluttering old laws may help build support for the new legal regime, increasing its chances of success. If legal obligations are streamlined by clearing out old rules, this may generate gains in the form of increased compliance and morale[186] (not to mention forestalling retreat to the prior alternatives). In cases where the new rules target more effectively the same result as existing rules, and the new rules are well-understood in their impact, highly likely to succeed, and broadly supported, then pursuing decluttering may help push taxpayers towards embracing and complying with the new rules. Of course all this operates on a spectrum: The more confidence a legislature has in its understanding of both the new and the old regime, the greater the confidence that the new regime will prove superior to the old rule, and the greater the support and agreement coalescing around the new regime, then the more decluttering may be appropriate.

The problem with the global tax case is that it is not clear that there is a robust understanding of Pillar Two, it is not yet clear that Pillar Two is going to be effective, and it is also not clear that there is broad support for Pillar Two.[187] Although some countries taken steps to implement Pillar Two, others have not. The contours of US engagement with Pillar Two remain unspecified given the shifting priorities of the Trump administration,[188] and there is significant dissatisfaction emanating from developing countries.[189]

[185] Oei & Ring, *supra* note 179 at 61, 71, 84-85.

[186] *See*, *e.g.*, OECD Public Governance Directorate Regulatory Policy Committee, Better regulation and simplification: Background document, COV/RPC(2022)9/ANN3 (June 28-29, 2022) at 2 ("the accumulation of regulations over time can lead to interactions among them that exacerbate costs or reduce benefits, or have other unintended consequences….even a small improvement in the quality of the regulatory stock could bring large gains to society."), https://one.oecd.org/document/GOV/RPC(2022)9/ANN3/en/pdf.

[187] *See, e.g.,* Herzfeld, *supra* note 172; Lamer, *supra* note 137 (quoting Cobham); Tandon, *supra* note 47; De Lima Carvalho *supra* note 125; Raghavan, *supra* note 126; Yanez, *supra* note 126.

[188] *See* White House Memorandum, *supra* note 46.

[189] *See, e.g.,* Tandon, *supra* note 47; De Lima Carvalho *supra* note 125; Raghavan, *supra* note 126; Yanez, *supra* note 126.

Moreover, it is not at all clear whether Pillar Two will ultimately work effectively on the ground.[190] Under these circumstances, building support for a contested and nascent reform by quickly decluttering existing tax rules is not necessarily desirable or justifiable.

5. Buttressing the OECD's Power

Finally, to the extent one wants to ensure that OECD's BEPS reforms succeed, perhaps it is justifiable to pursue a decluttering agenda that supports this end. Those who prefer this outcome may have heterogeneous motivations: Some may outright prefer the OECD's leadership and vision of tax reform to the UN's. Others might view the UN's chances of successfully spearheading global tax reform efforts as dim (for example, due to lack of experience, resources or institutional capacity)[191] and may see the OECD's project as nation states' best chance of successfully tackling tax avoidance and tax base erosion in a coordinated manner.[192] Regardless, if one is persuaded that the OECD tax reforms are normatively preferable to either the UN's alternatives or a world without global tax coordination, then decluttering may be an effective tool to help improve its chances of success (either by building taxpayer or government support or by cutting off fallback alternatives).

Yet, even if this were a justifiable motivation for decluttering old laws, decluttering now risks enabling precisely the kinds of tax avoidance

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[190] *See, e.g.,* Jack Barnett, *Donald Trump risks tax war with global minimum tax pullout*, THE TIMES (Jan. 26, 2025) (noting uncertainty about the Pillar Two fallout from the new US rejection of Pillar Two); PWC*, OECD Pillar Two country tracker*, (revealing a range of country responses to date on enactment of Pillar Two rules domestically), https://www.pwc.com/gx/en/services/tax/pillar-two-readiness/country-tracker.html (last visited Feb. 7, 2025).

[191] For examples, a 2023 International Centre for Tax and Development ("ICTD") working paper based on interviews with government officials from primarily lower-income countries, reported that several "raised concerns about the current lack of resources and capacity of the UN Secretariat, and its technical capabilities, in contrast with those of the OECD." Lucinda Cadzow, Martin Hearson, Frederik Heitmuller, Katharina Kuhn, Okanga Okanga, & Tovony Randriamanalina, "Inclusive and Effective International Tax Cooperation: Views from the Global South, ICTD Working Paper 172 (August 2023), https://financing.desa.un.org/sites/default/files/2023-09/ICTD_WP_172_FINAL.pdf. *See also* Harpaz, *supra* note 124 at 1058 (noting concerns about UN resource limitations);

[192] Beyond issues of capacity, the first two protocol topics selected for immediate attention by the UN's new Framework Convention on International Tax Cooperation (cross border services and dispute resolution) are not targeting the same base erosion and profit shifting concerns as Pillar Two's Minimum Tax Regime. *See* Sarah Paez, *Countries Agree to Majority Decisions for U.N. Tax Convention*, 2025 TNTI 26-3 (Feb. 7, 2025), https://www.taxnotes.com/tax-notes-today-international/tax-policy/countries-agree-majority-decisions-u.n-tax-convention/2025/02/07/7r14f.

and base erosion behaviors that the BEPS reforms are attempting to curb. If the new rules prove ineffective or the degree of overlap between new and old rules is less than anticipated, decluttering of existing rules may enable more tax planning and abuses to occur. More fundamentally, there seems to be little global agreement at the moment that the OECD is the superior venue for global tax reform, or that its reform vision is superior. Again, our point is not that there are zero good reasons to promote decluttering. Our point is simply that hasty decluttering in advance of the data holds significant risks.

C. Decluttering's Structural Implications

The risks of doing domestic decluttering of existing domestic rules in light of a new transnational regime also needs to be understood in structural terms.

First, promoting and engaging in domestic tax decluttering in the face of a new multilateral tax regime has implications for the allocation and distribution of tax lawmaking power between the transnational and national levels.[193] Simply put, the fact that the OECD—the organization that has played a leading role in global tax policy to this point—is advocating (with the support of the EU) changes to the domestic laws of nation states on the claim that those laws have been rendered unnecessary by the new transnational regime implicates longstanding issues of tax sovereignty. Tax sovereignty concerns the power of nation states to make their own tax laws. Tax sovereignty considerations are certainly not new, but the dynamics of the current tax decluttering movement places sovereignty in the spotlight.[194]

Second, the fact that domestic decluttering is being advocated against the backdrop of an emerging tussle between two leading international organizations—the OECD and the UN—over the location, control, and content of global tax reform work suggests that domestic decluttering will have structural repercussions for the transnational locus of global tax reform work and which IO holds power over that work going forward. This means that any domestic decisions to declutter may impact not just the distribution of tax lawmaking authority between the national and transnational levels but may also shape the landscape of and power allocation between international organizations and institutions operating in the tax space.

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[193] *See supra* Part II.B.1 (detailing the origins of this decluttering call in the OECD).

[194] For other discussions of tax sovereignty concerns emerging from the work of the OECD, see, e.g., Diane M. Ring, *Democracy, Sovereignty and Tax Competition: The Role of Tax Sovereignty in Shaping Tax Cooperation*, 9 FLA. TAX REV. 555 (2009); Irma Johanna Mosquera Valderrama, *Legitimacy and the Making of International Tax Law: The Challenges of Multilateralism*, 3 WORLD TAX J. 1 (2015); Diane M. Ring, *What's at Stake in the Sovereignty Debate?: International Tax and the Nation-State*, 49 VA J. OF INT'L L. 1 (2008).

Third, domestic decluttering in the transnational context raises concerns about inter-country dynamics, strategies, and games. This of course implicates old tropes of tax competition and tax cooperation.[195] Countries are likely to consider and react to the decluttering decisions of other countries, leading to longstanding concerns about the race to the bottom in taxes. The risk is that despite the amount of work that has gone into building a new, complex, and costly multilateral regime to prevent tax base erosion and profit shifting, countries—nudged along by multinational lobbying—will simply be reverting to old ways of tax competition in a new guise.

Finally, and related to the prior point, more fundamental geopolitical contests lurk beneath all three structural dynamics identified above—power distribution between the national and transnational level, power distribution between competing IOs, and tax and other competition among nation states. The shift of global tax to the UN is supported by the UN Africa Group as well as many developing countries, but is opposed by key developed countries and the OECD.[196] For example, in a December 2024 vote on draft resolutions that resulted in the adoption of Terms of Reference for the development of a UN tax convention, 119 countries voted in favor, but 9 (including Australia, Canada, the US, and the UK) voted against, and 43 (including the EU Member States) abstained.[197] It is not an overstatement to say that the global tax fight reflects increasing geopolitical tensions among various countries, which are clustered in competing geographical and/or economic blocs, and that these competing blocs have different preferences regarding which IO should lead global tax reform work. If this is so, then decluttering looks a lot like an attempt by one of the IOs competing for power in a global tax arena (the OECD) to persuade countries in its supporting bloc to dismantle domestic tax rules in a way that is likely to cement OECD power by

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[195] *See, e.g.*, Michael Keen & Kai K. Konrad, *The Theory of International Tax Competition and Coordination*, 5 HANDBOOK OF PUBLIC ECONOMICS 257-328 (2013), https://doi.org/10.1016/B978-0-444-53759-1.00005-4; Wolfgang Schoen, *International Tax Coordination for a Second-Best World (Part 1),* 1 WORLD TAX J. 67 (2009); Arthur J. Cockfield, *International Tax Competition: The Last Battleground of Globalization*, 63 TAX NOTES INT'L 867 (2011).

[196] *See, e.g.,* Joanna Robin, *Africa presses for UN tax plan despite EU resistance*, ICIJ (Oct. 24, 2023), https://www.icij.org/investigations/paradise-papers/africa-presses-for-un-tax-plan-despite-eu-resistance/; Tove Ryding, *African countries pave the way towards a UN Tax Convention – time for OECD countries to step up*, Eurodad Press Releases (Oct. 17, 2023), https://www.eurodad.org/african_countries_pave_the_way_towards_a_un_tax_convention_time_for_oecd_countries_to_step_up.

[197] *See, e.g.*, Elodie Lamer, *U.N. Assembly Agrees to Kick Off Talks on Framework Convention*, 117 TAX NOTES INT'L 142 (2025), https://www.taxnotes.com/tax-notes-today-international/corporate-taxation/u.n-assembly-agrees-kick-talks-framework-convention/2024/12/27/7pgzs.

buttressing reliance on the OECD's reform project (Pillar Two). Viewed in this light, decluttering's transnational-structural implications become difficult to ignore.

VI. Recommendations for How to Declutter

In summary, tax decluttering could have some benefits, but those benefits are difficult to assess, and carry with significant risks. Moreover, the risks are not just to the tax revenues of individual countries; rather, there are structural dimensions and implications at both the transnational and national level, implicating countries, blocs of countries, international organizations, and the dynamics and relationships between and among them. We therefore recommend that tax decluttering at the domestic level should be done with great caution at this time.

The following are some specific recommendations regarding how nation states might mitigate the risks of tax decluttering.

A. Slow Down

Most obviously, there is no real reason not to declutter slowly. There is much to be gained by waiting a few years to see how Pillar Two performs and whether it is effective, as well as to see how UN tax negotiations unfold. At present, the UN work is, as noted earlier, focused on topics not directly related to Pillar Two. [198] But the implications of this UN agenda, its success in coming years, and the potential for the UN to move on to address the remaining protocol topics identified as part of the UN Framework on International Tax Cooperation are currently significant unknowns. The urgency with which decluttering is being discussed and advocated—well in advance of global tax reform's successful implementation—suggests that perhaps other considerations are driving the movement beyond just a concern about overlapping and duplicative laws.

The counterargument is, of course, that decluttering later is not costless. Businesses will have invested in, and managed, compliance with multiple regimes in the interim. This is accurate, but much of the real additional burden will come from the need to design new systems of identifying, collecting, organizing and reporting the new information now required under Pillar Two. That task must be undertaken now regardless of whether other tax regimes remain functioning for a period of time, or are immediately dismantled via decluttering. By contrast, for old regimes were already in place, compliance structures and procedures already exist. Moreover, if old regimes are

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[198] *See, supra* note 192.

decluttered and then later have to be reinstated, this may turn out to be even more costly for both tax authorities and tax administrations.

B. Make Careful Distinctions

If and when decluttering does happen, national legislatures should be careful to make sound distinctions among laws for which decluttering is being considered. Here, the analytical categories we advanced in Part IV.C. and the categories described by existing literature in Part IV.B. should inform the analysis.[199] That is, unless an existing law is truly obsolete[200] and/or truly duplicative, decluttering based on the argument that the new Pillar Two regime is now doing the work is not defensible. There would need to be an independent normative basis for revising or repealing the existing law, and such a basis should be clearly articulated. Legal change should not simply be swept under the broad umbrella of decluttering.

Importantly, as discussed above, the various constituencies supporting decluttering surely have an incentive to overclaim the extent of duplication and burdensomeness between old and new rules.[201] Legislatures should therefore not take at face value claims of duplication. Instead, they should carefully interrogate the details of each regime's scope, technical application, and results (such as projected revenue impacts) before acting.

C. Use Existing Tools of Temporary Legislation

There are also well-known statutory design tools that legislatures can employ that may decrease the risks that can come with a decision to declutter.[202] For example, legislatures can enact temporary statutes that sunset after a certain time period and need to be actively renewed.[203] The need to renew the statute would give the legislature a second bite at the apple, should decluttering turn out to not have been a good idea. The cliff effects that could occur with temporary legislation could be ameliorated by employing gradual phaseouts, which are a well-known feature of legislative design.[204] Alternatively, a legislature could set target benchmarks for the

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[199] *See supra* Part IV.C. and Part IV.B.

[200] As discussed above, this will be the rare case in the current global tax context.

[201] *See supra* note 177 and accompanying discussion.

[202] *See supra* Part V.A.

[203] *See, e.g.,* Rebecca M. Kysar, *Lasting Legislation*, 159 U. PA. L. REV. 101 (2011) (discussing and critiquing the use of sunset provisions); George Yin, *Temporary-Effect Legislation, Political Accountability, and Fiscal Restraint*, 84 N.Y.U. L. REV. 174 (2009); Jacob E. Gersen, *Temporary Legislation*, 74 U. CHI. L. REV. 247 (2007).

[204] *See, e.g.*, Rodney P. Mock, Herbert G. Hunt III & Jeffrey Tolin, *When Economics Makes Bad Tax Policy: Tax Phase-Outs*, 37 VA. TAX REV. 485 (2018).

operation of the new regime, which, if met, would trigger the phaseout of the old regime.[205] Depending on the specific rule being decluttered (for example, interest expense deduction limits, CFC regimes, reporting requirements), different techniques for tempering the decluttering risk may be appropriate.

To be sure, there are acknowledged pitfalls associated with using temporary legislation, sunsets, and phaseouts in designing tax legislation, as the literature has identified.[206] These include political process concerns, increased uncertainty and complexity, and decreased legitimacy.[207] But in certain contexts, like the current one, these admittedly imperfect design tools can be used to help avoid potentially even worse outcomes (such as permanently and totally eliminating an anti-abuse rule in error).

Another possible objection is that this approach would allow increased regulatory burdens to persist for some period of time. However, in some scenarios, it could offer the best balance between attention to excessive compliance costs while also ensuring that regulatory goals are being met.

D. A Framework for Balancing Powers in the Transnational Context?

Our examination of global tax decluttering rules has revealed the ways in which domestic frameworks for thinking about tidying up obsolete laws—which are grounded in democratic separation of powers concerns—are of limited vitality in analyzing transnational tax decluttering. Yet, the same constitutional and balance of power tensions that has given rise to the statutory obsolescence literature in the domestic context are also present in the global tax case, even though the specifics look a little different.

In the transnational context, what we often see (albeit with variation across countries) is the executive branch in a parliamentary system charged with negotiating treaties on behalf of the state, but the legislature tasked with designing and enacting conforming laws when the agreement "comes home."[208] The executive may commit the state to a global regime, but the legislature retains power to enact (or not enact) specific domestic rules necessary for compliance.[209] The exact dynamic, and the likelihood of a gap

[205] Or, alternatively, if a legislature does choose to declutter old laws upfront, it would set a benchmark or floor, which, if met, leads the decluttering become undone. Our sense is that this latter design would be more atypical and would confront more constitutional and/or political economy hurdles.

[206] *See, e.g.*, Kysar, *supra* note 203; Gersen, *supra* note 203.

[207] *See, e.g.*, Jason S. Oh, *The Pivotal Politics of Temporary Legislation*, 100 IOWA L. REV. 1055 (2015); Lawrence Zelenak, *Complex Tax Legislation in the TurboTax Era*, 1 COLUM. J. TAX L. 91 (2010); Mock et al., *supra* note 204.

[208] *See*, *e.g*., Ring, supra note 170.

[209] *See, e.g.,* US Constitution, Article 1, Section 8, Clause 1: "The Congress shall have the Power To lay and collect Taxes…"; and "All Bills for raising Revenue shall original in

between the executive and the legislature, can look different depending on the design of government (presidential, parliamentary) as well as the existence of supranational commitments (such as those deriving from EU membership).[210] Domestic legal regimes explicitly manage this balance through rules governing how treaties are made and entered into force. Less clear is how the balance is managed when the international commitments by the executive are less formal and the demand legislative action for their implementation, as is the case in the Pillar Two context.[211]

But even less clear than any of the above is the appropriate role of and power of transnational organizations and blocs—particularly those that spearheaded the new regimes—in telling domestic legislatures to get rid of purportedly redundant tax rules once a new transnational regime has been put in place. At this point, we do not have any kind of transnational constitutional norm or guidance regarding this type of practice. But this dynamic is likely to persist and even become more common if tax regimes become increasingly transnational and coordinated, so it is possible that some such transnational balance of power framework would need to be articulated going forward. Today, international organizations and blocs may be advising countries to declutter existing rules; tomorrow, the advice may escalate into telling countries not to enact certain types of rules domestically at all, but to rather "leave it to us" at the transnational level.

The prospect of this type of dynamic recurring (and recurring even more strongly) in the future hints at the complicated challenges that await increased efforts to coordinate tax (or other) policy on a global level, whether at the OECD or the UN. This suggests the need for a more systematic approach to addressing transnational-national power dynamics and how such power should be balanced and constrained. While scholars have attempted to articulate frameworks for managing these types of national-transnational dynamics,[212] such attempts have gained limited traction. We do not attempt

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the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills."

[210] *See generally*, European Union, "Founding agreements," (providing a basic review of EU legal framework and the role of treaties among the member states: "Under the treaties, EU institutions can adopt legislation, which the member countries then implement."), https://european-union.europa.eu/principles-countries-history/principles-and-values/founding-agreements_en (last visited February 15, 2025).

[211] In the US application, the legislature remains free to exercise its authority and discretion in designing any necessary rules.

[212] *See, e.g.,* Eric C. Ip, *Globalization and the future of the law of the sovereign state,* 8 Int'l J. of Constitutional L. 636 (2010); Stewart Patrick, *Rules of Order: Assessing the State of Global Governance,* Carnegie Endowment for International Peace Working Paper (Sept. 2023), https://carnegie-production-assets.s3.amazonaws.com/static/files/202309-Patrick_Global%20Order_final-1.pdf; Josewph E. Stiglitz & Dani Ridrik, *Rethinking Global Governance: Cooperation in a World of Power* (June 2024),

to set forth such a framework in this article but do flag that one might become necessary in the future.

VII. CONCLUSION

The current call by major global players for decluttering of existing domestic tax rules in the wake of Pillar Two carries a deceptive appeal: Having "solved" tax base erosion and profit shifting through coordinated global tax policymaking, old domestic anti-abuse rules can be dispensed with, leaving a streamlined regime for both business and tax authorities. But despite this apparent appeal, global tax decluttering carries significant risks and important political economy implications, including implications for the allocation of tax lawmaking power between the transnational and national levels; for the allocation of power between competing international organizations in global tax policymaking; for competition among countries looking to attract business and investment by reducing tax burdens; and for geopolitical contests among competing blocs and country groups. Especially given the significant current momentum in favor of global tax decluttering and the comparative lack of countervailing analyses, it is critical for policymakers to understand the scope and nature of decluttering's risks and high stakes, in order to make balanced and considered decisions.

Even if the call to declutter ultimately is not heeded in this particular round of global tax contestation—either because countries are occupied by other pressing domestic issues, or because they have consciously rejected decluttering for now—the dynamics underlying the current decluttering movement are likely to recur as multilateral and transnational tax policymaking continues, evolves, and likely expands. Whether the OECD continues to play a leading role or the UN's new Framework Convention on Tax Cooperation gains serious traction, the momentum for global tax engagement remains strong and carries with it the complicated dynamics and relationships between international organizations, nation states, business interests, and other actors. Thus, the political economy stakes and dynamics that this article has identified are likely to be a continuing feature of the global tax landscape.

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