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RESEARCH ARTICLE

The Big Four and corporate tax governance: From global dis-harmony to national regulatory incrementalism

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Abstract

The Big Four professional services firms – PwC, Deloitte, KPMG and EY – promote, sanction, and regularise the behaviour and practices of business and government. This is especially the case in the area of multinational tax avoidance. This large, and growing, sector of the Big Four's business model places them at the centre of both causing and addressing the problem. Their role is not limited to advising MNCs on complex tax structures. They also advise governments and international organisations on regulatory reform of the global tax system. This article examines their role in so doing through an analysis of Australian Senate Inquiry hearings and responses to the OECD reform programme on the digitalisation of the economy. We show that advice provided by the Big Four is not purely technical, but is intended to achieve a global corporate tax system that is either globally dis-harmonised or a matter of national regulatory incrementalism. This is despite their claims of supporting global regulation based on multilateral agreements. Ultimately, we demonstrate that the Big Four use their significant structural power to discursively undermine the ideals of the OECD, the leading international organisation working to reform global taxation.

1 | INTRODUCTION

The provision of tax advice is a major part of the business of the world's major professional services firms, PwC, Deloitte, KPMG and EY. These 'Big Four' sit at the heart of the multinational tax avoidance regime. They facilitate multinational corporations' (MNCs') tax minimisation strategies by legally exploiting loopholes in the global tax system. This practice is estimated to cost governments at least US$483 billion annually (Tax Justice Network, 2021). The Big Four therefore act as 'rule intermediaries' that embody and enact informal industry norms and practices. They also play political roles by advising governments and international organisations developing national and global regulations. Their advice is neither purely technical nor neutral. As they have come to structurally occupy a pivotal role in the space between private practice and public regulation, the Big Four have constructed and enhanced their legitimacy and discursive power in the field. Their role in minimising MNCs' tax payments and providing advice to governments masquerading as technical expertise works to shore up their structural power in service of their business model.

In this article we illustrate how the Big Four exercise their discursive power to prevent changes to the regulatory *status quo*. We do so by examining their contributions to a national level inquiry as well as a global-level forum. Specifically, we draw on verbal testimony provided by their representatives at the 2015 Australian Senate Inquiry into MNC tax avoidance as well as public written submissions made by the Big Four

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regarding the Organisation for Economic Cooperation and Development's (OECD) proposed tax reform of the digital economy, BEPS 2.0. These two data points allow us to compare the change in the Big Four's attitudes over a four-year period as the possibility of global regulation moved closer to a reality. We employ discourse analysis of their representatives' statements and written submissions using QSR NVivo 12 to focus on their views on reform and regulation by governments both unilaterally and multilaterally.

We demonstrate that representatives of the Big Four do not promote uniformity in global tax reform and harmonisation of tax systems. The testimony and submissions provided by the Big Four instead reveal a strategic vision not for dealing with global corporate tax avoidance, but for (re-)enabling this behaviour. In essence, their discourse reveals their interest in maintaining their role as the world's advisers on corporate tax avoidance in order to enable it. In the first instance, we demonstrate a coordinated effort on the part of the Big Four in promoting a two-tiered global tax system, where alignment occurs at the OECD-level, leaving a cohort of tax havens outside this system. Essentially, they promoted a globally dis-harmonised regulatory approach. Second, when presented with concrete global tax reform, in the form of the OECD's BEPS 2.0, the Big Four were more assertive in their push-back against reform, arguing for a slowing of the pace of the reform project. Ultimately, they argued for a nationally incremental approach to regulation over a globally (dis-)harmonised one. This two-step strategy allows MNCs to continue to operate across multiple jurisdictions to take advantage of opportunities to minimise their taxation obligations. This means that the Big Four maintain their structural power as rule intermediaries between their clients and regulators, keeping them in the business of advising on, and facilitating, global corporate tax minimisation.

We conclude that not only do the Big Four facilitate global corporate tax avoidance, but that as rule intermediaries they utilise their discursive power, based on perceptions of their technical expertise, to defend this practice in the face of changing government and societal attitudes. We agree with Fransen and LeBaron (2019, p. 261) that the Big Four professional service firms are able to influence policy makers through a combination of ‘their roles as experts, assurance providers, and informal spokespersons for client firms’. However, we argue that this *discursive legitimacy* is ultimately used to mask their structural power, the method by which they retain their privileged position in the global corporate tax system. In the process, they serve their own business ends as providers of tax advice, as well as those of the MNCs receiving it. On this basis, we conclude that the Big Four should be viewed as a special interest group. While Big Four firms are invited to contribute to debates around global tax reform, we expect them to use their structural power to push for a continuation of the status quo. After all, it is the structure of the contemporary global tax system that enables their business model and delivers greater profits to MNCs.

Policy Implications

- In regard to the participation of the Big Four in economic policy-making arenas, it should be widely acknowledged that their advice is self-interested in service of their business model and the facilitation of ongoing tax avoidance by their clients.
- If states do not fully implement the suite of reforms the OECD has recommended, the result will likely be a globally dis-harmonised tax system. The Big Four will therefore continue to profit from tax competition between states.
- Governments suffer direct losses due to the advice the Big Four give their clients, yet they continue to seek the advice of the Big Four to address the tax avoidance problem. Governments and multilateral organisations should cease seeking advice from the Big Four or at the very least hold these firms to account by asking why their advice changes in differing contexts.
- There should be further interrogation of the advice the Big Four have thus far given around multilateral reform, with a particular focus on the meaning of global reform. OECD reform should not be conflated with rigorous and substantive global tax reform, which would capture traditional ‘tax havens’.
- States should fully support multilateral reform, avoiding unilateral action and a race-to-the-bottom on tax. Overall, substantive multilateral reform will increase the total amount of tax collected globally. This is a positive outcome for all states but can only be achieved if states collectively pursue the collection of corporate taxes.

2 | THE OECD AND THE EVOLUTION OF THE GLOBAL TAX SYSTEM

The OECD is tasked with improving the fragmented and complex global corporate tax system. The flaws in the system date back to its design in the early twentieth century, when the focus was on preventing double-taxation on businesses as they expanded globally (Eccleston, 2018). In contemporary times, as MNCs

are able to operate across many states, the initial aim of avoiding double taxation has evolved into a system of legal loopholes. They allow firms to shift profits from high tax jurisdictions to low or no tax jurisdictions, colloquially known as 'tax havens'. This practice is referred to as 'base erosion and profit shifting' (BEPS) because it has the consequence of shifting profits that erode both the tax base of individual countries, as well as the global tax base. MNCs' shift their profits from jurisdictions where they actually earn them to other jurisdictions where they can legally claim their business activities occur. Therefore, instead of preventing double taxation, the current regulatory arrangements for the global tax system provide opportunities for what Pascal Saint-Amans, Director of the Center for Tax Policy and Administration at the OECD, labels 'double non-taxation' (Australian Senate, 2015).

BEPS has accelerated since the global financial deregulation of the 1970s and 1980s. In 1998 the OECD published *Harmful tax competition: an emerging global issue* as the first attempt by an inter-governmental organisation to name and shame tax havens (Sharman, 2006). At the same time, the finance ministers of the G7 made a public commitment to address the issue. However, the election of the Bush Administration in the US ended any hopes of global cooperation. The new administration's opposition to the OECD's Harmful Tax Project stemmed from a general rejection of multilateralism and a view that 'the project simply served for high-tax European welfare states to impose their tax views on the rest of the world' (Genschel & Rixen, 2015, p. 175). The then US Treasury Secretary Paul O'Neill stated that that US's position was that it 'does not support efforts to dictate to any country what its own tax rates or tax system should be, and will not participate in any initiative to harmonise world tax systems' (O'Neill, 2001). The US government then worked to undermine any OECD attempts at regulatory harmonisation of the global tax system on the basis of its emphasis on preserving state sovereignty on the matter (Palan et al., 2013).

It was not until the 2008 Financial Crisis that the combined impact of falling government revenues, enormous bailouts, and resulting rising public debt led to a renewed interest in the tax affairs of MNCs. In developed states, the impact of aggressively tax-minimising MNCs on government revenues while the public had to bear the burden of austerity measure was highlighted by tax justice campaigns (e.g. see Fitzgerald, 2015). These campaigns coincided with the OECD's shift away from bilateral agreements to focus on a more unified overhaul of the global tax system (Eccleston et al., 2015). Concurrently, the US introduced regulation requiring greater diclosure of US citizens' overseas wealth, the Foreign Account Tax Compliance Act ('FATCA'). Although unilateral in nature, the US use of its global power to overturn the soveriegnty-centred precedent of non-disclosure actually opened the door for the OECD to follow, essentially paving the way for the very same multilateral action it had previously blocked (Christensen & Hearson, 2019; Hakelberg, 2016). Thus emerged within the OECD and its member states 'a genuine consensus for the need for multilateral efforts to tackle tax abuse' (Palan & Wigan, 2014, p. 334). This consensus took the form of the OECD BEPS initiative (BEPS 1.0), which resolved to reduce mismatches in the global tax system.

Negotiations on BEPS 1.0 began in 2013. They culminated in the key instrument, the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS* (the 'MLI'), signed in 2016, which attempted to harmonise global tax rules through 15 'BEPS Actions'. BEPS 1.0 faced significant challenges, beset by 'distributional tensions' even within the OECD and G20 resulting in a slow uptake of the MLI (Christensen & Hearson, 2019, p. 1069). Of the 94 signatories, only 50 countries (i.e. about half) domestically ratified the convention. In response, the OECD was forced to introduce the BEPS Inclusive Framework (BEPS IF), which requires states to sign up to only four of the 15 BEPS Actions. BEPS IF aimed to broaden membership to include more developing states that were unable, or unwilling, to sign up to the full suite of BEPS Actions (Christensen et al., 2020). Since its inception in 2016, 141 states have joined the BEPS IF.

In July 2021 the OECD announced a new set of global tax rules, known as BEPS 2.0. These rules emerged in response to the growth in the digital economy, which has enhanced opportunities for global corporate tax minimisation due to the inherently 'placeless' nature of MNCs' operations in the digital space. Uptake of BEPS 2.0 has been much quicker with 137 of the 141 BEPS IF immediately committing to the new global tax regime. BEPS 2.0 consists of Pillar One, a commitment to alter the profit allocation rules for a group of large MNCs, so that tax rights are re-allocated to the country where the end-user is based (Hirst et al., 2020). And Pillar Two, an attempt to consolidate the range of unilateral actions taken by various states into a global consensus position, resulting in a global minimum tax rate on foreign profits (Moreau & Bode, 2020). This programme is known as Global anti-Base Erosion (GLOBE). While the final details of BEPS 2.0 are yet to be determined, progress has been made on Pillar Two. In December 2021, the OECD released guidelines proposing a 15 per cent minimum global tax rate be applied to all MNCs with annual revenue greater than €750 million.

It can be argued that BEPS 2.0 represents significant wholesale change to the global corporate tax system. For example, Pillar One of BEPS 2.0 treats MNCs as one global entity for the purposes of allocating profit. This is in stark contrast to the current model that taxes individual subsidiaries, the strategic structuring and location of which are a key enabler of tax avoidance.

Perhaps most dramatically, in response to concerns about the digitalisation of the global economy, because physical presence is no longer a key determinant of where profit is generated, BEPS 2.0 takes this as an opportunity for tax to be levied based on the location of the end user or consumer, not a corporate subsidiary (OECD, 2021).

The OECD argues all countries are adversely affected if multilateral action does not accurately reallocate taxation from digital activities (OECD, 2019). Yet, BEPS 2.0 carries over many of the challenges of BEPS 1.0. First, several countries have consistently engaged in a race to the bottom (i.e. tax havens) or sought favourable treatment for their own MNCs (e.g. the US), leading to delays in consensus. Second, BEPS 2.0 has consistently set ambitious timelines which, in order to be met, have seen concessions made to attract states to sign up. For example, there has been some whittling down of the list of MNCs to which BEPS 2.0 applies.[1] Third, powerful states are still able to derail the process at any point. The US, previously recalcitrant on the issue of global tax rules, has signalled eagerness to be involved through the Biden Administration's *Made in America Tax Plan*. However, it is likely that US firms will feature prominently in the 100 or so MNCs caught in the BEPS 2.0 Pillar One net, at which point Congress may grow sceptical of such measures. Support from the UK and Europe also remains uncertain, particularly in relation to the US push for all members to commit to removing unilateral digital services taxes (which both the EU and UK have implemented) (Vann et al., 2021). Further, several European states with low corporate tax rates (Ireland and Hungary) as well as the UK (where four of the world's largest tax havens are domiciled) have expressed dissatisfaction with various rates put forward for BEPS 2.0 Pillar Two (OECD, 2021).

At best, a precarious consensus among states on OECD-led global tax reform has emerged. The Big Four have been keen to exploit it through consistent criticism in the form of their advice. While ostensibly supporting global harmonisation of tax regulations, the Big Four have in fact been pursuing the goal of ongoing global dis-harmonisation in the global tax system. The Big Four's historical ascent to power in general, and in respect of their role as designers of complex corporate tax minimisation structures in particular, is outlined in the next section by way of background to this strategy.

3 | THE POWER OF THE BIG FOUR

Until 1988, the accounting and business advisory industry was dominated by eight large firms, which through mergers were whittled down to the four we see today (Shore & Wright, 2018). These eight firms were themselves the result of previous consolidations in the industry. While the firms were getting bigger, they were also changing the nature of their operations and sources of revenues. Having traditionally derived the majority of their income from auditing and accounting services, they seized opportunities to perform more strategic governance as well as technical accountancy functions resulting from an increasing focus by governments on managerialism and privatisation of services. They also changed their nomenclature to 'professional services firms' (Shore & Wright, 2018, p. 308). The shift in remit of the Big Four meant that they came to be more deeply involved in defining the *rules of the game* for markets. In this role, they not only came to be seen as possessing technical expertise, but determining what constitutes technical expertise prior to giving advice to their clients, increasingly MNCs. This put them in an enhanced position to influence governments, thereby consolidating their political power. To better understand this, we can look to a three faces of power framework originally applied to business by Fuchs (2007; see also Mikler, 2018; and, earlier, Lukes, 1974). Her work argues that corporations are not simply economic actors, and that their political power needs be taken seriously. To do so, we must examine their possession and employment of instrumental, structural and discursive power.

The most basic form of power corporations hold is instrumental power. This form of power enables them to lobby law-makers, fund candidates and staff governments with industry-friendly people (Hacker & Pierson, 2002; Lukes, 1974). The high turnover of staff from politics to industry (and back again), or simply the access that one has to the other, is akin to a *revolving door*. Those with the right connections, or who have bought these connections, are therefore in a position to influence policy outcomes (Levy & Egan, 1998; Newell, 2006; Tienhaara, 2014). They can 'capture' regulators on behalf of corporate interests (Carpenter & Moss, 2014; Weidenbaum, 2004). However, there are impediments to the use of this form of power, notably the cost and resources associated with funding campaigns and employing staff to engage in lobbying. The visibility in exercising it, and the resulting possibility of public scrutiny, means that it can be reputationally damaging if the activities engaged in invite disapproval.

Structural power is more covert, as it involves firms' ability to use their control of economic resources and relations to threaten or reward states for business-friendly policies. Perhaps covert is the wrong term, for it is hardly the case that enormous firms like the Big Four are hard to 'see'. Yet their 'bigness' means that they are taken seriously without needing to proactively seek influence. They are not alone in possessing this form of power. In fact, as discussed in Mikler (2018), to possess it is normal in today's version of capitalism. Indeed, Nolan (2001; see also Tepper & Hearn, 2019) notes that by the turn of the twentieth century no more than five global corporations controlled each of the world's

major industries. Almost a third of these have one corporation that controls over 40 per cent of sales. These enormous entities do not have to explicitly threaten consequences for policies they dislike, or monetarily 'grease the hinges' of a notional revolving door to get access to law-makers. Just by virtue of their very existence and control of their industries, they occupy what has been termed a *privileged position* to achieve their goals (Cox, 1987; Frank, 1978; Lindblom, 1977; Tienhaara, 2014). In fact, they can get what they want without even asking for it. Big business is also adept at leveraging structural power to keep issues off, as well as getting them on, the political agenda (Bachrach & Baratz, 1962). The result is a capacity for agenda-setting as well as agenda-influencing (Elbra, 2020).

The influence that the Big Four have is not only a result of their market dominance and political connections. It is also a function of their perceived legitimacy. In addition to possessing structural power and utilising their access to decision-makers to exercise it instrumentally in pursuit of their interests (and those of their clients), the Big Four further seek to advise and influence decision-makers on the basis of expertise. As the holders of technical knowledge, they make discursive claims on 'truth' (Foucault, 1991). Discursive power, and the perceived legitimacy to which it potentially gives rise, is therefore the political 'prize' the Big Four, and the MNCs they represent, seek because it facilitates the creation of a world in the image of their interests. The ability to determine generally accepted truths is a powerful political tool, as is the ability to veil one's interests in terms of generally accepted norms. It enables the projection of 'a particular set of interests as the general interest', a sense that what is good for one is good for all and not just a matter of 'arm-twisting' or being too big to ignore (Levy & Newell, 2002, p. 87). The Big Four certainly play this game, as they attempt to create a belief that what serves them also serves the public interest not just nationally, but globally. They aim to possess what Mikler (2018) terms the *discursive legitimacy* to set rather than influence agendas, and to do so not just on the basis of being big and having access to decision-makers, but because they are perceived to be *right*.

These are claims that hardly need feats of logic to prove. The Big Four's very existence is predicated on them possessing not just the ability but the right to promote, sanction and regularise the behaviour of other firms, including the enabling of aggressive corporate tax minimisation practices. If they are to be an ally of MNCs seeking to leverage tax loopholes, then they must employ their expansive networks and connections via the discursive promotion of such an end (Kalaitzake, 2019). To do so, they engage in concerted efforts to make states in their 'image', to promote the idea that what is desirable for the MNCs who pay for their advice and whose interests they serve, is also in the interests of governments that regulate them (e.g. see Amoore, 2006). As such, in addition to being rule intermediaries the Big Four are also 'reputational intermediaries' (Gourevitch & Shinn, 2005, p. 114) between MNCs and states in order to create, embody and enact both informal and formal industry norms that become widely accepted as self-evident. If any proof is needed that this is the case, then it is the particularly astonishing fact that while governments suffer direct losses from the advice the Big Four give their clients, these same governments also seek the advice of the Big Four to address the problem.

As can be seen from the above discussion, the three faces of power do not exist independently of one another, nor are they exercised as such. But we contend that the face that does most of the 'heavy lifting' is structural power. The Big Four together audit 99 of the largest 100 corporations listed on the FTSE 100 Index, and 240 of the 250 next biggest ones listed on the FTSE 250 Index (Christodoulou, 2011). Given auditors' insight into the financial structure of firms, it is unsurprising that the Big Four leverage this to offer advisory and tax services to the world's largest corporations (Kalaitzake, 2019). PwC alone provides services to 429 of the companies listed on the Fortune Global 500 (PwC, 2018). Ramirez (2012, p. 49) argues that their overwhelming market dominance, coupled with their 'shared expertise, common interest and jointly-run projects', differentiate them from the rest of the accounting community. This market concentration gives the Big Four a 'disproportionally strong network in a variety of business communities, as well as policy communities, on which they may draw to advance their respective agendas' (Fransen & LeBaron, 2019, p. 264). Their market domination can then be used to gain access to decision-makers in order to exercise instrumental power. And when they do, they employ their vast business networks throughout the world to promote regulations and standards that are conducive to their interests, as well as those of their clients.

It would be naive to claim the Big Four are a neutral oligopoly without an agenda. This may be understood by policy makers, even though they usually profess to be commissioning the Big Four's consulting services on the basis of expertise and neutrality. (Calvert, 1985). The reality is that they play a key strategic role in furthering global capitalist interests, the very same interests they share with MNCs (Faulconbridge & Muzio, 2012; Suddaby et al., 2007). They are not just involved in a discussion about best practices, but create 'an ideological debate about how the corporate system enhances public benefits and the public interest' (Wilks, 2013, p. 79). In respect of tax minimisation specifically, they serve their own interests via the preservation of existing market opportunities for the provision of tax planning advice, but they do not overtly exercise their structural power or employ it instrumentally in

lobbying decision-makers. Instead, they promote both their own interests and those of the MNCs they serve through the discursive legitimacy they have established as 'experts'.

As such, while the three faces of power can be described independently, the political reality is that they are deeply intertwined. The Big Four's structural power is enhanced by their indispensability to government, not in the traditional economic sense, but in a political sense. They are the source of government and multilateral organisations' tax advice and are invited to provide inputs at all stages of the regulatory process. And, as shown in this article, this advice is not neutral. It serves the interests of their clients and the Big Four's business model.

4 | THE PUSH FOR GLOBAL (DIS-) HARMONISATION AND NATIONAL REGULATORY INCREMENTALISM

In this section we analyse the exercise of the Big Four's discursive legitimacy by studying their public statements. Our analysis begins with the Australian Senate Inquiry held between April 2015 and April 2016, at which the Big Four's representatives sought to justify the practices of their firms, the advice they provide to their clients, and their rationale for inserting themselves into discussion of global tax system reforms. While the analysis focuses on the discursive power of the Big Four, it is important to also recognise their structural power, when considering the seriousness with which their advice and expertise is taken. For example, in respect of the Australian context, the Big Four not only advise MNCs operating in Australia, but in the five years to 2017 they also provided consulting services to the Australian federal government totalling AUD1.7 billion (Tadros, 2020). In the financial year ending June 2019 alone, they were awarded a total of AUD720 million for their services, the most they have been awarded in a single year (Tadros, 2020). Over the six years to 2019 the Big Four also donated AUD4.5 million to the country's major political parties (Tadros & McIlroy, 2020). These substantial consultancy fees and political donations were paid during a period that included the Big Four's representatives being invited to appear at the hearings of the Australian Senate Inquiry. As such, they occupied a 'privileged position' (structural power) in offering advice and as a result enjoyed 'revolving door' (instrumental power) access to the Australian government before, and contemporaneously with, their discursive contribution to the tax reform debate. The Australian Senate Inquiry represents a crucial case: the hearing included a wider array of actors than comparable hearings in the UK and US, and as Anesa et al. (2019, p. 20) argue, 'other jurisdictions looked closely at the Australian development, not least because of the involvement of the Director of the OECD Centre for Tax Policy and Administration in the public hearings'.

Following our analysis of the Australian Senate Inquiry, we turn to more recent efforts to reform the global tax system via BEPS 2.0, which represents a concrete plan for global tax reform. The programme focuses on two areas: taxation of the digital economy, and a harmonised global tax rate. As this section outlines, multilateral efforts at taxing digital revenues were met with strong criticism from the Big Four. When faced with an actual multilateral reform *programme* for tax regulations in both these areas, as opposed to being questioned on the *idea* of tax reform more generally, their discourse changed. Rather than promoting global reforms, they became far more negative when faced with the likelihood (now substantially realised), rather than the possibility, of multilateral regulation.

4.1 | The Australian senate inquiry

In this subsection we analyse the transcripts of verbal testimony given by the Big Four's representatives at the hearings of the Australian Senate Inquiry. The transcripts were coded using QSR NVivo 12 for whether they expressed 'support for unilateral corporate tax reform' – that is, a preference for Australia taking unilateral action on tax avoidance – versus 'support for multilateral tax reform' – namely, the OECD BEPS programme. A summary of the coding results is given in Table 1. The number of codes per category is shown, as is the percentage of yes/no coding under multilateral and unilateral reform. The statements they made in this regard were then also qualitatively analysed.

All firms were fairly evenly split in their views for or against Australia taking unilateral action. During the hearing, firms were asked about proposed changes to the Australian tax code that would rescind clause 25–90 and prevent MNCs from obtaining interest deductions on certain forms of foreign income, one source of tax minimisation. Grant Wardell-Johnson, Partner in charge of KPMG's Tax Centre noted 'people who advise on 25-90 basically said: "Repeal this and you will not get the income that you expect to get, and it is a

TABLE 1 Support for multilateral and unilateral corporate tax reform Australian senate

	Multilateral reform		Unilateral reform	
	Yes	No	Yes	No
KPMG	13/100%	0/0%	5/56%	4/44%
EY	7/100%	0/0%	5/42%	7/58%
PwC	14/88%	2/13%	6/55%	5/45%
Deloitte	16/100%	0/0%	9/60%	6/40%
Total	50	2	25	22

poor set of rules with capricious results"'. He followed this up by noting, this 'was a widespread view within the tax community', thereby promoting the idea that he was presenting a truth uniformly shared on the impacts of such a tax reform. Ms Rosheen Garnon, National Managing Partner of Tax at KPMG noted, in support of unilateral reform, 'all stakeholders, including government, business leaders and advisers, have a part to play in the reform debate.'

The antipathy towards unilateral action was shared by Glenn Williams, partner at EY, who suggested that 'it is important that anyone making a decision to either create or repeal a section understands what all the consequences would be. So one of our duties is to ensure that those making decisions are fully informed about what the consequences would be of repealing a section or indeed introducing a new section.' Similarly, Mr David Watkins, Partner/Leader of Tax Insight and Policy at Deloitte argued that 'in the course of those discussions, [we] made it known that there were consequences, and perhaps in some cases unintended consequences, associated with the government's proposal'. Here, both representatives contend that professional services firms possess vital expertise necessary to comprehend the consequences of government decisions, over and above policy-makers in the Australian Taxation Office (ATO) and Department of Treasury. Watkins went on to add, 'we are here to help by contributing to the tax-reform debate, both domestically and internationally'. It is also notable that the language used by the Big Four representatives implies the threat of negative consequences for national economic prosperity resulting from government decisions not supported by the industry, rather than a threat to their business interests. Their contributions thereby serve to remind the governments of the firms' collective structural power, but in the context of the claimed national interest.

Big Four representatives showed far greater support for multilateral reform of the tax system via the OECD's initiatives. Garnon noted in this context that 'every time we have the opportunity to shine a light on the tax system in my view is a good thing'. Mr Rob McLeod, Tax Partner at EY, emphasised that international tax reform requires a multilateral response due to the number of jurisdictions involved. McLeod further argued that many of the issues the OECD seeks to address simply *cannot* be solved by unilateral measures. He stated in regard to the BEPS measures that 'finding a joint solution to a joint problem does not really lend itself to unilateral action'. He further stressed that Australia should not take unilateral action, because such action puts individual states at an economic disadvantage among their peers.

His views were supported by Mr Thomas Seymour, Managing Partner, Tax and Legal, at PwC, who noted that 'on the topic of international tax reform, we support the OECD's approach to multilateral consensus-based international tax reform'. He added that if cooperation between states fell away, 'to be frank, that would be great for our business, but it's not good for the country'. This statement suggests that PwC places multilateral reform and Australia's economic wellbeing ahead of its interests. Mr Watkins from Deloitte likewise provided a statement supporting OECD multilateral reform. However, there was more of a 'sting in the tail' in how he expressed this sentiment. Mr Watkins noted that 'the danger of alternative unilateral solutions is to risk a series of uncoordinated unilateral actions that could result in dispute, in double taxation and in greater uncertainty, none of which are conducive to encouraging business activity'. Such statements demonstrate the structural power of the Big Four because they illustrate the domestic economic damage that is possible were professional services firms to recommend further nationally-specific tax-minimisation strategies to clients.

Representatives went beyond support for global multilateral tax reform to also suggest ways in which this should be implemented. Ms Garnon, of KPMG, emphasised her company's private expertise, suggesting that 'a lot of work will be coming out of the OECD program of work. Both Treasury and the ATO will need additional resources if we want to act promptly. That is something I cannot reiterate enough – to work through it in the way that the OECD has, to have a defined timetable, to hit the benchmarks and the times, it is really important that we are seen to act quickly'. Ms Garnon's use of the pronoun 'we' does not necessarily suggest a literal meaning but implies a closeness between the tax professional community and government agencies responsible for legislating corporate tax. Additionally, Ms Garnon reiterates the Big Four's experience with multinational tax reform, understanding of business processes and tax reform matters. This positioning of the Big Four's authority was supported by Mr McCleod from EY, who noted that the firms see their consulting work as 'a social obligation' and that they are 'quite public-spirited in coming to those assignments and giving their input'. In other words, the Big Four's representatives saw themselves as not just 'at the table' with government agencies and OECD, but 'on the same page'. Indeed, Mr David Linke, the National Managing Partner, Tax and Legal at KPMG, divulged that his firm had made more than 60 recommendations to the Australian Government's white paper on tax reform, and that they were central to the National Reform Summit.

Finally, while the Big Four presented a unified position in favour of multilateral tax reform, their choice of the term 'global' in regard to the tax system and potential OECD reforms is notable. For example, Mr Watkins, of Deloitte, noted that 'we [Australia] do not want to find ourselves an outrider compared to the future global

consensus'. The global consensus Mr Watkins refers to is, as we have shown, ambiguous. The BEPS initiatives at the time of the Australian Senate Inquiry enjoyed a reasonable level of international support as a concept to promote fairness in taxation. However, as the representatives of the Big Four would have been aware, reform of the *global* corporate tax system requires the BEPS initiatives to be implemented widely by both OECD member and non-member states, neither of which looked likely as they gave their testimony. Knowing that uncertainty remained as to whether all states would sign up to BEPS, and even more around whether tax havens would do so, would seem to explain why the Big Four's representatives would be eager to conflate multilateral reform through the OECD with global governance, and promote the desirability of both over unilateral action.

4.2 | BEPS 2.0

In this subsection we analyse the Big Four's public written statements made in response to the OECD's *Public Consultation Document Addressing the Tax Challenges of the Digitalisation of the Economy*, published on 13 February 2019. The same coding framework was applied as that for the Australian Senate Inquiry hearings. A summary of the coding results is given in Table 2. The number of codes per category is shown, as is the percentage of yes/no coding under multilateral and unilateral reform. As with the Senate testimonies, the firms' written submissions were also qualitatively analysed.

The changes proposed by the OECD in its BEPS 2.0 project appear reflected in changes in the views expressed by the Big Four. As was the case four years earlier, three of the firms were overall in favour of multilateral reform, but given the likelihood of this coming about in reality rather than theory a noticeable degree of ambivalence is discernible. This is most noticeably the case for PwC and EY, the two firms that generate the highest returns among the Big Four from both auditing and tax advice (Statista, 2022). This is not surprising given the evidence suggesting the Big Four use their auditors' access to generate lucrative tax consulting business (Shore & Wright, 2018; Coffee, 2001). Despite three of the firms still stating support for multilateral reform, and one being somewhat supportive, advice cautioning the OECD against the specific reforms contained in BEPS 2.0 is evident from all of them. Further, both PwC and KPMG's submissions not only provided criticisms of the proposed new rules, but also lengthy annotations outlining their preferred methods for regulating digital revenue collection (KPMG, 2019b; PwC, 2019b). While still expressing strong support for multilateral reforms, all four firms qualified this support in the following terms: (1) retaining the *status quo*; and therefore (2) ensuring tax sovereignty for states; unless (3) global consensus can be achieved. In essence, they gave mixed messages of support for the *concept* of multilateral reform, while simultaneously arguing for caution, stability and consensus in order to slow the pace of reform.

TABLE 2 Support for multilateral and unilateral corporate tax reform BEPS 2.0

	Multilateral reform		Unilateral reform	
	Yes	No	Yes	No
KPMG	23/85%	4/15%	0/0%	9/100%
EY	21/51%	20/49%	4/50%	4/50%
PwC	37/43%	49/57%	5/50%	5/50%
Deloitte	51/93%	4/7%	4/44%	5/56%
Total	132	77	13	23

In respect of retaining the *status quo*, PwC noted that the OECD should 'strive to retain long-standing and well-founded international tax principles, as in many ways such are still fit for purpose and have been internationally agreed to for decades. We are very concerned that abandonment of these principles may lead to multiple levels of taxation and stifle growth' (PwC, 2019a). This approach was supported by Deloitte, which emphasised the importance of 'maintain[ing], and if possible enhance[ing], a broad international framework of rules agreed to by OECD' (Deloitte, 2019). EY similarly supported a cautious approach, suggesting that 'given the magnitude and reach of this project, we believe it should proceed deliberately' and urging participating states to 'devote the time that is needed for a project of this significance and complexity [because] this is not work that can be done properly in haste or under unrealistic deadlines' (Ernst and Young, 2019).

In other words, the firms expressed a strong preference for national incremental change to existing regulatory frameworks. When faced with the possibility of real substantive global reform, the Big Four were keen to emphasise states' rights to set their own tax rates, a clear rejection of Pillar Two. The most vocal proponent of states' rights was PwC, which stated that 'international tax rules should also preserve countries' sovereign rights to determine fiscal policies (e.g. tax rate, tax base, incentives, etc.) to achieve their economic prerogatives' and that 'defining the income tax base is an inherent right of sovereign nations' (PwC, 2019a). EY's submission mirrored this language when opposing multilateral reform, 'we are concerned that the global anti-base erosion proposals outlined in the consultation document would erode the sovereign right of countries to choose the corporate tax rate that is best for their particular economic circumstances'. EY's and PWC's statements lean heavily on the generally accepted norm of sovereignty, an exercise in discursive power, used to bolster their claims. These comments were somewhat offset by the company's peers, Deloitte and KPMG,

which both expressed concerns about unilateral action, and in somewhat stronger terms than during the Australian Senate Inquiry. For example, KPMG argued that 'it should be noted that the proliferation of unilateral measures has been a significant factor driving the need for a consensus-based solution on the tax challenges of the digitalised economy' prefacing their response with the suggestion that while unilateral reform was a bad thing, so were 'poorly designed laws, and frequent changes', which 'all contribute to uncertainty' (KPMG, 2019a). This view was supported by Deloitte, which in arguing for multilateral reform suggested 'agreement is needed to prevent unilateral and uncoordinated domestic measures' (Deloitte, 2019).

Fundamentally though, such a position also represents an endorsement of the *status quo* because the argument that a global consensus had to be reached in advance of any multilateral measures was actually *combined* with the sovereignty arguments. For example, KPMG stated that 'any proposal for further reform … should be one that can obtain the broadest consensus among members of the inclusive framework' and 'does not conflict, or is clearly reconciled with existing international tax rules and standards' (KPMG, 2019a). These two statements are clearly contradictory as the possibility of *both* global tax reform *and* retaining the existing national rules and standards that permit aggressive tax minimisation is not possible. The purpose of the argument only makes sense if the goal is slowing down the pace or reforms. Indeed, similarly combining arguments regarding global consensus and retaining the *status quo*, PwC stated the following: 'we recommend the search for consensus begin within the current principles which are acknowledged to work well for the vast majority of transactions and have been flexible enough to withstand many changes through their nearly 100 year history' (PwC, 2019a). PwC goes on to caution against reform, noting that the OECD's proposal represents 'a fundamental departure from the existing international tax framework … and could bring much disruption and uncertainty' (PwC, 2019a). Further, Deloitte noted that 'it is essential that countries reach a consensus agreement on a long-term solution to mitigate damage to the economy' (Deloitte, 2019), while EY cautioned against doing anything without sufficient consultation, in unnecessary haste, or risking unilateral action. In fact, EY suggested that there was a risk that BEPS 2.0 overall could undermine the work being done through the MLI. Therefore, EY suggested that the project be slowed down until all parties (EY included) could agree on the 'nature of the problems to be addressed and the objectives to be achieved' (Ernst and Young, 2019).

Ultimately, the Big Four's position on the digital economy was shared by the governments of some OECD member states, with 15 of the 38 OECD countries proposing or implementing a unliteral services tax as of 2021 (Hufbauer & Hogan, 2022). In other words, the result was national regulatory incrementalism in the service of further global dis-harmonisation. While some OECD states took divergent unilateral action, in June 2020, the US government halted multilateral reform under the Trump Administration. US Treasury Secretary Steve Mnuchin announced that not only would the US pull out of the OECD negotiations on taxation of the digital economy, but that they would implement trade retaliations against any state that undertook unilateral measures to combat profit shifting by new technology firms (Shields, 2020). This position was consistent with its earlier efforts to prevent global responses in favour of protecting its sovereignty, as well as previous Administrations' reluctance to embrace truly multilateral tax reform. The current US Administration has departed from previous positions, with President Biden expressing a willingness to embrace multilateral tax reform through the OECD. As Hakelberg (2016) notes, Democratic governments are more likely to support international tax initiatives, and multilateralism more generally (Palan et al., 2013; Milner & Tingley, 2012). Nonetheless, potential roadblocks remain including problematic domestic ratification, a refusal to join if other OECD states retain unilateral measures and the likelihood that US MNCs will be impacted by the proposed reforms, a key factor in slowing earlier efforts at global tax governance (Lips, 2019). Consensus around BEPS 2.0 thus has still not been achieved, with the UK and European states also taking issue with the need to drop unilateral tax measures in favour of the agreed OECD position.

The arguments and developments in respect of corporate tax governance continue to unfold, but what can be said is that they continue to reflect what the Big Four argued for: efforts aimed at creating a truly globally harmonised regulatory approach which remains unlikely, coupled with a slowing of the pace of unilateral reforms served by arguments around state sovereignty that support the *status quo*. Whether or not this continues to be the case in future, it is certainly in the interests of the Big Four that it does as it entrenches their structural power as rule intermediaries in the governance of a globally dis-harmonised tax system.

5 | CONCLUSION

Our analysis demonstrates how the Big Four wield their discursive power in the area of global tax governance. They present themselves as expert evaluators of existing and proposed regulations and make their own suggestions for improving global governance arrangements. They are able to do so because of their size, dominance, and role as rule intermediaries. In other words, because of their structural power. As a consequence, the Big Four are continually given the opportunity to argue in pursuit of their interests, as well as those of their clients.

As the evidence demonstrates, the Big Four have continually reminded law-makers and the OECD of the 'unintended consequences' of reforming global taxation. They appear to work towards the best interests of governments and the societies they serve by suggesting that many changes to taxation laws may not lead to increased tax revenues, but risk negative economic consequences. They create uncertainty, emphasising caution, promoting the benefits of multilateral efforts at tax reform when this seems more elusive, yet stressing the need to protect state sovereignty when it seems more likely. If such advice is seen as neutral and technical, rather than self-serving, then it is more likely to be accepted by states. And if some of these states do not fully implement the suite of reforms the OECD has recommended, with the result being a globally dis-harmonisation tax system, then the Big Four will continue to benefit from tax competition between states. This allows the Big Four to continue to serve their interests, as well as those of their clients, by creating complex tax minimisation schemes that utilise disharmony within, as well as beyond, OECD countries.

The Big Four mask their business interests by making discursive appeals to the public interest, the common good, national economic performance, and their technical expertise. In so doing, they have adopted a discursive strategy that supports the *status quo* in national and global taxation regulation. In reality, this does not support the public interest so much as it reflects their structural power and supports their ability to instrumentally argue for regulations that support their interests. Their perceived discursive legitimacy is employed to keep them in the tax avoidance business. Our analysis supports this finding as their arguments change depending on the threats to a fragmented and global tax regime. Their advice serves to uphold the existing global (dis-) order rather than reform it. The Big Four should thus not be seen as objectively technical experts giving advice on what serves the global public good. Instead, the Big Four are simply a special interest group leveraging their perceived technical expertise and structural position in the global economy to further their own interests.

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DATA AVAILABILITY STATEMENT

The data that support the findings of this study are available from the corresponding author upon reasonable request.

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ENDNOTE

[1] For example, Pillar One will apply to approximately 100 companies, that is those with turnover greater than €20 billion, and excludes financial services and resource firms.

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