The PwC Australia Tax Scandal: Private Consultation in the Drafting of Tax Legislation and What it Means for Canada

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ABSTRACT

Drawing on the analytical framework of Thomas Rixen and Brigitte Unger's exploration of tax governance, in their article "Taxation: A Regulatory Multilevel Governance Perspective" in the *Regulation and Governance* journal, this paper aims to extend their discussion on the efficacy and ethics of leveraging private expertise in shaping tax law from a generalized phenomenon to a specific instance. Using the recently uncovered PricewaterhouseCoopers ("PwC") Australia tax scandal as a case study along with some comparisons to my own country—Canada, this paper investigates the interplay between private sector involvement in tax policy development, and the regulatory frameworks governing this process. In doing so, this paper claims that the PwC Australia tax scandal is representative of a critical juncture in neoliberal tax governance. It argues for a reinvigoration of academic discourse along with a proactive shift in regulatory and socio-cultural paradigms to prevent the erosion of tax policy integrity. Theorizing that without concerted efforts to address these

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challenges, missteps as a result of the privatization of tax policy will recur cyclically, leading to ensuing scandals.

KEYWORDS: *PwC Australia; Tax scandal; Private-sector regulation; Tax policy development; Canadian tax policy*

I. INTRODUCTION

While recent discussions in regulatory scholarship have increasingly focused on the concept of indirect governance through privatization,[1] Rixen and Unger, in their 2022 *Regulation and Governance* journal article "Taxation: A Regulatory Multilevel Governance Perspective," were among some of the first modern academics to discuss the subject in terms of taxation.[2] The main reason this discussion had gone under the radar in the realm of taxation is because tax has been traditionally characterized as "national, hierarchical, direct, and public governance" rather than indirect and private.[3] Another reason is that the inclusion of private actors in rule-making is not entirely new, with private actors such as law and accountancy firms having deep roots in tax-policy making, especially in the international context.[4] What is new, however, is the scale and depth of engagement by these private entities within the tax policy domain, particularly under the pressures of globalization and neoliberalism.[5]

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1 Kenneth Abbott, David Levi-Faur & Duncan Snidal, "Introducing Regulatory Intermediaries" (2017) 670:1 The Annals of the American Academy of Political and Social Science at 6-13; Kenneth Abbott et al, The Governor's Dilemma: Indirect Governance beyond Principals and Agents (Oxford: Oxford University Press, 2020) at 3-38.

2 Thomas Rixen & Brigitte Unger, "Taxation: A Regulatory Multilevel Governance Perspective" (2022) 16:3 Regulation & Governance at 622.

3 *Ibid.*

4 *Ibid* at 624.

5 Rasmus Corlin Christensen, Leonard Seabrooke & Duncan Wigan, "Professional action in global wealth chains" (2020) 16:3 Regulation and Governance at 705-706, 715-717; While the term "neoliberalism" is not neatly defined, in this context it is intended to refer to the prioritization of market imperatives over democratic demands. Although less politically charged terminology could have been used, the retention of

Under these modern forces, taxation—a core function of the state—has shifted more from the public to the private sector.[6] This evolution has transformed private entities from mere advisors to key influencers, leveraging their expertise not only to navigate but also to shape tax legislation and enforcement strategies on a global scale.[7] This phenomenon is evidenced by the research of Brooke Harrington as well as that of Alexander Cooley and J.C. Sharman, which suggests that in the process of economic globalization, transnational private tax advisors and wealth managers have gained more control than governments over the actual tax rates paid by multinational companies and wealthy individuals.[8]

As if Rixen and Unger could see into the future, they expressed concern over the shifting balance of influence towards private entities in the realm of international tax governance, viewing it as a potential threat to the effectiveness and fairness of global tax systems.[9] Possibly even more on point was their apprehension towards the consolidation of power within the tax consulting industry, particularly emphasizing the dominant role of the Big Four accounting firms—KPMG, PricewaterhouseCoopers, Ernst and Young, and Deloitte.[10] Echoing the observations of Murphy et al., they pointed out the critical role these firms play in crafting tax laws for offshore jurisdictions, thereby facilitating strategies that allow multinational corporations to

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'neoliberalism' is intended to situate this analysis within the broader regulatory scholarship where the term remains prevalent, particularly outside North America, and to contribute to what remains a relatively limited body of discussion in this area. On the international use of the term, see David Singh Grewal & Jedediah Britton-Purdy, "Introduction: Law and Neoliberalism" (2014) 77:4 Law and Contemporary Problems at 1.

6 Rixen & Unger, supra note 2 at 621-628.

7 Christensen et al, *supra* note 5; Sheila Killian et al, "Regulating Havens: The Role of Hard and Soft Governance of Tax Experts in Conditions of Secrecy and Low Regulation" (2020) 16:3 Regulation and Governance at 722-725.

8 Brooke Harrington, Capital without Borders. Wealth Managers and the One Percent (Cambridge: Harvard University Press, 2016) at 271-303; Alexander Cooley & JC Sharman, "Transnational Corruption and the Globalized Individual" (2017) 15:3 Perspectives on Politics at 732-753.

9 Rixen & Unger, *supra* note 2 at 628.

10 *Ibid* at 627-628.

minimize their tax liabilities by exploiting legal loopholes and discrepancies between different tax systems.[11]

Less than two years later, news of the PwC Australia tax scandal made headlines around the globe,[12] and, at the detriment of Australian taxpayers, Rixen and Unger's general warnings about the privatization of tax policy development were validated.[13] Highlighting a gap in the regulatory literature that has only begun to be addressed,[14] this incident serves as a poignant case study for examining the risks of private sector engagement and insufficient oversight of this process in tax legislation.

Despite the story of the scandal seemingly coming to a close, with my home country of Canada and many other nations continuing to grapple with the design and regulation of complex, high-stakes tax regimes vulnerable to private sector influence, the conversation around the privatization of tax policy and its regulation is far from over.[15] The lessons drawn from Australia's past missteps must inform a proactive stance on regulatory reforms, ensuring that the evolution of tax policy remains equitable, effective, and resilient in the face of globalization and the growing clout of private interests.

By unpacking the specifics of the PwC scandal, this paper aims not only to advance the discussion initiated by scholars like Rixen and Unger[16] but also to explore beyond the abstract to dissect an instance where the theoretical risks of privatized tax policy manifested in real-world complications, emphasizing the need for a refined approach to regulating

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11 *Ibid* citing Richard Murphy, Leonard Seabrooke & Saila Stausholm, "Big Four Offshore: Locating and Decoupling in Transnational Organizational Fields" (2021) ed CBS Mimeo.

12 Neil Chenoweth, "PwC partner leaked government tax plans to clients", *Australian Financial Review* (last modified 23 January 2023), online: https://www.afr.com/companies/financial-services/pwc-partner-leaked-government-tax-plans-to-clients-20230120-p5ceaz [perma.cc/RBQ2-77N8] [leaked government tax plans].

13 Rixen & Unger, *supra* note 2 at 629-630.

14 *Ibid* at 623.

15 For Canada's planned commitment to the 2013 OECD BEPS Action Plan, please see the *Global Minimum Tax Act Enactment of Act*, Draft Legislation, 2023; OECD, *Action Plan on Base Erosion and Profit Shifting*, (OECD Publishing, 2013), online: <dx.doi.org/10.1787/9789264202719-en> at 145 [*2013 Action Plan*].

16 Rixen & Unger, *supra* note 2 at 622-623.

private influence in tax drafting. This call to action is imbued with a sense of urgency, particularly for nations like Canada, which are at a critical juncture in their adoption of international tax reforms.[17]

For this reason, the remainder of this paper is structured as follows: Initially, a brief explanation and history of the PwC Australia tax scandal will be provided to contextualize and ground the discussion. Subsequently, the discussion will transition into an analysis that forwards some explanations for the incident, spanning from individual and organizational behaviours to governmental actions and socio-cultural-legal influences. The discussion then shifts to examine Canadian parallels, exploring similar emerging risks in the Canadian regulatory landscape and highlighting why understanding the PwC Australia scandal is particularly relevant for Canada. Building on these insights, the paper then questions whether the PwC Australia scandal signals a broader pattern under the ongoing shift toward privatization of tax policy development and offers a generalized assessment of the collective ability of governments worldwide to prevent future occurrences. Lastly, the paper will conclude with recommendations for regulating tax policy privatization aimed at better protecting taxpayers' financial interests.

II. A TIMELINE OF THE SCANDAL

In the summer of 2023, an Australian scandal involving PwC, a "Big-4" global leader in the accounting and consulting industry, gained widespread international attention after an Australian Senate Report uncovered that Peter Collins, PwC's international tax chief, had significantly undermined the development of an Australian tax law that he and PwC had been contracted to develop.[18] However, despite coming to public attention recently, the scandal's origins extend back at least a decade, if not much

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17 *Global Minimum Tax Act*, SC 2024, c 17, s 81.

18 Kate Ainsworth, "What is the PwC tax scandal? Who is Peter-John Collins? Who knew about it? Why does it matter?" (4 June 2023), online: <https://www.abc.net.au/news/2023-06-05/pwc-pricewaterhousecoopers-government-tax-leak-scandal-explained/102409528> [perma.cc/K6HP-LWDS]; For the specific Senate report see- Austl, Parliament of Australia, *PwC: A calculated breach of trust*, (Senate Finance and Public Administration References Committee, June 2023) at 1-8 [A calculated breach of trust].

further, driven by the evolving challenges of the global digital economy and a critical shift towards the privatization of tax policy, which allowed multinational companies to conduct substantial business without significant physical presence or corresponding tax liability.

A. *Development of the Multinational Anti-Avoidance Law ("MAAL")*

Within this context, technology giants like Google, Apple, Microsoft, and Amazon stood out as some of the most prolific culprits of this form of aggressive tax avoidance.[19] These multinational companies and many like them had mastered the art of using high-value patents strategically placed in low-tax jurisdictions to deduct licensing expenses from their income in high-tax areas.[20] Perhaps a bit late to this technological, cultural and economic evolution, the Organization for Economic Co-operation and Development ("OECD") released a Base Erosion and Profit Shifting ("BEPS") Action Plan in 2013.[21] This plan outlined 15 actions to provide governments with the domestic and international instruments needed to prevent corporations from paying little or no taxes,[22] and was quickly endorsed by the G20, and, subsequently, Australia.[23]

Australia sought to align itself with the OECD's 2013 BEPS Plan by developing its own law capable of ensuring multinational companies pay

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19 Hamish Boland-Rudder, "US tech giants restructured to sidestep Australian tax law, following PwC advice" (11 July 2023), online: < https://www.icij.org/investigations/luxembourg-leaks/us-tech-giants-restructured-to-sidestep-australian-tax-law-following-pwc-advice/> [perma.cc/64PZ-RZUJ]; OECD, *2013 Action Plan, supra* note 15.

20 See Austl, Parliament of Australia, *Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015 [Provisions]*, ch 1 (Senate Economics Legislation Committee, 9 November 2015) (noting that the influence of the OECD's 2013 BEPS Action Plan is evident throughout the MAAL, with particular references to alignment with BEPS Action 7 and Action 13); See also OECD, *2013 Action Plan, supra* note 15.

21 *Ibid.*

22 *Ibid.*

23 OECD, *Members of the OECD/G20 Inclusive Framework on BEPS*, (OECD Publishing, last modified 28 May 2024) online: <https://www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf> [perma.cc/V9CM-S5V7] [*Members of the Action Plan*].

more in local taxes.[24] Yet, the OECD's BEPS Plan, at this time, offered limited guidance on the intricacies of implementation.[25]

Given the difficulty of crafting such a burgeoning, complex and inter-jurisdictional tax policy, the Australian government turned to PwC Australia, its main external consultant, which, at the time, in 2013, had earned over 47% of its revenue that year from government contracts, and established significant business relationships with the government across a variety of sectors.[26] As a trusted partner and global leader in accounting, tax, tax law, and consulting, PwC appeared to be the ideal candidate for advising on the development of the new laws, leveraging its comprehensive expertise to navigate the challenges presented by the global digital economy and resulting aggressive tax avoidance strategies. On this basis, PwC was contracted to advise on the formation of the policy, with their renowned international tax chief, Peter Collins, leading the initiative.[27] Whether PwC was contracted as the primary or sole advisor on this engagement remains unclear, as there appears to be no publicly available information clarifying the extent of its role relative to other potential advisors. What is certain, however, is that PwC's involvement in the initiative was significant and sustained.

This collaboration, spanning from 2013 to 2015, played a pivotal role in the development and shaping of the *MAAL*,[28] which was dubbed the 'Google tax' by its developers,[29] reflecting its sole focus on significant global entities ("SGEs")—defined as global parent entities with an annual global income of 1 billion or more, or members of a consolidated group for accounting purposes where the global parent has an annual global income of 1 billion AUD or more.[30] Central to the proposed *MAAL* or 'Google tax'

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24 *Ibid*; *Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015 (No 170)* (Cth) (Austl) [MAAL].

25 OECD, 2013 Action Plan, *supra* note 15.

26 Ainsworth, *supra* note 18.

27 Austl, Parliament of Australia, *A Calculated Breach of Trust*, *supra* note 18 at 8.

28 *Ibid*; Lewis Jackson & Scott Murdoch, "Explainer: PwC Australia fights to contain government tax leak scandal" (26 June 2023), online: <https://www.reuters.com/business/finance/pwc-australia-fights-contain-government-tax-leak-scandal-2023-06-26/> [perma.cc/E57M-8TSX]; Ainsworth, *supra* note 18.

29 Ainsworth, *supra* note 18.

30 MAAL, *supra* note 24, ss 3(1), s 3(3).

was the requirement for SGEs to disclose comprehensive details of their tax arrangements.[31] This disclosure included details of income earned, the tax paid, and the economic activity in every country these entities operate, known as 'Country-by-Country' reporting.[32]

The law also set forth a series of deterrents for non-compliance. One such deterrent was a principal purpose test capable of cancelling any tax benefits obtained by SGEs engaging in schemes with tax avoidance as a main purpose.[33] Unlike some other anti-avoidance rules focusing on the dominant purpose, this test featured a lower threshold, examining if one of the principal purposes of a transaction is to gain a tax advantage, thereby broadening its applicability and ensuring more schemes are captured under its purview.[34] Another deterrent can be found in the significantly heightened new penalties introduced under *MAAL*, which can reach up to 120% for non-compliance, along with new flexible additional withholding penalties, in addition to the pre-existing maximum penalty rate of 40% for Diverted Profits.[35] Additionally, the *MAAL* introduced mechanisms to reallocate domestically earned profits back to Australia. This involves the annihilation approach, which disregards the steps comprising the scheme, and the reconstruction approach, which allows for the reconstruction of transactions to reflect what would have reasonably been expected had the scheme not been put in place.[36]

B. *Discovery of Compliance Issues and Breaches of Confidentiality*

In theory, the many parts of this complex legislative scheme came together to effectively bridge the gaps in tax policy surrounding large players in the digital economy. However, shortly after the *MAAL* came into effect in 2016, the Australian Government, through its Australian Taxation

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31 *Ibid,* schedule 1.

32 *Ibid*, schedule 4.

33 *Ibid*, schedule 2.

34 *Ibid*.

35 *Ibid*, schedule 4; For the existing Diverted Profits Tax please see- *Income Tax Assessment Act 1936 (No 172)* (Cth) (Austl), s 177J.

36 *Ibid*, schedules 2, 4.

Office ("ATO"), noticed that corporations, several of which were PwC's clients, were adapting their structures in response to the new legislation at a suspicious speed and level of sophistication.[37] These adaptations had abandoned the traditional transfer pricing model, which reduces taxable income within Australia by manipulating deductions.[38] Instead, among other tax avoidance techniques, entities utilized foreign partnership schemes to imply that profits were made entirely outside of Australia, thus sidestepping the power of the *MAAL* altogether.[39]

Recognizing a flaw in the policy, the ATO quickly responded and issued notices to three of these companies utilizing foreign partnership-like exploits to amend their structures.[40] ATO commissioner Chris Jordan is on record informing the Australian Senate that these readjusted structures saved taxpayers roughly 180 million AUD.[41]

The ATO then began a process of repeatedly reaching out to PwC, sending over 46 formal requests for information and directly communicating their concerns to the then-chief executive, Luke Sayers.[42] Sayers later claimed to have no recollection of these communications, and PwC would eventually formally decline to provide the requested documents to the ATO, citing more than 15,000 instances of legal professional privilege—a stance that the Federal Court of Australia ultimately rejected as unfounded.[43]

Despite this ruling, Australia's confidentiality laws hindered the ATO's ability to share this information with the Treasury for years, thereby

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37 Austl, Parliament of Australia, *A Calculated Breach of Trust*, *supra* note 18 at 1 citing Chris Jordans *Opening Statement* at the Senate Economics Legislation Committee's "2023-24 Budget Estimates hearing" on 30 May 2023.

38 *Ibid*.

39 *Ibid*.

40 *Ibid*.

41 *Ibid*.

42 Edmund Tadros & Gus McCubbing, "Former PwC chief Luke Sayer 'does not recall' being told to review firm emails", *Australian Financial Review* (last modified 8 August 2023), online:<https://www.afr.com/companies/professional-services/former-pwc-chieflukesayers-does-not-recall-being-told-to-review-firmemails-20230808-p5duv5> [perma.cc/8WRU-5UXX].

43 *Commissioner of Taxation v PricewaterhouseCoopers*, 2022 FCA 278.

preventing these two entities from pooling their insights.[44] The ATO also approached the Australian Federal Police ("AFP") with their suspicions, but the AFP declined to pursue an investigation without detailed evidence, which the ATO was not authorized to collect.[45] After enduring years of bureaucratic obstacles, the ATO contacted the Tax Practitioners Board ("TPB") in 2020, which oversees the regulation of tax professionals' conduct and ethics.[46]

In December 2022, the TPB took action by suspending Peter Collins's tax license for two years for violations of integrity standards without specifying the breaches.[47] Additionally, the TPB mandated that PwC implement conflict of interest management training and submit compliance reports to the TPB for a period of two years.[48] Following a revealing article in the Australian Financial Review, the TPB issued a press statement clarifying its actions, sparking widespread public outrage in Australia and leading to a comprehensive Senate investigation.[49]

This inquiry uncovered that Peter Collins, a key figure in PwC's international tax department, had disclosed confidential government information to over 53 of his PwC colleagues through at least 144 internal emails between 2013 to 2018.[50] Despite being under confidentiality agreements, Collins exploited this information to attract at least 14 multinational corporations, including Google—a company the *MAAL* was

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44 Austl, Parliament of Australia, *PwC Australia's response to Questions on Notice asked by Greens senator Barbara Pocock*, (Senate Finance and Public Administration References Committee, 5 May 2023); *Taxation Administration Act 1953 (No 10)* (Cth) (Austl), s 355.

45 Henry Belot, "PwC scandal: Australian Tax Office tried to get federal police to investigate in 2018", *The Guardian* (8 August 2023), online: <https://www.theguardian.com/australia-news/2023/aug/08/pwc-scandal-australias-tax-office-tried-to-get-federal-police-to-investigate-in-2018> [perma.cc/X4EM-D92H] [ATO tried to get AFP involved in 2018].

46 Austl, Parliament of Australia, *A Calculated Breach of Trust*, *supra* note 18 at 1; Ainsworth, *supra* note 18.

47 Tax Practitioners Board, "Former PwC partner banned for integrity breach" (23 January 2023), online: <https://www.tpb.gov.au/former-pwc-partner-banned-integrity-breach> [perma.cc/6K23-VXWW].

48 *Ibid.*

49 Neil Chenoweth, "leaked government tax plans", *supra* note 12; Tax Practitioners Board, *supra* note 49.

50 Austl, Parliament of Australia, *A Calculated Breach of Trust*, *supra* note 18 at 1.

designed to especially target—by offering them strategies to circumvent the new legislation he was involved in drafting.[51] Adding to the controversy, Tom Seymour, the CEO of PwC Australia, who had initially criticized Collins and the overall information leak as exposed by the Australian Financial Review, was found to have been included in the email communications about the scheme.[52] This revelation indicated that the breach of trust extended to the highest levels of PwC's leadership.

C. *The Fallout*

Following the Australian Senate Report in May of 2023, when it was revealed that the corruption was widespread, PwC issued an apology, "owning up" to their serious slip-ups like not keeping things confidential, having weak systems and oversight, fostering a culture filled with inappropriate actions, and letting accountability slip through the cracks.[53] However, only eight partners were fired from PwC Australia's consulting practice before it was shut down and effectively repackaged under a different name- Scyne Advisory- which began with 117 former PwC partners but has since made over 1500 offers of employment to other PwC staff.[54]

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51 *Ibid* at 8; Lewis Jackson, "Exclusive: PwC Australia ties Google to tax leak scandal, sources say" (5 July 2023), online: <https://www.reuters.com/technology/pwc-australia-ties-google-tax-leak-scandal-sources-2023-07-05/> [perma.cc/9ANY-GTHM].

52 Austl, Parliament of Australia, *A Calculated Breach of Trust*, *supra* note 18 at 8.

53 Kristin Stubbins, "Open letter from PwC Australia acting chief executive Kristin Stubbins", *PwC* (29 May 2023), online: < https://www.pwc.com.au/media/2023/open-letter-from-pwc-australia-acting-ceo-kristin-stubbins-230529.html> [perma.cc/8QB4-CMW9].

54 Jonathan Barrett, "PwC Australia's former CEO among eight partners removed following tax leak scandal", *The Guardian* (3 July 2023), online: <https://www.theguardian.com/business/2023/jul/03/pwc-removes-eight-partners-following-internal-investigation-into-tax-leak-scandal> [perma.cc/JH6S-XQNZ]; Royce Kurmelovs, "PwC appoints new Australian CEO with plans to sell off government consultancy work for $1", *The Guardian* (25 June 2023), online: <https://www.theguardian.com/business/2023/jun/25/pwc-appoints-new-australian-ceo-with-plans-to-sell-off-government-consultancy-work-for-1> [perma.cc/2626-BUHU]; Edmund Tadros, "Scyne targets 1500 more PwC staff after nabbing 117 partners", *Australian Financial Review* (23 August 2023), online: <https://www.afr.com/companies/professional-services/scyne-targets-1500-more-pwc-

Aside from bad publicity, repercussions for PwC and the private actors involved in the scandal have also been relatively limited. Specific penalties directly applied to PwC for the scandal were settled confidentially, blocking any further action against the firm related to its false privilege claims, and can be speculated to be less than 700,000.00 AUD as initial penalties had been publicly set at 1.4 million AUD before being halved by the ATO due to some document mix-ups by the ATO itself.[55] Additionally, the only other financial penalty came from the Chartered Accountants of Australia and New Zealand, imposing its maximum fine of 50,000.00 AUD barely covering the cost of its investigation.[56] Lastly, on the criminal front, the AFP has opened a criminal investigation on Peter Collins for his improper use of confidential Commonwealth information, but to date, no charges have been laid, and there is no sign that any criminal liability will be assigned to PwC as an organization.[57]

More recently, as of February of 2024, PwC has triggered further Australian outrage by refusing to provide a report it commissioned from the international law firm Linklaters, which cleared its overseas partners of using confidential information related to the Google tax scandal for commercial gain.[58] Senate officials and those at the Australian Financial

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staff-after-nabbing-117-partners-20230823-p5dyuy> [perma.cc/4QYG-C32A] [Scyne repackaging].

55 Neil Chenoweth, "Tax Office halved $1.4m PwC fine for false privilege claims", *Australian Financial Review* (25 October 2023), online: <https://www.afr.com/companies/professional-services/tax-office-halved-1-4m-pwc-fine-for-false-privilege-claims-20231017-p5ed2e> [perma.cc/B6HB-QJ98] [Initial penalties halved].

56 Edmund Tadros, "Chartered Accountants fines PwC $50,000 over tax leaks scandal", *Australian Financial Review* (28 November 2023), online: <https://www.afr.com/companies/professional-services/chartered-accountants-fines-pwc-50-000-over-tax-leaks-scandal-20231127-p5en6x> [perma.cc/93QB-RKDR] [Chartered Accountants of Aus and NZ Penalty].

57 Sarah Basford Canles, "AFP commissioner says relationship with PwC Partner strictly professional after texts revealed", *The Guardian* (4 August 2023), online: <https://www.theguardian.com/australia-news/2023/aug/04/afp-reece-kershaw-former-nsw-police-commissioner-pwc-partner-mick-fuller-text-messages> [perma.cc/NYB7-4NWT] [AFP Investigation].

58 Edmund Tadros & Maxim Shanahan "Senators slam PwC global boss for rejecting tax leak request", *Australian Financial Review* (21 March 2024), online:

Review believe that "PwC global is resisting the document's release in part because it does not want the tax leaks scandal to extend beyond Australia and trigger scrutiny from US and British regulators."[59]

III. CONTRIBUTING FACTORS AND EXPLANATIONS

Having explored how the PwC Australia tax scandal unfolded, for those previously unacquainted, a deeper understanding requires our investigation to pivot toward understanding the reasons behind its occurrence. It might be tempting to attribute such scandals solely to the greed of a few "bad apples" and simply end the discussion there. Yet, as I will discuss, while individual and institutional greed certainly plays a role, it represents only a part of the broader issue at hand. To flush out these broader underlying issues, this section will unpack the scandal's human and organizational elements, as well as some of its significant socio-cultural and legal underpinnings. In addressing the complex factors behind the scandal, scrutinizing the personal and organizational dynamics at play seems an appropriate first step, setting the stage for a subsequent, more high-level exploration of the socio-cultural and legal factors involved.

There is an abundance of academic explanations for the individualistic aspects of financial crime,[60] but, again, very little, if any, of this discussion speaks directly to crimes or pseudo-crimes involving the privatization of tax governance.[61] Nonetheless, given the PwC Australia tax scandals' connection to fraud—a deliberate deception to secure unfair or unlawful gain—Ilter's general fraud theory provides a capable starting framework for

<https://www.afr.com/companies/professional-services/pwc-global-boss-rejects-senate-request-for-tax-leak-report-20240321-p5fe82> [perma.cc/9LMZ-TNH4].

59 *Ibid.*

60 Petter Gottschalk, "Theories of financial crime" (2010) 17:2 Journal of Financial Crime at 210-222.

61 Rixen & Unger, *supra* note 2 at 622-623.

understanding the human element in this instance.[62] According to Ilter, fraud in organizational financial crime arises under three conditions:

> (1) Incentives/pressures. Management or other employees have incentives or pressures to commit fraud.
> (2) Opportunities. Circumstances provide opportunities for management or employees to commit fraud.
> (3) Attitudes/rationalization. An attitude, character, or set of ethical values exists that allows management or employees to intentionally commit a dishonest act, or they are in an environment that imposes pressure sufficient to cause them to rationalize committing a dishonest act.[63]

1.1) Pressures

PwC, despite being a multinational brand of firms operating as partnerships,[64] because of its massive size functions in a manner akin to a corporation with a profit-driven mindset.[65] This fundamental aspect of PwC's operational ethos creates implicit and explicit institutional pressure on its employees, associates, and partners to generate profit. The involvement of Peter Collins and Luke Sayers is also indicative of the management pressures that influenced the scandal.[66] Collins, as the international tax chief, led a highly specialized and influential group within PwC. His position and expertise not only placed him at the forefront of the firm's engagements with complex tax legislation but also imbued him with significant autonomy and influence within the organization. Similarly, Luke Sayers, serving as the CEO, represented the apex of leadership within PwC Australia. Together, their leadership and PwC's operational structure cultivated would significantly influence the firm's values and priorities.

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62 Cenap Ilter, "Fraudulent money transfers: a case from Turkey" (2009) 16:2 Journal of Financial Crime at 125-136.

63 *Ibid*.

64 Brendan Lyon, *Time to account: Principles, profits and 'Big Four' account firms* (Senate inquiry into the management and assurance of integrity by consultants, 22 May 2023).

65 *Ibid*.

66 Austl, Parliament of Australia, *A Calculated Breach of Trust*, *supra* note 18 at 8; Edmund Tadros & Gus McCubbing, *supra* note 42.

Moreover, in a culture where the directives from such high-level leadership were not just influential but likely seen as mandated action, the other 52 colleagues who were given access to leaked confidential government information[67] would be less likely or less willing to question the pre-*MAAL* plan.

1.2) Incentives

It is obvious that financial incentives played a large part in PwC and Peter Collins betraying the Australian government, but, due to PwC's secrecy, it is difficult to determine how much PwC and Peter Collins would have profited if their scheme went undetected. The best available evidence of the financial incentives pursued by Peter Collins and other private actors involved comes from the Australian Senate's Report, which released 144 of PwC's internal emails.[68] One email dated January 6th, 2016—less than a month after the *MAAL* came into effect—is particularly revealing as it shows that the PwC earned an estimated 2.5 million AUD from its first stage of the *MAAL* leaks.[69] This email also demonstrates that the leaks had already resulted in a significant number of newly acquired clients, including some "brand-defining clients," which were expected to require future assistance in dealing with *MAAL* and the ATO.[70] While only speculative, given this information and the fact that the scandal was not fully uncovered and disrupted until 2023,[71] it seems safe to assume that PwC would have profited well more than 2.5 million AUD from these leaks.

PwC's secrecy also makes it extremely challenging to assess how much Peter Collins stood to profit from his involvement in the scandal. For

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67 Austl, Parliament of Australia, *A Calculated Breach of Trust*, *supra* note 18 at 8.

68 Austl, Parliament of Australia, *PwC Australia's response to Questions on Notice asked by Greens senator Deborah O'Neill*, (Senate Finance and Public Administration References Committee, 17 February 2023) [17 February 2023 AQoN's]. Note: As of April 10th, 2024, the full 144 leaked e-mails are available on "scribd.com."

69 *Ibid.*

70 *Ibid.*

71 Austl Parliament of Australia, *A Calculated Breach of Trust*, *supra* note 18; Neil Chenoweth, "leaked government tax plans", *supra* note 12. Note: The first source represents the formal uncovering, and the second AFR article represents the earlier informal discovery.

example, it is known that Collins was a senior partner at PwC,[72] but there is no publicly available information to confirm whether Peter Collins was an equity partner. Without that distinction, at best, we are left with an estimated profit share amount that ranges between 125,000.00-1,000,000.00 AUD of the revenue earned from the first stage of the *MAAL* leaks.[73] There are also performance bonuses to consider,[74] but, while the drafter of the email described above seemed pleased with Collins' intelligence,[75] attempting to estimate this figure seems futile. While undoubtedly substantial, the attractiveness of these financial incentives seems dull in light of the Senate Report, which shows that Collins' 2023 base salary likely falls within the range of 1 million to 3.45 million AUD.[76] So, if the pressures and incentives were arguably insignificant for someone with Collins' status and wealth, the question arises: What else motivated his actions?

The answer to this question is power. This incentive in the context of financial crime has been thoroughly explored by academics such as Brooke Harrington, who, in her book 'Capital Without Borders,' noted that wealth managers' detailed knowledge of the structures and laws governing their clients' fortunes gives these professionals enormous power, rendering them indispensable and difficult to replace.[77] Effectively elevating wealth managers to a state of quiet control over the lives of clients,[78] and in this case the clients were among the wealthiest multinational corporations on the planet.

In the same text, Harrington also noted that this level of influence is difficult to obtain, especially in a globalized economy where trust must be

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72 Austl, Parliament of Australia, *A Calculated Breach of Trust*, *supra* note 18 at 8.

73 Robert W Knechel, Niemi Lasse & Zerni Mikko, "Empirical evidence on the implicit determinants of compensation in Big four audit partnerships" (2013) 51:2 Journal of Accounting Research at 349-387.

74 *Ibid*.

75 Austl, Parliament of Australia, "17 February 2023 AQoN's", *supra* note 68.

76 Austl, Parliament of Australia, *PwC Australia's response to Questions on Notice asked by Greens senator Barbara Pocock* (Senate Finance and Public Administration References Committee, 7 July 2023) [7 July 2023 AQoN's].

77 Harrington, *supra* note 8 at 1.

78 *Ibid* at 83.

achieved across barriers of culture, language and religion.[79] Yet, despite these hurdles, the pursuit of such influence proves worthwhile, as Harrington observes that the control obtained by wealth managers differs significantly from that of other contemporary professionals.[80] This control is enduring, as established relationships with clients often endure a lifetime or span several generations of service to a single-family[81] or, under the circumstances of the scandal we are investigating, even a corporation's board members.

Considering the aforementioned incentives and pressures—the inherent profit-seeking nature of pseudo corporations of PwC's magnitude, coupled with the firm's revenue-sharing structure and the scarce but high-value nature of relationships with multinational corporate clients—it is logical that PwC and a wealth manager like Collins would go to great lengths to secure "brand-defining" clients if given the right opportunity. But were they given the right opportunities?

2) Opportunities

Proceeding through Ilter's framework for fraud in organizational financial crime,[82] the subsequent analysis delves into the specific opportunities that facilitated this conduct. Given the legislative branch's ultimate control over domestic tax policy,[83] thoroughly understanding and evaluating these opportunities to commit fraud requires a comprehensive analysis of both the government's regulatory actions and its approach to tax policy development. Most importantly, it is critical to understand the foundational role of government dependency on private-sector tax developers as a catalyst for the vulnerabilities that followed.

i. Dependency

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79 *Ibid* at 20-22.

80 *Ibid* at 79-81.

81 *Ibid*.

82 Ilter, *supra* note 62 at 125-136.

83 Walter Hettich & Stanley Winer, *Democratic Choice and Taxation: A Theoretical and Empirical Analysis* (Cambridge: Cambridge University Press, 1999) at 1-11.

The level of the Australian government's dependency on private-sector tax policy advisers showcased throughout the PwC Australia tax scandal is both quantitatively and qualitatively observable. This is quantitatively demonstrated by the 1,270% increase in government expenditure on the 'Big Four' consultancy firms from 2013 to 2023, culminating in PwC securing over 500 million AUD in active government contracts by 2023.[84] Qualitatively, the close relationship between PwC and the legislative body is perhaps best symbolized by PwC's sponsorship of the Annual National Budget dinners at the Great Hall of Parliament House, a tradition that continued until 2022 and was only discontinued after the scandal made headlines.[85] Another strong example of PwC's intricate relationship with the government can be found in its launch of a Tax Advisory Panel in 2013, which brought together representatives from government, business, academia, unions, and non-profit organizations to influence 'tax reform.'[86] The intertwining of PwC with Australia's government entities is further highlighted by the AFP's contract with PwC, worth nearly 1 million AUD, which was active even as they initiated a criminal investigation into the firm.[87] This situation, along with the fact that the AFP's Chief Operating Officer, Charlotte Tressler, previously worked 13 years at PwC, demonstrates the entangled almost inseparable connection between these supposedly independent bodies.

Beyond creating numerous opportunities for private-sector tax policy advisors like PwC to commit fraud by providing access to confidential information across personal and business-related engagements, the

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84 Henry Belot, "Australian government spending on big four consultancy firms up 1,270% in a decade, analysis shows", *The Guardian* (17 July 2023), online: <https://www.theguardian.com/australia-news/2023/jul/17/australian-government-spending-big-four-consultancy-firms> [perma.cc/T6C2-SX3X] [1,270% Growth]; Australia, Australian Government, *The Australian Government's Report on the Audit of Employment, 2021-2022* (Department of Finance and the Australian Public Service Commission (APSC), 2022) at 6 [2022 External Consulting Contracts].

85 Kishor Napirer-Raman & Noel Towell, "Embattled PWC pulls the pin on hottest event of budget night", *The Sydney Morning Herald* (9 May 2023), online: <https://www.smh.com.au/cbd/embattled-pwc-pulls-the-pin-on-hottest-event-of-budget-night-20230508-p5d6r7.html> [perma.cc/ZZ2Z-BYE7].

86 PwC, "Australian PwC Milestone" (last visited 8 February 2024) online: <https://www.pwc.com.au/about-us/history.html> [perma.cc/L35G-3Y7U].

87 Canales, "AFP Investigation", *supra* note 50.

Australian government created something far worse. Through its perpetuation of the shift towards the privatization of tax policy, it inadvertently made itself less capable of regulating the modern tax challenges of a globalized world and created a dependent relationship. This sort of dependent personality disorder not only placed PwC in a position of being indispensable but also emboldened the firm to exploit this indispensability as it knew it had become too needed to face significant consequences for its misconduct.

This entanglement and dependency help explain why PwC and Peter Collins have faced such limited civil consequences and no criminal charges following the discovery of their misconduct.[88] While infuriating to much of the Australian public and many others, in hindsight, such an outcome was somewhat predictable as major sanctions would have come with significant consequences for Australian taxpayers. For example, the ramifications of abruptly terminating the entirety of PwC Australia's 500 million AUD worth of active contracts,[89] or even a significant percentage of them, or PwC's refusal to honour such commitments, extend beyond mere contract violations. Thus, the sudden void left by withdrawing these projects would almost certainly precipitate further substantial financial setbacks as governments either struggled to reinitiate the contracted programs or outright abandoned them.

The economic fallout of discontinuing or barring PwC's services could also carry socio-economic consequences. The potential job loss for Australians, considering PwC Australia's 2022 workforce of 9,288 employees,[90] presents a significant socio-economic concern. The abrupt cessation of PwC's operations could lead to a ripple effect, impacting not only those directly employed by the firm but also the broader economic landscape, from decreased consumer spending to increased demands on social services.

With the knowledge that the collateral actions of such penalties could pose a greater risk to the national interest than the misconduct being

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88 *Ibid*; Chenoweth, "Initial penalties halved", *supra* note 55; Tadros, "Chartered Accountants of Aus and NZ Penalty", *supra* note 56.

89 Austl, Australian Government, "2022 External Consulting Contracts", *supra* note 84.

90 PwC, *PwC Australia Transparency Report FY22* (Sydney: PwC, 2022), online: <https://www.pwc.com.au/about-us/assets/firmwide-transparency-report-fy22.pdf> [perma.cc/43QM-E5GQ].

penalized, these private actors were empowered by the assumption that there would be very little, if any, meaningful government sanction against them. These assumptions were not unfounded and found empirical support in the aftermath of similar financial scandals. Instances like the Panama Papers, which revealed widespread tax evasion and avoidance through offshore accounts, along with other high-profile cases such as the LuxLeaks and the Paradise Papers, have arguably seen minimal direct governmental action against the corporations and individuals involved. These events have set a precedent, suggesting that the repercussions for engaging in or facilitating financial misconduct might not be as severe as one might expect, thus providing a concerning level of comfort to those considering similar actions.

ii. A Lack of Oversight and Transparency

Alternatively, the foreseeability of only limited consequences may have been a secondary consideration influencing the scandal, as the general evidence available suggests that criminals are more responsive to changes in the chance of being caught, than to changes in the consequence.[91] This phenomenon may have been a factor in our case study as the lack of regulatory oversight and transparency surrounding engagements with private-sector tax policy advisers created a relatively low probability of being caught.

While the specific terms of the contract between PwC and the Australian government were never made public, the firm's more than 15,000 attempts to claim legal privilege over documents,[92] coupled with the ATO's and the Senate's investigatory findings,[93] strongly suggest a significant lapse in government oversight throughout the engagement. Collectively, these actions and findings imply that the environment, where Collins and others navigated with minimal supervision, essentially functioned under an honour system, presuming adherence to ethical standards and contractual obligations without the necessary mechanisms for verification or enforcement.

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91 Michael Cain, "Is Crime Giffen?" (2009) 16:1 Journal of Financial Crime at 80-85.

92 Chenoweth, "Initial penalties halved", *supra* note 55.

93 Austl, Parliament of Australia, *A Calculated Breach of Trust*, *supra* note 18 at 8.

It should be noted that today, Australia has whistleblower laws, contained across a range of statutory regimes, that divide "protections" and "incentives" into private sector or public sector matters.[94] However, Australia's private sector whistleblower laws under its *Corporations Act* and *Tax Administration Act* were not introduced until 2019,[95] well into the ATO's investigation. Aside from being too late to make a significant difference in our case study, the effectiveness of these reforms in promoting ethical disclosure relating to private-sector tax policy development remains questionable, at best, because these additions are aimed solely at the private-sector and thereby exclude a vast array of situations where the public sector is involved. So, despite PwC's private misconduct in the scandal, given the government's involvement, disclosures of this nature could easily be interpreted as a public sector issue, which the Australian Attorney General recently described as applying to a "… disclosure of information that harms the effective working of Government[,] undermines the Australian community's trust in government and the ability of Commonwealth departments and agencies to deliver policies and programs."[96]

For these matters, it is important to address that Australia, at all material times, has had a *Public Interest Disclosure Act* (the "Act") with the stated purpose:

> (a) to promote the integrity and accountability of the Commonwealth public sector; and
> (b) to encourage and facilitate the making of public interest disclosures by public officials and former public officials; and

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94 Amy Cooper-Boast & Fiona Luu, "The First Test Cases of Australia's Whistleblower Protection Laws – Key Lessons" (31 July 2023), online: <https://www.lk.law/2023/07/the-first-test-cases-of-australias-whistleblower-protection-laws-key-lessons/> [perma.cc/ULF8-LANG].

95 *Corporations Act 2001* (No 50) (Cth) (Austl), Part 9. 4AAA; *Taxation Administration Act 1953*, *supra* note 44, s 355.

96 Austl, Australian Government, *Review of Secrecy Provisions. Final Report* (Attorney-General's Department (Mark Dreyfus), 2023) at para 146 [Secrecy Provisions Review]; Rex Patrick, "Fine print bombshell – share information which "undermines trust in government", face jail" (21 November 2023), online: <https://michaelwest.com.au/government-review-of-secrecy-provisions-an-assault-on-democracy/> [perma.cc/ULF8-LANG].

> (c) to ensure that public officials, and former public officials, who make public interest disclosures are supported and are protected from adverse consequences relating to the disclosures; and
> (d) to ensure that disclosures by public officials, and former public officials, are properly investigated and dealt with.[97]

However, the Act realistically provides no support for whistleblowers, even outside of the financial realm. This is evidenced by the fact that in the ten years since the introduction of the Act, it has not once been used to protect whistleblowers, and this is not because Australians have not attempted to rely on its so-called protections.[98] While there have been many attempts to call on the Acts protections, three notable cases particularly demonstrate the system's inadequacies in safeguarding those who reveal uncomfortable truths about the government.

Firstly, there is the case of David McBride, whom the Human Rights Law Centre had identified as "the first person facing jail in relation to war crimes in Afghanistan."[99] McBride, an Australian soldier, disclosed information on war crimes which occurred in Afghanistan in 2013, including the murder of children.[100] Despite an official inquiry confirming the war crimes, McBride faced prosecution and pleaded guilty to three criminal charges for jeopardizing the security and defence of Australia.[101] Today, purely as a result of his disclosure, McBride is awaiting sentencing that could lead to life imprisonment.[102]

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97 *Public Interest Disclosure Act* 2013 (No 133) (Cth), 2013, (Austl).

98 Human Rights Centre, *The Cost of Courage: Fixing Australia's Whistleblower Protections* (22 August 2023) online: < https://www.hrlc.org.au/app/uploads/2025/04/2308-Cost-of-Courage-Whistleblower-Report.pdf> [perma.cc/7L9Z-DYVP] at 9-12 [Fixing Australia's Whistleblower Protections].

99 Human Rights Law Centre, "David McBride goes on trial for blowing the whistle" (13 November 2023) online: <https://www.hrlc.org.au/reports-news-commentary/mcbride-trial> [perma.cc/7VFE-TX5S] [David McBride goes on trial].

100 *R v McBride*, 2023 ACTSC 328 at paras 106-107.

101 Sarah Basford Canales & Christopher Knaus, "Whistleblower David McBride pleads guilty after court rules to withhold evidence over 'security' risk", *The Guardian* (17 November 2023), online: <https://www.theguardian.com/australia-news/2023/nov/17/whistleblower-david-mcbride-guilty-plea-evidence-security-risk-act-supreme-court> [perma.cc/UM7T-GYM7].

102 *Ibid.*

Similar was the case of Richard Boyle, who recently exposed flaws in the ATO's debt collection practices.[103] Boyle's revelations were confirmed by three subsequent inquiries, which led to the cessation of these practices.[104] Yet, Boyle, too, would face charges for his whistle-blowing, and an Australian Court held that the Act was incapable of protecting his recording of privileged information he later used to expose the ATO's practices.[105]

Lastly, and likely most well-known, is the case of Australia's Julian Assange, who founded WikiLeaks, a website that publishes confidential and classified documents obtained from anonymous sources and information leaks.[106] Currently imprisoned in the United Kingdom for his involvement with WikiLeaks, Assange faces a protracted fight against extradition to the United States, where he is charged with publishing classified information.[107]

This epidemic lack of governmental support and protection for Australians who blow the whistle on the government and government-adjacent programs not only fails to incentivize transparency within the realms of government and corporate engagements, but it also actively discourages it. The consequence is a culture in which individuals, aware of the substantial risks of reprisal and the slim chances of meaningful protection or reward, are deterred from coming forward with crucial information. This dynamic has effectively created a safe harbour for unethical behaviour like fraud, where private actors involved in tax policy development and advisement can circulate sensitive information with confidence, secure in the knowledge that the systemic barriers and lack of protective mechanisms significantly reduce the likelihood of internal challenges or public exposure.

Moreover, even oversight after the fact was compromised by the barriers of bureaucracy and taxpayer information laws. Specifically, due to stringent

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103 *Boyle v Commonwealth Director of Public Prosecutions,* 2023 SADC 27.

104 Cooper-Boast & Luu, *supra* note 94.

105 *Boyle v Commonwealth Director of Public Prosecutions, supra* note 105 at para 293.

106 Deepa Govindarajan Driver, Mads Andenæs & Iain Munrom, "An inconvenient dissident: Human rights activism in the case of Julian Assange" (2024) 31:5 Organization.

107 *Ibid.*

confidentiality laws and procedural rigour set out under Section 355 in Schedule I of the *Taxation Administration Act* (the "TAA"), the ATO's constrained ability to share vital information with the Australian Treasury hindered the early detection and comprehensive response to the scandal.[108] Despite these measures aiming to balance confidentiality with governmental and law enforcement needs, they inadvertently contributed to an overly cautious approach that delayed and deterred the sharing of information critical to addressing malpractices within the tax policy domain. Such constraints not only exacerbated the challenges of maintaining transparency and accountability but also amplified the difficulties in detecting and rectifying unethical behaviour, further entrenching the culture of silence and obfuscation that allows fraudulent activities to flourish unchecked.

3) Attitudes/Rationalization

Thus, through its inadequate regulation of private-sector involvement in tax policy development on multiple levels, the Australian government enabled PwC's misconduct by creating numerous opportunities for its fraud to go undetected. Yet, as Stuart Green has noted in his article "What is Wrong With Tax Evasion," most criminal law scholars agree that the mere presence of an opportunity for committing a crime does not inherently justify the act of committing a crime.[109] For example, people generally do not go around murdering and raping each other because they believe rape is morally wrong, and they fear the resulting social shame.[110]

Green notes that "white-collar" tax crimes are distinguished from "blue-collar" crimes like murder, rape and assault because the norms against tax-related crimes are surprisingly weak.[111] It is important to recognize that Green's framing of these crimes as "blue-collar" is problematic because members of the "white-collar" class undoubtedly commit these acts. Nonetheless, there is value in his assessment of the ethical dimension behind these crimes, even in the more specific context of tax policy development scandals. Particularly noteworthy are his explanations for the

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108 *Taxation Administration Act 1953*, *supra* note 46, s 355.

109 Stuart Green, "What is Wrong With Tax Evasion" (2009) 9 Houston Business and Tax Law Journal at 222-223.

110 *Ibid.*

111 *Ibid* at 24.

norm against tax evasion, such as the complexity of underlying conduct and the prevailing sense that "everyone is doing it."[112]

Green's complexity-based explanation delves into the issues of dehumanization and dissociation from the victims.[113] Unlike direct offences that harm identifiable individuals, tax evasion spreads its damage thinly across a wide populace, making the consequences significant only when viewed collectively.[114] This diffused harm facilitates a disconnection between the actions of the perpetrators and their impact on society. In line with this idea, Brooke Harrington's insights reveal that the financial structures designed by wealth managers focuses on assets rather than people,[115] further accentuating this disassociation. Building on this foundation, the abstraction fostered within such frameworks enables individuals like Collins and the other 52 PwC members to justify their actions.[116] They can dissociate their activities from their human consequences, perceiving them as affecting spreadsheets rather than real lives. Furthermore, the professional environment at organizations like PwC, where an ethos of "just following orders" can diminish personal accountability, adds another buffer that makes it easier for individuals to engage in practices that, while illegal and unethical, do not carry the immediate moral weight of direct theft or exploitation.

The diffusion of personal accountability through participation in a group also speaks to the "everyone is doing it" explanation within organizational contexts like PwC.[117] While Green emphasizes this concept mostly in relation to general taxpayers' overestimation of tax evasion among their peers,[118] its significance is arguably amplified in professional environments where the collective ethos and practices significantly shape individual conduct. In these settings, individuals may rationalize their participation in dubious activities with the belief that if they refrain, another person within their organization or a competitor would inevitably

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112 *Ibid* at 225-229.

113 *Ibid* at 225.

114 *Ibid.*

115 Harrington, *supra* note 8 at 6.

116 Austl, Parliament of Australia, A Calculated Breach of Trust, *supra* note 18 at 8.

117 Green, *supra* note 109 at 228.

118 *Ibid.*

undertake those same actions, thus perpetuating the cycle. Whether reflective of reality or not, this collective overestimation contributes to an organizational culture where ethical lapses are not merely overlooked but, in some cases, implicitly encouraged under the guise of adhering to industry norms.

IV. CANADIAN PARALLELS

To assess whether Canadian tax policy design is subject to similar risks, particularly in areas with significant financial implications, this section returns to Ilter's three-part framework for understanding organizational fraud: (1) pressures and incentives, (2) opportunities, and (3) attitudes and rationalizations.[119] While all three elements were applied to the PwC Australia Tax Scandal, this analysis focuses specifically on opportunity—defined as the structural conditions that make misconduct possible or harder to detect. These include dependence on external expertise, gaps in regulatory oversight, and a lack of transparency.[120]

This focus is deliberate. While the private consulting firms implicated in the PwC Australia scandal undoubtedly differ in their regional operations, internal governance, and client portfolios, they tend to share similar multinational structures that give rise to comparable pressures and incentives. These include commercial targets, competition for influence, and the need to demonstrate value to both government clients and private-sector stakeholders.[121] As for attitudes and rationalizations, the cultural and professional norms that shape how white-collar misconduct is justified—or overlooked—seem unlikely to diverge meaningfully between Australia and Canada.[122]

Parallel Opportunities?

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119 *Supra* note 62 at 125-136.

120 *Ibid.*

121 See e.g. Lyon, *supra* note 64.

122 See e.g. Harrington, *supra* note 8 at 6; See also Green, *supra* note 109 at 228.

The more material question is whether the structural conditions surrounding Canadian tax policy development—especially in areas involving high financial stakes—are creating a comparable set of opportunities that could enable organizational misconduct of the kind seen in the PwC Australia scandal.

i. Dependency

In the Canadian context, the specifics of direct private consultation in the drafting of tax legislation remain somewhat opaque. However, there is growing evidence of systemic reliance on a small group of powerful private firms for consulting services. Among them, McKinsey & Company has received over CAD 100 million in federal contracts over the past seven years,[123] while Deloitte, Accenture, and PwC have also secured substantial contracts[124]—with Deloitte leading these firms, receiving over CAD 166 million in the 2021-2022 fiscal year, according to data compiled by a government-funded Carleton SPPA Research Project.[125]

Recent calls from political parties in Canada for an investigation into the legitimacy of these contracts with McKinsey & Company resulted in a Treasury Board report focusing on political interference in the procurement process.[126] Although this inquiry did not find evidence of misconduct in the awarding of contracts,[127] it leaves open the question of whether the firm, or any other similar to those listed, could misuse access to sensitive government information in ways that parallel the PwC scandal in Australia.

For now, the role of heavily contracted multinational consulting firms in Canadian tax policy development remains unclear. However, if Canada is indeed over-relying on a private multinational consultant in areas of high

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123 Canada, Government of Canada, *Federal Contracts Awarded to McKinsey & Company* (January 1, 2011, to February 7, 2023): A review by the Treasury Board of Canada Secretariat and Public Services and Procurement Canada (last modified 13 July 2023).

124 Canada, Government of Canada, *Public Accounts of Canada 2024*, vol III, s 3 (last modified 23 January 2025).

125 Carleton University, "Government of Canada Contract Analysis: Core departments and agencies", (16 August 2022), online: Government of Canada Contracts <https://govcanadacontracts.ca/> [perma.cc/DSU9-7FU4]

126 Canada, Government of Canada, s*upra* note 123.

127 *Ibid.*

financial consequence, the conditions may already exist for a comparable scandal to emerge. Whether it manifests through the amended General Anti-Avoidance Rule ("GAAR"),[128] the newly introduced *GMTA*,[129] potential unilateral legislation akin to the *MAAL*,[130] or any other high-stakes tax initiative, significant risk lies in the possibility that unchecked and disproportionate private influence could incentivize misconduct.

ii. A Lack of Oversight and Transparency

This vulnerability is amplified by Canada's limited and fragmented regulation of private consultants in legislative development—gaps that also contributed to the PwC Australia tax scandal.[131] For instance, instruments such as the Federal *Conflict of Interest Act* and the *Values and Ethics Code for the Public Sector* impose no constraints or disclosure requirements on external consultants, even when they play an active role in shaping government policy.[132]

In terms of procurement oversight, Canada does maintain controls under the *Government Contracts Regulations*[133] and the related Directive on the Management of Procurement (formerly the Treasury Board Contracting Policy), which requires competitive bidding and value-for-money analysis for consultant contracts.[134] However, these rules are primarily concerned with how consultants are selected and compensated, focusing on market conditions rather than substantive influence.[135] Notably, neither the Directive nor any associated policy appears to impose a limit on the

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128 *Income Tax Act*, RSC 1985, c 1 (5th Supp), s 245.

129 *Global Minimum Tax Act*, *supra* note 17.

130 MAAL, *supra* note 24.

131 See e.g. Austl, Parliament of Australia, *A Calculated Breach of Trust*, *supra* note 18 at 8; See also *Taxation Administration Act 1953*, *supra* note 44, s 355 (This section constrained the ATO's ability to share vital information with the Australian Treasury regarding early detection of the scandal).

132 *Conflict of Interests Act*, SC 2006, c 9, s 2; Canada, Government of Canada, *Values and Ethics Code for the Public Sector* (Modified: 15 December 2011).

133 *Government Contracts Regulations*, SOR/87-402, ss 4-7

134 Canada, Government of Canada, *Directive on the Management of Procurement*, App A (last modified 28 May 2025).

135 *Ibid*; Government *Contracts Regulations*, *supra* note 133.

proportion of contracts that may be awarded to a single consulting firm—nor do they require the government to disclose the degree of consultant involvement beyond annual spending figures, which are available through the Public Accounts of Canada as required by sections 63 and 64 of the *Financial Administration Act*.[136]

At present, one of the few avenues for accessing more detailed information on private-sector involvement in the legislative process is through federal and provincial access-to-information regimes. Under Canada's *Access to Information Act*, members of the public can request internal records concerning the development of federal policy, including communications with external consultants.[137] Yet access can be constrained by broad exemptions that shield policy advice, solicitor-client privilege, and commercially sensitive information.[138] In the tax policy context, this means key materials—such as consultant recommendations, draft provisions, and government deliberations—could be withheld in full, limiting public visibility into private-sector influence on legislation.

Beyond limited access to government records, Canada's weak whistleblower protections further hinder accountability in this space. Among the most glaring limitations is the fact that the federal framework under the *Public Servants Disclosure Protection Act* ("*PSDPA*") excludes private-sector consultants, including employees of private firms working on public projects, from its scope.[139] Potentially equally troubling is that, even if the *PSDPA* were expanded to cover these individuals, it would still narrowly define protected disclosures, exclude many forms of misconduct, and offer few remedies when reprisals occur.[140] Making matters worse, investigations are infrequent, and corrective actions even rarer[141]—issues that contributed

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136 *Ibid*; *Financial Administration Act*, RSC 1985, c F-11, ss 63-64; See also Canada, Government of Canada, Public Accounts of Canada 2024, *supra* note 124.

137 *Access to Information Act*, RSC 1985, c A-1, s 4(1).

138 *Ibid*, ss 13-26.

139 *Public Servants Disclosure Protection Act*, SC 2005, c 46 [*PSDPA*].

140 *Ibid*.

141 Samantha Feinstein & Tom Devine, "Are whistleblowing laws working? A global study of whistleblower protection litigation", *Government Accountability Project* (London: International Bar Association, 2021) at 11-12.

to Canada being ranked last among over 60 countries in a 2021 comparative review of whistleblower laws.[142]

Finally, Canada evidently has no statutory measures that address misconduct of this magnitude in the context of policy development. As a result, there are no systemic deterrents in place, such as contracting ineligibility or organization-wide bans for consulting firms that breach public trust.

V. CHARTING A COURSE FORWARD

As of August 2nd, 2025, many countries have signed onto the OECD's 2015 BEPS Action Plan and are now implementing global minimum tax regimes aligned with Pillar Two of the framework.[143] However, these reforms generally secure only a 15% minimum effective tax rate, leaving significant base erosion and profit shifting—often enabled through artificial or aggressive multinational tax structures—largely untouched.[144] To close this gap, governments may increasingly turn to complimentary domestic measures, such as adjusted general anti-avoidance rules or targeted legislation akin to Australia's *MAAL*.[145] Yet the sheer financial stakes associated with such initiatives—or any tax policies of comparable magnitude—risk attracting the involvement of opportunistic private actors, particularly in jurisdictions that, like Canada, lack coherent regulatory frameworks to govern external consultants in tax policy development.

The challenge of developing and implementing increasingly complex tax policies—particularly those shaped by the OECD's BEPS Action Plan, which heavily influenced Australia's *MAAL*[146]—places much of the world at a pivotal juncture. In a complex globalized world that is increasingly

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142 *Ibid* at 10.

143 OECD, *Members of the Action Plan*, *supra* note 23.

144 See e.g. GMTA, *supra* note; See also *Taxation (Multinational-Global And Domestic Minimum Tax) Act* (No 132) (Cth) (Austl).

145 MAAL, *supra* note 24.

146 Austl, Parliament of Australia, Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015 [Provisions], *supra* note 20.

neoliberalizing tax policy development,[147] it is not practical to suggest that most countries should avoid the dangers of privatizing tax policy development altogether by keeping the domain entirely public.[148] The reality is that many countries lack the necessary public infrastructure to effectively regulate the taxation of emerging industries, complex avoidance strategies, and an increasingly interconnected and metaphysical economy.[149] As the digital economy expands and cross-border transactions become more complex, traditional public sector approaches to tax regulation are often outpaced by the speed of innovation and the intricacies of global finance.[150] This gap not only challenges the efficacy of national tax systems but also opens doors for aggressive tax planning and avoidance schemes that exploit these limitations. Therefore, while the privatization of tax policy development carries inherent risks, as shown in this paper's case study, these engagements are a necessary evil in the modern world.

As Canada, along with numerous other countries, move to adopt or adapt these frameworks,[151] it becomes especially important to not only play the role of a historian who traces origins and identifies key causes, but also to leverage this knowledge to chart a more accountable path forward. This approach involves examining the broader implications of the scandal and applying lessons learned to navigate the evolving landscape of neoliberal tax policy.

Although aspects of the scandal may be particularly unique to Australia,[152] the broader lesson is clear: unless nations worldwide can effectively address the multifaceted causes of this scandal, they are poised to witness variations of these events unfold within their own borders, potentially on an even larger scale. Governments, as a result of the legislative

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147 Christensen et al, *supra* note 5 at 705-706, 715-717.

148 Rixen & Unger, *supra* note 2 at 623, 627.

149 *Ibid.*

150 *Ibid.*

151 OECD, Members of the Action Plan, supra note 23.

152 See e.g. Austl, Parliament of Australia, A Calculated Breach of Trust, *supra* note 18 at 8; See also Austl, Australian Government, *Review of Secrecy Provisions. Final Report*, *supra* note 98.

branch's control over domestic tax policy[153] and its role in enabling this fraud, bear the brunt of this burden.

In light of the lessons learned from the Australian case study, it becomes apparent that for governments worldwide to regulate the privatization of tax policy more effectively, a multifaceted strategy aimed at disincentivizing fraud and diminishing opportunities for such fraud is essential.[154] Key to this strategy is the prevention of over-reliance on any single private actor, which can elevate them to a status where their contracts are perceived as too significant to fail. While the involvement of the public sector in tax policy development is an unavoidable reality in today's complex economic landscape,[155] many of the consequences identified in the PwC Australia scandal could have been mitigated had the government guarded against over-reliance on any one firm—not only at the broader level of contracting across sectors, but also in the narrower context of policy design and even within specific projects.

For countries looking to avoid such over-reliance, one possible approach would be the adoption of procurement thresholds. This would likely be most effective if applied at both a macro level, such as limiting the proportion of total government contract revenue awarded to a single firm, and at a more targeted level, such as capping consultant involvement in tax policy development or even specific tax projects. Implementing such thresholds would, of course, be complex and highly context-dependent, varying with each country's resources, institutional capacity, and reliance on external expertise; nevertheless, it is an idea that deserves further exploration.

Furthermore, the necessity of engaging private sector advisors in tax policy development does not mean that governments should forsake the development of their internal capacities. On the contrary, strengthening public sector expertise is essential not only to reduce long-term reliance on external consultants, but also to enable effective oversight of their contributions. Through sustained investment in internal capacity, governments can exercise meaningful oversight, positioning public institutions to act as informed gatekeepers in their collaboration with

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153 Hettich & Winer, *supra* note 83 at 1-11.

154 Ilter, *supra* note 62 at 125-136.

155 Rixen & Unger, *supra* note 2 at 623, 627.

private experts and safeguard the integrity and accountability of the policy-making process.

Once over-reliance on private consultants is reduced, these relationships are less likely to become 'too big to fail,' creating space for governments to establish more effective regulation of private involvement in tax policy development. This includes contemplating and implementing stringent sanctions against this specific form of misconduct—such as financial penalties, criminal charges, jurisdictional bans, and restrictions on full or partial future government partnerships—because in the absence of serious consequences, private actors have little incentive to self-regulate. Realistically, no single penalty or combination of penalties will fully eliminate opportunism, but setting a clear precedent that misconduct results in both institutional and personal consequences can alter the perceived risk calculus for those operating in this space.[156]

Even more importantly, as evidence shows that the risk of getting caught is more influential than likely punishments,[157] governments would be well served to improve transparency around private-sector involvement in tax policy development. Many countries, including Canada, currently maintain confidentiality frameworks that shield nearly all material information about consultant participation in legislative design from public view.[158] This lack of meaningful disclosure limits public accountability and prevents scrutiny of the influence these firms may exert on policymaking.

If governments choose not to disclose these relationships themselves, they could at least prevent private actors from selectively benefiting by referencing them. At present, at least a few multinational firms are promoting their involvement in general terms without violating contractual confidentiality.[159] Although such statements may appear benign, they signal privileged access and insider expertise that can distort market competition and deepen information asymmetries.

Beyond these targeted transparency measures, governments must also consider broader efforts to eliminate the conditions that enable undetected

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156 Cain, *supra* note 91 at 80-85.

157 *Ibid.*

158 See e.g. Feinstein & Devine, *supra* note 141 at 10.

159 See e.g. PwC, *PwC Global Transparency Report 2024* (London: Pwc, 2024), online: <https://www.pwc.com/gx/en/transparency-report/pwc-transparency-report-2024.pdf> [perma.cc/N67A-3DXE].

misconduct. One such approach involves implementing external whistleblower incentives and ensuring baseline protections for those who come forward. These programs may prove crucial, particularly for governments lacking the resources required for comprehensive oversight of their private sector partners.

Even with limited financial resources available, improvements in oversight and transparency could be achieved by enhancing and facilitating domestic and international inter-agency communication. Targeted reforms to tax information privacy laws would contribute to this end, ensuring that critical information is more readily shared and that collaborative efforts to combat tax fraud are strengthened.

Admittedly, such policy changes are not devoid of potential consequences. They may deter private actors who are hesitant to expose their clients to increased scrutiny and oversight. Nevertheless, the competitive dynamics of the market are likely to ensure the fulfillment of these contracts despite these concerns. Moreover, firms that prioritize ethical practices and transparency could find themselves at a competitive advantage, potentially attracting more business in the long run.[160] While these measures might dissuade some of the most proficient private advisors from participating, it stands to reason that entities with transparent operations should welcome the push for greater openness.[161]

This recognition of just a few of these challenges associated with legislative action shows that the effective regulation of privatized tax policy development is nuanced and difficult. However, beyond these regulatory challenges, the socio-cultural aspects of the problem may even be further out of reach. As highlighted by Green, the norms against tax-related crimes are surprisingly weak, reflecting a broader societal ambivalence towards these offences.[162] This ambivalence contributes significantly to creating and enabling environment in which private actors operate, often blurring the lines between aggressive tax planning and outright evasion.[163] Thus, until there is a shift in cultural attitudes towards viewing these crimes through a

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160 Brenda E Joyner & Dinah Payne, "Evolution and Implementation: A Study of Values, Business Ethics and Corporate Social Responsibility" (2002) 41 Journal of Business Ethics at 297-311.

161 *Ibid.*

162 Green, *supra* note 111 at 222-224.

163 *Ibid* at 230.

more humanistic lens—recognizing the real-world impact on public services, societal equity, and the integrity of the state—efforts to combat them may fall short.

Reconstructing these norms requires concerted efforts across multiple fronts. Education plays a crucial role, not just in terms of legal compliance, but in fostering an understanding of the ethical implications and societal costs of tax avoidance and evasion.[164] Media and public discourse can also play an important part in influencing public perception by highlighting the tangible consequences of these practices on public services and societal well-being.[165] For this reason, I have endeavoured to contribute to the reshaping of these norms by building upon the conversation initiated by Rixen and Unger.[166]

However, given that these sorts of discussions have only recently started to appear in regulatory scholarship,[167] it seems unlikely that the large-scale societal norms surrounding tax evasion are going to shift anytime soon. Additionally, this lack of coverage in the academic and legislative arenas suggests an even more troubling possibility: that our governments might be either unaware of their complicity in these issues or, worse, willfully blind to their role in enabling such crimes. As a result, it is likely that meaningful change, if any at all, will only come years after the damage has already been done when these sorts of scandals break and trigger public outrage.

VI. CONCLUSION

The PwC Australia tax scandal emerges not merely as an isolated event but as a pivotal chapter in the broader metanarrative of neoliberal global tax governance, spotlighting the escalating encroachment of private interests into realms traditionally safeguarded for public oversight. This unfolding story offers a critical caution: the foundational integrity of tax policy, the

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164 Alexandra Galbin, "An Introduction to Social Constructionism" (2014) 26 Social Research Reports at 82-92.

165 *Ibid.*

166 Rixen & Unger, *supra* note 2 at 623.

167 *Ibid.*

constitute core of modern statehood,[168] stands at risk of erosion when the influence of private entities is allowed to surpass the collective aim of public welfare.

As we contemplate the future of tax policy in an increasingly globalized economic landscape, it becomes clear that the lessons from the PwC scandal are not merely historical footnotes but living guides for pre-empting and mitigating future breaches of trust. These sorts of scandals are a call to action for nations worldwide to critically evaluate their reliance on private consultants in tax policy development and to fortify the mechanisms of oversight and accountability. By doing so, nations can better safeguard the process against conflicts of interest and make it more likely that tax legislation serves the public interest above all.

However, countering the entrenched challenges of neoliberalized tax governance looms large, suggesting that genuine reform is a complex, multifaceted endeavour requiring more than just policy adjustments. Meaningful change demands a significant re-evaluation of our collective approach to the privatization of tax policy, encompassing regulatory reforms, increased domestic and international collaboration, and possibly even a cultural paradigm shift.

Yet, with notable silence in academic and legislative circles about increasing tax policy privatization,[169] inertia threatens. The uproar from the PwC scandal will likely fade from global headlines without sparking needed change outside Australia, leaving much of the world in a cycle of complacency or denial. At this crossroads, without unified action, history is poised to repeat itself, pausing only for the next scandal to briefly stir public outrage before the cycle restarts

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[168] Philipp Genschel & Markus Jachtenfuchs, "How the European Union Constrains the State: Multilevel Governance of Taxation" (2011) 50:3 European Journal of Political Research at 293-314.

[169] Rixen & Unger, *supra* note 2 at 622-623.