Multinational Corporations' Perspectives on Taxation

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Abstract

There has been increasing scrutiny of the effectiveness of national corporate taxation regimes. Given global economic integration, multinational corporations (MNCs) are able to legally shift profits to states where they pay little tax. However, what is legal is not necessarily legitimate. Global corporate tax avoidance is estimated to cost governments US$240 billion in foregone revenues each year. Putting this figure in the context of the uncertain economic environment since the 2008 financial crisis, including high levels of public debt as a result of bailing out the British banking system, and the protracted Eurozone sovereign debt crisis thereafter, and it is no wonder that corporate tax avoidance has emerged as a major political issue. MNCs that minimise their tax payments while the tax burden is shifted to ordinary citizens has led global civil society and the media to wage a campaign against the 'unfair' nature of the global corporate tax system. Although MNCs' structural power would seem to give them the ability to ignore the concerns raised, nevertheless they understand that their reputations are precious assets that they may jeopardise by their actions. Furthermore, recent G20 discussions suggest they risk the imposition of unwanted regulation if they are not seen to be upstanding corporate citizens. Has this affected corporate perspectives of their strategies? We answer this question by first considering the reality that there are actually very few 'placeless' MNCs. The world's MNCs are still based in the world's largest advanced industrialised economies, and most are headquartered in the US. All those that have attracted the most attention for their aggressive tax avoidance strategies are also based there. We demonstrate that their strategic motivations are a reflection of their institutional embedding in the US as the emblematic example of Anglo-Saxon shareholder capitalism. Secondly, we analyse indices of corporate reputation constructed by industry insiders to demonstrate that a liberal preoccupation with shareholder value seems to still dominate the interests of corporate leaders. Thirdly, we consider the discursive leveraging of MNCs' interests through responses to recent public inquiries. Whether a result of their institutional embedding in their home state of the US, or the perceptions of corporate leaders expressed through responses to surveys or public inquiries, we find that a liberal ideological belief in free markets, and a related focus on shareholder value, dominate MNCs' perspectives on paying their fair share of tax. We therefore conclude it is unlikely MNCs will voluntarily pay their fair share of tax, but also that in declaring their right not to do so they have opened the way to national and international re-regulation.

Introduction

Multinational corporations (MNCs) are able to take advantage of international arbitrage opportunities to reduce or eliminate their taxation obligations in the states where they earn much of their revenue. These opportunities are offered by states through tax competition for the investment and employment opportunities MNCs offer. However, in the period since the global financial crisis (GFC) governments the world over remain challenged by slow economic growth and unsustainable debt levels. In response to these twin challenges, they have sought to regain fiscal control by searching for ways to increase government revenue whilst reducing spending, often on social services. Clearly, there are contradictions in tax competition between states and governments' goals of fiscal consolidation. No wonder the ability of MNCs to avoid paying their 'fair share' of tax, combined with austerity measures being endured by citizens, has led to campaigns waged by tax justice activists, international non-government organisations and the media. The campaign has been highly critical of the actions of MNCs, painting corporate tax avoidance as a failure of democratic governance, an issue that reflects a growing dissatisfaction with the distribution of power and wealth in society (e.g. see Oxfam, 2016).

The role for MNCs in addressing these concerns hinges on their perspectives as to the nature of the criticism being levelled at them. To consider this, in the first section we consider the ideological and structural context in which MNCs operate. While the bailouts and fiscal stimulus measures the financial crisis necessitated seemed to presage the end of neoliberal globalisation, eight years later they appear to have been more in the nature of temporary measures designed to get national and global economies back 'on track' (e.g. see Wade, 2010). As states seek to pay off the public debt they incurred, neoliberal ideology has not been attacked but re-embedded, with power retained or increased by MNCs, and with the burden for picking up the costs falling on society (e.g. see Blyth, 2013; Crouch, 2011). This is the starting point for our analysis and it squares with critical accounts of globalisation (e.g. see Teeple and McBride, 2011). Therefore, we re-visit arguments about why neoliberalism is likely to be the default position if global governance is not possible, but in so doing we demonstrate that rather than global markets being free and competitive they are economically and geographically concentrated. Rather than being globally diffuse, power in the hands of a small number of MNCs headquartered in a small number of powerful states, particularly the US, is the reality. The economic power these MNCs wield, in both geographical and economic terms, is the reason paying tax is verging on becoming voluntary for them, as they notionally shift the jurisdictions in which they earn revenue.

In the second section, we consider the likelihood of MNCs voluntarily paying tax. Their taxation strategies affect their brand value, and therefore they should feel that their legitimacy is potentially damaged by being seen to aggressively minimise tax payments. If corporations understand that their reputations are precious assets they may be jeopardising, then it may be the case that their desire to be seen as good corporate citizens mitigates their efforts at tax minimisation. However, we contrast the theoretical arguments with data on how corporate leaders themselves judge corporate reputation. We demonstrate that their perceptions of legitimacy are at odds with their social responsibility to pay a fair share of tax, focussing on the US-based MNCs that have been most publicly attacked for their aggressive tax avoidance strategies. This suggests that they are unlikely to feel motivated to voluntarily do so.

Finally, we turn to how corporations themselves have discursively shaped their legitimacy in respect of their tax obligations in their responses to the criticisms they have faced. We

consider the cases of Google and Apple because they are among the world's most visible corporations in terms of their brand value and their efforts to minimise tax by shifting the territorial jurisdiction of their revenue. Using statements made to government inquiries, we demonstrate that they have fallen back on stressing what is legally required rather than what is socially desirable, and declaring that their actions should be seen as legitimate in this light.

We conclude that regardless of what might be thought of as risks to brand value, corporate strategies to minimise tax are not being conducted clandestinely, but being pursued proactively and even proudly. However, such a narrative indicates that corporate leaders are actually promoting the crisis of legitimacy they seek to avoid due to MNCs' tax minimisation activities. In stressing that their actions are legal, reasonable and even the fault of governments (which indeed we find they are) they have increased the likelihood of ceding power to regulators over whom they have previously sought the discursive leverage that has underpinned corporate claims of good citizenship. That this is the case suggests corporations by their actions, coupled with corporate leaders' defence of them, have unintentionally provided the most compelling argument for international agreements in the face of opportunities for arbitrage that have been seized. This is because social concern appears to be regarded as largely irrelevant in the face of major MNCs' judgments as to what is most important to their reputations: financial performance and shareholder value.

Globalisation and the 'Business of Business'

MNCs are usually conceived of as market actors (e.g. see Broome 2014, pp92-111). Therefore, material returns are 'naturally' seen as their prime focus, evidenced through measures such as their profitability, share price, shareholder value, competitiveness and market share. There is much robust debate between those in favour of this conception versus more critical voices desiring alternatives (e.g. see Micklethewait and Woodlridge, 2013), but there is neither the space nor the need to review the vast literature around neoliberal globalisation here. It suffices to say that Milton Friedman's (1970) declaration that 'the business of business is business', while the collective, public good is the responsibility of governments that democratically represents the aspirations and expectations of their citizens, is problematic in the context of globalised economy. Given the reality of markets and market actors that are no longer territorially defined, the political options for states seem reduced to either neoliberalism or shared sovereignty for global governance (e.g. see Martell, 2007).

Yet the global economy is neither as deterritorialised nor diffuse as is often claimed. Wealthy, industrialised countries still account for 80 percent of world output, 70 percent of international trade and make up to 90 percent of foreign direct investments (Chang 2008, p32). To be more accurate, it is the corporations from these countries that do so. Table 1 demonstrates that 84 percent of FT Global 500 corporations[1] are headquartered in just 10 states, with the US alone accounting for nearly half of these. Even with the rapid emergence of China and India as economic powers 'a statistical profile for the current corporation indicates that it is predominantly Anglo-American' (Harrod 2006, p27). Between 1990 and 2013, 81 percent of the value of mergers and acquisition (M&A) purchases were carried out by corporations from developed states, with those of the US and Europe alone accounting for 67 percent of the total. The top two states from which the purchasers came were the US (17 percent) and the UK (14 percent) (UNCTAD 2014a). It is also the case that over the same period the US and Europe accounted for 73 percent of M&A sales – i.e. a similar percentage

[1] The world's top 500 companies on the basis of their stockmarket capitalisation.

to M&A purchases – again with the top two states being the US (25 percent) and UK (16 percent) (UNCTAD 2014b). Rather than global diffusion in MNC's operations, the dominant corporations from the world's economically dominant states have been buying each other, further entrenching the geographical concentration of their home bases.

It is also the case that all the world's major industrialised sectors are controlled by five corporations at most, and 28 percent have one corporation accounting for more than 40 percent of global sales (Harrod 2006, p25; see also Fuchs, 2007). The world's major corporations, based in the world's largest economies, control trade and investment flows and do so because they dominate the markets for their products. In dominating these markets, they do so from the states in which they are headquartered. Although the world's 100 largest corporations ranked by foreign assets have an average transnationality index (TNI) of 60,[2] suggesting a high degree of independence from their home base, many are in fact bi-national or regional rather than global (e.g. see Rugman and Verbeeke, 2009), and the average TNI of US MNCs is 51. On average, these well-established MNCs from the world's most powerful industrialised state retain half their sales, assets and employment at home, even though they have had the most time to 'go global'(UNCTAD, 2014c).

Table 1: The Top Ten Headquarters of FT Global 500 Corporations, 2015

Country	Number of Corporations	Percent
US	208	42
China[a]	55	11
Japan	35	7
UK	27	5
France	24	5
Canada	19	4
Germany	18	4
India	13	3
Switzerland	11	2
Sweden	10	2
TOTAL	420	84

Source: (Financial Times, 2015)

[a] The FT Global 500 lists China and Hong Kong separately, but they have been combined here.

Many studies have also demonstrated that corporations' headquarters remain of strategic importance to them (Rugman and Oh, 2010; Buckley, 2011). It is not just that individual firms have different ways of organising their operations, but that 'the basic institutional structures of MNCs may be influenced or even determined by the characteristics of states' (Pauly and Reich 1997, p5). If 'national boundaries demarcate the nationally specific systems of education, finance, corporate management, and government that generate social conventions, norms, and laws' (Wade 1996, p85), then corporate structures and strategies must be substantially influenced by the national institutional contexts of their operations. Focussing on the US again, this is important because it is often taken as the exemplar of liberal market shareholder capitalism (e.g. see Hall and Soskice, 2001; Jackson and Deeg, 2008), which has implications not just for corporations' actual material interests, but how they *perceive* the achievement of them. If the world's largest corporations which control the global markets for their products tend to hail from the world's most powerful economies, and predominantly the US, then they are likely to do so form a liberal market perspective.

[2] The United Nations Conference on Trade and Development's TNI is a simple composite average of foreign assets, sales and employment to total assets, sales and employment. The figure of 60 is derived as the simple average of their TNIs. If the top 100 corporations are treated as a group, calculating their transnationality in total based on the sum of their assets, sales and employment yields an average TNI of 59 (i.e. slightly less).

Therefore, MNCs like Google, Apple, Amazon and Starbucks that have been widely criticised for minimising their tax payments may perhaps be better conceived as US corporations that control the markets in which they operate at home and abroad. Their desire to minimise the tax they pay, in pursuit of short-term profitability and shareholder value, is a reflection of their home state's institutional preferences. They should be expected to primarily focus on the bottom line in terms of production and sales, as well as related financial indicators of market performance such as share price and ability to pay dividends (e.g. see Lazonick, 2014). Furthermore, US-based corporations are more likely to seek to impose their form of capitalism globally as 'best practice' given they face pressure from their shareholders to deliver value regardless of the location of their operations. By comparison, those from more state-guided or coordinated economies are more inclined to share their decisions with a range of other stakeholders (e.g. see Geppert and Dörrenbächer, 2011). Being accustomed to a more relational form of capitalism in their home states, theirs by definition is not a model for the world.

However, it may also be the case that all corporations, regardless of the institutional and organisational preferences of their headquarters, do not seek high taxing jurisdictions when they invest and operate abroad. As such, competition for business location choice inevitably gives rise to tax competition by states seeking to attract footloose business operations. In fact, surveys such as Deloitte's (2014) of 800 corporate executives in 20 jurisdictions across the Asia Pacific region, demonstrate that low levels of corporate taxation and 'transfer pricing issues' were regarded as of 'extreme importance' in making FDI choices. Transfer pricing is a prominent tax minimisation practice, involving lowering the profits of a corporation's division located in a state with higher taxes by reporting the profits in another that has low (or no) tax. But transfer pricing also means that corporations may not even have to move their operations at all. They may stay 'at home', or locate in jurisdictions where they have business interests, whether these be productive assets, sales or skilled employees, and pay tax elsewhere. If they can do business in one jurisdiction while notionally and legally shifting the jurisdiction in which they pay tax to another, then national institutional variations and preferences may effectively be retained while for tax purposes they are irrelevant.

In addition to liberal institutional foundations for corporate organisation for most of the world's major MNCs, those that are truly global in their operations would seem to have an interest in what amounts to exercising an option to pay as little tax as possible in jurisdictions not necessarily where their market interests lie, nor where they have the majority of their operations. Either way, it is states that should be central to understanding MNCs' strategies. Either their institutional embedding in their home states, or the tax competition provided by other states, explains MNCs' ability to engage in tax minimisation strategies.

Corporate Reputation

Although MNCs may be conceived as instrumentally-motivated pursuers of profits with an institutional preference for liberal market shareholder capitalism due to their headquarters, or simply possessing the ability to maximise their profits as a result of their global operations, even from these perspectives they also have an interest in acting to ensure their reputations are not tarnished by their actions. This is because while they can minimise tax by shifting the jurisdiction in which they pay it without necessarily shifting their operations, normative questions of whether it is 'right' or 'wrong' for them to do so are important in the sense that 'if they do not use their power in ways that are regarded as socially responsible they risk

losing it. Lawrence et al. (2005, p47; originally Davis and Blomstrom, 1966) call this 'the iron law of responsibility', and it has led international business scholars to claim that given the power they possess corporations understand they must 'proactively build reputational capital for strategic advantage' (Jackson 2004, p. 3). In essence, they realise that while shareholders are interested in profitable businesses, they also expect firms to mitigate both market and regulatory risks by adhering to socially accepted norms.

The result is that corporate reputations may be regarded as 'exceedingly valuable commodities' (O'Callaghan 2007, p114), or even intangible assets (e.g. see Gotsi and Wilson, 2001). The ability of societal pressure to promote or undermine corporate reputation potentially functions as a self-regulatory mechanism to constrain socially negative aspects of corporate behaviour. This has led to a wide embrace of corporate social responsibility (CSR) programmes. Beyond traditional notions of philanthropy and charity, CSR suggests an active concern for stakeholders very broadly defined, and a willingness to take action to mitigate the negative consequences of all business activities. In acting as a self-regulatory mechanism, CSR programmes that enhance corporate reputation may be used as leverage to avoid government regulation while enhancing profitability. For example, a 2001 review of the international business literature found that 68 percent of studies identified a positive correlation between socially responsible firms and profitability, while just 15 percent found a negative correlation (Margolis and Walsh, 2001). More pragmatically, Vogel (2006, p17) argues that although 'there is no evidence that behaving more virtuously makes firms more profitable…conversely the fact that CSR does not make firms *less* profitable means that it is possible for a firm to commit resources to CSR without becoming less competitive'. It makes sense for companies to engage in CSR programmes as they either increase, or have little to no effect, on profitability while the enhanced corporate reputation they confer may convince society and governments to embrace self-regulation.

The pioneering corporate reputation study is the annual Fortune 500 World's Most Admired Companies list (Ponzi et al., 2011). The list is based on questionnaires provided to corporate representatives (Melo and Garrido-Morgado, 2012) and takes place in two rounds. In 2015, respondents from 668 firms across 29 countries were first asked to rank their industry peers across nine criteria, one of which is community responsibility. Secondly, the industry leaders who responded to the first round of industry surveys (4,104 in total in 2015) were asked to select their ten most admired corporations overall. The results are presented in Table 2 for the top five most admired corporations, and their ranking by criteria if in the top ten for each of these. What is notable is that *none* of the top five corporations judged by their peers as most admired are ranked in the top five for the criteria of community responsibility. In fact, they do not even rank in the top ten. This suggests that these firms' ranking as 'most admired' is derived mostly from the other criteria, particularly management quality; quality of products/services offered; innovativeness; and soundness of financial position.

Because the Fortune 500 World's Most Admired Companies list represents the view of 'business insiders' from the world's largest, most well-known firms, it has been criticised for only presenting their views rather than those whose judgment actually confers or undermines the reputations corporations seek (eg. see Brown and Perry, 1994; Fryxell and Wang, 1994). But what corporate representatives think matters in judging corporate reputation has implications for corporate tax strategies. Four of the top five most admired firms - Apple, Google, Amazon and Starbucks – have faced the most high profile public criticism for their complicated global corporate taxation structures. The greater importance of factors other than community responsibility for them suggests CSR is unlikely to be a primary driver in

considering their taxation obligations. This is supported by studies such as Davis et al. (2016) who find that corporations with the most extensive CSR programmes are those with the most aggressive tax minimisation efforts. They conclude not only that ‘the payment of taxes is not viewed as an important socially responsible activity’ but also that ‘CSR and taxes act as substitutes rather than complements’ (Davis et al. 2016, p.65). It takes no great leap of logic to conclude, as they do, that CSR activities are primarily intended to offset negative perceptions arising from aggressive tax avoidance strategies.

Table 2: Fortune 500 World's Most Admired Companies Ranked by Key Attributes, 2015

Most Admired	Community Responsibility	Management Quality	Quality of Products/Services Offered	Innovativeness	Value as a Long-Term Investment	Soundness of Financial Position	Ability to Attract, Develop and Retain Talent	Wise Use of Corporate Assets	Effectiveness of Conducting a Global Business
1 Apple	-[a]	-	4	1	7	3	5	9	3
2 Google	-	6	5	2	3	1	2	-	5
3 Berkshire Hathaway	-	-	-		10	-	-	-	-
4 Amazon	-	-	3	4	-	-	10	-	-
5 Starbucks	-	9	-	8	-	-	-	-	-

Source: http://fortune.com/worlds-most-admired-companies/ and http://fortune.com/2015/02/19/wmac-ranked-by-key-attribute/

[a] '-' signifies that the corporation was not ranked in the top 10

Discursive Power and Legitimacy

The prediction that business should be able to leverage the growing interconnectedness associated with globalisation to demand business-friendly policies was highlighted by the likes of Friedman (2000), Fukuyama (1992) and of course Strange (1997, p.184) who declared that states were retreating in the face of MNCs for whom they would increasingly serve as mere 'handmaidens'. The importance of corporate reputation should make this a problematic prediction, yet because corporate leaders rank community responsibility below other factors the 'race to the bottom' thesis that characterises so much of the globalisation literature would seem to hold weight – i.e. states competing to bid down taxes and standards to attract corporate investment. However, if corporations' reputations come under attack as a result of their CSR efforts being seen for what they really are, namely 'window-dressing' their real agenda of underpinning brand value through financial performance, then this weakens their position.

Generally speaking, 'whoever sets the terms of discourse will almost always determine the outcome' (Lowi 2001, p.131), so if MNCs lose the ability to do this on the basis of their reputations then they are in a diminished position to make widely accepted claims as to their social responsibility. In technical terms, they lose discursive power. This refers to the ability to use communicative practices to shape the preferences of others, to actively promote norms of behaviour that become the accepted 'rules of the game'. Essentially, it is the ability to create 'truths' that are accepted by other political actors including policy-makers (Lukes, 1974). As Elbra (2014, p.6) puts it, 'interests do not need to be pursued if they can be created', and as such if corporations are able to develop a high level of perceived legitimacy, they can promote the 'projection of a particular set of interests as the general interest' (Levy and Newell 2002, p.87). If they lose the ability to do this, they risk being in a position where their claims are more easily 'dismissed by a skeptical and cynical public' (Tienhaara 2014, p.167), meaning they have to fall back on the instrumental-relational and structural power they possess.

As per the three faces of power framework for global business presented in Fuchs (2007), instrumental-relational power is the most basic form of power MNCs wield. It entails them directly influencing the policy process through staffing governments with industry supporters, and influencing government decision-makers through campaign contributions and lobbying (Hacker and Pierson, 2002; Lukes, 1974). This type of power is relatively weak due to its high visibility if exercised publicly, or because of the personal relations needed for it to be exercised covertly (e.g. see Culpepper 2011). Whether more overt or covert, it means that business agendas must be pursued through the expenditure of considerable time and resources influencing policy-makers who may be more inclined for political reasons to respond to social concerns. Structural power refers to corporations' size and economic dominance. Their geographical and market concentration referred to previously gives MNCs leverage to organise issues 'in' and 'out' of politics, and have their interests served without explicitly making the case for this (e.g. see Bachrach and Baratz, 1962). They can punish or reward countries for the provision of favourable investment conditions not just by explicitly, but implicitly threatening to relocate their operations (eg. see Cox 1987; Frank 1978).

Up to now, MNCs have not had to overtly defend their position on tax minimisation. Instead,

they have been able to rely on the glacial progress of global corporate tax reform. A decade ago, the G7 Finance Ministers (1996) noted the following:

> Globalisation is creating new challenges in the field of tax policy. Tax schemes aimed at attracting financial and other geographically mobile activities can create harmful tax competition between states, carrying risks of distorting trade and investment and could lead to the erosion of national tax bases.

Yet, despite a public commitment made to tackle the problem there have been few tangible outcomes. Frustrating the process of reform has been wavering support from member states such as the US, whose commitment and participation is seen as crucial to effective reform efforts. The most recent of these, the OECD's Base Erosion and Profit Shifting (BEPS) initiative, promises reform of global tax norms and has been undertaken through extensive multilateral negotiations. However, the BEPS initiative's success hinges on sustaining international cooperation in the context of the divergent interests of participating states (Palan and Wigan 2014).

These divergent interests on the part of states serve the interests of MNCs, not just for the tax minimisation opportunities that flow from them, but also in the sense that it allows their political motivations to be obscured. As J.K. Galbraith (1977, p.191) opined on the operations of American corporations prior to what we now call globalisation:

> The service of the accepted image of economic life to the political needs of the business firm – the large corporation in particular – is, in fact, breathtaking. In broad concept it removes from the corporation the power to do wrong, leaves with it only the power to do right. Are prices too high? The corporation is blameless. Prices are set by the market. Are products deficient in safety, durability and design? Are they really needed? They only reflect the will of the sovereign consumer…One sees how great are the political and social advantages of this image of economic life.

However advantageous it may be, seeing MNCs as simply operating on the basis of global market forces, as opposed to the opportunities afforded them by states engaging in tax competition, is now under attack as a legitimate vision of them and their responsibilities. The cases of Apple and Google illustrate how MNCs have used the arbitrage opportunities afforded through their negotiations with, and the differing national regulatory contexts of, the states in which they operate (i.e. instrumental-relational power), coupled with their national and global economic dominance (i.e. their structural power) to dramatically minimise their tax payments. The dissatisfaction of the citizens of states in which these firms operate but pay little or no tax has led to governments undertaking a series of inquiries, and in the UK embarking on a unilateral attempt to tax 'diverted profits' (Callaghan, 2015). Corporate attempts to defend their strategies when challenged by public policy makers as a result of public backlash suggests that they are in danger of losing discursive power and thence legitimacy in respect of their operations.

Apple

Apple is headquartered in the US with a market capitalisation of US$416 billion. In 2014 the firm's global operations recorded turnover of US$182.7 billion and net profit of US$39.5 billion (Apple Inc., 2015). With a TNI of 59.6, the majority of its sales, assets and employees are abroad (61, 58 and 60 percent respectively), and so it may be thought of as a global corporation. The company has been the focus of much attention in regards to corporate tax minimisation, including the recent European Commission 'state aid' ruling that demanded Apple repay €13 billion in back taxes to a reluctant Irish government, concerned that it may damage its competitiveness as a low tax jurisdiction (Campbell 2016). Apple's key tax minimisation strategy is the creation of three subsidiaries incorporated in Ireland but which are effectively not

registered as a tax resident of any country. Putting it simply, Apple pays taxes in the US, but is able to legally claim most of its profits are earned in other jurisdictions. These jurisdictions, in turn, do not regard these profits as taxable. Its subsidiaries collect dividends from most of Apple's offshore affiliates and pay little to no tax on these. In fact, they would seem to exist primarily for this purpose. One of them, Apple Operations International, receives dividends from most of Apple's offshore affiliates but has no employees and no physical presence. Another, Apple Sales International, contracts manufacturers in China to make Apple products which it then sells to Apple Distribution International which pays as little as 2 percent tax on its profits having negotiated this 'special' rate with the Irish government (Anon, 2013). It is this complex tax avoidance strategy that attracted the attention of the European Commission (EC). The Irish Government's decision to appeal the ruling, alongside Apple, reflects the place of tax competition its strategies for attracting foreign investment..

The result is not just that Apple pays less tax in the US, but also in other states in which it conducts business. This is because Irish tax law asserts jurisdiction only over companies managed and controlled in Ireland, but as Apple is managed and controlled from its US headquarters this arrangement allows Apple to escape both US and Irish taxation. The US has consistently criticised the use of sweetheart tax deals by Ireland (despite the US itself being considered a tax haven by many analysts) as it seeks to maximise the share of Apple's taxation payments directed to the US government (Bowers, 2016). In this sense, the US remains less interested in Apple and other MNCs' tax avoidance strategies, than it is in other sovereign states asserting their rights. Indeed, the US Treasury Department's main concern at the time of the EC's decision was that 'the EU was trying to become some kind of global tax authority' (Cellan-Jones 2016)

In May 2013 the United States Senate Committee on Homeland Security and Governmental Affairs held a public inquiry into Apple's compliance with US tax laws to 'spotlight Apple's extensive tax-avoidance strategies' after finding evidence of tax avoidance and an 'unusual tax scheme' whereby its three Irish subsidiaries paid no tax in either Ireland or the US (US Senate Committee on Homeland Security and Governmental Affairs, 2013). Among the most damning accusations were that in exploiting the gap between US and Irish tax jurisdictions Apple was able to pay *no* tax on income totalling US$30 billion over 2009-2012 through Apple Operations International, and enjoyed a tax rate of 0.05 percent on income of US$74 billion over the same period through Apple Sales International (US Senate Committee on Homeland Security and Governmental Affairs, 2013). Senator Levin argued that 'Apple wasn't satisfied with shifting its profits to a low-tax offshore tax haven' but instead 'created offshore entities holding tens of billions of dollars, while claiming to be a tax resident nowhere' (US Senate Committee on Homeland Security and Governmental Affairs, 2013). Senator McCain noted that while 'Apple claims to be the largest US corporate taxpayer…it is also among America's largest tax avoiders' (US Senate Committee on Homeland Security and Governmental Affairs, 2013). The inquiry focused on the following three tax practices: using a cost sharing agreement to transfer valuable intellectual property overseas thereby moving profits into a tax haven jurisdiction; using loopholes to disregard offshore subsidiaries in order to shed billions of dollars in income that would otherwise be taxable in the US; and negotiating a tax rate of less than 2 percent with the government of Ireland. This rate is significantly lower than the nation's 12 percent statutory rate,

and having negotiated it Apple used Ireland as the base for its extensive network of overseas subsidiaries (US Senate Committee on Homeland Security and Governmental Affairs, 2013).

In addition to a written submission, Apple sent its Chief Executive Officer, Tim Cook, and Chief Financial Officer, Peter Oppenheimer, to represent the company at the inquiry's hearing. In his opening statement, Cook highlighted the company's decision to keep its product design and development staff (approximately 50,000 employees) in the US, the jobs created by companies in Apple's US supply chain, and pointed out that Apple is the largest corporate tax payer in the US. This is based on the company paying US$6 billion, or an effective tax rate of 30.5 percent in the US (Cook 2013). Although Senator McCain noted that this disregards revenue the firm has moved offshore to be effectively outside the reach of *any* tax authorities, Cook (2013, p.3) stated Apple pays all the taxes it owes, not only complies with the relevant laws but also the spirit of the laws, and that it does not 'stash money on some Caribbean Island'. Cook (2013, p.4) concluded:

> Apple has always believed in the simple, not the complex. You can see it in our products and the way we conduct ourselves. It is in this spirit that we recommend a dramatic simplification of the corporate tax code. This reform should be revenue neutral, eliminate all corporate tax expenditures, lower corporate income tax rates and implement a reasonable tax on foreign earnings that allows the free flow of capital back to the U.S. We make this recommendation with our eyes wide open, realising this would likely increase Apple's U.S. taxes. But we strongly believe such comprehensive reform would be fair to all taxpayers, would keep America globally competitive and would promote U.S. economic growth.

In other words, Apple would be prepared to negotiate paying more tax in the US as long as its offshore arrangements are left alone, but blames the US government for its tax arrangements rather than accepting responsibility for them.

In April 2015, the Australian Senate also held an inquiry into Corporate Tax Avoidance at which senior Google and Apple representatives appeared. At this inquiry Tony King, Apple's Australia and New Zealand Managing Director, stated in a similar vein that his company 'pays all the taxes it owes in accordance with Australian law' and that its effective tax rate in Australia was above 30 percent (King, 2015). When asked about the company's seemingly low gross profit and its use of tax minimisation strategies, he reiterated that Apple 'pays tax in accordance with Australian tax law' (King, 2015). When it was put to King that of the $600 retail price of an iPad in Australia, $550 is shifted to Ireland of which approximately $220 is never taxed anywhere in the world, and that while this may be lawful it would nevertheless constitute avoiding tax, he replied 'we do not avoid tax, we pay all of our taxes that are due in the Australian market in accordance with the law' (King, 2015).

Google

Google is also a US-based firm. Its market capitalisation is currently US$530.70 billion. In 2014, it recorded global revenues of US$66 billion and net profit of US$14 billion (Google Inc., 2015). Estimates of the company's market share suggest that approximately 65 percent of the world's internet searches are undertaken using Google, while in 2013 it attracted 33 percent of the world's digital advertising expenditure (Efrati, 2013). However, Google has a TNI of just 41.9, and it is only in sales that it has a majority of its operations abroad (55 percent). Only 37 percent of its assets and 34 percent of its employees are outside its home state. Unlike Apple, Google may therefore be thought of as a US corporation with international interests. Regardless of the difference in the profile of its operations, in order to reduce the company's taxable income

Google has also relied on profit shifting. In 2011, the company moved 80 percent of its pre-tax profits from international subsidiaries to Bermuda where a corporate tax rate of zero applies to the company (Allard, 2014). Google's profit shifting, and its use of complex tax manoeuvres through Ireland and the Netherlands as tax centres due to their low tax rates, as well as routing sales through them to the low tax jurisdiction of Bermuda, mean that the company pays as little as 2.4 percent tax on its non-US revenues (Johnston, 2014).

Inquiries into Google's taxation strategies were held in the UK in 2012 and 2013. The terms of the 2013 inquiry noted that in order to avoid corporate tax, 'Google relies on the deeply unconvincing argument that its sales to UK clients take place in Ireland, despite clear evidence that the vast majority of sales activity takes place in the UK' (UK Public Accounts Committee on Tax Avoidance – Google, 2015). At both of these inquiries the company was represented by Vice President for Sales and Operations, Matt Brittin. When questioned about the company's claim that Google conducts the bulk of its European business from its low-tax jurisdiction Dublin offices, Brittin (2013) noted that 'any advertiser in the UK, Germany, France or any European country contracts with Google in Ireland, because that is where they have the rights to sell Google advertising'. The parliamentary committee repeatedly presented evidence including sales jobs advertisements for positions located in London, as well as that provided by whistle-blowers suggesting a significant portion of Google's sales activities take place in the UK where the company paid just £10 million in tax on 2006-2011 revenues of £11.5 billion (Syal 2013). Despite the evidence, Google's official position was that 99 percent of its European sales take place in Ireland, hence the legitimacy of the company's tax structure. At the parliamentary inquiry Brittin remained committed to this business model as an accurate depiction of Google's European operations, but also claimed to have no detailed knowledge of them declaring 'I am not a tax or a legal expert'. When pressed on the specific actions of Google, he declined to elaborate further stating 'obviously, what I cannot do is talk specifically about Google's affairs', though eventually acknowledging that 'the lower tax regime was one factor in establishing us in Ireland' (Brittin, 2013).

A similar position was taken by Google Australia, also present at the Australian Senate inquiry into corporate taxation, represented by Managing Director Maile Carnegie. Agreeing with her Apple counterpart that global taxation requires overhauling, Carnegie (2015) stated that in relation to taxation, 'Google believes international cooperation at the OECD level is essential'. Carnegie went on to respond to questions about profit shifting from Google Australia to the low-tax jurisdiction of Singapore saying 'the products and services we sell to Australian customers are sold by our Singapore group' leading to the following breakdown in profits from sales in Australia: '$2 billion in software products and services revenue booked in Singapore and a little over $100 million of consulting services booked in Australia' (Carnegie, 2015).

Carnegie and Brittin's positions are consistent with public statements made by Google's Chairman, Eric Schmidt, who has declared 'we pay lots of taxes; we pay them in the legally prescribed ways', and that he is 'very proud of the structure that we set up. We did it based on the incentives that the governments offered us to operate' (Womack, 2012). As with Apple the clear implication is that the fault again lies with governments if they engage in tax competition and choose not to close opportunities for tax minimisation. Far from shying away from what

others may regard as corporate obligations to pay a fair share, Schmidt proudly stated ‘it’s called capitalism…we are proudly capitalistic…I’m not confused about this’ (Womack, 2012).

Conclusion

Whether related to the national institutional context of their home state, and in the case of the large US corporations that have attracted attention for minimising tax it may be, or the result of tax competition by states, there is clearly an expression of a liberal ideological belief in free markets in the corporate taxation strategies of large corporations and the justifications offered in respect of them. Regardless of the CSR literature on the potential for self-regulation to enhance corporate reputation, what appears to matter most to corporate leaders are traditional financial and market performance metrics. These, above community responsibility, are what confer reputation. Therefore, it is unsurprising that the comments of corporate leaders amount to a disregard for tax minimisation concerns expressed by tax advocacy groups. Instead, they stress their firms’ lawful behaviour.

They have a point. They are not breaking any laws and they are not evading tax. They are minimising it. If the public believes them to be acting legitimately and for the outcomes produced to be desirable, then they remain in a politically powerful position to arrange their tax affairs as they see fit with the help of the states that allow them to do so. The problem for both is that increasingly this seems to no longer be the case. Part of the reason for this is their responses to the criticisms they have faced on their tax affairs. Power that is believed to be exercised responsibly comes to be regarded at the very least as ‘tolerable’ (Wilks 2013, p177). It therefore endures and institutionally re-embeds itself rather than having to be continually asserted and imposed. But this is the position corporations are finding themselves in as they explain their strategies with reference to the law, and even declare their pride with the way in which they have structured their tax affairs. As they stress this, they are undermining their legitimacy in the eyes of the public, and therefore their discursive power. It is also rebounding on the states that are at the forefront of offering them opportunities for tax minimisation. The publicly pronouncements of MNCs like Apple and Google are not just revealing of their perspectives, but strategically cavalier. In claiming their positions as legitimate, and in the process (correctly, in our view) shifting blame to governments for the opportunities afforded them, they are inviting and politically enabling the response they least desire: global regulation. At the same time, they are strengthening the arm of states that wish to put in place greater tax demands while working towards the necessary global reforms to undermine the strategies of tax havens like Ireland.

We only considered the examples of Google and Apple and cannot claim that they represent all MNCs’ perspectives. Even so, their lack of ‘shame’, let alone concern, for their tax minimisation strategies is likely shared with other corporations if the opinion of Irving H. Plotkin, Senior Managing Director with PwC Boston is indicative. He has stated that ‘a company’s obligation to its shareholders is to try to minimise its taxes and all costs, but to do so legally’ (Drucker, 2010). Milton Friedman would probably have agreed. Similarly, we primarily focussed on US MNCs due to their dominant position by comparison to those of other nationalities, and in debates surrounding corporate tax avoidance. Space constraints preclude a comparative analysis, but future studies could consider the extent to which MNCs of other nationalities perceive their interests in similar terms. Even so, we have suggested that a concern for shareholder value and

financial drivers are likely to be more globally generalisable than more socially relational forms of capitalism. If corporations do not primarily judge their standing and brand value on the basis of social responsibility, being less concerned with an obligation to society than shareholders, then they are unlikely to be voluntary payers of tax. In failing to pay a fair share, claiming their position as a legitimate one, and in the process shifting blame to governments for the opportunities afforded them, they are not only weakening their position and inviting and enabling the regulatory response they least desire. They have also demonstrated that global corporate tax avoidance is not caused by global market forces, nor capitalism, nor globalisation, but by tax competition between states. The solution to the problem therefore cannot reside with the MNCs that have benefited from the opportunities states have afforded them.

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