

THEORETICAL PERSPECTIVES ON ETHICAL DILEMMAS IN GLOBALIZATION AND INTERNATIONAL TAXATION

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Abstract

Global corporations confront ethical dilemmas that lead to increasingly contentious environments where corporations extend tax planning by availing of ambiguities and new devices such as tax havens emerging from a globalized economic system. Adopting a normative theory-based approach, the paper contextualizes global tax planning approaches applying three theoretical perspectives, agency, legitimacy and normative stakeholder that help interpret ethical issues in global taxation to reflect the tensions and viewpoints of interest groups. The paper thereby extends the classifications of tax planning beyond those that emerge through the stages of historic growth of tax departments as profit centers and risk management centers (e.g., Donohoe, McGill, & Outslay, 2014) to stakeholder accountability centers. Specifically, drawing attention to the multiple stakeholders impacted by global business and international taxation, the paper presents a rationale for public policy that engages

global business to further the public interest through a stakeholder based tax planning approach.

INTRODUCTION

A chronological analysis of corporate tax outlook suggests an evolution of corporate tax departments, from Cost Centers focused on compliance, to Profit Centers, and finally, Risk Management Centers (Donohoe et al., 2014). Tax planning essentially changed compliance-oriented tax departments from cost centers to profit centers, reflecting the increased competition and tax planning opportunities for global business (Robinson, Sikes, & Weaver, 2010). The changes emerged with the enactment of the corporate income tax in 1913, and the invention of income shifting schemes to take advantage of differing shareholder or jurisdictional tax rates. This also led to increased regulation, for example, as Congress enacted legislation that included anti-deferral provisions restricting dividend deferrals through “foreign personal holding companies” and Subpart F provisions of 1962 to extend such restrictions to all passive income.

Complexity in tax laws continued to increase with ongoing corporate efforts at tax avoidance using highly structured tax shelters, and income shifting to low-tax jurisdictions leading to such financial debacles as occurred at Enron and WorldCom. Congress again responded, this time with the Sarbanes Oxley Act that created the Public Company Accounting Oversight Board (PCAOB) that also led to restraining activity of auditors in providing consultative (including tax) services. Thus, the increased risks involved in tax compliance became a new focus of corporations.

Thus, the evolution of corporate tax complexity reached a new phase with globalization and the emergence of multiple stakeholders and perspectives. Resultantly, the tax questions became more ambiguous and complex, indicative of dilemmas confronting corporations and stakeholders involved. The issues ranged from when and how much to tax to goals and beneficiaries of such taxation in a capitalist system. The tax accountant has

emerged as one of the players, with dual sources of accountability, to corporations and to the government. While largely called to the task of supporting tax planning to increase profit and reduce taxes, tax accountants have developed tax-planning schemes to avoid taxes that have led to increased criticism (e.g., Sikka & Willmott, 2013). Therefore, the complex environment that has increased the opportunities for tax avoidance has also led to ethical questions surrounding international taxation and the increasingly complicated new regulations and global initiatives (e.g., OECD, 2013) that seek to contain such tax avoidance. In this milieu, three theoretical perspectives influence and provide insights into these global tax dilemmas.

The first, agency perspective, presents the view of corporations as entities existing for value creation to promote shareholder interests. This is the *de facto* tax consultant approach and has the advantages of market based *laissez faire* support, while also energizing corporations to higher levels of shareholder value creation. Many corporations and tax departments would ardently seek free market-based and sanctified capitalism to adhere to this system, arguing that managers as agents of the owners (i.e., shareholders) have the sole responsibility to increase profits for shareholders.

Corporate social responsibility and stakeholder concerns are largely ignored and managers devise risky tax strategies that have the potential to increase corporate profits. Thus, this perspective would use tax planning to avail of natural advantages of globalization that may lead to tax competition and a greater spiral towards lower global taxes that can seriously dilute or erode tax bases of host countries. The second is the legitimacy perspective defined along legal lines supported by courts and cases such as *Westminster* that provides considerable leeway for firms to seek to reduce taxes through legitimate tax planning within the legal framework. This approach sticks to the basic tenants of the law, maintaining legitimacy in the eyes of the law while arguing in favor of greater autonomy in tax strategies.

This risk-averse pragmatic approach also appears to balance the outcomes so that there is less financial risk by abiding by the letter of the law while seeking to avoid taxes subject to legal constraints. The third perspective ranges from stakeholder activism focused on corporate greed to a normative stakeholder approach that addresses the impact of tax avoidance on stakeholders, particularly citizens required to make up tax revenues from corporate tax avoidance, increased inequality in wealth and loss of tax base impacting government spending on infrastructure and education.

Corporate tax policies that adopt this perspective extend legitimacy to the other stakeholders, thereby highlighting an obligation of the firm to society (the social contract) and reflecting the perspective of stakeholders opposing the growing transnational MNE activity that increase tax competition and the erosion of the tax base. Specifically, this normative stakeholder perspective would balance tax strategy with an active strategy to address stakeholder concerns.

The expanding role of the accounting profession integrating taxation and decisions calls for a framework that provides clarity in understanding the perspectives, and boundaries for operation and stakeholder roles. How should the tax consultants see their role in this situation? Drawing on the differing viewpoints, the paper suggests that a narrow self-serving viewpoint would lead to increased uncertainty and sub-optimal outcomes for the system and the corporation in the long run.

When public interest and individual self-interest collide, consequential impact on tax resources leads to resistance from stakeholder coalitions and national tax authorities, leading to increased regulation and confrontations in legal systems. These logical outcomes may lead firms to tax planning approaches that extend beyond considering tax departments as profit centers and risk management centers to stakeholder accountability centers that integrate stakeholder concerns in tax planning. Rather than driving tax competition between tax jurisdictions to lower effective tax rates, a normative stakeholder perspective could potentially lead to a new form of tax competition, applying taxes to increase value for

stakeholders with greater salience and lower power (Mitchell, Agle, & Wood, 1997).

Using the theoretical research and tax literature and information from the Vodafone tax case (India), the paper describes and illustrates the three perspectives. Overall, a fair integration of the different perspectives creates greater awareness that can enable accountants and other stakeholders to anticipate and support an equitable and cohesive approach to globalization and sharing of the growth that comes from it. The next section provides the nature of ethical dilemmas in the context of international tax planning. The third section provides the three perspectives on these ethical dilemmas. The fourth and final section presents conclusions.

INTERNATIONAL TAXATION AND ETHICAL DILEMMAS

With global expansion, firms now have multiple subsidiaries, often layered as holding companies serving to act as financial intermediaries. Additionally, these entities are often dispersed across different tax jurisdictions resulting in variations in how tax is treated. Thus, dilemmas begin to emerge from the complexity and diversity of corporation forms and tax regulations in differing tax jurisdictions. Countries adopt two types of tax regimes, territorial (or source-based) and worldwide (or residency based) (Avi-Yonah, Sartori, & Marian, 2011). Two concepts used to identify territorial and worldwide taxes are situation or situs of assets, and nexus or connection to the country where assets are located.

The first is necessary for income to be classified under “source” or territorial income, while the second indicates residency in the host country for tax purposes and therefore would legitimately be classified as sourced in the host country. With worldwide taxation, a U.S. resident or corporation headquartered in the United States must pay U.S. corporate income tax on all its income, regardless of whether it is earned within the country or overseas. A territorial tax system taxes only the income earned within a country's

borders. The differences between the two systems have implications on total taxable income, flow of foreign direct investments, tax treaties and other related issues.

Generally, however, countries tend to adopt some compromises in implementing the systems. For example, worldwide income is normally offset either by deduction or credit for taxes paid to source countries on the same income, and sometimes, as in the U.S. case, with deferral of tax until repatriation of the income in the form of dividends from foreign subsidiaries to the home country resident parent (Matheson, 2013). The first dilemma, therefore, concerns what is taxed, and how such taxation arises, given the multiple jurisdictions that have alternative definitions of taxable income from territorial operations and income or through operations that have their source in geographical regions. Specifically, the different jurisdictions with differing tax rates require transnational treaties and oversight that allows for equitable taxation and avoidance of double taxation, but also opens the door to corporations for creative tax planning.

This leads to the next dilemma. Globalization leads to the unequal and arbitrary manner in which tax resources may be allocated among nations who may also be associated with the generation of corporate revenues. Double taxation stands as one obvious example. According to an OECD (2013) report, countries around the world agree on the need to eliminate double taxation and the need to achieve this on the basis of agreed international rules that are clear and predictable, giving certainty to both governments and businesses. To enable equitable tax allocation between residence and source countries and coordinate actions of tax regimes to limit tax avoidance while preventing double non-taxation (Avi-Yonah et al., 2011), the United Nations (UN) and the Organization for Economic Cooperation & Development (OECD) developed a series of model treaties that led to the current set of over 2,500 bilateral income tax treaties.¹ These treaties provide the framework of the

¹ http://www.un.org/esa/ffd/documents/UN_Model_2011_Update.pdf (UN Model) - this model is generally adopted by developing countries.

international tax regime, fundamentally providing a compromise between source and residence taxation. Some rights to tax are given to the source, and the residence country is required to relieve double taxation either by giving a credit for such source taxes paid, or by exempting the relevant income from its taxes.² International tax law is therefore a key pillar in supporting the growth of the global economy.

The opportunities for corporations to expand operations globally and avail of tax treaties have also resulted in the growth of tax havens. Most tax havens are island nations that emerged from the British territories that had previously been part of a United States-United Kingdom income tax treaty (e.g., Dharmapala & Hines Jr., 2009). These island nations continued to benefit from these treaties, while also lowering their own taxation to draw more investors.

Other tax havens, such as Singapore, Hong Kong, and several others have also emerged. Many multinationals divert Foreign Direct Investment (FDI) through conduit countries that have a favorable tax treaty network (sometimes called treaty shopping), to avoid host country withholding taxes. The effect of tax treaties on FDI diversion partly arises from the reduction of dividend withholding tax rates (Weyzig, 2013). The increased use of such tax havens for tax avoidance has led to cancellation of bilateral treaties between some countries, while also creating provisions for limits to benefits with others (Grady, 1984).

Nevertheless, corporations continued to devise new methods of overcoming provisions in tax treaties to reduce their income tax (Gravelle, 2015). Governments responded by placing restrictions on tax treaties, laying conditions or “Limitations of Benefits’ (LOB)

<http://www.oecd.org/ctp/treaties/2014-model-tax-convention-articles.pdf> (OECD Model). This model is adopted by OECD countries.

² Generally, source jurisdictions retain their right to tax active (business) income, except for short-term activities, but give up some of their right to tax passive (investment) income (see more on this distinction in Tax Justice Network’s Tax Justice Briefing on Source and Residency taxation (Tax Justice Network, 2005) and Avi-Yonah et al. (2011).

provisions, as elaborated later. Tax havens also provide tax planners of global firms the opportunities to identify and exploit the tax arbitrage opportunities, thereby extending tax planning with more confidence in taking aggressive tax positions.³

Key to such tax planning schemes are tax treaties between nations. In the absence of a double taxation treaty or directive in a potential investment (FDI) country, the multinational corporation can channel passive income through a so-called conduit company resident in a country with a double taxation treaty with the high tax country. Other transactions and schemes include transfer pricing and indirect share transfers, among others (e.g., Gravelle, 2015).⁴ Generally, the nature of transactions differ based on the nature of the tax regime of the home and host countries.

These primarily appear to include the creation of some form of entity that resides in tax havens. FDI strategy had implications on how firms entered into new territories, operated in and exited from these territories. Several new global tax strategies depending on the availability of tax havens served to promote the goals of firm autonomy but also created a controversial tax environment. Thus, the second dilemma or controversy would pose the question of how much do we tax? Tax treaties allow firms to reduce taxes, such that corporations would have an effective (or actual) tax rate that is significantly lower than the statutory taxation of the country of origin.

With the growth of tax havens and the widely prevalent tax planning involving shifting incomes to lower tax regimes, the dilemma is further exacerbated as ideas of free enterprise and laissez faire capitalism are extended to tax jurisdictions. A variety of new forms of tax avoidance applying tax differences emerged. Most tax strategies sought to reduce taxation by financial schemes that allowed the firm to form entities and develop resource flow that also

³ Donohoe et al. (2014) point out that tax arbitrage was first initiated by Scholes and Wolfson and led to the increased objectification of tax planning that altogether omitted the social angle.

⁴ Hybrid entities are structured such that they are treated as a partnership for one purpose and corporation or another (Gravelle, 2015).

formed the basis for tax avoidance. Some clearly were not acceptable ethically or legally. For example, corporate inversion was one form applied in worldwide tax regimes that sought to avoid most of the IRS liability altogether. Inversion is an administrative process by which, for example, a U.S. company buys a foreign subsidiary and then on paper makes that overseas business the new corporate headquarters of the combined companies.

The establishment of the company HQ abroad means the U.S. business then avoids higher U.S. corporate taxes as it no longer is U.S. resident for tax purposes. Another tactic was round tripping that involved getting the money out of one country, say India, sending it to a place like Mauritius and then, dressed up to look like foreign capital (through shell companies or subsidiaries), sending it back home to earn tax-favored profits. The problem for the home country is that native profits escape taxation this way and instead of foreign capital flowing into the country, local capital just gets a tax-favored ride (Johnston, 2011). Where tax rates varied significantly, firms developed another method titled “debt allocation and earnings stripping” through which firms shifted profits from a high-tax jurisdiction to a low-tax one by borrowing more in the high-tax jurisdiction and less in the low-tax one. This shifting of debt can be achieved without changing the overall debt exposure of the firm.

Other schemes tied to such tax havens presented firms the opportunity to reduce taxes while operating globally. For example, transfer pricing involved shifting profits from high-tax to low-tax jurisdictions through the pricing of goods and services. By lowering the price of goods and services sold by parents and affiliates in high-tax jurisdictions and raising the price of purchases, income can be shifted. Transfer pricing mechanisms may apply for production and service transactions. Tax authorities have made provisions to limit such income shifting by establishing objective “arms-length” pricing systems. However, these systems have also been difficult to implement, particularly given the nature of the product or

component that may be unique to the firm (where no comparable arm's length price is available).⁵

Where firms sought to exit foreign territories, they would seek to avoid capital gains that generally accumulated over time through the application of offshore transactions. Such transactions, titled indirect share transfers involved the purchase and sales of corporate shares through tax haven based companies as conduit intermediaries (or holding companies) that allow such firms to avoid significant capital gains tax.⁶ Such transactions do not lead to direct source income/loss in the place where the company is located (i.e., situs or presence in the place of operation, not ownership). Cui (2014) discusses the implications of the indirect transfer of shares, comparing the different approaches in the United States and in China, given the implications of worldwide versus local income source. The offshore market for Foreign Direct Investments (FDIs) may also increase due to legal hurdles and flexibility of organizational laws. Layers of Holding Companies may develop not only for tax avoidance, but also due to inadequate market for legal services (Cui, 2014, p. 117).

The different methods indicated above are not exhaustive but illustrative of the different schemes that have been widely recognized as tax avoidance. The outcomes have been the erosion of tax base of countries with tax rates higher than that of the tax havens. There are evident ethical and legal implications to these methods. International entities (OECD and UN) have developed models that address the importance of control over transnational space, addressing this new form of competition, specifically the intra-firm jurisdictions and tax competition. The third dilemma that emerges from this complex scenario regards the basic rationale for taxation, whether this taxation is legitimately required to be paid

⁵ Drucker (2010) has more examples of such tax loopholes.

⁶ Capital gains tax is tax on gains from a capital transaction, such as sale of a fixed asset or sale of shares. When such sale is direct (where seller and purchases are in the same country or tax jurisdiction), this is a capital gain transaction where there is no controversy as in the case of indirect share transfers.

based on what countries label as statutory, or whether corporations' ability to shift operations is a legitimate means to increase tax competition between nations.

Finally, the increased tax competition also leads to the erosion of tax bases of countries that are at different stages of development. Developing countries confront questions on how to stimulate investments while preventing tax base erosion that effectively allows firms with resourceful tax departments to shift income generated through the growth and opportunities presented by host countries without paying a legitimate share for the upkeep and renewal of such a resource base.

Such actions potentially reduce the total resources available for continued investments in infrastructure and education and also lead to under-funding of public investment that could help promote economic growth. Depending on the country, the problem of treaty shopping is handled in different ways. Voluntary groups presenting the perspective of developing countries have emerged. An organization titled Tax Justice Network (TJN) has an interesting and well-researched publicly available document called "Tax us if you can" which contains important material referred to in this note (Tax Justice Network, Murphy, & Christensen, 2012). Another organization, Citizens for Tax Justice (CTJ) plays a role in alerting the stakeholders about the excesses of tax shelter activity and income tax shifting to benefit large corporations (Citizens for Tax Justice, 2014).

These nonprofits have served to increase awareness among citizens and governments about the nature and impact of tax haven activity. While some may argue that they have a bias in their reports, there is little doubt that significant research went into the creation of the documents presented by these citizens' groups. This increased stakeholder activism increases the role of stakeholders, but also presents the fourth dilemma, who are the stakeholders and beneficiaries of corporate taxation, the government, society or a combination of these?

PERSPECTIVES ON INTERPRETING TAX PLANNING

Viewing the dilemmas from multiple perspectives provides insights into the implications of corporate tax planning for the sustainability of the larger capitalist system and the stakeholders involved. While corporations and governments are central to the issues, MNEs often tend to benefit from this ambiguity where tax planning opens avenues for tax avoidance. Thus, these situations can be viewed as opportunities, but a more cautious approach would see the risk underlying such opportunism and address situations considering the legal and reputational perspectives. Specifically, firms have to abide by social norms to find acceptance by stakeholders (customers and suppliers) and the law (legal courts and tax authorities).

Violating these principles would finally lead to adverse outcomes. MNEs often also have to retain their reputation as they operate globally, and therefore, continued stakeholder goodwill may motivate behavior. However, these situations may increase in complexity as stakeholders operating on self-interest motives prevent simple solutions. For example, recommending tax enforcement from the public interest perspective may also be stymied by regulators using their power and opportunities for self-serving (utility maximizing) purposes that may be in conflict with public interest (i.e., taxes are not utilized effectively in increasing public services and offering opportunities to increase public welfare).

This section presents a critical analysis of the issues from three perspectives, agency, legitimacy and stakeholder that helps develop an understanding of ethical issues from the different perspectives of stakeholders with divergent goals and viewpoints reflecting political and ideological biases.

Agency Perspective

The separation of ownership and control forms the bedrock of the modern publicly traded corporation. The problem of agency is embedded in this system, where the separation of owner-manager leads to the possible goal incongruence (i.e., goals of managers and

owners may be different) and leads to managers misappropriating resources from the owner's perspective. This problem was identified by Adam Smith in the *Wealth of Nations* regarding the likelihood of managers using other people's money with less "anxious vigilance" than if it were their own venture (Smith, 1776). Berle & Means (1933) raised this concern as well, noting that managers, motivated by self-interest, were likely to increase their own perquisites, thereby diminishing the returns to investors, and the well-being of the larger public.

The need to reduce such opportunistic behavior in this agency relationship through monitoring and incentives was further developed by Jensen & Meckling (1976). This suspicion of the motives culminated in Milton Friedman's assertion that the sole purpose of the firm was to make money for its shareholders (Friedman, 1970). Such profit orientation is further justified because the competitive environment forces firms to organize themselves to minimize contracting costs in order to survive (Fama & Jensen, 1983).

This profit motive also began to drive tax departments, with agency based tax-planning goals treating the tax department as a profit center, minimizing costs and maximizing savings (Donohoe et al., 2014). Profit center classification increases with tax planning opportunities, and results in significantly lower effective tax rates (Robinson et al., 2010). In purely contracting terms, the firm consists of a "nexus of contracts" and hence, contracts with the state to do business in exchange for paying dues that include taxes.

Therefore, minimizing such payments would constitute an acceptable means to compete and ensure survival. Thus, all firms would be expected to play along the same lines of tax minimization, with innovators becoming more creative than others in the cause of survival. Tax planning, the goal of which is consistent with the overall goals of profit maximization, is intended to integrate taxes with other strategic goals. Thus, effective taxes could be considerably lower than statutory tax rates through judicious tax planning. Overall, globalization has led to complex environments

that created ambiguity in tax statutes, increasing opportunities for global firms to plan tax avoidance strategies.

This environment has allowed the development of new territories that provide refuge to companies for tax advantages that corporations use to facilitate strategy, but also leads to tax competition. Thus, the incessant competitive pressure to reduce taxes also leads to emergence of tax havens as conduit companies to route transactions and develop tax competition between tax jurisdictions. Such tax competition is increasingly seen as another form of free market competition that may be justified by promoting more stringent and efficient government spending, as governments, when seen from the agency perspective, would also have opportunistic goals of extending self-serving goals in their relationship with other stakeholders such as corporations.

Some research appears to suggest the advantages of tax havens to different countries (e.g., Dharmapala & Hines Jr., 2009; Desai, Foley, & Hines Jr., 2009). Davidson (2014), a strong advocate for a *laissez faire* approach to enterprise that included the freedom to use tax havens, argues that the benefits outweigh the costs. He maintains that MNEs maximize their value to society not only when they pay tax, but by providing investment, creating jobs, facilitating innovation transfers, providing goods and services, and also paying tax.

Additionally, MNEs pay not only corporate income tax; they also pay payroll taxes, local rates, and a host of other charges and levies. Finally, MNEs in tax havens are generally firms in industries characterized by high R&D intensities and significant volumes of intra-firm trade. R&D-intensive firms are very likely to have operations in well-governed economies that also have low rates of corporate income tax. Thus, firm value creation becomes a key justification for this perspective. In general, tax haven activity appears to increase shareholder wealth in well-governed firms. Wilson (2009) examined whether the use of tax havens is associated with effective tax planning that generates wealth for shareholders, or whether tax havens are used by managers to extract wealth from the company.

The results indicated that firms that use tax sheltering together with strong corporate governance present positive abnormal return performance that created wealth for shareholders, while firms that use tax havens with poor corporate governance exhibit significantly lower abnormal returns, attenuating the benefit of tax sheltering. Desai & Dharmapala (2009) tested alternative theories of tax avoidance using unexplained differences between income reported to the capital market and to the tax authorities.

Their results indicated that the effect of tax avoidance on firm value is a function of corporate governance and that tax avoidance when combined with good governance practices increases firm value. Tax havens are generally small countries, and have been found to score very well on cross-country indices of governance quality, political stability, government effectiveness, rule of law, and the control of corruption (Dharmapala & Hines Jr., 2009).

To justify this narrative, other corporation contributions to economies are also highlighted (Desai, Foley, & Hines Jr., 2006; Desai et al., 2009). Desai et al. (2006) report that tax haven activity increases economic activity in nearby non-tax haven economies. Owing to the higher after-tax returns that multinational corporations are able to enjoy as a consequence of tax havens, they are able to maintain higher levels of foreign investment than they otherwise would have been able to maintain.

This increases the economic welfare in those economies while also providing investors with greater returns than they would otherwise have earned. Desai et al. (2009) investigate the impact of U.S. multinational corporations' offshore behavior within the United States. They report that those multinational corporations that expand their offshore activities also tend to expand their onshore activities. Foreign investment is complementary to domestic investment and not a substitute.

Overall, agency would address the dilemmas through a corporate shareholder lens that held corporate profits to be the ultimate objective for the existence of the corporation. The first dilemma, whether taxation should arise under territorial versus

source pits state against state in determining who would be eligible to tax profits from a transaction.

Corporations avail of tax treaties and other provisions to reduce ambiguity to create schemes such as indirect share transfers (capital gains transactions executed externally), transfer pricing using multiple tax jurisdictions that reduce effective tax rates, and other such schemes. Courts and tax jurisdictions emphasize that taxes are due when income is earned, while corporations assert the right to postpone such payment when such taxes cannot be reduced or eliminated.

These contravening views lead to the underlying rationales for taxation. The general agency oriented response would see tax competition as an extension of free markets and competition that benefits all concerned when unconstrained – a reflection of the invisible hand. This perspective naturally extends to efforts to increase the gap between what tax jurisdictions levy and what corporations effectively pay. The proponents of this viewpoint generally argue that other stakeholders such as the government and tax authorities are driven by similar self-serving goals that motivate them to similar opportunistic behaviors that seek pecuniary benefits or reduced effort in lieu of tangible benefits. Thus, tax competition is further legitimated by the inherent self-serving goals of different stakeholders.

Legitimation Perspective

Regulation has also increased risk, causing tax departments to increasingly focus on risk management that is captured by the legitimacy perspective. Legitimacy as a theoretical perspective can be considered as “a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs and definitions” (Suchman, 1995, p. 574). Legitimacy theory posits that organizations endeavor to operate within the bounds and norms of their respective societies. For global firms operating in the local environment, a key source of legitimacy for the corporation relates

to adherence to legal and social norms, particularly local laws of the land.

Legal systems around the world vary greatly, but they usually follow civil law or common law. Under common law systems, legal precedents or judicial rulings form an important basis for jurisprudence. Common law systems make references extensively to statutes, but judicial cases are considered the most important source of law, allowing judges to pro-actively contribute to content of law. Under civil law, codified statutes and ordinances rule, allowing governments rather than courts, customs, and case precedents to shape the society and legal systems. Thus, judges have a more limited role of applying the law to the case in hand, without establishing general rules. The United States, Canada, England, India, and Australia are generally considered common law countries. Civil law countries include all of South America (except Guyana), almost all of Europe (including Germany, France, and Spain), China, and Japan.

Case precedents in British courts have established tax law that has also facilitated tax planning, particularly demarcating what should constitute legitimate tax avoidance in contrast to illegitimate tax evasion. The progression of tax case precedents suggests the independent frame of judicial thought, as the principles embodied in the Westminster were later modified in the Ramsay case and reinstated in MacNiven. In *IRC v Duke of Westminster* [1936] AC1 (HL), Lord Tomlin stated that the taxpayer was entitled to “arrange his affairs so that the tax attaching under the appropriate Acts is less than it otherwise would be” although tax authorities or others were “unappreciative” of his “ingenuity.”

Judge Learned Hand in *Helvering v. Gregory*, 69 F.2d 809, 810-11 (2d Cir. 1934), further reinforced this ruling pointing out that “he is not bound to choose that pattern which will best pay the Treasury; there is not even a patriotic duty to increase one's taxes.” However, the Ramsay case (*IRC v. WT Ramsay Ltd* (1981)) broke with the Westminster case precedent. The House of Lords enforced substance over form, indicating that where a transaction had pre-arranged artificial steps that served no commercial purpose other

than to save tax, the proper approach was to tax the effect of the transaction as a whole.

Ramsay was a turning point in the interpretation of tax laws in England; followed by subsequent House of Lord decisions in *IRC v. Burmah Oil Co Ltd* (1982) confirming this decision. This principle was followed in the Indian Supreme Court's decision in the 1985 case of *CTO v. McDowell and Co. Ltd.* ('McDowell') in India. Justice Mishra pointed out that while tax planning may be legitimate when within the framework of the law, "colorable devices cannot be a part of tax planning and it is wrong to encourage the belief that it is honorable to avoid payment of tax by resorting to dubious methods."

However, we see the reversal of case precedents, as the Westminster principle was upheld in later cases such as *MacNiven v. Westmoreland Investments Ltd* (2001) ('MacNiven'). Regarding tax havens and tax treaties, the *Union of India v. Azadi Bachao Andolan* ('Azadi Bachao') in 2003 confirmed the right of the taxpayer to mitigate taxes by all legitimate means, including availing of benefits from tax treaties (specifically the Mauritian tax treaty on the basis of a valid tax residency certificate in Mauritius).

In a more recent case, *Indian Revenue Service versus Vodafone*, the Supreme Court of India relied extensively on the decisions of the House of Lords in England in interpreting principles of tax avoidance and upholding the Westminster principle. The *ratio decidendi* (legal principle upon which the decision in a case is founded) of English decisions may assist our understanding of the thought process of Indian courts. The legal ramifications of the cases, particularly those that emphasized the tax ambiguity in such areas as taxation of indirect share transfers led to changes in tax code of code law countries.

For example, the Chinese response to the Vodafone case was Circular 698 that curtailed use of avoidance mechanisms that used tax havens that had no significant commercial purposes other than tax avoidance. Importantly, the tax authorities had greater enforcement power, unlike in India, which followed common law.

To illustrate the application of codes and case precedents in the common law system, the Vodafone experience of indirect share transfers in India saw the distinct application of the “letter of the law” as the courts emphasized. This is a particularly important case that illustrates the power of courts to overturn a ruling that favored the tax authorities based on the “letter of the law” and the interpretation of the law in the light of case precedents. Vodafone maintained a tax risk position that was “ideally managed by the prevention of unnecessary disputes”. However, as their Tax Risk Management Strategy document asserts, “the avoidance of all tax dispute would suggest an overly prudent position that is not in line with our main objective to enhance shareholder value” (Vodafone Ltd., 2016). Vodafone, therefore, articulated their “Appetite for risk” as follows:

Vodafone’s appetite for risk is governed by its “more likely than not” principle enshrined in the code of conduct. Consistency and transparency of application across the group is essential. All tax function members should act proactively to ensure and continually improve our tax risk decision making. Further definition of the components for interpreting and assessing risk are available in supporting document. (Vodafone Ltd., 2016).

Vodafone purchased the shares of an Indian telecommunications company, Hutchison Essar, through indirect share transfers. Purchase and sales of corporate shares through companies located external to the area of operation is referred to as indirect share transfer. Where the financing companies are located in tax havens, such holding companies can lead to avoidance of significant capital gains tax.⁷ The Supreme Court of India ruled that such a transaction was not source income/loss based on Indian tax

⁷ Capital gains tax is tax on gains from a capital transaction, such as sale of a fixed asset or sale of shares. When such sale is direct (where seller and purchases are in the same country or tax jurisdiction), this is a capital gain transaction where there is no controversy as in the case of indirect share transfers.

code in the place where the company assets are located (i.e., situs or presence in the place of operation, not ownership).

The main provisions of the code consisted of Sections 5(1) and Section 9(1) alongside Section 195 on withholding taxes where such income is deemed to arise in India. Section 5(1) specified the total income in any previous year of a nonresident that would fall within the taxable income category.

According to the section, such income would accrue when received in India or accrues or arises or is “deemed” to accrue or arise in India through any source. Further, Section 9(1) clarified that deemed income would include all income arising directly or indirectly, “deeming” provisions specifically indicating that all income accruing or arising “from any asset or source of income in India, or through the transfer of a capital asset situated in India” shall be deemed to accrue or arise in India.

The Supreme Court of India ruled that such income did not arise from the transfer of such asset “situated” in India, rather it arose through the sale of shares situated outside India. Though the shares related to assets in India, the shares were distinct property, not acquired or designed to avoid taxes alone, but in the course of conduct of business for legitimate financing purposes. Thus, the case upheld the Westminster principle embodied in such other cases as *Azadi Bachao*.

Thus, Vodafone succeeded in maintaining their risk position strategy, availing of the legal resources and strategy to succeed in winning their case, thereby meeting code criterion of “more likely than not” risk position that could be “sustained on its merits if challenged by a tax authority” (Vodafone Ltd., 2016). Nevertheless, the power of the state was not fully thwarted, as they did respond by amending Section 9 of the Income Tax Act, 1961 (“the Act”).

Specifically, the Indian Finance Bill of 2012 extended the deeming component of Section 9 to include the statement that “any share or interest in a company or entity registered or incorporated outside India shall be deemed to be . . . situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.” This amendment sought to bring into the

tax ambit gains from transfer outside India of shares of foreign company deriving substantial value from assets situated in India by deeming the shares of the said foreign company as situated in India. “Substantially” has been defined to mean fifty percent or more of the total value of a company’s assets.

In contrast with this example of what one might call the “conventional” approach for taxing indirect transfers, China determines the taxability of an indirect transfer on the basis of an ex-post determination. Under Circular 698, where arrangements are without a reasonable business purpose to avoid enterprise income tax obligations, tax agencies may re-characterize the equity transfer according to its “business substance” and disregard the existence of the offshore holding company used for tax planning purposes.

Finally, only a Chinese tax authority under the general anti-avoidance rule (GAAR) can determine the taxability of an indirect transfer, and such determination is to be made explicitly based on a finding of tax avoidance motives. This has been referred to as “abuse of law” principle (see Avi-Yonah et al., 2011) under the code law. Tax authorities are empowered to disregard tax benefits of a transaction in such instances where the form of the transaction of the taxpayer is not “contemplated by law, and the same economic benefits could have been achieved differently” (Avi-Yonah et al., 2011, p. 106).

While there are different opinions on taxing indirect shares, Cui (2014) indicates that taxing indirect share transfers would lead to less tax avoidance and also the development of on-shore legal systems. The look-through provisions could also eliminate the layers of holding companies, and over-ride the complex transactions from use of holding companies and tax shelters (see examples on page 133 of Cui, 2014). The rather elaborate discussion highlights the nature of legal systems and the challenges of attaining legitimacy within local legal environments when tax departments seek to combine tax planning and legitimacy within a complex legal environment.

For global firms, there is also the broader regulation or treaties between nations, developed by individual nations and often

modeled after those developed by the OECD (Christians, 2009) and UN that seek to limit tax avoidance and unfair tax disadvantages through devising models for countries to follow in their international tax regulations. Firms seeking legitimacy must therefore consider the implications of these statutes, irrespective of their enforceability.

The OECD, UN and US Model treaties have specific Limitation of Benefits (LoB) clauses. These are provisions made in tax treaties to limit benefits from the treaty to restrain treaty shopping. The United States, for example, seeks to limit treaty shopping (i) through increasing the reporting requirements for foreign investors to enable the IRS to identify investors who are abusing United States bilateral tax treaties, (ii) and since 1962, through specific anti-treaty shopping LOB articles in tax treaties.

For example, the U.S. LoB clause is contained in the 2006 U.S. Model Technical Explanation Article 11 that specifically requires them to fulfill “a series of objective tests. A resident of a Contracting State that satisfies one of the tests will receive benefits regardless of its motivations in choosing its particular business structure.” The United States has concluded LoB clauses in treaties with countries such as Switzerland, Luxembourg, and Germany.

To circumvent spurious use of provisions of the treaties for tax avoidance, the LoB clauses required that parties to the treaties have “substantial” investments through active trade or business. The technical explanations generally stated that the determination would take into account the comparative sizes of the trade or businesses, the nature of the activities performed in each state and the relative contributions made to the trade or business in each state. The US-Swiss treaty gives a vague (but strict), standard for determining substantiality. The US-Luxembourg treaty is more specific about the substantive test.

Under this ratio test, income earned by the Luxembourgian entity is considered substantial if the value of assets held by the entity, the gross income derived from the active trade or business, and the payroll expense related to the trade or business in the preceding year is at least 7.5 percent in comparison to that of the U.S. trade or business. The average of all three factors must exceed

10 percent in the preceding year. The Luxembourgian treaty allows for the use of ratios from the preceding three years should one of the factors fail to meet the test.

The US-German Treaty contains provisions to identify abuse that would occur in the situation where a resident of a third country that has not concluded a tax treaty with the United States interposes a German company between itself and the United States (therefore, availing benefits of the treaty). To prevent this abuse, the German company intending to take advantage of the lower treaty tax rate must satisfy several qualifications. Article 28(l)(e)(aa) of the US-German Treaty, the so-called ownership percentage test, requires that a German company be owned by at least fifty percent German or U.S. nationals before the company enjoys the treaty benefits. Thus, a German company does not qualify for the treaty if, for example, sixty percent of its shareholders are French nationals, and forty percent are German nationals.

This analysis highlights the complex issues that firms confront as they seek legal legitimacy through tax planning. Firms that seek legitimacy also reduce the risk to the firm that comes not only from damaged reputation but also from significant loss of resources where such tax avoidance planning leads to violation of tax law. The dilemmas would therefore, be viewed from this perspective.

For example, on the question of when to pay taxes, corporations would seek congruity with the state and generally accepted norms. While corporations would be cognizant of the role of treaties in reducing taxes, they would avoid all semblance of violating specific taxation norms such as the creation of devices intended to avoid taxes (in adherence to tax law precedents such as Ramsay case). Thus, such a perspective would exercise greater restraint to reduce tax risk, while availing of tax treaties by seeking to abide by the letter of the law. This viewpoint would also see the role of governing systems and their legitimate place in the global economic system, such that corporations exist within the umbrella of the territory and tax jurisdictions, and therefore, do not

proactively seek to overcome existing policies of states (for example through an active agenda for tax competition).

Nevertheless, this viewpoint also serves the primary interests of corporate shareholders, and therefore, has been accused of being opposed to the spirit of the law. For example, Lord Haskel, in House of Lords debates, points out that there “are armies of bankers, lawyers and accountants who ensure that even though the letter of the law is respected, increasingly immoral ways are found of perverting the spirit of the law to ensure that tax is avoided” (Hansard, 2011). Thus, a distinction can be drawn between what is considered legitimate in the eyes of the corporation and that of the stakeholder, which leads to the third perspective.

Normative Stakeholder Perspective

The stakeholder view of management recognizes the impact of large corporations on various constituents in society, i.e., stakeholders (Freeman & Evan, 1990) who “can affect or are affected by the achievement of the organization’s objectives” (Freeman, 1984, p. 46). Some would profess that legitimacy includes a stakeholder perspective. Hybels (1995), for example, argues that good models in legitimacy theory must examine the relevant stakeholders, and how “each influences the flow of resources crucial to the organizations’ establishment, growth, and survival, either through direct control or by the communication of good will” (p. 243).

A normative stakeholder theory most appropriately encompasses the proactive nature of this perspective. Stakeholder theory has been viewed as a nexus of implicit and explicit contracts, in effect transplanting (and extending) the “principle-agent” in agency theory with the “stakeholder-agent” relationship (Hill & Jones, 1992). Extending the “property rights” basis of agency theory, stakeholder theory recognizes that rights to property are limited by its impact on others, i.e., “restrictions against harmful uses are intrinsic to property rights” (Donaldson & Preston, 1995). Stakes of different stakeholders are inter-related and inter-

dependent, where interests in these stakes can conflict, as for example, in the economic trade-offs between employee claims of higher wages, consumer claims for quality/lower prices and claims from local community for lower pollution, and fair share of taxes as returns to communities that support and provide corporations infrastructure and opportunities.

When confronted with these inter-dependencies, how does an organization respond with due consideration of the public interest? The responses based on a stakeholder view could take two forms, one the “strategic” view that limits the consideration of interests and concerns of stakeholders (other than stockholders) to the extent that it advances the primary goal of the firm, which is to maximize the benefits and minimize the losses to the stockholder.

Under this approach, the interests of “other stakeholders” are treated as a “means” to accomplish the goals of stockholders. The ethical dilemma inherent in this approach is evident when managers are confronted with the choice of actions that appear beneficial to stockholders and yet violate ethical norms or moral reasoning standards (Goodpaster, 1991). An alternative “normative” viewpoint while maintaining the special fiduciary role of shareholders in corporate governance, explicitly recognizes that management has a moral obligation to stakeholders not to cheat, lie or injure, irrespective of whether it is in the explicit interests of the stockholder.

This moral reasoning bar sets standards of honesty that may be in accord with societal ethical norms where mere compliance with the law may be “unduly limited and even unjust” (Goodpaster, 1991, p. 70). The firm has ethical and moral obligations (i.e., apply moral reasoning) to recognize and treat stakeholder interests with fairness, although there may not be explicit laws that protect their interests. This is pertinent when considering stakeholders’ limitations in “influencing” the organization in relation to their stakes.

For example, equity stakes can exercise voting rights, customers and suppliers their purchasing power, and government and community, the political process and legislation (Freeman &

Reed, 1983).⁸ However, “power differentials” (i.e., difference in power between the firm and its stakeholder) restrict the extent of this influence even though stakeholders may have a legitimate claim when their interests are impacted by activities of the firm (e.g., Mitchell et al., 1997).

“Power differentials” in developing countries are often more pronounced than in developed countries, as communities and even the state have less resources and few options to enforce rights and corporate accountability (e.g., Blair, 1995). Because the stakeholder approach recognizes legitimate interests of stakeholders as a “moral” right, firms search for innovative solutions that consider such interests, rather than the expedient options that disregard them, thereby employing the organizational innovative potential in developmental areas.

The implications of global business on international taxation surfaced as governments and citizens increasingly sought to form coalitions to highlight these issues and address them. For example, OECD, a consortium of developed nations, argues that governments are harmed when multinationals actively avoid taxes through finding loopholes. This leads to Base Erosion and Profit Shifting (BEPS) (through base erosion and income shifting), leading to individual taxpayers bearing the burden when businesses shift their income away from jurisdictions where income-producing activities are conducted.

However, business and enterprise in capitalist systems too suffer, as local firms that do not have offshore advantages have a higher tax burden, making them less competitive (OECD, 2013; Weiner & Ault, 1998). Additionally, BEPS undermines the integrity of the tax system, as the public, the media and some taxpayers deem reported low corporate taxes to be unfair. MNEs resultantly face significant reputational risk. Finally, OECD analyzes the tax effects on FDI and finds that many firms adopt measures that significantly

⁸ Examples of influence through the political process and through legislation include the Clean Air Act, Foreign Corrupt Practices Act and the Product Safety Act that provide exogenous safeguards.

reduce the effective tax rates (compared to the statutory tax rate – see OECD, 2008). The effective rate is driven by the tax competition for FDI that has created pressures on governments to lower taxes (OECD, 2008). OECD criticizes tax competition pointing out that it diverts funds from serving the public to “bankroll extravagance”.

As accountants are increasingly involved with developing tax products, the criticism of their approach borders on what would constitute unethical behavior that actively seeks avoidance through treaty shopping. This leads to devices that may have no other purpose than tax avoidance.

Thus, stakeholders in developing countries have much to lose from tax base erosion, that could lead to reduction of resources for investment in infrastructure and education and also lead to under-funding of public investment that could help promote economic growth. Thus, citizen groups would increasingly use an alternative narrative of capitalist exploitation, including accountants as exploiters who apply their goals in undermining the developmental goals of countries through shifting profits and taxes out of developing regions into corporate coffers.

Global business thus leads to unequal development where a significant population is left out of burgeoning opportunities presented by resource availability with the consequential increased inequality as wage increases for some segments (with less influence or higher power differentials) do not keep up with inflation and increases in cost of living. Hence, the goal of such citizens group is to prioritize the needs of the most marginalized.

The stakeholder perspective therefore can have wide spectrum based on the source of the narrative. For the corporation, it involves an understanding or empathy of the broader stakeholder groups impacted by actions of corporations and the social responsibility to contribute to development in some regions. The comparison of the dilemmas from the three perspectives provides interesting insights as indicated in Table 1.

Table 1: Dilemmas and Perspectives

Dilemmas	Agency	Legal Legitimacy	Normative Stakeholder
When does the tax obligation arise – territorial or worldwide	Management of earnings has predominance – defer, postpone and minimize tax	What tax law requires – letter and spirit of the law in specific jurisdictions	Where stakeholders are impacted – beyond law to consider tax benefits in conjunction with social responsibility
How much do we pay – tax rates and tax treaties; effective rates and statutory rates	Tax planning – tax competition not dissimilar to free markets and is essence of capitalism	Taxation based on availing of incentives and abiding by legal statutes	Progressive taxation with more accountability for beneficiaries of free markets with more resources to support and sustain the system
Why do we need corporate taxes – capitalist or social goals, free markets and tax competition	Laissez faire global capitalism - tax competition not dissimilar to free markets and is essence of capitalism	Social contract – maintain legal legitimacy	Promoting an equitable society through recognizing stakeholder participation in economic system (Distributive justice and through opportunity and outcomes)
To whom do we have a duty to pay – government or citizens	The Government – who operates on self-interest and is therefore wasteful – therefore, argue for tightening government spending	The government – who is accountable for all relationships with other stakeholders	The citizen – therefore, need to offset infrastructure and development costs; focus on stakeholders with “power differentials”

Overall, the questions reflect the need to identify stakeholders from individual territories where the companies have

operations and income generating assets, and the accountability to those that support the generation of that revenue. While abiding by legal systems is important to gain legitimacy, accountability extends beyond that to consider the essence of how the stakeholders are served.

Thus, such firms may seek to reduce effective taxation where it would be possible thereby to increase overall stakeholder well-being. Specifically, the goals of such tax departments would involve competing for resources (including through reducing taxation) to increase stakeholder value, even competing with governments in use of tax resources, thereby increasing firm reputation and credibility. Such forms of “tax competition” would ultimately benefit stakeholders, particularly those with salience and power differences, and largely neglected within the socio-economic system. This view leads firms, as major beneficiaries of the system, to recognize their social responsibility to sustain free markets and capitalism through seeking equitable growth that does not negatively impact the social fabric of societies but increases the well-being of society.

DISCUSSION AND CONCLUSIONS

The paper highlights the complexity of global tax issues, with implications at different levels: from the global business macro level of multinational corporations and transnational coalitions, to states, tax regimes and professions such as tax accountants. The paper identifies dilemmas, and the complex issues in international taxation that corporations and stakeholders encounter. The key perspectives through which to view and interpret questions confronted by corporations serve to highlight differences in perceptions and outcomes, but also project ideas that can give shape to trust and effectiveness of the capitalist economic model.

Opportunities to create new entities such as holding companies in tax havens to route transactions, and transfer goods and services to minimize taxes opens doors, are largely found acceptable under the agency perspective. Managers are commended for devising innovative schemes that reduce costs and increase

shareholder profits. This viewpoint finds support in research, for example, Desai et al. (2009), Dharmapala & Hines Jr. (2009), and Wilson (2009) among others, who generally underscore the theory that good corporate governance erases negative aspects of tax havens and other such initiatives and increase value of the firm. Such research tends to highlight firm and shareholders' benefits, alongside economic benefits not just to the tax shelters but also to the countries whose investments are channeled through tax havens.

Hence, the agency principle argument asserts that risky schemes for tax avoidance are justified as they curtail opportunistic behavior of self-serving managers and governments, who through negligence, shirking and the like, would deny the shareholders the optimal values for their shares. However, even within the context of this consequentialist approach, the agency perspective has weaknesses when held up to scrutiny. Given the widespread nature of stockownership, shareholders have a short run perspective.

Therefore, their goals would not find value in stakeholder relationships that foster long-term viability of the capitalist model particularly given the social implications of increased inequality. Additionally, from the fairness of the economic perspective, global firms increase investments through tax avoidance schemes, which are not available to local/domestic firms.

Legitimacy from the legal perspective insists on adherence to the letter of the law that justifies tax planning without loss of credibility, although the goals remain of reducing taxes through various tax avoidance schemes. The Vodafone case illustrates this point and highlights how the corporation did finally maintain their stance of abiding by the letter of the law consistent with case precedents such as the Westminster, and Ramsay rulings. However, the continued unrest and increased legislation/models that seek to plug loopholes in tax treaties (UN, OECD and US models) and the pressure from citizens' groups suggest that the idea of legitimacy of tax planning does not provide a sufficient deterrent against MNEs exploiting advantages from globalization such as tax havens. Thus, adherence to legal rules and codes may limit damage to the reputation, and importantly, coffers of the firm.

Nevertheless, such firms, particularly larger and more profitable ones, come under scrutiny when their resourceful tax departments successfully devise schemes that result in effective tax rates that are significantly lower than less resourceful taxpayers. Thus, while legitimization behavior shows aversion to financial risk, it may well be exposed to reputation risks when it does not consider the extensive nature of their activities and impacts on multiple stakeholders.

The distinction between legitimacy and stakeholder approaches rests on a conscious effort to proactively increase stakeholder interaction and relational outcomes. Such stakeholder intervention can constrain regulation and increase opportunity to apply the skills developed by the corporation to meet social goals, thereby also improving their overall image. Clearly, limits to legitimacy arise particularly where there are no explicit laws that protect interests of stakeholders and provide for an equitable society in the purely capitalist system. Rather, the firm has ethical and moral obligations (i.e., apply moral reasoning) to recognize and treat stakeholder interests with fairness.

New approaches to understand business begin to emerge when the inter-relatedness and inter-dependency of stakes are recognized, particularly in avoiding and resolving conflict (e.g., Donaldson & Preston, 1995). Agency and legitimacy from a legal perspective leave a gap in how the firm can address these global trends where the stakeholders neither control resources, nor have other moral authority that normally is manifest in society. While agency theory presents an important aspect of accountability that is crucial to the sustenance of the capitalist model, it is limited in widely dispersed shareholding with such shareholders having a short run perspective. Legitimacy has a pragmatic and utilitarian outlook but is limited in its integration of ethical and managerial accountability.

Neither agency theorists nor the legitimacy perspective recognizes the inter-relationships between the firm and society and the basic outcomes of inequality that form outcomes of global business and that can well be attributed to corporations that decline

to contribute to development, apart from the development effects that may naturally ensue from their responsibilities to generate profits for shareholders (Reed, 2002). In contrast, the normative stakeholder approach specifically considers stakeholders from this power differential perspective. For example, according to Reed (2002), firms with national development as a goal are inclined to include stakeholder interests and social responsibility programs into their strategy.

The normative stakeholder approach also subjects strategies designed to maximize shareholder wealth to certain normative constraints (e.g., labor welfare, and employment of minors) although these may not be regulated. Thus, such firms subject themselves to constraints based upon organizational norms and/or stakeholder claims (e.g., local communities) which may go beyond requirements of the law, thereby also potentially enhancing their reputation and brand value.

The discussion above highlights the environment of global business, where stakeholders compete for resources, in the case of agency, through corporations driving tax competition between nations, or the legal aspect of seeking tax avoidance schemes that drive tax authorities to seek new sources of tax revenue. The extreme forms of such competition appear in stakeholder activism that attributes corporate profit to greed, thereby also seeking to dismiss the value of free markets, preferring state regulated enterprises as the alternative.

Such extreme views lose sight of the positive impact of free markets as vehicles for innovation and productivity. Thus, the extreme views also illustrate the competitive visions for society. The paper draws on these perspectives to highlight the alternative form of stakeholder competition that considers the interests of those salient stakeholders with less power, providing a basis for tax professionals and departments to address this contentious issue. Corporate governance that ignores these aspects will lead to greater state controls, and eventually the demise of the innovation and productive capabilities of individuals and corporations.

Likewise, governments that seek to increase taxes without incentives would drive away investments while also reducing opportunities to increase stakeholder welfare. Where key stakeholders, particularly governments and corporations recognize this mutual goal of serving the public interest through highlighting stakes of stakeholders with highest power differentials, such an environment can create incentives where societal value creation increases. Overall, such strategies may also lead firms to tax planning approaches that extend beyond creating tax departments as profit or risk management centers, to stakeholder accountability centers where reputation and altruism becomes a resource of value.

This normative outcome presents an option for change that considers the adverse impact of globalization on unseen stakeholders who may neither benefit from it, nor are able to bear its ultimate costs. Thus, an understanding of the perspectives provides a basis to leverage the incentives that develop and coordinate a sustainable capitalist model.

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