Fair Taxation and Corporate Social Responsibility

Karina Kim Egholm Elgaard, Rasmus Kristian Feldthusen,
Axel Hilling and Matti Kukkonen (eds)

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Outline Contents

1. Conference Report: Fair Taxation and Corporate Social Responsibility **1**
Vidya Kauri, Law360

TAXATION AND CSR IN PERSPECTIVES **17**

2. Tax Avoidance and Corporate Irresponsibility – CSR as Problem or Solution? **19**
Professor Jeremy Moon & Associate Professor Steen Vallentin, Copenhagen Business School

3. Tax Transparency – How to Report Responsible Choices **53**
Associate Professor Axel Hilling, Lund University, & EU Affairs Senior Project Manager Lorena Sorrentino, CSR Europe

TAXATION AND CSR IN PRACTICE **79**

4. Tax Incentives for Charities in the European Union – Integration or Segregation? **81**
Professor Dr. Sigrid Hemels, Erasmus University Rotterdam/Lund University

5. Why Social Responsible Corporations Should Take Tax Seriously **103**
Professor Hans Gribnau, Tilburg University/Leiden University

6. Can Corporations Contribute to Sustainable Development by Paying Taxes? **161**
PhD Researcher Ave-Geidi Jallai, Tilburg University

CSR AND TAXATION IN REGULATION 199

7. Corporate Social Responsibility and Taxation in Regulation – The EU Perspective 201
Professor María Amparo Grau Ruiz, Complutense University of Madrid

8. Taxation, General Anti-Avoidance Rules and Corporate Social Responsibility 227
Professor Peter Koerver Schmidt & Professor Karin Buhmann, Copenhagen Business School

Chapter 2

Tax Avoidance and Corporate Irresponsibility – CSR as Problem or Solution?

Professor Jeremy Moon & Associate Professor Steen Vallentin, Copenhagen Business School

Summary: *This chapter addresses the relationship between the theory and practice of CSR (corporate social responsibility) and corporate tax avoidance. We argue that CSR scholars and practitioners only recently have begun to address matters of taxation and provide some explanations for this failure or neglect, ranging from silo-mentality to different ideologies regarding business and society. Furthermore we argue that CSR can be considered both as a problem and a solution in regard to corporate tax avoidance and develop both lines of reasoning. With regard to the solutions part, we argue that companies should exercise self-restraint in the face of legal loopholes and be responsive to and engaged with tax authorities and the spirit of the law—and that a responsible approach to corporate taxation can find justification in a political view of the corporation and its social responsibilities.*

1. Introduction[1]

Corporate tax avoidance has become one of the big economic issues of our time (OECD, 2013). It is well-known that many big businesses engage in creative tax planning and occasionally bend (or break) the rules to serve their own economic interests. Included among the corporate arrangements of choice (structures, transactions) are uses of offshore tax havens or -shelters, transfer pricing, profit-shifting, active exploitation of tax loopholes etc. (Avi-Yonah, 2014; Hilling & Costas, 2017). While this has been going on for decades, recent leaks of confidential documents, whistle-blowing and exposures of dubious corporate tax practices have given the public new insights into the nature, magnitude and severity of the problem. As a result, there is a new awareness and sense of urgency around a topic that can otherwise seem impenetrable and uninviting for non-specialists (Knuutinen, 2014). In public discourse, creative corporate tax practices are spoken of in the same breath as—and made morally equivalent to—whitewashing and corruption scandals. Recurrent exposures of such practices and the wide-ranging negative impacts they can have on society have made 'legal corporate wrongdoing', and the business leaders that are ultimately responsible for such wrongdoing, targets of public scorn while at the same time exposing a lack of effective systems of accountability. Critique is coming not only from social activists, but from politicians and commentators left and right. The problem is undeniable, the sense of urgency is widely shared, and this is reflected in efforts to address and/or remedy the problem within the OECD, UN and EU systems, among NGOs, within and among nation states (as tax jurisdictions), and within and among private businesses and trade organizations that now have to step up and show a willingness to be part of the solution.

1. We are grateful for discussion of a draft version of the paper presented at the Communication, Organisation and Governance (COG) Cluster of the Department of Management, Society and Communication, Copenhagen Business School, and particularly for feedback from Hans Krause Hansen and Sara Jespersen. We also thank the editors for their feedback on the draft.

As reflected in other chapters in this volume, tax avoidance on a grand scale is a product of the financialization and globalization of the economy. Indeed, it can be considered symptomatic of the excesses and moral failures of finance capitalism that have been all too well documented since the financial crisis of 2007–2008. In part this can also be seen as a consequence of a collective action failure of governments who have not devised—let alone administered—an integrated international corporate tax system, despite numerous proposals around the turn of the century for variants of a Tobin tax on currency transactions.[2] In this context it is noteworthy that the most recent international government initiative for social, economic and environmental sustainability, the UN Sustainable Development Goals, is quiet on the subject of corporate taxation.

However, in addition to blame for tax avoidance being attached to market failure and national and international government failure, the judgments of societies have now turned to blame corporations themselves. In particular big multinational enterprises with high capital mobility are being blamed, reflecting their ability to choose between different jurisdictions when making investments, based on preferential tax terms and other benefits on offer (Christensen & Murphy, 2004). These enterprises can take advantage of differing tax rates and residency rules and, through cross-border tax arbitrage, utilize incompatibilities and inconsistencies between different tax systems to their own advantage (Knuutinen, 2014; Whait et al., 2018). The list of multinational tax avoiders that have been called out publicly is long and getting longer. Among the prominent perpetrators that have engaged in various elaborate schemes to minimize their tax payments, are IKEA, Starbucks and the omnipresent tech and platform giants Amazon, Apple, Facebook and Google. Others exposed to the public glare are big investment banks and consultancies that, apart from engaging in their own internal tax planning, make money helping their clients minimize their tax payments. Sometimes, this

2. Although Tobin devised this eponymous tax to moderate currency fluctuation, variants were later advocated to raise funds for international development and meet the costs of addressing climate change.

appears to be acting against the interest of society. Certainly, tax avoidance expertise itself has become a commodity—a service bought and sold (Harrington, 2016).

The fundamental problem of large scale tax avoidance is that it 'enables companies to become economic free-riders, enjoying the benefits of public expenditure (e.g. economic, social and physical infrastructure) without accepting the costs, while also causing harmful market distortions and transferring a larger share of the tax burden onto individual tax payers and consumers' (Christensen & Murphy, 2004, p. 39). The problem can be approached in a number of different ways. In this chapter, we approach it from the vantage point of corporate social responsibility (CSR). We also suggest a rethink of how to motivate and frame responsible corporate tax practice through focusing on political responsibilities that we see as entailed in CSR. This is not to say that it is a problem that can be dealt with easily by means of CSR as a form of corporate self-regulation, or that this is necessarily the most effective way to deal with it. Hence, we want to showcase both pros and cons—and the political implications—of addressing tax avoidance as a matter of CSR. We acknowledge the need for regulatory action and the importance of the social activist agenda with its focus on social injustice, economic inequality and development issues, but it is outside the scope of this chapter to address broader issues of political economy and the broader range of governance issues that accrue to taxation. Our starting point is that CSR is one of the mechanisms that can serve to constrain corporate tax avoidance. It does, however, need to be seen as one element within a larger, systemic whole that also involves rules, regulations, international principles, multilateral agreements, multistakeholder dialogue and collaboration etc. Importantly, our aim is not just to show how notions of CSR can serve to curb the aggressive and irresponsible urges of tax avoidance. It is also to take part in establishing points of intersection and strengthening lines of communication between two fields that have otherwise, for the most part, both in theory and practice, existed in splendid isolation from each other: CSR and corporate taxation. As indicated, the tax issue has yet to gain a strong foothold in the CSR literature, and the literature con-

necting CSR and tax has for the most part been carried out by researchers leaning towards the tax side rather than the CSR side of the argument. Coming from the CSR side, we use extant research to reflect on connections and disconnections between CSR and corporate taxation and to showcase tensions and ambiguities in relations between the theory and practice of the two. We suggest that focusing on taxation in the context of political aspects of CSR may help corporations—and their critics—in framing appropriate approaches to this issue.

In the next section, we provide a definition, delineation and critical discussion of the object of analysis. This leads into a further exploration of the relationship between CSR and corporate taxation based on extant academic literature. We argue that it is a relationship fraught with ignorance and discomfort: ignorance, because scholarship on CSR until recently has tended to ignore the issue of taxation almost entirely, discomfort, because taxation is a complex legal-technical issue that ostensibly fits more comfortably within a shareholder value mindset than within a CSR/stakeholder mindset. It is also an ambiguous relationship. Hence, as reflected in the title of this chapter, CSR can be seen both as part of the problem that is tax avoidance and as part of the solution. We cover the problem and solution aspects in turn and conclude by pulling together the different threads of our argument to propose that corporate taxation/tax avoidance can be regarded and theorized as a matter of CSR, but that such efforts call for accommodation of its particular legal and political features.

2. Modes of (ir)responsibility: evasion, avoidance, responsible tax

In order better to understand the blindness of CSR scholarship to taxation, we must first try to define and/or delineate the object of analysis. This is not an easy or straightforward task. To this end, we will distinguish between three modes of (ir)responsibility in regard to payment of tax: (1) Illegal tax evasion; (2) Legal tax avoidance; (3) Responsible tax planning. These modes are meant to encapsulate tax

practice that is, respectively, *in breach of compliance*, *in compliance* and *beyond compliance*. While this may be a neat and tidy analytical solution, the categories are by no means clear-cut in practice. Their boundaries are negotiable and tax avoidance in particular is a grey zone because its boundaries are subject to judicial contestation. Keeping these limitations in mind, the three modes can serve as a basic framework for understanding how the problem of (ir)responsibility is constituted. To begin with, the concern from a CSR point of view is with corporate payment of taxes in relation to particular corporate income tax rates in particular tax jurisdictions. Of course, corporate taxation is not one, homogeneous thing. It comes in different shapes and sizes (including VAT, customs and employee income taxes) that in turn can be underpinned by different governmental purposes (from funding of public goods to attracting investments) (Gribnau, 2015). However, debates about tax avoidance are often centred on corporate tax rates and the extent to which companies do (or do not) contribute to society via the corporate income tax. This is fundamentally a compliance issue, albeit a tricky one, not least due to the complexity of tax codes and the incompatibilities of tax regimes (across jurisdictions). To address it as a CSR issue—and to talk about it in beyond compliance and responsible tax planning terms—is not to call for companies to pay more taxes than they are obliged to according to tax laws. It is to call for self-restraint in how they engage in tax planning activities in order to minimize their tax payments. It is to call for corporate adherence to the spirit as well as the letter of tax law.

This makes *tax avoidance* a central concern. It can be defined as 'the legal utilization of the tax regime to one's own advantage in order to reduce the amount of tax that is payable, by means that are within the law, or at least within the *letter* of the law' (Knuutinen, 2014, p. 59). CSR interventions usually address the avoidance side of the tax avoidance/tax evasion distinction, while holding up responsible tax planning as the ideal to strive for. While tax avoidance refers to activities that are supposedly legal, *tax evasion* refers to deceitful, corrupt or fraudulent behaviours that contravene the law and call for legal sanctions (Hasseldine & Morris, 2013). As suggested in the

definition above, companies can engage in aggressive tax planning that may be legal according to the letter of the law, but can be in conflict with the spirit, intention, purpose of tax legislation. Hence, the level of tax aggressiveness is another important concern when addressing taxation as a responsibility issue (Lanis & Richardson, 2012; Whait et al., 2018). According to Hanlon & Heitzman (2010), tax aggressiveness and tax avoidance are interchangeable terms.

While tax avoidance and tax evasion are supposed to be different in terms of legal status, their outcomes are basically the same (Bird & Davis-Nozemack, 2018). As with tax evasion, the money 'lost' from tax avoidance constitutes a direct financial transfer from society to corporate shareholders (Dowling, 2014). Nevertheless, tax avoidance is assumed to be a legal activity, and this 'exposes the ambiguity of the simple statement that companies should "abide by the law"' (Dowling, 2014, p. 174). The distinction is by no means innocent or unproblematic as it serves to legitimize efforts (on the avoidance side) to exempt companies from paying taxes for the benefit of private interests. The very notion of tax avoidance implies or imposes an acceptance that tax planning can be irresponsible but legal. There is a caveat to this argument, though. Namely that the legal status of tax avoidance practices of the more aggressive or creative kind is uncertain and ultimately *to be determined*—in court. Tax avoidance is not a safe space by any means—it is risky business as it can be called out legally in court and morally in the court of public opinion. To iterate, if or when exposed to public and/or regulatory scrutiny, activities that would seem to fall under the heading of tax avoidance can not only be called out as illegitimate, they can also turn out to have unforeseen legal and economic consequences.

As Knuutinen (2014) points out, it is difficult to give a legal definition of tax avoidance. It involves exploitation of legal formalities to get tax advantages; often in the form of artificial structures and transactions that have no valid business purpose. Avi-Yonah similarly speaks of aggressive tax strategies and behaviours as 'transactions that are not motivated by a valid business purpose, even if a corporation dresses them up as such and believes it might survive potential litigation' (2014, p. 2). Nevertheless, no exhaustive definition of tax

avoidance can be given, and therefore it is an activity that is difficult to criminalize. Furthermore, 'aggressive tax planning' is not a legal concept. There is no legal definition for it. Importantly, these insights do not only point to regulatory limitations. They also suggest that a purely technical approach to (aggressive) tax planning is 'unlikely to protect companies from charges of irresponsibility and associated reputational damage' (Knuutinen, 2014, p. 37). Leaving aside the problematic evasion/avoidance distinction for a moment, how can the line be drawn between, on the one hand, overly creative, opportunistic and potentially illegitimate tax planning, and, on the other, sound, professional, legitimate tax planning and what companies are beginning to call a 'responsible' approach to payment of taxes? The frustrating answer is that the line can be drawn in different ways and that ideology and cultural values play into understandings of what is legitimate and responsible and what is not (see below). Knuutinen suggests that aggressive tax planning, from the CSR point of view, can be defined as 'actions taken by tax payers which are in the line of requirements of tax law, but which do not meet the reasonable and justified expectations and requirements of the stakeholders' (2014, pp. 37 and 61). We return to the matter of how corporate stakeholders and the broader public can form 'reasonable and justified' expectations about a technical issue such as corporate taxation.

In sum, tax avoidance defines a space of corporate discretion where tax payments (or the lack hereof) can be addressed as a moral concern and aggressive behaviour, when exposed to public scrutiny, can lead to accusations of moral transgression. In other words, it defines a space where taxation can be addressed as a matter of CSR—or, as indicated, as a matter of corporate social *irresponsibility* (CSiR) (Lange & Washburn, 2012; in relation to tax see Huseynow & Klamm, 2012; Lanis & Richardson, 2012). Thus, taxation tends to be a negative CSR issue in the sense that companies are more likely to get punished for failing to live up to societal demands and expectations regarding tax payments than they are to be applauded for fulfilling their obligations. They are supposed to be in compliance with tax requirements. Indeed, a 'company cannot in general claim to be particularly responsible if it pays its taxes in accordance with the law

—after all, this is what all companies are expected to do' (Knuutinen, 2014, p. 56). As we have argued, corporate taxation is, first and foremost, a compliance issue and one where going beyond compliance can be considered sound risk management but holds few promises of public praise.

As recent public cases have shown, tax avoidance is often a matter of creative compliance (Hasseldine & Morris, 2013), and the question is whether or how addressing tax payments as a CSR issue can serve to curb the opportunism and aggression invested in such efforts. To iterate: From being almost exclusively about compliance, corporate tax payments are increasingly becoming a beyond compliance issue in the sense that companies are called upon to show self-restraint and even positive engagement with the spirit of the law in tax planning. The question remains, however, what this means in practice. The translation of normative principles into legal-technical practice is by no means straightforward. The difficulties that CSR scholarship has had and continues to have with the issue of taxation can help enlighten us about possible barriers to a merger of CSR and corporate tax policies.

3. CSR and corporate taxation—between blindness and discomfort

We have argued that corporate taxation can be addressed and is increasingly addressed as a matter of CS(i)R. Nevertheless, scholarship on CSR and corporation taxation remains quite scarce. Indeed, it is fair to say that the literature on corporate responsibilities has tended to ignore issues of taxation altogether (Dowling, 2014; Jenkins & Newell, 2013). In 2004, Christensen & Murphy found it curious 'that the debate about Corporate Social Responsibility (CSR), which has touched on virtually every other area of corporate engagement with broader society has scarcely begun to question companies in the area where their corporate citizenship is most tangible and most important—the payment of tax' (2004, p. 37). In a similar vein, Huseynov & Klamm (2012) spoke of a 'missing link' between the separate areas of tax avoidance and CSR. Moon (2014) described as the 'elephant in

the room' that CSR policies appeared not to address such issues as taxation, lobbying and political campaigning. A recent review of scholarship regarding tax aggressiveness and CSR (Whait et al., 2018) suggests that some progress has been made, and that relations between CSR scholarship and corporate taxation are increasingly forged, spurred, as we have argued, by the heightened public awareness and scrutiny of corporate tax avoidance schemes and their effects on society. Based on an empirical study of German companies over the period 2007–2012, Hardeck & Kirn (2016) similarly conclude that corporate tax disclosure is on the rise, indicating that it is no longer a taboo topic, but that there is still room for improvement —with 50% of the surveyed companies being silent on the issue and many companies providing only technical information. For the most part, however, the two fields of endeavour still appear separate and disconnected.

The general blindness of CSR scholarship to this important issue does raise some fundamental concerns. The failure to link CSR with corporate taxation arguably exposes weaknesses or blind spots in many definitions and measures of CSR, while raising some uncomfortable questions about the integrity of how CSR supporters define 'responsibility' in the first place (Dowling, 2014). Sikka (2010) suggests that payment of taxes provides a litmus test for corporate claims of social responsibility. If that is the case, many companies would seem to fail the test—with little apparent support or guidance to be found in the academic literature on CSR. Applying Carroll's (1979) much-used four-part model of corporate social performance it can, however, be argued that taxation, if only in the most general sense, has been within the scope of CSR theory and practice all along (Knuutinen, 2014). Carroll (1979) distinguishes between the economic, legal, ethical and discretionary responsibilities of business. In his model, payment of taxes would appear to be a straightforward compliance issue, i.e., one that belongs to the realm of what is required for companies to be economically responsible. However, this categorization does not suffice when tax avoidance as a form of creative compliance makes its appearance. Tax avoidance can be regarded

as a legal activity that is reflective of economic responsibility while at the same time being called out as immoral and socially irresponsible.

Although tax revenues, to some observers, constitute the very lifeblood of the social contract between business and society (Christensen & Murphy, 2004), early CSR scholarship—before and after Carroll's seminal paper—did not pay much attention to the issue. This was perhaps partly for ideological reasons: being pro tax is obviously to be pro government (many CSR supporters are not), but also the tax issue had not yet developed into a problem of the magnitude that we see today, enabled by the forces of financialization and globalization. As a result, payment of taxes was largely taken for granted by CSR scholars as part of the economic baseline of social responsibility. There are a number of more deep-seated reasons for this failure or neglect. First among these is that payment of taxes is usually considered to be a matter of compliance with extant rules and regulations. It is normally regarded as a compulsory activity and therefore can be difficult to reconcile with voluntary notions of CSR and private authority. However, this is not the only reason why taxation is a difficult issue for CSR scholarship to grasp and why it tends to be located, conveniently, outside its field of vision.

Another barrier has to do with path dependencies and divisions of labour in academia as well as in the business world. Tax experts usually do not talk about CSR and CSR experts are not used to talking about taxation. Neither are very comfortable in reaching out to the other side. Until recently, the corporate tax function lived a quiet life, doing its work hidden from public view, and academic experts in these fields rarely came into contact with each other. Now that the problem of tax avoidance is out in the open and exposed to public scrutiny, there is a need to break down silos, in theory and practice, and find ways to communicate across different areas of expertise. This is made difficult, however, by the technical and highly specialized nature of the work carried out by tax professionals. It is thus important to address the technical complexity of corporate taxation and tax planning. This matter is arguably not getting sufficient attention in the extant literature on CSR and taxation. In an interview with the head of sustainability at Maersk in 2017, when asked about this, she

found that taxation is by far the most complex area of engagement they had ever experienced in the sustainability department—and this is a company with a broad and highly developed approach to CSR and sustainability reporting covering a wide range of environmental, social and governance issues. This is not to belittle the complexity and challenges involved in other areas of CSR engagement, but merely to point out that there are special challenges involved in translating normative principles into operational practices in this area. One thing is to improve disclosure and transparency, another to find ways actually to let CSR thinking and moral principles partake in determining what are (and what are not) appropriate solutions, structures and transactions inside the tax machine room.

With corporate taxation being an economic responsibility of business, we would perhaps expect economic approaches to CSR to be most adept at addressing it and weighing the pros and cons of acting responsibly. Instead, they tend to skirt the issue and part of the reason may, again, have to do with ideological precepts. Strong believers in neoclassical economics and economic liberalism of the Friedman variety ('the business of business is business') tend not to be enthusiastic supporters of strong government and redistribution of wealth and tend to put economic liberalism—and the freedom that this secures for corporate interests—before democratic values. Relatedly, they also support the view that it is the private sector that creates value in the economy while the public sector merely usurps value. Milton Friedman (1970) used taxation as a rhetorical device when talking about 'taxation without representation'. He used this mantra to cast suspicion on business leaders who would support socially responsible causes at others' expense (owners, employees, customers, suppliers), without having proper mandate to do so (see Moon, 2014 for a critique of this view). In *Capitalism and Freedom*, speaking of graduated income tax as a means to redistribute wealth, Friedman similarly found it to be 'a clear case of using coercion to take from some in order to give to others and thus to conflict head-on with individual freedom' (1962, p. 174).

More recently, Porter & Kramer (2011), in their CSV (creating shared value) framework, have made it abundantly clear that their

approach is not about redistribution of wealth in any form or fashion. It is about making a larger pie (value creation), not about sharing what already is. Responsible tax does not fit well into a CSV mindset as the benefits of contributing more to society are only indirectly (if at all) channelled back to the individual business. To speak of responsible tax almost unavoidably means to put societal interests before those of business, whereas the CSV model recommends finding new opportunities for value creation. Overall, economic approaches to CSR have centred on economic gain for business (McWilliams & Siegel, 2001), and this is where corporate taxation becomes a fundamentally uncomfortable topic. Of course, we can speak of a business case for responsibility as taxation has become a more material issue for many businesses. The business case is centred on reputational risk (the risk of 'tax shaming'), risk of litigation and fines and risk of jeopardizing relations with governments (Jenkins & Newell, 2013). To iterate, taxation is a negative CSR issue in the sense that it is most often addressed as a matter of irresponsible behaviour. The extent to which a responsible approach to tax can yield positive PR and relational benefits is yet to be established. Either way, business case considerations are up against tangible—and often considerable—reductions of profits if companies are to contribute more to society by paying more taxes. Again, this is not a matter of companies agreeing voluntarily to pay more taxes than the law requires. It is a matter of forgoing opportunities to reduce tax payments through the use of aggressive/creative tax planning schemes and engaging positively and responsibly with the spirit of the law.

Compared to other CSR activities, that may involve limited investment and have somewhat intangible outcomes, payment of taxes is highly tangible. It has immediate economic effect with little obvious pay-off, and this has legal implications. Hence, payment of taxes is associated with the fiduciary duty of corporate directors. It is part of the financial responsibility of top management to reduce costs and secure a high return on investment for the shareholders or owners of the business. Whereas considerations of CSR are decidedly outside the comfort zone of professional tax work, the shareholder value model is the very definition of a comfort zone for creative tax plan-

ning. Within a shareholder value mindset, tax avoidance can be reduced to a technical (amoral) matter of bringing costs down in order to maximize corporate profits. Here, we need to keep in mind that although the discursive power of the CSR phenomenon is undeniable, its structural powers are certainly weaker. While we can speak of a broader stakeholder orientation as a social norm, the corporate law field continues to give primacy to the rights of shareholders (Sjåfell, 2018).

Ultimately, it is important to consider tax avoidance not only as a corporate activity and problem, but as a global and pervasive problem of sustainability (Bird & Davis-Nozemack, 2018). This means reconceptualizing taxation as a systemic issue and tax payments as part of interconnecting economic ecosystems. So it is within this larger agenda that we address the role of CSR which, as indicated, is ripe with tensions and ambiguities. To many observers, CSR is not just (or not at all) a harbinger of internal reform and social progress. It looks much more like a part of the problem of tax avoidance, the issue to which we now turn.

4. CSR as part of the problem of tax avoidance

Addressing CSR as part of the problem of tax avoidance, we need to take account of the past, present and future aspects of this relationship. We have described a *past* characterized by ignorance and general disregard. At the *present* moment there is heightened awareness and urgency around the issue of tax avoidance. Regulatory forces (hard and soft) are being mobilized and companies experience a need to address and somehow find ways to cope with the issue. The present climate of opinion can be considered a window of opportunity, not least in regard to corporate action. However, the *future* remains highly uncertain. Hopes for better and more sustainable solutions are mirrored by fears that 'responsible tax' will turn out to be just another corporate smokescreen and that little will ultimately change. The problem narrative can be divided into a particular and a more general part. The first has to do with tax avoidance as a corporate and organizational practice, the second with CSR as a contested socio-political phenomenon.

To begin with the former, the problem narrative got considerable international attention in January 2016 when *The Economist* published a short piece entitled 'Social saints, fiscal fiends'. The findings in the article are based on the research of Guenther and colleagues (Davis, Guenther & Krull, 2016), who used a sample of American companies over the period 2002–2011. The researchers found that 'the companies which do the most CSR also make the most strenuous efforts to avoid paying tax—and that those with a high CSR score also spend more lobbying on tax' (*The Economist*, 2016). They also suggested a number of possible explanations. One being hypocrisy: that companies say one thing and do another because they can get away with it. To add some theoretical backbone to this argument, we can turn to Brunsson's theory of organizational hypocrisy (Brunsson, 2003; Sikka, 2010). This theory proposes that companies, under certain circumstances, can (1) say one thing, (2) decide another and (3) act in an entirely different manner. Furthermore, it proposes that companies can not only get away with this sort of decoupling, they can actually satisfy different stakeholder groups, with different values and priorities, in the process. Corporate taxation does seem to lend itself to such decoupling, due to the highly specialized and technical nature of the work that is carried out by tax professionals. Few people, inside and outside a company, are bound to have deep insights into what is happening in this machine room. This 'veil of complexity' accompanied by stakeholders' lack of technical expertise in many instances makes it difficult to establish clear accountability in regard to what is communicated, what is decided, and what a company actually ends up doing.

A related explanation has to do with functional differentiation/division of labour in modern business firms. As often pointed out, and as we have already touched upon, CSR and corporate taxation belong to different parts of the organization. The responsible people in these respective functions may have limited (if any) contact with each other on a daily basis. Although the ideal of CSR is integration into every organizational function and action, this is a rare accomplishment. In practice, corporate CSR people only recently have begun to consider taxation as a topic that is within their sphere of

influence. Just as we would, looking back, expect most decisions regarding tax payments and tax avoidance to have been made without CSR people at the table and without consideration of social responsibility playing any part. Even companies regarded as leaders in terms of CSR have rarely given any attention to taxation as a CSR issue (Dowling, 2014). Following Jenkins & Newell, 'One of the main limitations of CSR is the way in which corporate practices that are central to company profitability are not considered part of a company's corporate responsibility' (2013, p. 381).

Part of the problem is that the tax department serves a financial function and that its technical and specialized work is defined in accordance with a functionalist model of modern organization. Its work is meant to ensure that the company pays the taxes it is obliged to and no more, thus minimizing costs. It is not meant to have any broader managerial or organizational significance. In other words, the tax function can more readily be associated with corporate financial performance than with corporate social performance. Only recently we have begun to see companies presenting payment of taxes as part of their social performance, and it remains to be seen whether or how some of the bigger tax culprits in particular will show a willingness to engage in more wide-ranging overhauls of their elaborate tax schemes. While disclosure and higher levels of transparency are important, decisions and actions have to follow suit if a proper merger of CSR policies and corporate taxation is to take place. Can we imagine that CSR (voluntary self-restraint) can or will play an active part in companies like Amazon, Apple, Facebook or Google changing their aggressive ways about tax, or does the issue have to be forced through regulation? If the latter is the case, it points to the continued impotence and limited impact of CSR policies in regard to this matter.

On a somewhat more hopeful note, and speaking more broadly, it is important to consider developments in a process perspective. The paper by Davis, Guenther & Krull (2016) focuses on American companies only and it covers a period before corporate tax payments became a major public concern—even in the United States. Other research has suggested that there can be a positive relationship

between CSR disclosure and responsible tax behaviour (Huseynov & Klamm, 2012; Lanis & Richardson, 2012; Mueller & Kolk, 2015). It is one thing to speak of a missing link between CSR and corporate taxation, another to propose that companies actively and deliberately use CSR as a smokescreen/substitute to deflect attention from their irresponsible activities, tax avoidance included. Besides, corporate tax disclosure is on the rise (Hardeck & Kirn, 2016) and that is in itself a positive development. Col & Patel speak of how 'firms purposely increase their CSR activities to hedge against any reputational risks that might arise from aggressive tax avoidance practices' (2019, p. 1034). The question is whether such risk management strategies will continue to be feasible—in light of the public awareness surrounding taxation. Again, Maersk appears to be an example of a company where the approach to responsible tax mirrors the overall commitment to responsibility and sustainable development rather than acts as a substitute.

We can speak of substitution in more ways than one. *The Economist* (2016) also relates it to the view that companies, by striving to minimize their tax payments, can become more profitable and have more funds at their disposal to do good things. According to this line of reasoning, tax avoidance can effectively become an enabler of CSR. This form of substitution, again, points to the importance of political-ideological precepts. Starting from CSR, it is easy to take payment of taxes for granted as a legitimate and widely shared cultural value. That is, to assume that it is wrong to deprive the state of tax revenues as they are needed to fund public goods such as health care, social services, education and infrastructure. However, such assumptions can be misleading. Speaking in the most general terms, the United States is a good example of this with its widespread preference for market-based solutions and individual freedom over centralized government and state control. It is noteworthy that both leading combatants in the shareholder vs. stakeholder controversy, Milton Friedman and R. Edward Freeman (both Americans), have declared themselves to be libertarians. Freeman has argued that his influential notion of 'stakeholder capitalism' has roots in a libertarian understanding of individual freedom vis-à-vis society and the state

(Freeman & Phillips, 2002). In spite of obvious differences of opinion, Friedman and Freeman have a common denominator: low trust in government bureaucracy and regulation and high trust in the private sector and its ability and willingness to contribute to sustainable development. With this starting point, tax avoidance is not about economic free-riding or depriving the social contract between business and society of its lifeblood. Whatever the problem is, the solution is never more payment of taxes for corporate or individual citizens. Instead, a minimalist state is the ideal and redistribution of wealth is seen as an obstacle to economic growth and job creation and a hindrance for companies to become the best possible corporate citizens they can be. In their empirical study of corporate tax disclosure, Hardeck & Kirn find that some companies explicitly consider 'corporate tax payments as obstacles to economic growth that produce negative societal consequences' (2016, p. 1348).

This way of thinking has close affinities with the notion of *Philanthrocapitalism* (Bishop & Green, 2008) and thus the idea that super-rich entrepreneurs like Bill Gates (via the Bill & Melinda Gates Foundation) can act as 'hyper-agents' and make change and development happen more effectively than other actors in society (governments, NGOs). Tax avoidance enables accumulation of wealth among a select group of one-percenters that can then put their entrepreneurial skills to use in philanthropic activity in areas such as public health, poverty alleviation and education. Of course, this is a way of legitimizing the philanthropy of the rich and corporate giving (CSR with tax benefits) over government action, while giving primacy to social impact over democratic principles. Furthermore, it is a way of legitimizing continued economic inequality. Whilst we would expect this sort of mindset to be more prevalent in the United States than for instance in Northern European countries with their strong welfare legacies, our point here is to illustrate problems in the simple assumption that tax avoidance necessarily makes for social irresponsibility.

Secondly, the failure of CSR theory and practice to address corporate taxation in a qualified manner taps into more general, sceptical narratives of CSR as a socio-political phenomenon. In recent

years CSR has increasingly been exposed to political discussion. As part of this political turn, strong assertions have been made about the kinship or interrelatedness between neoliberalism and CSR (Vallentin & Murillo, 2019). Critical sociologists and political science scholars alike have suggested that CSR is little more than an embodiment or reflection of neoliberalism (e.g. Shamir, 2008; Steurer 2010) and that all voluntary conceptions of CSR lend support to a neoliberal agenda by advocating deregulation and privatization (Shamir, 2004). Hence, CSR is associated with a 'hollowing out of the state' (Rhodes, 1994), with which strategies to weaken national tax authorities are consistent. To some, CSR is a case of 'guilt by association' with such developments. Hanlon argues that 'CSR does not represent a challenge to business' but rather 'a further embedding of capitalist social relations and a deeper opening up of social life to the dictates of the market place' (2008, p. 157). Banerjee considers CSR as part of an ideological movement that is intended to legitimize the power of large corporations (2007). What is at stake here is 'whether CSR is simply a palliative for a model of capitalism that generates perverse social and environmental effects, [...] or a crucial element of "embedded liberalism"' (Utting, 2007, pp. 697–698). The critical discourse has tended to stick with the former narrative while discarding the latter (Vallentin, 2015).

In the critical political discourse CSR is, ultimately, a minor concern. The bigger fish to fry is modern corporate capitalism and its effects on the people and the planet. In this bigger scheme of things, CSR emerges as little more than a set of false promises that confirms the ability of capitalism to absorb external shocks and adjust itself to new societal conditions without any fundamental change actually taking place (Utting, 2007). CSR is addressed because it is becoming a more powerful part of an (already) hegemonic economic discourse. Corporate failure to deliver on the normative promises of CSR is seen as a sign that the underlying theory of responsibility is morally or politically corrupt or misguided (Vallentin, 2015).

The critical political discourse is characterized by its overall rejection of the notion that CSR, as an explicit mode of corporate self-regulation, can be a positive step towards more humane business

practices and sustainable development—whether viewed separately or in conjunction with other government-related or civil modes of governance. Although it is acknowledged that there is such a thing as businesses pursuing profit in an ethical manner, this is largely overshadowed by concerns relating to the institutional totality that CSR is embedded in (Fleming and Jones, 2013). Although this type of agenda has close affinities with radical leftism and the anti-capitalist sentiment of social activism, its scope is broader than that. An example of this is the book *Supercapitalism* by Robert Reich (2007). Reich, a quintessential modern (democratic) liberal (he was Secretary of Labour under Bill Clinton), considers CSR to be little more than a deflection that is meant to lure the public into believing that companies would perform selfless acts and develop into responsible corporate citizens without being forced to do so. He writes: 'a kind of faux democracy has invaded capitalism. Politicians and advocates praise companies for acting 'responsibly' or condemn them for not doing so. Yet the praise and blame are disconnected from any laws and rules defining responsible behaviour. The message that companies are moral beings with social responsibilities diverts public attention from the task of establishing such laws and rules in the first place' (2007, p. 205). Reich argues that modern (super)capitalism imposes such hypercompetitive pressures on companies that they no longer have any discretion to be virtuous and will only engage in socially responsible activities to the extent that it can benefit their bottom line. Therefore we should not expect a very deep or significant commitment to social betterment from companies. Market pressures force private businesses into an instrumental, and ultimately selfish, mindset about responsibility, and therefore we need to uphold the values of liberal democracy and ensure that proper regulations are in place to curb their behaviour.

An important proviso here is that Reich speaks almost exclusively about the American experience of capitalism—in light of global competitive pressures. Notwithstanding the undeniable material relevance of this argument, the resulting critique of CSR is symptomatic of a tendency, in the critical discourse, to generalize from the experience of Anglo-American big business and multinational enterprises

while being insensitive to varieties of capitalism (Hall & Soskice, 2001) and institutional differences (Aguilera et al, 2007; Matten & Moon, 2008), thus neglecting the existence of a variety of modes of economic organization in the world. This argument will serve as a segue into the solutions part—as it points to democratic potentials above and beyond what may be associated with the American model of capitalism. We now turn to the prospects of envisioning CSR as part of the solution to the problem of tax avoidance.

5. CSR as part of the solution of tax avoidance

So far we have alluded to 'Responsible tax planning' as a sort of empty signifier: a concept embodying ideals of responsible corporate tax behaviour. Now we turn to the matter of how this concept can be filled with meaning and lend support to the idea that CSR can be part of the solution to corporate tax avoidance. In this section we illustrate how corporations have both been enjoined by civil society, taxation- and legal professionals, and national and international governments to engage in more responsible approaches to taxation that go beyond tax avoidance through legal compliance. The purpose is to illustrate the range of possibilities of CSR for taxation in approach and substance.

An early example is the issues raised by international development critiques of corporate exploitation of weak governance systems in resource rich developing countries (Auty, 1993; Frynas, 2009; Jenkins & Newell 2014). The Publish What You Pay (PWYP 2002) campaign led by six NGOs (CAFOD, Global Witness, Open Society Foundation, OXFAM, Save the Children, Transparency International) contended that corporations could and should exercise discretion responsibly, particularly by being transparent about taxation and other payments to governments where compliance did not otherwise require it. This was not simply a question of responsible taxation for its own sake but also for societal benefit and for more informed polities. It was intended that such transparency would enable 'citizens to have a say over whether their resources are extracted, how they are extracted, and how their revenues are spent' (Publish What You Pay n.d. quoted in Knudsen & Moon, 2017, p. 146). The prin-

ciple of the PWYP campaign was then taken up by the then CEO of BP and the UK government to launch the Extractives Industry Transparency Initiative (EITI). Although this is effectively now a governmental-led multi-stakeholder initiative, its initial dynamic was a CSR concern for a level playing field as an enabler of responsible taxation by means of agreed principles of transparency to be audited and legitimised by professionals and civil society representatives in countries whose governments had signed up to the Initiative (Knudsen & Moon 2017).

Attention to responsible taxation more generally, and linking it directly to sustainability, came with the SustainAbility report, *Taxing Issues: Responsible Business and Tax* (2006). This advocated responsible and sustainable companies adopting 'active' rather than 'passive' approaches to taxation. Passive approaches reflect legal compliance motivated principally by economic cost to the corporation. Active approaches reflect the recognition of taxation as a key social and economic impact, and thus become a facet CSR and corporate sustainability policies. Secondly, the SustainAbility (2006) paper argued that taxation should attend to the 'spirit' of the taxation law, rather than being a matter of gaming. Corporate tax returns should therefore reflect the spirit of the law's assumption of how profits are actually earned, rather than how they can be created to minimize costs to the company. The theme of transparency noted above was also echoed in the recommendation of 'full disclosure' extending to tax dilemmas and risks. Finally, it was argued that responsible taxation processes should be integrated into wider governance systems and applied globally (SustainAbility, 2006).

The accounting profession also addressed this issue as illustrated by a paper from the KPMG Tax Business School (Williams, 2007; see also ACCA, 2008). This extended the distinction between *evasion* (illegal) and *avoidance* (compliant but diffident) as noted above, by adding the third approach *planning*. This stresses the need for taxation outcomes to reflect real social, economic and organizational affairs of the corporation, and is justified in terms of 'fairness', 'responsibility to the state', 'triple bottom line', and 'reputation'.

Hilling & Ostas (2017) argue that corporations should recognise and respect the social norms and policy intentions underpinning tax laws: the spirit of the law. They present various ways in which corporations can exercise discretion for more responsible taxation, including focusing upon the intention and 'plain-meaning interpretations of tax obligations' (2017, p. 83) rather than loopholes for cost saving. They also recommend that corporations adopt 'cooperative' approaches to tax authorities, and that they apply the aforementioned attention to social norms and policy intentions of tax laws to the appointment of tax advisors and lobbyists, the uses of tax havens, and 'debt-push-down strategies' (designed to shift profits to subsidiaries in low tax jurisdictions).

Turning to the perspective of tax gatherers, it should also be noted that governments often provide advice regarding choices between multiple tax authorities, transparency and anti-avoidance, reflecting the choices that corporations face (see Hilling & Ostas, 2017, pp. 46–54). Many national tax authorities focus on the fairness principle and apply this to, transfer pricing, taxation reflecting the 'economic substance' of corporate activity, transparency, and anti-avoidance. They encourage corporations to engage in 'tax negotiation' and welcome the 'cooperative' approaches advocated for corporations (above). International governmental organizations (e.g. EU, G20, OECD) have also endeavoured to engage with the objective of greater fairness in international taxation and have gone so far as to link this with wider social responsibilities (e.g. human rights—see Christians 2009). The implication of these new forms of guidance is, of course, that corporations have opportunities to go beyond avoidance strategies for compliance.

Instructively, leading business associations for responsible business have also engaged with this agenda contributing articulation of principles and appropriate practices for responsible corporate taxation. The 'B Team' (an association of business and civil society leaders) which aspires to move beyond CSR as a vehicle for profit to doing business for social and planetary well-being launched its responsible tax principles (<http://www.bteam.org/announcements/responsibletax-2/>) to address approaches to tax management, rela-

tionships and reporting. The principles focus on corporate taxation being: (1) overseen by the Board and integrated into corporate governance; (2) fully compliant with national law where business is done; and (3) reflecting business structures created only for commercial reasons. The recommended approaches include: cooperative relations with tax authorities; acceptance of taxation incentives only when they are consistent with business strategy and the respective regulatory frameworks; collaboration with governments, business groups and civil society to develop effective tax systems; and transparency. CSR Europe, another association of leading corporations, launched *From Tax Transparency to Responsible Tax Behaviour* (<https://www.csreurope.org/governance-and-accountability/tax-project-tax-transparency-responsible-tax-behaviour 2016>, 2019).

Notwithstanding CSR-based arguments for tax avoidance noted above we see that corporations are also enjoined to, and instructed in how to, take more active approaches to responsible taxation and more responsive relations with tax authorities and the spirit of tax laws.

6. Discussion and conclusion

So we have seen that CSR can be regarded as *both* part of the problem of tax avoidance through irresponsible compliance and part of the solution through responsible engagement with tax authorities and with the spirit of tax law. We advocate engagement with the responsive and engaged approaches flagged in the previous section. But we could be challenged with the simple question as to why corporations should risk greater taxation liabilities when they can perfectly legally avoid taxation and thus better serve their shareholders and other stakeholders?

There are arguments from the familiar CSR literature such as stakeholder theory and corporate social performance as to why corporations should *not* adopt the approaches to taxation that we have described as responsible in the previous section. We can also envisage that each of these CSR perspectives might also offer arguments as to why corporations *should* adopt policies of legal tax avoidance according to the balance of shareholder/stakeholder interest. In response,

we suggest that focus on responsible taxation as a political imperative puts the issue in sharper—and more urgent—focus.[3] Hence we suggest that taxation should be considered as a political responsibility of corporations.[4] We draw upon applications of two sorts of political theory to corporations: citizenship and social contract.

Considering corporate citizenship, it is interesting that many corporations have adopted the term 'corporate citizenship'. Whilst in many cases this is simply as a synonym for CSR (Matten & Crane, 2005), in other cases corporations use the term to convey a stronger sense of identification with the societies in which they operate than CSR does alone. We take this to be a good starting point for our argument about political aspects of CSR: it is obviously easier to engage corporations with political agendas from a perspective on which they may have some basic affinity.

Many corporations understand and even encourage the idea of their membership of societies which, of course, are basic to the formation of polities (Finer, 1997). Building on this, we note that whilst citizenship brings 'rights' (e.g. concerning their legal standing, protection from unwarranted incursions) and 'public goods' (e.g. in the form of social, economic and physical infrastructure) many of which corporations are able to take advantage, it also brings duties. Duties are generally understood to relate to support for the polity itself and, thereby, treatment of other citizens. These may include commitments to participate in vital governance systems (e.g. jury service) and extend even to defence of the polity. But these duties are usually understood to include contributions to the resource base on which the functioning of the polity, the securing of rights and the provision of the goods: which gets us to tax.

The literature on corporate citizenship (Crane, Matten & Moon, 2008) proposes arguments for corporations being regarded as, and considering themselves as, citizens. In particular, Moon et al. (2005;

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3. Our political argument has parallels with Avi-Yonah's (2014) 'legal argument for responsible taxation'.
4. This is not to be confused with Scherer & Palazzo's (2007, 2011) 'Political CSR' which is about corporate responsibility *in the absence* of governmental and legal authority.

see also Crane et al., 2008) adopt an Aristotelian view of citizenship in which the citizen both 'is ruled' (i.e. is subject to government-like roles) and 'rules' (i.e. undertakes governmental roles). Adopting more developmental and deliberative perspectives on citizenship (Stokes, 2002), Crane et al. (2008) extend these two dimensions of relationships of citizenship of corporations by adding a third, arguing that corporations can also serve the citizenship of their stakeholders. Whelan, Moon & Grant (2013) take this third dimension yet further arguing that corporations can serve the citizenship of members of society more widely (rather than just their stakeholders) on the grounds that CSR should reflect societal values and preferences not only those of corporate stakeholders.

We submit here that corporations aiming to adopt the language and thinking of 'citizenship' to explain and motivate their responsibilities in regard to taxation payments and practices should:

- Pay their taxes honestly and fairly—as we expect of human citizens
- Pay their taxes in such a way as not to reflect gaming with public resources but rather by taking a judicious engagement with tax law and authorities—as governments would expect
- Consider taxation payments and practices as part of their wider social and economic impact on their own stakeholders and their societies at large.

Social contract theory has been used to legitimize the authority of governments (Hobbes, 1968), the liberties of citizens (Locke, 1967) and systems of justice (Rawls, 1999). Social contract theories are conventionally based on arguments concerning what reasonable citizens would agree with one another about how politics should be framed in the absence of extant political systems. The literature which applies social contract theory to corporations (e.g. Donaldson & Dunfee, 1995; Dunfee, 1991; Gauthier, 1986) justifies corporate responsibility on the grounds that the corporations benefit from the existence of the respective society and thus should be prepared to exercise restraint and act responsively in respect to that society. Taxation provides the

public—usually through the medium of national government—with resources for its collective purposes, ranging from defence, law enforcement and the administration of justice, through communications and related infrastructure, to social investments in education, health and welfare—without which, as Hobbes famously observed, life would be 'solitary, poor, nasty, brutish and short' (1968, Chapter 13). Without taxation government would lack precisely the resources to provide those things from which corporations manifestly benefit: e.g. government funded R&D expenditures and other subsidies; education, the maintenance of fair competition, the systems of justice, lender of last resort for the banking system (a core underlying structure on which corporations depend). Whilst corporate taxation alone does not guarantee fiscal strength to a polity—and rates and rules vary widely even among OECD countries—it has been a legitimised component of revenue raising (even in the USA) for many years. Moreover, even in the event of the substitution of corporate tax by indirect purchase taxes, corporations would still play a key role in the collection and transfer of such taxes to the treasury department.

Despite their differences, corporate citizenship and social contract theories bring a rather different perspective to thinking about corporate responsibility and taxation than ethical theories privileging compliance with the law, and stakeholder theories privileging stakeholder interest. They suggest that the polity is part of the context of business and is to be treated respectfully in the light of the rights that citizenship theory offers corporate citizens, and the corporate powers and opportunities that social contract theories offer. Indeed we argue that corporate citizenship theory and social contract theory suggest a mutuality of interest between corporations and the polity. We suggest that these arguments apply fundamentally in the area of corporate taxation.

Conventionally, governments have been regarded as the source of solutions for collective action problems among businesses. They make the policies—usually having consulted companies or business associations—and then are expected to apply them, if necessary with the force of judicial sanctions. This can apply to issues from rules about weights and measures to rules and subsidies for industrial

training. By parity of reasoning it might be expected that this logic was reflected in the corporate taxation principle: Governments raise revenues by various means, including from corporations, and these are expected to enable governments to provide precisely those goods and services that serve the collective interests of society in general and business in particular.

However, this assumption is fatally undermined by the possibility of 'irresponsible compliance' that globalization and financialization allow—and even encourage. We therefore argue that, based on the application of theories of citizenship and social contracts, corporations have duties to undertake responsible taxation as a political responsibility/imperative. They have duties to support the polities which frame the legalization of corporations (Avi-Yonah, 2005) and which provide the social and economic infrastructure on which their business models depend (as well as those where profits are earned). Thus 'passive' or 'avoidance' strategies—whilst legal—are compatible neither with claims of citizenship (and synonyms) nor with claims of a membership of a polity which social contract theory would justify.

We therefore conclude that corporations should adopt tax planning and active taxation policies by more thoroughgoing accountability, transparency and consistency. In this way they will serve the governmental fiscal function—from which they benefit—and can justify their claims that they are part of, and responsible to, societies.

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