

INTERNATIONAL TAX MINIMIZATION: WHERE DOES CORPORATE TAX MORALITY FIT?

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The Usual Argument for Corporate Tax Morality

MNEs are increasingly expected to exhibit a morally responsible approach to tax planning, above and beyond compliance with the letter of the law.

A corporation is an artificial construct that exists because society allows it and therefore laws allow it.

What does a corporation then owe the community that allows it to be through the existence of a social contract?

A social license to operate provides legitimacy to this artificial construct, and when that legitimacy is achieved it results in credibility and trust of the corporation by the public.

With a social license to operate however comes obligations and paying taxes is one of those obligations that needs to be upheld.

CAN TRANSPARENCY BE USED TO DEMONSTRATE CORPORATE MORALITY?

ARE TRANSPARENCY MEASURES REALLY ENCOURAGING CORPORATE MORALITY?

Corporate Responses: Starbucks



Corporate Responses: Ampol



What is really happening?

The taxpayers were in a position of power to effectively remove the legal obligation to pay tax and transform it into a business negotiation.

The payment of tax in each case moved from an ex-post legislated expense determined according to the law to one that was part of the MNEs cost of doing business.

Costs of doing business are, by their very nature, ex-ante negotiable and are minimised to ensure the greatest return to shareholders.

The Result

The behaviour of these taxpayers has been legitimised and accepted as appropriate, as has the Revenue Authorities' position on acceptance and/or settlements rather than litigation. The message is clear, and is one of 'trust us'.

Incorporating the payment of tax into business operations and volunteering to pay additional tax or settle brought tax into its sphere of socially responsible actions and the public were assuaged.

Coercive measures ensured the public were assuaged while legally aggressive tax strategies were relegated to the background and seemingly approved of by revenue authorities.

Measures to address MNE Tax Avoidance

1. Substantive regulatory reforms that attempt to close loopholes and address the strategies used by multinational entities (MNEs) to reduce taxes paid.
2. Increased transparency measures both voluntary and mandatory.

These two forms of measures are generally viewed as working in concert and seen as complementing each other. However, the underlying principles and policy rationale of each are oftentimes contradictory.

WHY HAS IT GONE SO WRONG?

Taxation within the Social Contract

The traditional corporate social contract is between an entity and a nation's people, meaning that the contract sits at a domestic level. While MNEs are global entities, there is no global community with which a single social contract can be formed.

Separate domestic level social contracts are in fact in direct contrast to the true nature of the MNE that transcends national boundaries and operates to ensure it maximises global profits.

The corporate entities have taken their responsibility to pay tax within the domestic social contract framework and leveraged contracts in other jurisdictions off each other. Then, the MNEs simply disclose certain tax information and claim their responsibility is met. In this sense, there is a conflation between reporting responsibilities on the one hand and a statutory obligation to pay taxes due on the other.

Corporate Social Responsibility

1970, Milton Friedman: the social responsibility of business is to increase its profits'. Known as Shareholder theory, the notion that the primary obligation of a company is to its shareholders and that profits must be maximised, traditionally failed to take into account externalities.

1984, R Edward Freeman detailed Stakeholder theory to expand a company's obligation to all those who have a stake in the organisation, including customers, employees, investors, and communities.

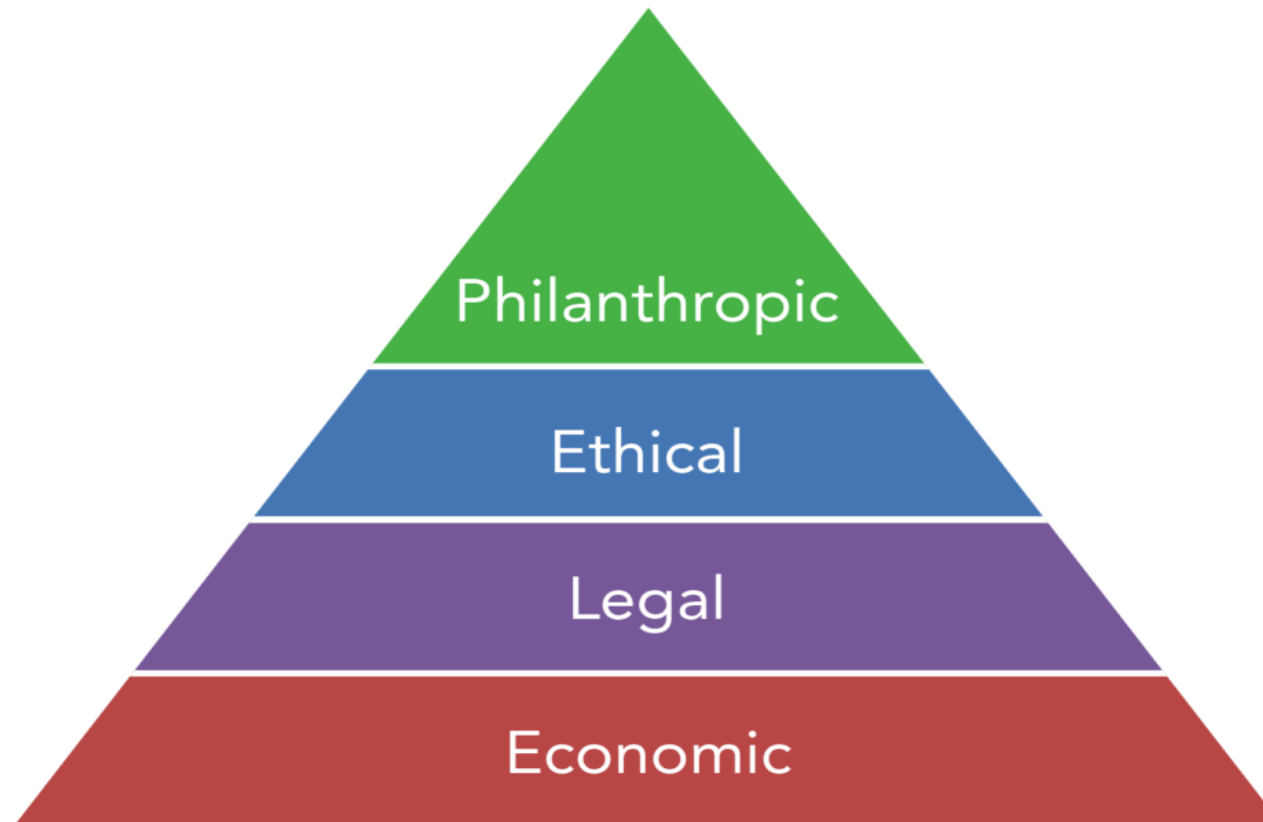
A move from the traditional view of the corporation, that it exists primarily to make profits, to one where a broader stakeholder perspective is adopted brings with it the question of business ethics and the moral dilemmas that are generally managed outside a profit driven framework. Essentially, it brought into the realm of the corporate world the notion that they too were part of the social contract network and that an ethical or moral obligation existed beyond profit maximisation.

Voluntary Reporting Mechanisms in Taxation

CSR: The literature provides conflicting evidence as to the relationship between corporate tax payments and corporate social responsibility reporting with ambiguous findings and little consensus as to whether the reporting is simply a 'smoke and mirrors' tactic or a genuine attempt to demonstrate an ethical approach to matters of corporate tax.

Tax Transparency Code (Australia): studies suggest that the market does not react to information.

Taxation within a Voluntary reporting Framework



Carroll's CSR Pyramid

A Summary of the Problem

From a legal perspective, the MNE lacks a unitary corpus resulting in distinct social contracts and multinational choice.

These separate contracts with differing explicit and implicit terms, coupled with multinational choice allows MNEs to take advantage of different national systems whether through different standards and wages or other possible arbitrages.

The MNE is in a position of power like no other and it is a position they are able to abuse while remaining within the bounds of the legal requirements to pay tax.

To change the behaviour of the MNE, a change in the underlying principles is needed and then the laws need to enforce that principle through sanctions.

If making MNEs accountable for tax on their global profits is the ultimate aim, coercive measures such as reporting is much more likely to have the opposite effect.

THANK YOU
