Tax Reporting and Sustainability

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Contents

1. Introduction[1]

Corporate social responsibility is a term frequently used both in politics but also in academia. The taxation of multinational enterprises has also been at the forefront of many debates not just because of the BEPS project but also due to the additional fiscal needs during and in the aftermath of the Pandemic. Therefore, it is no surprise that the topic of corporate social responsibility and corporate taxation are sometimes linked.

To avoid a too generic analysis, we will in the following focus on sustainability and taxation and demonstrate strengths and weaknesses of the current reporting standards in the area of sustainable taxation. The reason to focus on sustainability lies in the fact that there are not only several sustainability standards already available in corporate tax matters but also as the link between corporate social responsibility and taxation seems obvious.[2]

However, as we will argue in this paper, this link has to be viewed in a differentiated way, whereby two different rationales are to be distinguished: a (1) **business development rationale** focusing on the sustainable development of a corporation over decades and a (2) **comprehensive development rationale** focusing on the sustainable development of our planet and society as a whole as fulfilling the Sustainable Development Goals set forth by the United Nations.

2. Some historical background

For many years, the corporate social responsibility discussion was based on the idea brought forward by Milton Friedman: "The social responsibility of business is to increase its profits".[3] The main line of argumentation of Friedman builds on the idea that the manager is the agent of the owner of the business. Interestingly, one of the then developed arguments to support the thesis is that if a corporate executive would be spending someone else's money for a general social interest, he would on the one hand in effect be imposing taxes, and on the other hand

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1 The present paper is a first draft and the starting point of a larger research project. The authors are all members of the Institute of Public Finance, Fiscal Law and Law and Economics at the University of St. Gallen (IFF-HSG), Switzerland. The authors highly welcome comments and can be contacted via email (peter.hongler@unisg.ch, thomas.berndt@unisg.ch and florian.regli@unisg.ch).

2 For a recent analysis see Jallai, A.-G. (2020). *Good tax governance - International corporate tax planning and corporate social responsibility - Does one exclude the other?* Tilburg: Tilburg University. Or see e.g. Gribnau J.L.M., Jallai A.-G., Good Tax Governance: A Matter of Moral Responsibility and Transparency, Nordic Tax Journal, p. 70 et seq.

3 This is the title used in a contribution of Friedmann, M. (1970, September 13). The social responsibility of business is to increase its profits. *The New York Times Magazine*, p. 17.

deciding how these taxes shall be spent. He then concludes that this raises questions on the level of the political principle that imposing taxes is a prerogative of the government with a constitutional framework in place assuring as far as possible the preferences and desires of the public.[4]

Milton Friedman, in its own perception a classic liberal thinker, stands in for a clear distribution of roles in the management of a corporation[5]: while the agent is supposed to do business (and only business), the principle is basically free to spend his money as he wants. At the beginning of this century, this split of the roles has somehow been scrutinised by scholars performing research in corporate social responsibility to combine two different rationales – what we will call in the following the **Business Development Rationale** and the **Comprehensive Development Rationale**. This all started with an increased focus on environmental topics that followed major environmental disasters that shook up the world[6] and later in the 1970 and 1980ies led to the birth of several green movements around the world.[7] Consequently, the general public and later on also the legislator (e.g. in the EU) were putting pressure on businesses to focus on the environmental and social aspects.[8] Following Carroll, the publication of the book "Social Responsibilities of Businessman" by Howard R. Bowen in 1953 marks the beginning of the modern era of CSR.[9] Carroll stated that "*the social responsibility of business encompasses the economic, legal, ethical, and discretionary expectations that society has of organizations at a given point in time".*[10]

In the following, the discussion about business sustainability evolved further, as the business community acknowledged that sustainability is more than just recognizing a need to respond to social and environmental concerns in addition to economic factors. John Elkington, a renowned thinker in the area of corporate

4 At the same time concerning the level of consequences Friedman points out the question how the corporate executive should know how to spend the money for a general social interest. Based on these arguments, but not exclusively, Friedman comes to his provocative thesis that was summarized in another article as "business of business is business". Although, Friedman did not suggest that corporations should not pay their taxes legally due.

5 Jensen, M. C., Meckling, W. H. (1976). Theory of the Firm: Managerial Behaviour, Agency Costs and Ownership Structure. *Journal of Financial Economics, 3(4),* 305-360.

6 Elkington, J. (1998). *Cannibals with Forks*. Gabriola Island BC, Canada and Stony Creek, CT, U.S.A.: New Society Publishers, p. 41 et seq.

7 For instance, GREENPEACE was founded in 1971 to challenge Nuclear Tests of the US in Alaska, see GREENPEACE (n.d.). *About Greenpeace.* Retrieved from https://www.greenpeace.org.uk/about-greenpeace/, last visited on June 3, 2021.

8 Amstutz, M. (2015). The Evolution of Social Responsibility. *Schweizerische Zeitschrift für Wirtschafts- und Finanzmarktrecht*, 189-198.

9 Carroll, A. B. (2016). Carroll's pyramid of CSR: taking another look. *International Journal of Corporate Social Responsibility, 1(3)*, 1–8.

10 Carroll, A. B. (1979). A Three-Dimensional Conceptual Model of Corporate Performance. *Academy of Management Review, 4(4)*, 497–505, p. 500.

responsibility and sustainable development, has introduced the concept of the so called 'triple bottom line': "[…] a process by which firms manage their financial, social and environmental risk, obligations and opportunities. These three impacts are sometimes referred to as people, planet and profits".[11] In Switzerland, prominent advocates for an evaluation of the discussion are Thomas Dyllick and Katrin Muff, two researches from the Universities of St. Gallen and the Business School Lausanne. They have introduced a new typology that spans from business-as-usual to business sustainability. The authors review the questions of "How can business make an effective contribution to resolving the sustainability challenges we are collectively facing?" and "When is business truly sustainable?".[12] In principle, both questions aim to distinguish between those companies that do and those that do not make effective contributions to the sustainable development of society.

It comes not as a surprise that in literature many definitions for sustainability can be found.[13] The vast majorities of definitions have in common that they are addressing a certain behaviour of today and link it with the future in a way that the use of resources today has to happen in a way that does not limit the options to use them in the future. Historically, when it comes to the specification of the resources, the focus lies on the environment. Driven by certain environmental issues, the voice for a sustainable use of natural resources has emerged. It is no surprise that during the time of the iron curtain and the opposing paradigm of capitalism versus communists, the common denominator was an increasing concern about our environment. Only later to the end of the last century, the view was broadening, and sustainability became a matter of environmental justice, social equality, human rights protection, and business ethics. For example, in Switzerland this development led to an initiative to commit Swiss based MNEs to respect human rights and environmental standards all over the world.[14]

Although it is highly unclear which human rights and which environmental standards are affected, it seems clear that these are areas in which a direct impact of

11 Elkington, J. (1998). *Cannibals with Forks*. Gabriola Island BC, Canada and Stony Creek, CT, U.S.A.: New Society Publishers, p. 2 et seq.

12 Dyllick, T., Muff, K. (2015). Clarifying the Meaning of Sustainable Business: Introducing a Typology From Business-as-Usual to True Business Sustainability. *Organization & Environment*, 1-17.

13 Probably the starting point of the sustainability debates was the publication of the Brundtland Report, Brundtland, G. H. (1987). *Environment and Development: Our Common Future.* Oslo: World Commission. Retrieved from https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf, last visited on June 3, 2021.

14 See the amendment proposed by the Federal Initiative 'For more responsible business', *Article 101a litera a Draft Federal Constitution*. (2020, October 16).

the activities of an MNE can be seen.[15] MNEs shall implement a due diligence process in order to detect actual or potential infringements of human rights or ecological standards.[16] There lies a major difference to the area of taxation. In tax matters measuring the direct impact on human rights or environmental protection is extremely difficult if not impossible as MNEs pay their taxes to states and the societal impact depends on the state investing such fiscal revenue. We will further highlight this issue throughout the article.

3. Distinction of two basic rationales as a basis for our analysis: "Comprehensive Development Rationale" and "Business Development Rationale"

Before outlining the available standards and before discussing in more detail what the relation is between tax reporting and the sustainability debate, it is important to frame what sustainability in the context of taxation means as it seems to being used following two vastly different rationales:

1. Firstly, adherence to a sound tax strategy is viewed to sustainably develop a corporation's value for decades to come. In this view, abstention from profit shifting and thus the payment of taxes in the respective jurisdictions of value creation allows for an inclusive engagement with different stakeholders (local societies, employees, government). Consequentially, this approach enables an enterprise to sustainably increase its value over time. (**"Business Development Rationale")**

2. Secondly, taxes are the source of public funding through which socially desired purposes are financed. In this perception, the payment of taxes seems crucial for the realization, inter alia, of the Sustainable Development Goals (SDGs).[17] **("Comprehensive Development Rationale")**

These two approaches are often mingled. Moreover, it frequently remains unclear whether a standard or guidance setter refers to the first, the second, both

15 See for a broader perspective on the initiative in an international context Kaufmann, C. (2017). Menschen- und umweltrechtliche Sorgfaltsprüfung im internationalen Vergleich. *AJP, 26(8)*, 967-977.

16 See the amendment proposed by the Federal Initiative 'For more responsible business', *Article 101a litera a Draft Federal Constitution*. (2020, October 16). See also on this topic OECD. (2018). *Due Diligence Guidance for Responsible Business Conduct*. Retrieved from https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm, last visited on June 3, 2021; on this topic see also Baier, C. (2020). Strengere Sorgfaltspflichten für verantwortungsvolle Lieferketten. *Der Betrieb, 35*, 1801-1805.

17 United Nations Global Compact. (2015). *2015 SDG Report.* United Nations, Publisher, p. 2. Retrieved from https://www.unglobalcompact.org/library/2291, last visited on June 3, 2021. In 2016 the Agenda 2030 has been presented, with 17 Sustainable Development Goals being at the core of this initiative.

or even none. Not only in the area of tax, the two approaches are often mingled. It seems that it is usually assumed that in case a business is performing well under the "**Comprehensive Development Rationale**", the goals stemming from the "**Business Development Rationale**" can be achieved automatically.[18] If and to what extent this assumption is true can remain open for the purpose of this paper and will not be investigated further.

However, the distinction between the two rationales is important when we review how the existing standards approach the topic of sustainability and taxation. Therefore, it is key that we outline in more detail how taxation and these two rationales interact before we refer to the actual tax reporting standards.

4. Business development rationale and taxation

4.1. Overview

Business has accompanied humans since their evolution to the dominant species on this earth. The purpose of business has evolved accordingly and can be linked to major developments that occurred during the last centuries. Like for many economic or societal developments, the industrialization marks a changing point also for the purpose of business. Generally speaking, one purpose of business has always been to make money and profit, but the extent and direction where the money is spent has shifted. Over the past years, taxation has become a vital part of the discussions about the sustainable development of companies. As we argue below, this increasing influence is closely connected with a general shift from a shareholder value to a stakeholder value orientation and the voice of certain stakeholder groups.

Simply speaking, a corporation fully and only committed to (short term) shareholder value aims to reduce its tax spend as much as possible in a given year in order to increase the value of the corporation. Any opportunity to reduce the tax burden is subject to financial cost/benefit considerations. If an opportunity is financially net positive, it will be pursued. On the contrary, a corporation following a stakeholder value approach has an approach to tax which is aligned with its overall business strategy and a thorough assessment of the needs of its stakeholders.

[18] See Gast, A., Illanes, P., Probst, N., Schaninger, B., & Simpson, B. (2020, April 22). Purpose: Shifting from why to how. *McKinsey Quarterly*. Retrieved from https://www.mckinsey.com/business-functions/organization/our-insights/purpose-shifting-from-why-to-how, last visited on June 3, 2021.

4.2. From shareholder value to stakeholder value

In the pre-industrialized era, most humans were self-sufficient and occupied in agriculture. Still, trading merchants and handcrafters existed to satisfy specific needs. For example, so called "shreni" a guild-like organization for trading and craft products in the eighth century BCE in India, are reported to be the first "business like" organization with resemblance of a modern firm.[19] The purpose of business was to improve the resource configuration of individuals and households and to secure a living. With rising ancient empires all across the globe, trade became more far-reaching and trade intensity increased. This development peaked in the 15th – 18th century with governments funding major explorations (e.g. Columbus' exploration to America) and trade revenues grew. During this period, the purpose of business shifted from securing a living to financial purposes as governments (or the reigning elite) financed their domination of the world through the trade of goods. Also, sole proprietors, family partnerships and a, what today could be called, small capitalist sector consisting of banks and joint-stock companies profited from these developments.[20]

The industrialization had the effect that technology enabled humans to produce much more than is needed by a single individual/household, which created economic opportunities for everybody.[21] Supported by this development, backed by liberal and capitalists' thinkers like for example Adam Smith or Milton Friedman, and the creation of new laws for companies[22] the purpose for organizations became to maximize output and efficiency to benefit its owners, best characterized as the shareholder approach[23]. Profit oriented thinking and shareholder orientation was dominant until around 1950. Since 1950, voices for a more holistic view of the purpose of business have incrementally became louder and introduced

[19] Bain & Company. (2017). *A Brief History of Business*. Retrieved from https://media.bain.com/history-of-business/, last visited on June 3, 2021; Allen, J., Root, J. & Schwedel, A. (2017, June 22). *3,000 Years of Business History in Two Minutes* [video]. Retrieved from https://www.bain.com/insights/3000-years-of-business-history-in-two-minutes-video/, last visited on June 3, 2021.

[20] Gelderblom, O. & Trivellato, F. (2018). The business history of the preindustrial world: Towards a comparative historical analysis. *Business History*, *61(2)*, 225-229, p. 234.

[21] Kumar, V. (2017, September 1). *A Brief History of Business.* Retrieved from http://vkumar.expertscolumn.com/article/brief-history-business, last visited on June 3, 2021.

[22] Ekelund, R. B. Jr., Tollison, R. D. (1980). Mercantilist Origins of the Corporation. *The Bell Journal of Economics, 11(2),* 715-720, p. 719.

[23] Pfarrer, M. D. (2010). What is the Purpose of the Firm? Shareholder and Stakeholder Theories. In J. O'Toole, D. Mayer (Eds.). *Good business: Exercising effective and ethical leadership* (pp. 86-93). New York, NY: Routledge.

concepts like corporate social responsibility, the triple bottom line[24], or the stakeholder approach, which all introduce more dimensions that a business should focus on to excel. Or as outlined by Guthrie *"[a]ccording to stakeholder theory, an organisation's management is expected to undertake activities deemed important by their stakeholders and to report on those activities back to the stakeholders."*[25] But the term also raises difficulties as discussed by other scholars: *"Stakeholder theory itself is a confusing term as many different researchers have stated that they have used stakeholder theory in their research (…) (P)erhaps, we can think of the term stakeholder theory as an umbrella term that actually represents a number of alternative theories that address various issues associated with relationships with stakeholders, including considerations of the right of stakeholders, the power of stakeholders, or the effective management of stakeholders."*[26]

An assessment of a corporation's stakeholders and their norms and values as well as their concerns and interest with regard to a sustainably business development and taxation starts with a definition of the relevant stakeholders. The St. Gallen Management Model (SGMM) gives a comprehensive framework for such analyses defining the relevant stakeholder groups and embedding the corporation in a broader context. The SGMM was developed in the 1960ies and has its roots in system theory which explains the strong focus on different elements and their interrelations.[27]

Of course, the question of what a stakeholder is, is disputed.[28] The SGMM differentiates seven different stakeholder groups: investors, customers, employees, public/media/NGOs, government, suppliers and competitors.[29] It comes with no

24 Carroll, A. B. (2009). A History of Corporate Social Responsibility: Concepts and Practices. In A. Crane, D. Matten, A. McWilliams, J. Moon & D. S. Siegel (Eds.). *Oxford Handbook of Corporate Social Responsibility* (pp. 19-46). Oxford: Oxford University Press.

25 Guthrie, J., Petty, R. & Ricceri, F. (2005). The voluntary reporting of intellectual capital. *Journal of Intellectual Capital, 7(2),* 254-271, p. 257.

26 Deegan, C., Unermann, J. (2011). *Financial Accounting Theory* (2. European ed.), London: McGraw-Hill, p. 348.

27 Rüegg-Stürm, J., Grand, S. (2020). *Das St. Galler Management-Modell* (2. ed). Bern: Haupt.

28 For instance Freeman and Reed state the following: "Any identifiable group or individual who can affect the achievement of an organisation's objectives, or is affected by the achievement of an organisation's objectives.", Freeman, R., Reed, D. (1983). Stockholders and stakeholders: A new perspective on corporate governance. *Californian Management Review, 25(2)*, 88 – 106, p. 91. See also Donaldson, T., Preston, L. E. (1995). The stakeholder theory of the corporation: Concepts, evidence and implications. *Academy of Management Review*, *20(1)*, 65 – 91.

29 Of course, there are also other but similar approaches to define the obligations of the governing bodies of companies from a business perspective. For a historical overview see Keay A. (2010). Stakeholder Theory in Corporate Law: Has It Got What It Takes? *Richmond Journal of Global Law & Business*, *9(3),* 249 – 300, p. 252 et seq. See for more details on such CSR discussion Jallai, A.-G. (2020). *Good tax governance - International corporate tax planning and corporate social responsibility - Does one exclude the other?* Tilburg: Tilburg University, p. 119 et seq.

surprise that with that nothing is said about the norms, values, concerns and interests of these stakeholder groups. There are other approaches which prioritize certain stakeholders into primary and secondary stakeholders. For instance, as Keay highlights, some approaches understand five primary stakeholders (i.e. **financiers, customers, suppliers, employees and shareholders)** and additional secondary stakeholders.[30] Therefore, the government or the communities in which an enterprise operates might be considered a stakeholder but a secondary stakeholder only. But each industry and each enterprise might assess the hierarchy of its stakeholders differently.

Important as well is to consider that depending on the industry, the products or the geographical footprint, these elements and their impact on the stakeholders might be different. This is of particular interest when thinking about taxation. For example, if we focus on investors only, there might be short term-oriented investors that would like to maximize their return. From a tax standpoint, this would imply rather aggressive planning. On the other hand, if an investor is committed to invest for a longer period, balanced tax planning could better respond to his norms and values as well as his concerns and interests.

To conclude, although stakeholder approaches have become more important for the management of corporations, it is fair to say that taxation might still be considered to be a cost and, therefore, a reduction of such costs is in line with a stakeholder approach. Of course, aggressive tax planning can have a negative impact on stakeholders' perception (e.g. some investors) and therefore, a stakeholder approach might indeed require specific tax actions such as the mitigation of aggressive tax planning strategies.[31] Importantly, and this is a particular goal of the present paper, if some stakeholders consider taxes as an important factor, the company might change its attitude towards taxation in a certain manner in order to fulfill the expectations of its stakeholders and not in order to be truly sustainable as we will explain in the following chapters.

4.3. From inside-out to outside-in

The relationship between business and society is the central focus point to understand the impact of a corporation's actions. Usually, this relationship is looked

[30] Keay A. (2010). Stakeholder Theory in Corporate Law: Has It Got What It Takes? *Richmond Journal of Global Law & Business*, *9(3),* 249 – 300, p. 259, with further references.

[31] Or see e.g. Gribnau J.L.M., Jallai A.-G., Good Tax Governance: A Matter of Moral Responsibility and Transparency, Nordic Tax Journal, p. 77.

at from an inside-out perspective and it is demonstrated how business is contributing to the improvement of emerging sustainability topics.[32] This means that the goals of the business are both the starting and the main reference point for all entrepreneurial activities. This seems to align with a stakeholder approach so that the corporation does what is considered to be "good" in the perception of its stakeholders.

It is hence no surprise that certain stakeholders with a strong public voice such as NGOs are heard. Many NGOs have been focusing on multinational companies claiming that global tax structures are used to reduce the tax burden, especially in developing countries and at the same time not leaving enough tax revenue for social welfare. These claims have their roots in the movement against globalization culminating at the turn of the century with street protests[33]. The discussion emerged again after the debt/financial crisis 2007-2013 and the politics started to take initiatives to end 'tax avoidance'.

In the following standard setters[34] have requested companies to publicly disclose for example their tax strategy, tax governance framework as well as tax payments taking a typical inside-out perspective. Some multinational companies were even proactively disclosing their overall tax contribution. Focusing on the arguments brought forward by the respective NGO, the discussion is mainly about the question of how much tax should be paid.

Prima facie, however, this is not yet an indicator of whether a business is indeed sustainable. Or as Thomas Dyllick and Katrin Muff, rightly point out, if a 'full-fledge' or true sustainability perspective is taken, the perspective should be turned around and business has to take an outside-in perspective and ask itself how business can contribute effectively to solving global challenges.[35] Therefore, such an approach is not limited by the current goals and objectives of the business itself and by the expectations of the main stakeholders. Becoming truly sustainable may be in line with the claims from relevant stakeholders and may bring business opportunities, as solving sustainability problems can be strategic challenges like others and hence "business opportunities in disguise" for which a

32 Dyllick, T., & Muff, K. (2015). Clarifying the Meaning of Sustainable Business: Introducing a Typology From Business-as-Usual to True Business Sustainability. *Organization & Environment*, 1-17, p. 7.

33 See e.g. Egle, F. (2009). "Wipe out WEF!" - oder doch nicht?: die Kontroverse um das World Economic Forum 1998-2005 als Folge von sozialem Wandel und neuem Strukturwandel der Öffentlichkeit. [Doctoral Dissertation, University of Zurich].

34 See below section 6.

35 Dyllick, T., Muff, K. (2015). Clarifying the Meaning of Sustainable Business: Introducing a Typology From Business-as-Usual to True Business Sustainability. *Organization & Environment*, 1-17, p. 7.

commercially oriented corporation earns an adequate return.[36] The reasons why corporations may or even should turn to become truly sustainably can be left to future research. The current research specifically focuses on the outside-in perspective having taxes in mind for now.

4.4. Legal obligations

There is a long and broad discussion about what the discretion is of governing bodies from a legal perspective. Two topics must be distinguished.

- First of all, whether corporate law allows the management to apply a broader stakeholder perspective; and

- Second, whether company law even contains explicit obligations to apply a broader stakeholder perspective considering objectives outside the traditional objectives of a company.

With respective to the second point there has been an impressive amount of new regulation in the area of corporate social responsibility such as:[37]

- OECD Guidelines for Multinational Enterprises as a binding instrument for the states with a dispute settlement procedure through the national contact points for responsible business conduct[38]

- The Companies Act 2006 in the United Kingdom (see section 172)

- Loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre in France

- EU Directive regarding non-financial reporting[39]

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[36] Dyllick, T., Muff, K. (2015). Clarifying the Meaning of Sustainable Business: Introducing a Typology From Business-as-Usual to True Business Sustainability. *Organization & Environment*, 1-17, p. 14 et seq.

[37] See with further details Kaufmann, C. (2018). Global agieren, lokal profitieren – und keine Verantwortung? *Schweizerische Zeitschrift für Wirtschafts- und Finanzmarktrecht*, 329-341.

[38] OECD. (2011). *OECD Guidelines for Multinational Enterprises*. Paris: OECD Publishing. Retrieved from http://www.oecd.org/daf/inv/mne/48004323.pdf, last visited on June 3, 2021.

[39] Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups Text with EEA relevance. (2014, November 15).

- Modern Slavery Act 2015 in the United Kingdom
- The Counter Proposal to the Responsible-Business Initiative in Switzerland.[40]

In very simplified terms, the new approaches indeed provide legal obligations according to which companies and their directors have to consider goals outsides the corporation's narrow objectives such as the environment or human rights. The existing binding rules do in general, however, not explicitly refer to the payment of taxes.[41]

With respect to the first point above, there is indeed such discussion in several states but, as domestic legal frameworks differ, it is difficult to develop any general conclusions. However, it seems fair to say that company laws around the world seem to allow a broader application of a stakeholder perspective as long as there is still a certain link to the long-term positive development of the value of a corporation which is in the interest of the shareholders and, of course, as long as these actions are in line with the objectives of the corporation. Even countries who traditionally applied a strict shareholder primacy perspective, are dynamically moving more into a broader stakeholder perspective.[42]

Therefore, there has indeed been a shift from a shareholder to a stakeholder perspective also within the legislative framework, but, of course, the extent of such legal developments depends on each jurisdiction. Company laws around the globe still provide certain limits mainly in the sense the actions must still be in line with the shareholders interest and the objectives of the company understood in a broad manner.[43]

4.5. Intermediate conclusion

There has been an obvious shift from a narrow shareholder value to a stakeholder value approach over the past decades. Therefore, both business literature but

[40] Indirekter Gegenvorschlag zur Volksinitiative 'Für verantwortungsvolle Unternehmen – zum Schutz von Mensch und Umwelt', *Article 964bis et seq. Draft Code of Obligations*. (2020, June 19).

[41] An exception is obviously Section XI of the OECD Guidelines for Multinational Enterprises, OECD. (2011). *OECD Guidelines for Multinational Enterprises*. Paris: OECD Publishing, p. 60 et seq.

[42] On this topic see Keay A. (2010). Stakeholder Theory in Corporate Law: Hat It Got What It Takes? *Richmond Journal of Global Law & Business*, *9(3),* 249 – 300, p. 251 et seq.

[43] See in relation to taxation already Schön W., (2008). Tax and Corporate Governance: A Legal Approach. In W. Schön (Ed.). *Tax and Corporate Governance* (pp. 31-61). Heidelberg/Berlin: Springer. On this topic see also Jallai, A.-G. (2020). *Good tax governance - International corporate tax planning and corporate social responsibility - Does one exclude the other?* Tilburg: Tilburg University, p. 126.

also business practice are more open to apply a broader stakeholder approach. However, it is extremely difficult to find a common denominator when it comes to the different stakeholders and whose expectations should prevail. Even within the different stakeholder groups the norms, values, concerns and interests may be different and may have opposing directions. Moreover, even if there is a shift from a shareholder to a stakeholder perspective, it does not necessarily mean that what is good for the sustainable business development also means that it is truly sustainable. It might even be the opposite that acting truly sustainable has a negative impact on the business development and on certain stakeholders.[44] Moreover, in parallel also legislators have developed obligations for corporations to consider economic, social or governmental goals going beyond a traditional shareholder approach.

As an interim conclusion, it could therefore at least be said that a corporation should allow its stakeholders to assess the company's approach to tax in order to have enough information to decide if the company's approach aligns with its own norms and values as well as their concerns and interests. This leads to the question of what information is required so all stakeholders can adequately make the necessary assessment? When it comes to such a common denominator, further research has to be made. In this paper a first attempt is made by analysing what the current standards setters are requiring. However, before focusing on actual tax reporting recommendations, reference is made to the comprehensive development rationale and its intersection with taxation. In order to do so, we will also demonstrate what it could mean to be truly sustainable following an outside-in perspective.

5. Comprehensive development rationale and taxation

5.1. Overview

In order to be truly sustainable, it is required to assess what the impact of the enterprise's actions are. As normative benchmarks we will in the following refer to the SDGs as there is a global consensus that global sustainable development

[44] See with some empiric evidence Lassala, C., Orero-Blat, M. & Ribeiro-Navarrete, S. (2021). The financial performance of listed companies in pursuit of the Sustainable Development Goals (SDG), *Economic Research-Ekonomska Istraživanja, 34(1),* 427-449. See for a literature overview on the existing studies on the relation between corporate sustainability and financial performance Grewatsch, S., Kleindienst, I. (2015). When Does It Pay to be Good? Moderators and Mediators in the Corporate Sustainability–Corporate Financial Performance Relationship: A Critical Review. *Journal of Business Ethics*, 383–416.

means fulfilling the 17 SDGs.[45] In other words, the SDGs are the common global denominator when it comes to achieving truly sustainable development. It is, however, far from clear what influence the act of paying corporate income taxes or tax actions in general have on the various SDGs, due to the following four limitations:

1. Not all MNEs have the same possibilities due to industry-specific and geographic reasons and limitations (see section 5.2)

2. Some SDGs are outside the sphere of influence of MNEs (see section 5.3)

3. The corporate tax incidence and the distribution of the corporate tax burden makes it very challenging to agree on who actually bears the tax burden (see section 5.4)

4. Corporate tax payments have to be spent by the state and the impact of a corporate tax payments can only be measured if we understand how such revenue is indeed distributed and invested by the state. Or in a negative form, not paying taxes means in very simplified terms that an enterprise has more money to spend on labor, investor returns or it might also allow MNEs to reduce the cost of products sold (see section 5.5)

Although the present paper focuses on tax reporting obligations, we will discuss in more general terms what the relation is between corporate taxation and the SDGs. The reason is that additional tax reporting obligations at least partly aim at increasing corporate tax payments by MNEs.

5.2. Not all MNEs have the same possibilities

Not all enterprises might have the same possibilities. For instance, enterprises which do not use a lot of natural resources might not be able to help to achieve SDG 13 "**Climate Action**" to the same extent as an enterprise which has huge potential to reduce its commodities and its CO2 emissions used in its production process. Or as a second geographic and more tax-related example, some enterprises might not operate in states in which some of the SDGs are a concern. For instance, one indicator used to assess whether SDG 1 "**No Poverty**" has been fulfilled by 2030 is the poverty headcount ratio at USD 1.25/day.[46] In our country

45 The benchmark is, therefore, not justice. See on the latter Hongler, P. (2019*). Justice in International Tax Law.* Amsterdam: IBFD, p. 354 et seq.

46 United Nations Resolution A/RES/71/313. (2017, July 6). Annex, Indicator 1.1.

Switzerland the percentage living below such defined and extreme poverty lines is 0.0%.[47] Therefore, one of the problems is that it is impossible to improve such an indicator from the perspective of a particular corporation if it operates only in Switzerland or at least only in similarly developed states.

The same is true for SDG 2 **"Zero Hunger"**. As an example, according to the World Food Programme, in 2019 approx. 135 million people in 55 states or territories were living in crisis conditions or worse[48] but only three countries account for one third of people living in crisis conditions. The three are Yemen, Democratic Republic of the Congo and Afghanistan.[49] First of all, it is extremely sad that we are still not able to extinguish poverty although there seems to be plenty of resources. Secondly, it also shows that in developed jurisdictions hunger is not a major problem anymore. Therefore, paying corporate income taxes in the majority of states does not help to reduce hunger and, therefore, to fulfil SDG 2.

Moreover, we always need to consider whether taxation can indeed help to improve certain SDG indicators. For instance, if we look at how hunger can end, we need to understand the reasons why people are living in undernourished conditions. And of course, not paying the fair share by MNEs is not the main driver but (i) conflict / insecurity, (ii) weather extremes and (iii) economic shocks. The most important ones are conflicts and insecurities.[50] Conflicts and insecurities are the key drivers behind hunger of around 77 Mio. of the mentioned 135 Mio. people. Therefore, if you really want to end hunger, you need to focus on ending conflicts and insecurities. Paying taxes can even be detrimental in case you support countries enabling these conflicts. In conclusion, higher tax payments of MNEs in most countries, in particular in developed states, will have basically no impact on the fulfillment of SDG 2 as the level of undernourished people is already very low in developed states.

[47] Food Security Information Network. (2020). *2020 Global Report on Food Crises, Joint Analysis for Better Decisions*. Rome/Washington, DC: Food and Agriculture Organization; World Food Programme; International Food Policy Research Institute, p. 2.

[48] So called IPC/CH Phase 3 or above. See Food Security Information Network. (2020). *2020 Global Report on Food Crises, Joint Analysis for Better Decisions*. Rome/Washington, DC: Food and Agriculture Organization; World Food Programme; International Food Policy Research Institute, p. 2.

[49] See Food Security Information Network. (2020). *2020 Global Report on Food Crises, Joint Analysis for Better Decisions*. Rome/Washington, DC: Food and Agriculture Organization; World Food Programme; International Food Policy Research Institute, p. 21.

[50] Food Security Information Network. (2020). *2020 Global Report on Food Crises, Joint Analysis for Better Decisions*. Rome/Washington, DC: Food and Agriculture Organization; World Food Programme; International Food Policy Research Institute, p. 22.

Of course, one could than argue that these states could again invest the fiscal revenue for supporting undernourished persons worldwide, but there is no guarantee that this will happen and it would likely be more effective if the MNE directly spends the money, for instance, for the World Food Programme. This would then again align with an outside-in perspective in the sense that the MNE would need to assess how it can act truly sustainable. However, as mentioned it should be highlighted that the payment of taxes by MNEs might have a very limited impact on some SDGs. Of course, our position is not that MNEs should aim at reducing their tax burden as much as possible but the goal of this paper is to challenge the narrative that forcing MNEs into comprehensive tax reporting obligations will indeed lead to a more sustainable world.

5.3. Some SDGs are outside the competence of the private industry

Some of the other SDGs are to a large extent outside the competences of private parties. For instance, achieving ”**Sustainable Cities and Communities**” as in line with SDG 11 is mainly a task for states and local communities. The same is true for other SDGs such as SDG 4 “**Quality Education**”. There the impact of entrepreneurial activities might be very limited concerning SDGs and it all depends on how states spend their tax revenue. This will further be outlined in section 5.5.

5.4. The corporate tax incidence and the distribution of the corporate tax burden

Inequalities has been one of the most important topics in the past years. It is also often mentioned in the public debate that multinationals should pay more corporate income taxes in order to decrease inequalities.[51] Therefore, it is crucial to review what the relation is between taxation and the reduction of inequalities.

It is extremely difficult to assess the impact of the payment of corporate income taxes on the distribution of the tax burden within society and this is particularly relevant for the fulfilment of SDG 10 *“**Reduce Inequalities**”*. We will not repeat what has been developed by many economists. However, it seems a fair conclusion that we are far away from a clear understanding what it would mean for the allocation of the corporate tax incidence if MNEs would pay more taxes. It would, of course, also depend on what would be the trigger for higher corporate income taxes. Is it a minimum tax (Pillar 2) or new source rules (Pillar 1)? The most recent impact assessment on the proposals of the OECD/Inclusive Framework shows

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[51] See e.g. Oxfam International. (n.d.) *Inequality and poverty: the hidden costs of tax dodging*. Retrieved from https://www.oxfam.org/en/inequality-and-poverty-hidden-costs-tax-dodging, last visited on June 3, 2021.

how difficult it is to estimate the corporate tax incidence.[52] The same is true for higher tax payments due to additional tax reporting obligations.

Although, we assume that comprehensive tax reporting obligations will lead to higher corporate income tax payments, we do not know whether this will increase or decrease global and/or national inequalities. Therefore, if we really aim at reducing inequalities as required by SDG 10, we should not focus on corporate income tax but on other taxes where a precise allocation of the burden is possible (e.g. wealth, income or inheritance taxes). Even more effective would be to focus on the spending side of a state. The spending side might even be more important than the revenue collection for the reduction of inequalities. For instance, this is one reason why a regressive tax might even be better than no tax at all as indicated by the Lambert's Conundrum. it all depends on how the fiscal revenue is invested.[53]

TABLE 2-7
Lambert's Conundrum

Individual	1	2	3	4	Total
Original income *x*	10	20	30	40	100
Tax liability (*T*)	6	9	12	15	42
Benefit level (*B*)	21	14	7	0	42
Post-benefit income	31	34	37	40	142
Final income	25	25	25	25	100

Source: Lambert (2001, p. 278, table 11.1).

Therefore, not paying taxes does not mean the money is lost for society. In order to measure the impact on the sustainable development goals, we would actually need to review what the impact is of a tax payment but also of the alternative investment options.[54] Obviously, such latter assessment is extremely difficult and so is the former. However, the difficulty of measuring the impact of a tax

[52] OECD/G20. (2020). *Tax Challenges Arising from Digitalisation – Economic Impact Assessment*, Paris: OECD Publishing, para. 330.

[53] Enami, A., Lustice, N. & Aranda, R. (2018). Analytic Foundations, Measuring the Redistributive Impact of Taxes and Transfers. In N. Lustig (Ed.). *Commitment to Equity Handbook, Estimating the Impact of Fiscal Policy on Inequality and Poverty* (pp. 56-113). Washington, DC: Brookings Institution Press, p. 75.

[54] See Dyllick and Muff who state: *"At the same time, lower taxes might financially compensate higher labour cost when it comes to the selection of a production site.",* Dyllick, T., Muff, K. (2015). Clarifying the Meaning of Sustainable Business: Introducing a Typology From Business-as-Usual to True Business Sustainability. *Organization & Environment*, 1-17, p. 7 et seq.

payment (and the impact of alternative investments) does not justify an over-simplification by arguing that paying higher corporate taxes per se through additional tax reporting obligations has a positive impact.

5.5. We cannot simply ignore state spending

The biggest elephant in the room regarding the impact of corporate income tax payments on the fulfillment of the SDGs is that it is extremely difficult to measure the impact of tax payments due to the state as the intermediary investor. Therefore, it is far too simple to argue that more corporate tax payments are leading to a more sustainable world. Of course, we are here at a political minefield and as academics we should be reluctant to either argue that a smaller or larger state budget is per se good as this is something we want to achieve as this should depend on a democratic decision-making process. Nevertheless, the current debate seems sometimes to be biased as the common narrative is that it is per se good if states have more money to spend as this will lead to a truly sustainable world.

We have of course some sympathy that each state should achieve a certain level of tax/GDP ratio in order to fulfill the most essential tasks such as providing a decent health infrastructure. If we look at, for instance, the OECD countries, the tax to GDP ratio ranges from 16.5% (Columbia) to 46.3% (Denmark). It seems obvious that 16.5% is too low as the state is not able to provide all services needed to fulfill the SDGs, however, one could also argue that 46.3% is far too high.

And of course, raising tax-to-GDP-ratios can even harm the poor. For instance, even though there was evidence that higher corporate income taxes are to the benefit of the fulfilment of several SDGs, it should also be considered that higher corporate income tax can have a negative impact on other SDGs such as SDG 8 "**Decent Work and Economic Growth**" and SDG 9 "**Industry, Innovation and Infrastructure**".

An interesting discussion has emerged in the area of state budgeting regarding the question of how a state shall invest USD 100 of fiscal revenue in order to be most effective concerning the fulfillment of the SDGs.[55] We believe that this is

[55] See e.g. United Nations Development Program. (2020). *Budgeting for Sustainable Development Goals, Guidebook 2020*. Retrieved from https://sdgfinance.undp.org/sites/default/files/UNDP%20Budgeting%20for%20the%20SDGs%20-%20Guidebook_Nov%202020.pdf, last visited on June 3, 2021.

indeed the most important discussion we should have concerning a comprehensive development rationale and taxation. The focus, of course, is on SDGs that are primarily public in nature.[56]

5.6. Intermediate conclusion

We have seen that we are far away from having an agreement that paying higher corporate income taxes has per se a positive effect on the fulfilment of the SDGs. Therefore, the narrative that MNEs should pay more corporate taxes in order to fulfil the SDGs lacks clear evidence. We do not want to be misunderstood in the sense that we are against corporate income taxation or even in favor of corporate tax avoidance. However, our position is that in order to assess whether an enterprise is truly sustainable corporate taxation might be the wrong anchor. There are far better measurements to review whether an MNE acts truly sustainable (e.g. prohibition of child labor within the value chain, reduction of CO2 emission within the production process, enhancing gender equality among the work forces). In the following final part of the present working paper, we will go through the most recent and most prominent tax reporting standards in order to assess where standard setters approach such missing causation.

6. Current sustainable reporting standards and their approach towards taxation

Considering the broad variety of standards, we tried to categorize the various recommendations in the context of sustainability and taxation. Of course, such categorization is always blurry. Nevertheless, it helps to develop a comprehensive understanding.

6.1. Legal compliance and beyond

Several standards require that tax payers act in line with the law.[57] Or as famously stated in the OECD Guidelines for Multinational Enterprises, tax payers should both be compliant with the letter and spirit of the law.[58] Such recommendation

56 See e.g. United Nations Development Program. (2020). *Budgeting for Sustainable Development Goals, Guidebook 2020*.

57 The B Team. (2018). *A New Bar For Responsible Tax*. Principle 2, p. 5. Retrieved from https://bteam.org/assets/reports/A-New-Bar-for-Responsible-Tax.pdf, last visited on June 3, 2021.

58 OECD. (2011). *OECD Guidelines for Multinational Enterprises*. Paris: OECD Publishing, p. 60. See also S&P Global Switzerland SA. (2021). *CSA Companion 2021*, p. 58. Retrieved from https://portal.csa.spglobal.com/survey/documents/SAM_CSA_Companion.pdf, last visited on June 3 2021.

seems rather obvious, although, the devil is in the details in particular with respect to the OECD's approach according to which tax payers should obey both the letter and the spirit of the law, several issues remain unclear. We will refer to two specific problems in this regard.

6.1.1. Tax payments are not necessarily good

The underlying argument of the position above works as follows: Following the letter of the law might not necessarily be morally right and, therefore, it is a duty of the tax payer to assess whether his or her actions are not only compliant with the legal requirements but also morally right.[59] Therefore, in the tax world it often boils down to the question of what is still considered to be (legal) tax planning that is morally right and (legal) tax planning or tax avoidance that is morally wrong.

Underlying such debate is the assumption that aggressive tax planning is harmful for society as companies do not pay their fair share. We believe, however, that such an approach is flawed. As already mentioned in detail, paying taxes is not per se good as it does not necessarily mean that the well-being increases in a society and that the SDGs will be fulfilled. Otherwise, it would be an unconditional maxim (also for individuals) to pay as much taxes as possible in order to fulfill the SDGs. As it was outlined,[60] the fact that taxes have to be distributed and invested by states makes such an argument a derivative one, i.e. paying taxes can be good for the fulfillment of the SDGs but it depends on how it is invested by the state actors.

We are fully aware that this is a rather provocative statement in the current political environment of broad consensus against corporate tax planning or at least against aggressive corporate tax planning. However, we believe that our position is persuasive if the aim is, indeed, to review whether a business is to be seen as sustainable or not (following a Comprehensive Development Rationale).[61]

6.1.2. Teleological interpretation and the spirit of the law

The question of whether following the letter of the law but not the spirit of law is indeed an apparent sustainability problem depends on each state's legal system. The result might be different considering the various approaches towards a

59 Jallai, A.-G. (2020). *Good tax governance - International corporate tax planning and corporate social responsibility - Does one exclude the other?* Tilburg: Tilburg University, p. 185.

60 See above section 5.5.

61 See above section 5.

teleological and/or historical interpretation of the law around the globe.[62] I.e. the value that "the spirit" has in the way law is interpreted, is different in the various legal systems. Representatives of MNEs will decide how to structure the MNE's operation following their interpretation of the law. By doing so, they are biased by their education and by their methodological approach towards understanding and interpreting the law. Forcing tax payers to act in line with the spirit and not just the letter of the law basically means admitting that the law needs to be interpreted which of course makes sense but has no additional value. If the additional value towards sustainability is that tax payers shall act in line with the law and in particular avoid aggressive tax planning (since this presumably seems not to be in line with the spirit of the law) then it would be better to argue that tax payers shall not commit aggressive tax planning explicitly. Most states, however, do already have measures as part of their law to avoid non-intended aggressive tax planning going against the spirit of the law be it using judicial or statutory general anti avoidance rules (GAARs).

6.2. Tax governance

Different sustainability reporting standards contain specific recommendations on how to govern taxation within an MNE. These sections often include the following recommendations:

- Develop and publish a tax strategy of the MNE.[63] Such tax policy, according to some standards may include, inter alia, the corporation's approach to transfer pricing but also a commitment of a corporation not to *"transfer value created to low tax jurisdictions".*[64]

- Define the responsible bodies for tax (strategy) compliance and develop criteria and processes for implementing, monitoring and managing both tax risks and adherence to the tax strategy.[65] Besides, it is recommended that corresponding control mechanisms and subsequent reporting of such assurance processes should be disclosed.[66]

[62] In particular in US constitutional law, there is an intense debate on what is in line with the letter of the constitution, what was the spirit of the law by the founders and how should the constitution be read. See Barnett, R. E., Bernick, E. (2018). The Letter and the Spirit: A Unified Theory of Originalism. *The Georgetown Law Journal, 107(1)*, 1 - 55.

[63] S&P Global Switzerland SA. (2021). *CSA Companion 2021*, p. 58.

[64] S&P Global Switzerland SA. (2021). *CSA Companion 2021*, p. 58.

[65] Global Sustainability Standards Board (GSSB). (2020). *GRI 207: Tax 2019.* 207-2 (a), p. 7. Retrieved from https://www.globalreporting.org/how-to-use-the-gri-standards/resource-center/, last visited on June 3, 2021.

[66] Global Sustainability Standards Board (GSSB). (2020). *GRI 207: Tax 2019.* 207-2 (b) and (c), p. 7.

- Moreover, the importance of succession-planning for tax-related positions is highlighted as an important factor for the organization's (sustainable) development.[67]

At first glance, these recommendations aim at a sustainable business development (i.e. following a Business Development Rationale).[68] There is no obvious link between these recommendations and the fulfillment of the sustainable development goals of the UN or a Comprehensive Development Rationale.

6.3. Tax Planning

Sustainability standards often contain further specific recommendations regarding the question of how MNEs should approach tax planning. These include the following:

- Some standards recommend that MNEs do not use "tax havens".[69]

- It is sometimes also recommended that MNEs pay their tax according to value creation.[70]

- Moreover, it is recommended that MNEs are transparent about their corporate structure. This means, for instance, that it is disclosed to the public in which states the MNE has subsidiaries and/or branches.[71]

- Publish the effective tax rate. The rationale behind such recommendation is to evaluate whether the effective tax rate of an MNE might be unsustainable in a global context.[72]

- In some cases, the sustainability standards require a comparison between the effective tax rate of an MNE to the effective tax rate of peers in the same industry.[73]

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67 Global Sustainability Standards Board (GSSB). (2020). *GRI 207: Tax 2019.* 207-2, p. 7.
68 See above section 4.
69 The B Team. (2018). *A New Bar For Responsible Tax*. Principle 3, p. 6.
70 The B Team. (2018). *A New Bar For Responsible Tax*. Principle 2.A, 2.B., 2.E. (implicitly) and Principle 3.A. (explicitly), p. 5 et seq.
71 The B Team. (2018). *A New Bar For Responsible Tax*. Principle 3, p. 6.
72 S&P Global Switzerland SA. (2021). *CSA Companion 2021*, p. 62.
73 S&P Global Switzerland SA. (2021). *CSA Companion 2021*, p. 62 et seq.

According to the UN Principles for Responsible Investment, aggressive tax planning can both distort investment or divestment decisions and, therefore, indeed pose a risk to corporate earnings,[74] damage reputation and brand value: For instance, negative media coverage triggered by aggressive tax planning can have a negative impact in particular in consumer-facing sectors.[75] Tax risks are defined as risks that can pose a threat to the organization's goals, or lead to financial and/or reputational damage.[76] Such risks can, among others, arise from aggressive tax practices.

Seeking information on how the organization mitigates such risks, the standards link the abstention from aggressive tax practices to the organization's interests and are thus in accordance with the Business Development Rationale considering the interests of some stakeholders. However, it is also a common position that reducing tax planning helps to develop a more sustainable world following a Comprehensive Development Rationale. We would again challenge the latter position as paying taxes does not per se lead to a more sustainable world due to the reasons mentioned above.[77]

Moreover, the recommendation outlined in the last point above regarding the ETR comparison further enhances the difficulty of measuring what the impact is of an MNE's tax payment. Effective tax rates are highly dependent on the location of the business activities of an MNE.[78] Therefore, it does not make sense to negatively evaluate an MNE just because an MNE produces in a low tax jurisdiction. At the same time MNEs listed at a stock exchange and following IFRS or US GAAP for their external reporting, do already disclose the location of their affiliates as well as are subject to disclosure rules regarding the effective tax rate as per the applicable accounting standard.

6.4. Awareness

A few standards require MNEs to assess how and whether their approach to tax interacts with their broader development strategy. For instance, according to GRI 207-1 (a)(iv) companies are required to describe how their tax approach is linked

74 See implicitly Karananou, A., Guha, A. (2015). *Engagement Guidance on Corporate Tax Responsibility.* London, UK: Principles for Responsible Investment, p. 7 et seq. Retrieved from https://www.unpri.org/download?ac=5601, last visited on June 3, 2021.

75 Karananou, A., Guha, A. (2015), *Engagement Guidance on Corporate Tax Responsibility.* London, UK: Principles for Responsible Investment, p. 9 et seq.

76 Global Sustainability Standards Board (GSSB). (2020). *GRI 207: Tax 201.* 207-2, p. 7.

77 See above section 5.

78 See also section 5.2.

to the business and sustainable development strategy of the organization. However, it is unclear what this means.

GRI specifies that reporting should include whether the corporation has considered *“the economic and social impacts of its approach to tax when developing its tax strategy”;*[79] and *“any organizational commitments to sustainable development in the jurisdictions in which it operates and whether its approach to tax is aligned with these commitments.”*[80]

Such recommendation seems to be related to a Comprehensive Development Rationale as it aims at better understanding the societal impact of a tax policy.[81] Some standards explicitly require that tax payers disclose how their tax strategy aligns with other means to achieve sustainability. For instance, GRI requires reporting enterprises to disclose *“any organizational commitments to sustainable development in the jurisdictions in which it operates and whether its approach to tax is aligned with these commitments.”*[82]

6.5. Relationships with authorities

Furthermore, sustainability standards contain recommendations on the interaction and the relationship with the authorities. These include the following:

- MNEs should follow established procedures.[83]

- MNEs should be open and transparent with authorities. Enterprises should be obliged to provide information on their approach to engagement with tax authorities.[84]

- MNEs should aim at establishing relationships of cooperative compliance.[85]

- MNEs should aim at mitigating misunderstandings.[86]

79 Global Sustainability Standards Board (GSSB). (2020). *GRI 207: Tax 2019.* 207-1, p. 6.
80 Global Sustainability Standards Board (GSSB). (2020). *GRI 207: Tax 2019,* 207-1, p. 6.
81 See Dyllick, T., Muff, K. (2015). Clarifying the Meaning of Sustainable Business: Introducing a Typology From Business-as-Usual to True Business Sustainability. *Organization & Environment*, 1-17, p. 2 et seq.
82 Global Sustainability Standards Board (GSSB). (2020). *GRI 207: Tax 2019.* 207-1 (a) (iv), p. 6.
83 The B Team. (2018). *A New Bar For Responsible Tax*. Principle 4.A., p. 7.
84 Global Sustainability Standards Board (GSSB). (2020). *GRI 207: Tax 2019*. 207-3 (a) (i), p. 9.
85 The B Team. (2018). *A New Bar For Responsible Tax*. Principle 4.B., p. 7.
86 The B Team. (2018). *A New Bar For Responsible Tax*. Principle 4.D., p. 7.

- MNEs should seek rulings based on full disclosure only.[87]

- No bribes towards tax authorities.[88]

With tax compliance costs rising, co-operation between companies and tax authorities will indeed be beneficial for both sides. Going beyond their respective statutory obligations[89] strengthens trust and indeed creates certainty for businesses. A more stable and trustful relationship between taxpayers and authorities might create a more stable environment for investments and thus it might create (more and sustainable) economic growth. Therefore, improving the relationship with authorities might indeed be in line with a Comprehensive Development Rationale. However, the idea of an active stakeholder approach towards governments might also increase the corporation's own sustainable growth (i.e. a Business Development Rationale) as it was also indicated in the ICC Guidelines for Sustainable Business Growth from 2015.[90]

6.6. Support and enable effective tax systems

Furthermore, in various standards it is recommended that MNEs support the development and maintenance of effective tax systems. For instance, through the following means:

- MNEs should provide constructive inputs to industry groups, governments, and other external bodies.[91] Or, as held in an UN document, Companies shall help to develop taxation policies *"that contribute to the redistribution of wealth"*.[92]

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87 The B Team. (2018). *A New Bar For Responsible Tax*. Principle 4.E., p. 7.

88 The B Team. (2018). *A New Bar For Responsible Tax*. Principle 4.C., p. 7.

89 International Chamber of Commerce (ICC). (2020). *ICC position paper on Tax and the United Nations' Sustainable Development Goals.* International Chamber of Commerce, p. 5. Retrieved from https://iccwbo.org/content/uploads/sites/3/2018/02/icc-position-paper-on-tax-and-the-un-sdgs.pdf, last visited on June 3, 2021. In reference to OECD. (2008). *Study into the Role of Tax Intermediaries*. Cape Town: OECD Publishing. Retrieved from http://www.oecd.org/tax/administration/39882938.pdf, last visited on June 3, 2021.

90 International Chamber of Commerce (ICC). (2015). *Inspire and Grow your Business in the 21st century.* Paris, France: ICC, Guideline No. 8, p. 9. Retrieved from https://iccwbo.org/content/uploads/sites/3/2015/01/ICC-Business-Charter-for-Sustainable-Development.pdf, last visited on June 3, 2021.

91 The B Team. (2018). *A New Bar For Responsible Tax*. Principle 6.A., p. 8.

92 United Nations Global Compact. (2017). *2017 United Nations Global Compact Progress Report: Business Solutions to Sustainable Development.* New York: United Nations Global Compact, p. 82. Retrieved from https://d306pr3pise04h.cloudfront.net/docs/publications%2FUN+Impact+Brochure_Concept-FINAL.pdf, last visited on June 3, 2021.

- It might also be recommended to publish the approach to tax-related public policy advocacy.[93] For instance, in "The 2017 Progress Report" on the United Nations Global Compact reference is indeed made to taxation. In its focus area No. 7 *Tackling Inequality, Fostering Inclusion* companies are encouraged to proactively engage with policymakers with regards to taxation. They shall help to develop taxation policies *"that contribute to the redistribution of wealth".*[94]

- MNEs should also support initiatives to help develop the capacity of tax authorities. This includes the strengthening of BEPS initiatives in developing countries and a broad implementation of automatic exchange of information.[95]

- Moreover, MNEs should promote responsible tax practices.[96] Yet it is unclear what is to be considered such practice.

- In its 2018 position paper, the ICC's focused on changing the (domestic) tax frameworks of developing countries in such a way that they enable the respective economies to grow sustainably. The eradication of poverty is to be achieved through global trade and foreign direct investment of *private* actors. Non-discriminatory and effective tax regimes shall enable such economic development and thereby lead to societal prosperity in the sense of the SDGs. The organization further emphasizes on the importance of tax revenue for the financing of infrastructure, yet tax revenue is not explicitly mentioned as a direct means to finance the SDGs.

In conclusion, these recommendations have a clear reference to the Comprehensive Development Rationale and prima facie, it seems also possible that these measures of a MNE might have a positive effect on the sustainable development of societies. However, it is not evident that not acting in the recommended way has a negative effect on the sustainable development of societies and the fulfilment of the sustainable development goals.

The relationship between the state and a MNE remains a sovereign relationship, whereby this relationship is characterized by the superiority of the state. And

93 Global Sustainability Standards Board (GSSB). (2020). *GRI 207: Tax 2019*. 207-3 (a) (iii), p. 9.

94 United Nations Global Compact. (2017). *2017 United Nations Global Compact Progress Report: Business Solutions to Sustainable Development.* New York: United Nations Global Compact, p. 82.

95 OECD. (2016). *Better Policies for 2030 - An OECD Action Plan on the Sustainable Development Goals,* p. 5. Retrieved from https://www.oecd.org/dac/Better%20Policies%20for%202030.pdf, last visited on June 3, 2021.

96 The B Team. (2018). *A New Bar For Responsible Tax*. Principle 6.C., p. 8.

therefore, the relationship requires fair conduct from both parties as a minimum standard.

6.7. Transparency

Moreover, the various standards contain recommendations with respect to transparency. It is obvious that some of the following recommendations could also fall under one of the other categories.

- MNEs should not only develop a tax strategy but also publish such tax strategy.[97]

- Under BEPS Action 13 enterprises are required to provide country-by-country reporting (CbCR). According to the OECD CbCR is a key element in fighting BEPS as it provides tax authorities with the information necessary for assessing risks arising from multinational enterprises' tax practices.[98] Sometimes it is recommended that MNEs publish their CbCR online.

- The recommendations of the ICC requests transparency from tax authorities too, with regards to how and how much tax is levied and ultimately how this revenue is spent.[99]

It is difficult to clearly categorize these recommendations following either a Business Development Rationale or a Comprehensive Development Rationale. Transparency seems to be used to self-discipline MNE not to commit aggressive tax playing which is again presumably justified by both rationales. As mentioned already, following a business development rationale, corporations should allow its stakeholders to assess the company's approach to tax in order to have enough information to decide if the company's approach aligns with their own norms and values as well as their concerns and interests. However, further research is required on what this exactly means.

97 The B Team. (2018). *A New Bar For Responsible Tax*. Principle 7.A., p. 8.

98 OECD. (2019). *Guidance on the Implementation of Country-by-Country Reporting - BEPS Action 13.* Paris: OECD Publishing, p. 5. Retrieved from http://www.oecd.org/tax/beps/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf, last visited on June 3, 2021.

99 International Chamber of Commerce (ICC). (2020). *ICC position paper on Tax and the United Nations' Sustainable Development Goals.* International Chamber of Commerce, p. 5.

7. Time to rethink?

To begin with, in some standards but also in many publications, the role and importance of taxes for the respective jurisdiction's fiscal policy and macroeconomic stability is highlighted.[100] Corporate tax revenues are indeed an important means to fund the achievement of the Sustainable Development Goals and in general contribute to a country's public household. We further acknowledge that aggressive tax planning can lead to a lack of public funding and consequential macroeconomic distortions.

However, as it was argued throughout this paper, the problem with taxation and its link to sustainability or corporate social responsibility is that there is no certainty that the revenue collected is indeed an investment into the sustainable development of the world if the SDGs are considered to be the benchmark. Paying taxes is primarily contributing to a certain state's household and it is only in a second step that the state decides on how to invest its money. This is a major difference from other areas in which the actions of a MNE directly have an impact on the sustainable development (e.g. prohibition of child labor within the value chain, reduction of CO2 emission within the production process, enhancing gender equality among the work forces).

Again, we are not suggesting that corporate tax payers should aim at minimizing their tax burden at all costs and in the most aggressive forms, but our position is that the impact of corporate taxes (and tax reporting) on sustainability is overrated and it is too simple to argue that paying more corporate taxes leads necessarily to a more sustainable world. This is further accentuated by the fact that empiric studies on corporate tax incidence are suggesting that various stakeholders (labor, consumer, investors) carry at least parts of the corporate income tax burden.[101] Therefore, paying more corporate income taxes means less funds for these stakeholders which might also have a detrimental impact on sustainable development.

In very general terms, we do not see taxation as a key element to be considered by a MNE in the discussion on corporate social responsibility compared to other areas. Of course, it might make sense that MNEs contribute to the development of an effective tax system.[102] However, in particular with respect to the latter,

[100] Global Sustainability Standards Board (GSSB). (2020). *GRI 207: Tax 2019*, p. 9.

[101] See e.g. recently Baert, P., Lange, F., & Watson, J. (2019). *The Role of Taxes on Investment to Increase Jobs in the EU - An Assessment of Recent Policy Developments in the Field of Corporate Taxes.* Brussels: European Economic and Social Committee. See also Bauer, M. (2019, December 12). Should unfairness be maintained in corporate taxation? *Timbro*. Retrieved from https://timbro.se/ekonomi/skatter/should-unfairness-be-maintained-in-corporate-taxation/.

[102] See above section 6.6.

policy making in tax matters remains a sensitive area in which society as a whole should contribute and the role of corporate tax payers should not be overestimated. MNEs operate in dozens of countries and countries might legitimately follow rather different approaches on how large the state should be and who should finance the household. There is no right or wrong.[103]

With respect to the question of what the impact of these recommendations and standards have on the sustainable development of a business (Business Development Rationale) there seem to be strong arguments that some of the recommendations might indeed be important for MNEs to be implemented. However, this requires a detailed industry specific stakeholder analysis.

[103] See on the term value imperialism Hongler, P. (2019*). Justice in International Tax Law.* Amsterdam: IBFD, p. 354 et seq.