

# CROSS-BORDER CORPORATE SOCIAL RESPONSIBILITY AND TAXATION: A NEW CONCEPTUAL FRAMEWORK IN AN ERA OF ECONOMIC GLOBALIZATION

DORON NAROTZKI\* & TAMIR SHANAN\*

## TABLE OF CONTENTS

I. INTRODUCTION .....	156
II. A BRIEF HISTORY OF THE CORPORATE SOCIAL RESPONSIBILITY THEORY .....	159
III. CORPORATE SOCIAL RESPONSIBILITY AND TAXATION (CSRT) .....	162
IV. THE DEVELOPMENT OF CORPORATE SOCIAL RESPONSIBILITY IN THE ERA OF ECONOMIC GLOBALIZATION .....	164
V. CONCLUSION.....	167
A. Minimal Effective Global Corporate Tax Rate of 15%.....	167
B. MNCs Must Participate in a Full Transparent Disclosure Regime.....	168
C. Adoption of a Novel Framework for Allocating Taxing Rights Among the Relevant Taxing Jurisdictions and Replacing the Current Transfer Pricing Regime .....	168

While only several decades ago the idea of corporate social responsibility (CSR) was not trivial, it seems that most scholars today understand that corporations owe special commitments to their stakeholders that go beyond common regulatory and conventional requirements in promoting the community in which they operate. However, while “translating” such a notion to real life and prioritizing these commitments among the corporation’s stakeholders in a corporation that operates domestically is not self-explanatory, translating it in the cross-border context is even more challenging.

This paper attempts to take the notion of CSR a step forward and, as global commercial relationships bring our world closer into a global village, to question “who is thy neighbor?”<sup>1</sup> and, in our context, “who is thy stakeholder?” and proposes a new conceptual framework in how tax revenues should be allocated among countries in which multinational corporations operate in an era of globalization. This issue was less relevant fifty years ago when most economic relations were within the boundaries of their locality or domestic state. We now live in an era of economic globalization, and the time has come to update the CSR framework accordingly.

---

\* Associate Professor of Tax and Business Law, George W. Daverio School of Accountancy, College of Business, The University of Akron.

\* Senior Lecturer (Assistant Professor), the Haim Striks Faculty of Law, College of Management Israel.

<sup>1</sup> See generally Jeremy Waldron, *Who Is My Neighbor?: Humanity and Proximity*, 86 MONIST 333 (2003).

This paper is divided into five parts. Part I provides the background to the theory of “Corporate Social Responsibility” and the exposure corporations currently have to foreign markets. Part II provides a concise overview of what we believe are the most significant milestones in the development of the social responsibility theory. Part III provides an overview of the linkage between corporate social responsibility and taxation. Part IV attempts to make the case for the expansion of social responsibility beyond the scope of domestic activities, shows the importance of cross-border social responsibility, and demonstrates how cross-border social responsibility is applied in the context of taxation. Finally, Part V connects the dots between all the statements and arguments made in this paper and proposes a new conceptual framework that should be applicable to Multi-National Corporations (MNCs) in eliminating strategic tax behavior and allocating MNCs’ corporate tax revenues among the countries in which they operate in a fair manner.

## I. INTRODUCTION

Several decades ago, the idea of corporate social responsibility (“CSR”) was not entirely accepted by most corporations or legal scholars. Today, many scholars and corporations understand that corporations owe special commitments to their stakeholders in addition to their traditional function of maximizing profits for the benefit of their shareholders.<sup>2</sup> It is also accepted that corporations’ commitments go beyond standard regulatory requirements and that corporations should not disregard their impact and influence over the communities in which they operate. Corporations are viewed as both economic and social entities; they depend upon, compensate, and have complex relationships with stakeholders.

Under the nexus of contract approach,<sup>3</sup> the corporation is conceptualized as a nexus of explicit and implicit contractual undertakings towards its stakeholders, which are not limited to the corporation’s stockholders and include its bondholders, executives, employees, suppliers, and customers. As such, “translating” such notions to a CSR regulatory framework requires prioritizing these commitments among the corporation’s stakeholders. Such prioritization is complex for domestic corporations. However, such prioritization in the cross-border context for multinational corporations (“MNCs”) can be even more challenging. Our research proposes a general framework for CSR and taxation (“CSRT”) in the cross-border context.

Centuries ago, corporations were the creations of the state, which had the exclusive prerogative to issue the charter of incorporation. Following this argument, corporations were expected to act in furtherance of the specific rights and duties issued by the state. For instance, the first two MNCs were

---

<sup>2</sup> See Doron Narotzki, *Corporate Social Responsibility and Taxation: The Next Step of the Evolution*, 16 HOUS. BUS. & TAX L.J. 167, 167 (2016).

<sup>3</sup> See Armen A. Alchian & Harold Demsetz, *Production, Information Costs, and Economic Organization*, 62 AM. ECON. REV. 777, 783 (1972).

established as early as the 17th century to gain access to East India and develop cross-border commerce between Europe and the Far East.<sup>4</sup> The English East India Corporation and the Dutch United East India Company were viewed as state organs.<sup>5</sup> Therefore, the English East India Corporation was expected to fulfill the numerous contractual features and undertakings as specified in its charter of incorporation and in consideration, was awarded certain benefits, including trade monopoly for fifteen (15) years, privileges of purchasing land, pleading in English courts, and more.<sup>6</sup> For such privileges, the corporation undertook regular voyages to India, using six ships to deliver their ships to the English navy in times of war and to pay customs and duties (following a brief period of tax holidays they received upon incorporation).

However, over the years, the complete subordination relationship between the corporation and the state of incorporation has been significantly relaxed as the old grant/charter system was replaced with a free incorporation system. This movement dramatically changed the state's role in forming corporations from a monopolistic power approach that views the state as the holding power to form corporations to a commodification approach that only requires the state's recognition and allows the founders to "cherry-pick" among states. This change also led to a "race to the bottom" among states that welcomed it.<sup>7</sup> It often incentivized founders to incorporate corporations under the assumption that such incorporation would benefit them, either by using local professional services providers or paying charges, fees, and taxes. These changes eventually led to the increasing powers MNCs have at the expense of state sovereignty and accelerated the new era of economic globalization we currently live in. In support of this argument Justice Alito stated in *Burwell v. Hobby Lobby Stores, Inc.* that:

Congress provided protection for people . . . by employing a familiar legal fiction: It included corporations within . . . definition of "persons." But it is important to keep in mind that the purpose of this fiction is to provide protection for human beings. A corporation is simply a form of organization used by human beings to achieve desired ends.<sup>8</sup>

---

<sup>4</sup> Ron Harris, *Could the Crown Credibly Commit to Respect Its Charters? England 1558–1640*, in QUESTIONING CREDIBLE COMMITMENT: PERSPECTIVES ON THE RISE OF FINANCIAL CAPITALISM 24, 40–41 (D'Maris Coffman, Adrian Leonard & Larry Neal eds., 2013).

<sup>5</sup> See *id.*

<sup>6</sup> *Id.*; see also Tsilly Dagan, *The Future of Corporate Residency* (Bar Ilan Univ. Fac. L., Research Paper No. 18-14, 2017).

<sup>7</sup> Reuven S. Avi-Yonah, *Globalization, Tax Competition, and the Fiscal Crisis of the Welfare State*, 113 HARV. L. REV. 1573, 1581 (2000); Tsilly Dagan, *The Costs of International Tax Cooperation* 18 (Univ. of Mich. Pub. L. & Legal Theory, Research Paper No. 02-13, 2002).

<sup>8</sup> *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 706 (2014).

In other words, the creation of a corporation is a means to an end. The end, according to Justice Alito, is to provide protection for “human beings”<sup>9</sup> and help them achieve their goals. Corporations are not created to allow people to commit misconduct and avoid certain responsibilities. Per Justice Alito’s opinion, corporations should protect the shareholders, officers, and employees of the corporation.<sup>10</sup> A close reading reveals that even he argues that Congress’ intention with corporate fiction is to protect people, but it was only his choice to limit it to those specific groups. Yet, we argue that we cannot and should not ignore the fact that the law, specifically the theory of “Corporate Social Responsibility,” is an evolving creature.<sup>11</sup> Even the biggest and most aggressive (for-profit) corporations nowadays are engaged in some form or manner of CSR.

Nonetheless, most scholars who support the expansion of CSR view this solely through the domestic lens of the corporation’s activity. In this paper, we would argue that it is time to take this notion a step forward. In our view, MNCs should acknowledge their impact and social responsibility goes far beyond the jurisdictions in which they incorporate or locate their HQ, where they operate, sell, or render their products or services, so we propose a new global CSR framework in the tax context.

To support this argument, one needs to look at the Standard & Poor’s (“S&P”) 500 list.<sup>12</sup> An analysis of the list shows that 29% of the revenue of the S&P corporations comes from foreign markets,<sup>13</sup> but revenue is not the only relevant factor. Since it is safe to assume that most, if not all, S&P 500 corporations have some international presence and exposure to foreign markets and jurisdictions, there are likely many other ways to demonstrate an MNC’s entanglement with a foreign market. Now that the norm is to

---

<sup>9</sup> *Id.* It is also worth noting that Justice Alito specifically used “human beings” and not just “person,” since there is a significant difference between those terms in tax law, as “person” does not necessarily mean a human being.

<sup>10</sup> *Id.*

<sup>11</sup> See Reuven S. Avi-Yonah, *The Cyclical Transformations of the Corporate Form: A Historical Perspective on Corporate Social Responsibility*, 30 DEL. J. CORP. L. 767 (2005). For a comprehensive review of the Corporate Social Responsibility evolution and debate, see also C.A. Harwell Wells, *The Cycles of Corporate Social Responsibility: An Historical Retrospective for the Twenty-First Century*, 51 KAN. L. REV. 261 (1992); Doron Narotzki, *Corporate Social Responsibility and Taxation: The Next Step of the Evolution*, 16 HOUS. BUS. & TAX L.J. 167 (2016); Cynthia A. Williams, *Corporate Social Responsibility in an Era of Economic Globalization*, 35 U.C. DAVIS L. REV. 705 (2002).

<sup>12</sup> *S&P 500 Overview*, S&P DOW JONES INDICES, <https://www.spglobal.com/spdji/en/indices/equity/sp-500/#overview> [https://perma.cc/7ZVP-3KVF]. The S&P 500 is often viewed as the best single measurement for the U.S. equity market and includes 500 companies that resides in the United States and captures about 82% of the total U.S. equity market value.

<sup>13</sup> S&P Glob., *Daily Update: February 6, 2023*, S&P GLOB. (Feb. 6, 2023), <https://www.spglobal.com/en/research-insights/articles/daily-update-february-6-2023> [https://perma.cc/6EDF-AGUR].

expect corporations to engage in CSR, there is no real reason to limit it only to the jurisdiction in which the entity was incorporated/registered or the entity's stock is listed. However, a brief overview of the historical evolution of the CSR theory is first required in order to better understand the argument of this paper.

## II. A BRIEF HISTORY OF THE CORPORATE SOCIAL RESPONSIBILITY THEORY

CSR, which is typically described as “corporate conscience,” is often, in practice, an act taken by corporations to embrace certain self-regulation standards that the corporations are not forced to adopt.<sup>14</sup> Typically, these activities do not generate any immediate economic gain to the corporation.<sup>15</sup> The corporation fiction has changed dramatically since it was first established by Roman law, and over time, three major theories of the character of the corporation have emerged.<sup>16</sup> First was the “aggregate theory” that sees the corporation as an aggregate of its shareholders.<sup>17</sup> Second was the “artificial entity theory,” which sees the corporation as a creature of the state.<sup>18</sup> The third theory is the “real entity theory,” which sees the corporation as a distinct and separate entity managed and controlled by its senior executives.<sup>19</sup> Of those theories, with regard to MNCs, it seems clear that the third theory applies more than the other two, and as a result, an MNC's responsibility to its own shareholders has become softer, enabling MNCs to consider other aspects and stakeholders.<sup>20</sup>

The academic literature on CSR is mainly a product of the previous century, but the notion of CSR has been around for a long time. There is

---

<sup>14</sup> Michael Fontaine, *Corporate Social Responsibility and Sustainability: The New Bottom Line?*, 4 INT'L J. BUS. & SOC. SCI. 110 (2013); see also Donna J. Wood, *Corporate Social Performance Revisited*, 16 ACAD. MGMT. REV. 691, 694 (1991); Narotzki, *supra* note 2, at 176.

<sup>15</sup> Abigail McWilliams & Donald Siegel, *Corporate Social Responsibility and Financial Performance: Correlation or Misspecification?*, 21 STRATEGIC MGMT. J. 603, 603–05 (2000) (asserting that it is reasonable to assume that adopting CSR elements may end up, indirectly, producing some economic gain for the company that adopted such regulations, often due to positive public opinion, increased customer happiness, etc. However, extensive research done by Abigail McWilliams and Donald Siegel shows that CSR has a neutral impact on a corporation's financial outcomes.).

<sup>16</sup> Reuven S. Avi-Yonah, *Corporate Social Responsibility and Strategic Tax Behavior* 7 (Univ. Mich. Pub. L., Working Paper No. 69, 2006).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 2; see also Avi-Yonah, *supra* note 11, at 771.

<sup>20</sup> John M. Conley & Cynthia A. Williams, *The Corporate Social Responsibility Movement as an Ethnographic Problem* 1–2 (Univ. N.C. Legal Stud., Working Paper No. 1285631, 2008).

evidence of business entities' interests in the well-being of society, even centuries ago.<sup>21</sup> Nonetheless, until the 1950s, CSR was often described only as "social responsibility."<sup>22</sup> This is most likely because corporations were not as impactful as nowadays and had far less influence on the public.<sup>23</sup>

Beginning in the 1950s but gaining much more momentum during the 1960s, academic researchers increased efforts to clearly define CSR. One of the leading scholars on CSR during that era was Keith Davis, who said that "businessmen's decisions and actions are taken for reasons at least partially beyond the firm's direct economic or technical interest."<sup>24</sup> Davis even stated that, although social responsibility was an ambiguous concept, and it certainly was at that time, one should view it from a broad managerial perspective,<sup>25</sup> and his view became generally accepted during the following decades. Davis was able to anticipate the future when he argued that "social responsibilities of businessmen need to be commensurate with their social power"<sup>26</sup> and further argued that when social responsibility and power are evenly balanced, then "the avoidance of social responsibility leads to gradual erosion of social power."<sup>27</sup>

Joseph M. McGuire would later explain that "the corporation must take an interest in politics, in the welfare of the community, in education, in the 'happiness of its employees, and in the whole social world about it."<sup>28</sup> In 1967, Keith Davis added to the CSR theory the notion that "the substance of social responsibility arises from concern for the ethical consequences of one's acts as they might affect the interests of others."<sup>29</sup>

In 1971, the Committee for Economic Development (CED) published "Social Responsibilities of Business Corporations." This was a big step forward in the CSR theory because this was when social responsibility was clearly referring to the corporation and not the corporation's shareholders.<sup>30</sup>

---

<sup>21</sup> Archie B. Carroll, *Corporate Social Responsibility: Evolution of a Definitional Construct*, 38 BUS. & SOC'Y 268, 268 (1999).

<sup>22</sup> *Id.* at 269.

<sup>23</sup> See generally PETER G. BOWEN, JEAN-PASCAL GOND & HOWARD R. BOWEN, SOCIAL RESPONSIBILITIES OF THE BUSINESSMAN (1st ed. 2013).

<sup>24</sup> Keith Davis, *Can Business Afford to Ignore Social Responsibilities?*, 2 CAL. MGMT. REV. 70, 70 (1960).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 71.

<sup>27</sup> *Id.* at 73.

<sup>28</sup> *Id.*

<sup>29</sup> Keith Davis, *Understanding the Social Responsibility Puzzle: What Does the Businessman Owe to Society?*, 10 BUS. HORIZONS 45, 46 (1967).

<sup>30</sup> It should also be noted that the CED was composed of businesspeople and scholars and, therefore, reflects an important view, coming from both sides of the table. See RSCH. & POL'Y COMM., COMM. FOR ECON. DEV., SOCIAL RESPONSIBILITIES OF BUSINESS CORPORATIONS 6 (1971). Also, it is still important to remember the time and environment that the CED operated in (the late 1960s and early 1970s) was a time when social movements were at their peak with regard to the environment, worker safety, consumers, and employee rights.

The CED acknowledged in its paper that “business functions by public consent and its basic purpose is to serve constructively the needs of society—to the satisfaction of society.”<sup>31</sup> The CED also added that:

Business is being asked to assume broader responsibilities to society than ever before and to serve a wider range of human values. Business enterprises, in effect, are being asked to contribute more to the quality of American life than just supplying quantities of goods and services. In as much as business exists to serve society, its future will depend on the quality of management’s response to the changing expectations of the public.<sup>32</sup>

From this point on, the focus was no longer on “Social Responsibility” but on “Corporate Social Responsibility,” of course, while still maintaining the corporation focus on being profitable.<sup>33</sup> In 1972, Henry G. Manne took this theory another step forward when he argued that a business expenditure or activity must be one for which the marginal returns to the corporation are less than the returns available from some alternative expenditure.<sup>34</sup> In 1975, Jules Backman added to the definition of CSR by clearly recognizing what should be viewed as CSR activity, including employment of minority groups, reduction in pollution, and greater participation in programs to improve the community, including healthcare and safety.<sup>35</sup>

To summarize, in the past five decades, CSR has made meaningful progress. CSR has evolved from a very simplistic concept to a clear list and ideas of socially responsible activities that we, as a society, expect from corporations. We believe that one of the main reasons for this transition is the creation of the MNC, which turned corporations into a much more powerful and impactful force in the global economy. In 1983, Archie B. Carroll supported this idea by furthering the definition of CSR by explaining that CSR can be viewed as a corporate voluntary activity that promotes the economic, legal framework, ethics, and philanthropy in the jurisdiction in which it operates.<sup>36</sup>

---

<sup>31</sup> *Id.* at 11.

<sup>32</sup> *Id.* at 16.

<sup>33</sup> Rob Fenn, *Benefits of Corporate Social Responsibility*, SUSTAINABLE BUS. TOOLKIT (Jan. 5, 2015), <http://www.sustainablebusinesstoolkit.com/benefits-of-corporate-social-responsibility/> [<https://perma.cc/9X6A-NR9Y>].

<sup>34</sup> Carroll, *supra* note 21, at 276 (summarizing the argument of Professor Henry G. Manne in a 1972 debate against Professor Henry C. Wallich); Henry G. Manne, *First Lecture*, in *THE MODERN CORPORATION AND SOCIAL RESPONSIBILITY* 1, 4–6 (1972).

<sup>35</sup> JULES BACKMAN, *N.Y.U. COLL. OF BUS. & PUB. ADMIN., SOCIAL RESPONSIBILITY AND ACCOUNTABILITY* 13 (Jules Backman, ed., 1975).

<sup>36</sup> Archie B. Carroll, *Corporate Social Responsibility: Will Industry Respond to Cutbacks in Social Program Funding?*, *VITAL SPEECHES DAY*, 604 (1983).

Additionally, the EU Commission's definition of CSR is based on the definitions mentioned:

By stating their social responsibility and voluntarily taking on commitments which go beyond common regulatory and conventional requirements, which they would have to respect in any case, companies endeavor to raise the standards of social development, environmental protection, and respect of fundamental rights and embrace an open governance, reconciling interests of various stakeholders in an overall approach of quality and sustainability.<sup>37</sup>

Hence, the evolution of CSR has led to the notion that CSR is a kind action conducted by the corporation's strategic management, which goes beyond legal constraints and sees CSR as an approach for the relations between a corporation and its stakeholders.

### III. CORPORATE SOCIAL RESPONSIBILITY AND TAXATION (CSRT)

As we previously indicated, CSR started as a self-regulation business model that assisted corporations and their executives in becoming more socially accountable to the corporations' stakeholders and the communities in which they operate. This self-regulation business model acknowledges the responsibilities corporations and their executives have regarding many aspects of society, such as economic and social responsibilities.<sup>38</sup> Since the state's ability to subsidize social welfare is closely connected to the state's revenues and tax revenues, it logically follows that one of the responsibilities a corporation has to society is to pay its fair share of taxes.<sup>39</sup>

Accordingly, while several decades ago, executives were expected to engage in strategic tax behavior that would reduce corporate tax payments, over the past two decades, it has become apparent that such aggressive tax behavior is undesirable and may indeed undermine the abilities of states to maintain their welfare services.<sup>40</sup> As Professor Avi-Yonah concluded, strategic tax behavior that attempts to reduce corporate effective tax payments cannot be justified under any of the views of the corporation (artificial entity view, real view, or aggregate view):

Thus, strategic tax behavior seems to be inconsistent with any view of the corporation. Under the artificial entity view,

---

<sup>37</sup> *Promoting a European Framework for Corporate Social Responsibility*, at 4, COM Green Paper Doc. 01/9 final (July 18, 2001).

<sup>38</sup> Fontaine, *supra* note 14, at 110-11.

<sup>39</sup> Reuven S. Avi-Yonah, *Corporate Social Responsibility and Strategic Tax Behavior*, in *TAX AND CORPORATE GOVERNANCE* 183, 191 (Wolfgang Schön ed. 2008).

<sup>40</sup> See generally Avi-Yonah, *supra* note 7, at 1573.



it undermines the constitutive relationship between the corporation and the state. Under the real view, it runs contrary to the normal obligation of citizens to comply with the law even in the absence of effective enforcement. And under the aggregate view, it is different from other forms of shareholder profit maximization in that it weakens the ability of the state to carry out those functions that the corporation is barred from pursuing. It would thus seem that whatever view management takes of its relationship to the shareholders, to society and to the state, it is never justified in pursuing tax strategies that have as their only goal minimizing the corporation's tax payments to the government.<sup>41</sup>

Nonetheless, leading executives and corporations have been actively involved in abusive tax shelters which enabled them to dodge paying corporate income taxes.<sup>42</sup> The collapse and bankruptcy of Enron in 2001 is possibly one of the best examples of how executives believe they are expected to operate.<sup>43</sup> In investigating Enron's collapse, Congress discovered abusive tax practices, which included the formation of 3,500 domestic and offshore entities (441 in the Cayman Islands alone) and dozens of abusive tax shelters that enabled it to dodge paying corporate income taxes.<sup>44</sup> This is despite the fact that it continued generating tax losses even when it became clear that the company's economic shape was in trouble and even though it was unclear as to what extent such losses can be used in future years.<sup>45</sup>

Less than a decade ago, Gabriel Zucman found that approximately 55% of the foreign profits of U.S. corporations were located outside the United States in an attempt to reduce their effective corporate tax rates.<sup>46</sup> At the same

---

<sup>41</sup> See generally Reuven S. Avi-Yonah, *Taxation, Corporate Social Responsibility, and the Business Enterprise*, (Compar. Rsch. L. & Pol. Econ., Research Paper 19/2009, 2009).

<sup>42</sup> *Id.* at 13.

<sup>43</sup> Michael Peregrine & Charles Elson, *Twenty Years Later: The Lasting Lessons of Enron*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Apr. 5, 2021), <https://corpgov.law.harvard.edu/2021/04/05/twenty-years-later-the-lasting-lessons-of-enron/> [<https://perma.cc/Z9FR-JD85>].

<sup>44</sup> April Witt & Peter Behr, *Enron's Other Strategy: Taxes*, WASH. POST (May 22, 2002), <https://www.washingtonpost.com/archive/politics/2002/05/22/enrons-other-strategy-taxes/9d96c5be-932d-4026-88e4-48847f608afb/> [<https://perma.cc/EL3P-WA57>].

<sup>45</sup> *Id.*

<sup>46</sup> See generally Gabriel Zucman, *THE HIDDEN WEALTH OF NATIONS: THE SCOURGE OF TAX HAVENS* (2015); see also Ludvig Wier & Gabriel Zucman, *Global Shift in Profit Shifting, 1975–2019*, 1–14 (United Nations Univ. World Inst. for Dev. Econ. Rsch., Working Paper No. 121, 2022).

time, the Tax Justice Network<sup>47</sup> estimated that about a quarter of U.S. corporations' profits have been moved into jurisdictions where those corporations do not have any real economic activity, and this behaviour has led to an annual income tax revenue "saving" of approximately \$130 billion.<sup>48</sup>

One important milestone in advancing Corporate Social Responsibility and Taxation (CSRT) is the ratification of the multilateral instrument that characterized double non-taxation as an abusive and undesirable practice. Another important milestone was changing the self-regulation business model from a voluntary basis to a more mandatory basis. This multilateral effort was orchestrated through the OECD member states, heads of G20s, and heads of 137 states.<sup>49</sup> Through their work on this inclusive framework a recommendation was made that corporations be subject to a minimal effective corporate tax rate of 15% (Pillar Two of the BEPS Project).<sup>50</sup> However, in our view, this 15% rate alone is not enough. In an era of globalization, the time has come to develop a new conceptual framework for CSRT in the cross-border settings and for MNCs.<sup>51</sup>

#### IV. THE DEVELOPMENT OF CORPORATE SOCIAL RESPONSIBILITY IN THE ERA OF ECONOMIC GLOBALIZATION

As international trade and cross-border transactions increase, several prominent issues face MNCs and their corporate social governance responsibilities. One such issue is determining which states an MNC should be held accountable to as MNCs operate in different countries at the same time. Another issue concerns how MNCs should divide responsibilities among the relevant countries, assuming their involvement in different

---

<sup>47</sup> The Tax Justice Network is an advocacy group consisting of a coalition of researchers and activists with a shared concern about tax avoidance, tax competition, and tax havens. See Tax Just. Network, *Core Funding Prospectus 2018–2021*, TAX JUST. NETWORK, <https://www.taxjustice.net/wp-content/uploads/2018/07/TJN-Core-Funding-Prospectus.pdf> [<https://perma.cc/L9N4-Y273>].

<sup>48</sup> Chris Jones, Yama Temouri & Alex Cobham, *Tax Haven Networks and the Role of the Big 4 Accountancy Firms*, 53 J. WORLD BUS. 177, 177 (2018); Donald L. Korb, *Shelters, Schemes, and Abusive Transactions: Why Today's Thoughtful U.S. Tax Advisors Should Tell Their Clients to "Just Say No"*, in TAX AND CORP. GOVERNANCE 289 (Wolfgang Schön ed., 2008).

<sup>49</sup> Duke Express, *Cross-Border Corporate Social Responsibility and Taxation: A New Conceptual Framework in an Era of Economic Globalization*, FINREG BLOG (June 23, 2023), <https://sites.duke.edu/thefinregblog/2023/06/23/cross-border-corporate-social-responsibility-and-taxation-a-new-conceptual-framework-in-an-era-of-economic-globalization-2/> [<https://perma.cc/UTX2-2UAX>].

<sup>50</sup> *Id.*

<sup>51</sup> Mihir A. Desai & Dhammika Dharmapala, *Corporate Social Responsibility and Taxation: The Missing Link*, BSR LEADING PERSP. 4–5 (2005).

countries is uneven. Additionally, CSRT needs to consider the extent that indirect value-adding activities conducted by MNCs have an impact in the different countries in which they operate. For example, an MNC's foreign direct investment, the MNC's contributions to economic development through the transfer of technology, increasing skilled employment, and corporate tax payments all should be weighed in determining CSRT.<sup>52</sup>

As Professor Benshalom well summarized, the classical controversy in liberal theory over the international scope of distributive justice and cosmopolitan-versus-statist debate in particular, under each of such approaches the theory of relational duties, may indeed impose fair trade practices and fair conduct.<sup>53</sup> Such notions should indeed be interpreted as impacting the behavior of states as well as private parties and as such the regulatory model is more complicated as there are more players and countries. The time has come, in our view, to adopt a new global CSRT framework.<sup>54</sup>

A good example of "good" global citizenship is SpaceX Exploration Technologies Corporation (SpaceX), a private U.S. corporation. SpaceX contributed to the people of Ukraine when it offered Starlink's free internet access during the 2022 Russian invasion of Ukraine and provided direct aid (and not just monetary donations).<sup>55</sup> An MNC took a clear political stand in an armed conflict between two nations to which the MNC has no direct link to or relationship with. SpaceX technology was used to bring the world's attention to the poor living conditions of the residents of Mariupol. Another example of good cross-border citizenship for governments (even though the warring countries have no diplomatic ties) is the decision of the state of Israel to provide emergency aid to enemy state Syria in the wake of a massive

---

<sup>52</sup> See generally Alan Muller & Ans Kolk, *Responsible Tax as Corporate Social Responsibility: The Case of Multinational Enterprises and Effective Tax in India*, 54 Bus. & Soc'y (2012).

<sup>53</sup> Ilan Benshalom, *The New Poor At Our Gates: Global Justice Implications for International Trade and Tax Law* 42–44 (Nw. Univ. Sch. of L. Scholarly Commons, Faculty Working Paper No. 172, 2009) ("The conflict between liberal cosmopolitanism, which stresses the importance of global redistribution across-borders, and state-centered liberalism, which argues that wealth redistribution should be limited to the politically accountable unit of the nation-state, is decades old.").

<sup>54</sup> Michael J. Graetz, *Taxing International Income: Inadequate Principles, Outdated Concepts, and Unsatisfactory Policies*, 54 TAX L. REV. 261, 277; Nancy H. Kaufman, *Fairness and the Taxation of International Income*, 29 L. & POL'Y INT'L BUS. 145, 156 (1998); see generally Daniel N. Shaviro, *Why Worldwide Welfare as a Normative Standard in U.S. Tax Policy?*, 60 TAX L. REV. 1 (2007).

<sup>55</sup> Michael Sheetz, *Elon Musk's SpaceX Sent Thousands of Starlink Satellite Internet Dishes to Ukraine, Company's President Says*, CNBC (Mar. 22, 2022), <https://www.cnn.com/2022/03/22/elon-musk-spacex-thousands-of-starlink-satellite-dishes-sent-to-ukraine.html> [https://perma.cc/C228-9PUV].

earthquake. The emergency aid included medical equipment and access to Israeli hospitals.<sup>56</sup>

These two examples show how some private players and governments already understand that they have a social responsibility that goes far beyond the place they live in and their people. However, should this understanding remain completely voluntarily? We believe that some elements of this social responsibility should be voluntary. However, one element of this social responsibility (the way taxes should be paid and be borne) cannot stay voluntary, and nations have already realized it.

Another example that can possibly illustrate the necessity to develop a novel conceptual CSRT framework in the global setting is Twitter. Twitter is an online social networking service, which was incorporated in the state of Delaware in 2007.<sup>57</sup> Currently, Twitter is a U.S. private corporation with an office in the United States and twenty-five (25) other offices around the world. Twitter is considered to be one of the smallest social networks as of 2022. However, as of December 2022, Twitter has approximately 368 million monthly active users worldwide.<sup>58</sup> Therefore, Twitter impacts all those people's lives (and indirectly, many more) one way or another. Should Twitter have any responsibility for those people? According to Justice Alito, it may very well have a duty to these individuals. Let's go back to his words in *Burwell v. Hobby Lobby Stores*, "[T]he purpose of this fiction is to provide protection for human beings. A corporation is simply a form of organization used by human beings to achieve a desired ends."<sup>59</sup>

Taking Justice Alito's words and considering the historical and recent development of CSR,<sup>60</sup> corporations should not simply ignore various stakeholders with whom they interact (whether these stakeholders are shareholders, investors, employees, or perhaps most importantly, consumers). Corporations should promote CSR in response to a variety of social and economic pressures. In doing so, corporations are advancing their own future and eventually increase their long-term sustainability, which of course aligns with the corporation's traditional goal to be profitable. For example, SpaceX is owned by Elon Musk, but so is Twitter. Twitter needs free speech in order to survive as a social network service. When Elon Musk

---

<sup>56</sup> *Earthquakes in Turkey and Syria: Race to Rescue Survivors*, WALL ST. J., <https://www.wsj.com/livecoverage/turkeyearthquake/card/israel-to-send-aid-to-syria-even-as-countries-remain-at-war-vLlyVhh7zKljUstmi5XH> [https://perma.cc/8WKY-QV5J].

<sup>57</sup> Twitter, Inc., Registration Statement (Form S-1) (Oct. 3, 2013).

<sup>58</sup> eMarketer & Insider Intel., *Number of Twitter Users Worldwide from 2019 to 2024 (in Millions)* STATISTA, <https://www.statista.com/statistics/303681/twitter-users-worldwide/> [https://perma.cc/X78X-QQRQ].

<sup>59</sup> *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 706 (2014). See Waldron, *supra* note 1.

<sup>60</sup> *Promoting a European Framework for Corporate Social Responsibility*, *supra* note 37.

assists, through SpaceX, the Ukrainian people, he fights against Russian dictatorship and censorship and eventually, helps his own business.

## V. CONCLUSION

It has become clear that corporations should be responsible to pay their fair share of taxes and that previous aggressive tax planning practices should be viewed as abusive, illegitimate, and undesirable. It is also clear that in the global setting, a majority of tax economists today believe that in most instances income does not have a single country that it can be attributed. This is because an MNC's income has its origins in many countries and as such, they owe increasing responsibilities to the countries in which they operate and responsible for the generation of the MNC's profits.

We propose adopting a novel CSRT framework that would determine the appropriate level of contribution that MNCs should make among the relevant countries in which they operate and where their profits/revenues originate. This suggested framework would require a minimal effective corporate tax rate (globally) that would also divide MNCs tax payments among the relevant countries. This proposal encompasses the following actions taken:

### A. *Minimal Effective Global Corporate Tax Rate of 15%*

This is in line with Pillar Two of the BEPS project and may indeed support the countries' ability to subsidize welfare systems.<sup>61</sup> Pillar Two of the OECD BEPS project received support from approximately 134 countries that agreed to introduce a new idea in order to better address the challenges countries face with battling tax avoidance and the rise of powerful MNCs that keep finding ways to minimize their tax liability to levels we have never seen before. Pillar Two, as this initiative is referred to, introduced a global minimum effective corporate tax rate of 15% for MNCs with a combined revenue over 750M euros on income generated in low-tax jurisdictions.<sup>62</sup> Our proposal, however, wishes to reduce this ceiling and not to apply it in the first three/five years of the MNCs operations to allow it to penetrate to such country.

Pillar Two marks the first time such a large number of countries agree that MNCs have a responsibility to pay a minimum rate of corporate tax if

---

<sup>61</sup> *Further Progress on Two-Pillar Solution: OECD Releases Consultation Document on the Withdrawal of Digital Service Taxes and Other Relevant Similar Measures Under Pillar One and an Implementation Package for Pillar Two*, OECD (Dec. 22, 2022), <https://www.oecd.org/tax/beps/further-progress-on-two-pillar-solution-oecd-releases-consultation-document-on-the-withdrawal-of-digital-service-taxes-and-other-relevant-similar-measures-under-pillar-one-and-an-implementation-package-for-pillar-two.htm#:~:text=Under%20Pillar%20Two%2C%20the%20Inclusive,at%20an%20effective%20rate%20of> [https://perma.cc/55LT-QDLH].

<sup>62</sup> *Id.*

they meet the profitability threshold. This initiative is interesting on several levels, however, regarding CSR, it seems like nations have acknowledged for the first time the global responsibility of MNCs and the need to cooperate in order to meet the challenges of the corporate world in the twenty-first century. The implementation of Pillar Two would align with the premise that corporations have a social responsibility to pay their fair share in taxes and help society by carrying the economic burden like the rest of us. One of the biggest challenges is the fact that technology-based corporations can now locate their headquarters and employees anywhere they like while at least technically still having a digital footprint in every country in the world. We propose that the minimal corporate rate would be determined country by country separately and not on average among all countries.<sup>63</sup>

### *B. MNCs Must Participate in a Full Transparent Disclosure Regime*

MNCs must be registered in each country where they operate (directly or indirectly) and in each country that has a minimal annual turnover. Corporations must file in each of these countries a full report of their global activity and profits. It seems that applying a full disclosure regime is in line with the exchange of information changes that have been adopted with the leadership of the United States in promoting Foreign Account Tax Compliance Act (FATCA) and the Multilateral Convention MLI.<sup>64</sup>

### *C. Adoption of a Novel Framework for Allocating Taxing Rights Among the Relevant Taxing Jurisdictions and Replacing the Current Transfer Pricing Regime*

We propose the adoption of a novel taxing rights allocation methodology that would allocate taxing rights among the relevant taxing jurisdictions that participate in the MNC's income generating process (including countries whose residents purchase goods or services above an agreed upon threshold). This new methodology should take into account the economic contribution of the MNCs in these taxing jurisdictions' economies. We also wish to remind that the international tax regime is, in many aspects, a zero-sum game as one country's gain is possibly the other's loss and as such, tax allocational formulas may refer not only to the actual added value that each relevant jurisdiction contributes, but can also consider external considerations such as

---

<sup>63</sup> Chris William Sanchirico, *Should a Global Minimum Tax Be Country-by-Country?* 549 (Univ. of Penn., Inst. for L. & Econ., Pol'y, Research Paper No. 22-24, 2022).

<sup>64</sup> *Multilateral Convention to Implement Tax Treaty Related to Measures to Prevent BEPS*, OECD, <https://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-beps.htm> [<https://perma.cc/UN5S-DVB6>].

such jurisdictions infrastructure, poverty, macro-economic conditions, and more.

In this context, it is proposed to consider the amount of the MNC's investment (which to some extent reflects the risk applied to the investors) and the value-adding activities these MNCs have in the relevant taxing jurisdictions (for example, MNCs foreign direct investment in infrastructure, their contributions to these taxing jurisdictions' economic development through transfer of technology, increasing skilled employment, and corporate tax payments).

We wish to clarify that the previous factors are not a closed list of considerations. Other considerations can be weighed whose common denominator is the degree of contribution that an MNC's investment has in the development and prosperity of the economies in which they operate and profit from. These factors should be objective and predetermined.<sup>65</sup>

---

<sup>65</sup> See Doron Narotzki & Tamir Shanan, *Corporate Income Tax: We Tried the Stick, How About the Carrot?*, 12 MICH. BUS. & ENTREPRENEURIAL L. REV. (forthcoming Fall. 2023).

