This article advances the argument that market participants, increasingly concerned about the sustainability of the social benefits and opportunities derived from the state, are interested in how companies contribute to society via taxation. The article advocates that companies should disclose their tax returns for each jurisdiction in which they operate, in order to give market participants a tool to better understand a company’s comprehensive economic contribution to society. It then investigates how more diffuse measurements based on externality assessment could be used to “score” a company’s contribution to society, and how such scoring could affect both the markets and tax policy. The article concludes by reiterating aspirations for tax transparency, and by advocating for a new state-business tax paradigm in order to ensure the continued viability of the state as a provider of social goods.

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When company shares first began to be widely held and exchanged, two models of financial market regulation emerged. The English model favoured transparency and disclosure, rather than intervention by the state, holding paramount the right of investors to make informed decisions.\(^1\) By contrast, the American model was not overly concerned with informational aspects and instead preferred to reserve the state's right to intervene in projects and proposals that were deemed to be unworthy of the public's money.\(^2\) As the markets evolved, the English disclosure model and the investor's right to make financial

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2. *Ibid* at 199–201. Note that the American model is sometimes referred to as “blue sky” legislation, the name stemming from the unconfirmed anecdote that fraudsters would try to sell parcels of the sky in fee simple to unsophisticated investors. See Richard I Alvarez & Mark J Astarita, *Introduction to the Blue Sky Laws*, online: SEC Law.com <www.seclaw.com/bluesky.htm>. Note, however, that some authors now contest the solely fraud-based impetus for blue sky legislation. See e.g. Jonathan R Macey & Geoffrey P Miller, “Origin of the Blue Sky Laws” (1991) 70:2 Tex L Rev 347 (arguing that small banks and their regulators were the main forces behind blue sky laws); Paul G Mahoney, “The Origins of the Blue-Sky Laws: A Test of Competing Hypotheses” (2003) 46 JL & Econ 229 (arguing that blue sky laws arose due to broad-based political movements, and that lobbying by small banks, in particular, had the most influence on the degree of merit-based review in such laws).
decisions based on comprehensive information came to be preferred over the paternalistic right of the state to intervene.\(^3\)

The evolution of financial market disclosure rules gradually evolved to encompass the requirements that are present in today’s Securities and Exchange Commission (SEC) Form 10–K and the System for Electronic Document Analysis and Retrieval Annual Information Form, the benchmark information disclosure mechanisms imposed on publicly traded companies in the United States and Canada respectively.\(^4\) Market catastrophes—including the South Sea Bubble,\(^5\) the Enron debacle,\(^6\) or the 2008 recession—have been important catalysts for such change. In response to the 2008 recession, the United States Congress enacted the \textit{Dodd-Frank Act},\(^7\) which, like other post-financial crisis legislation, attempted to re-align the structure of financial markets in a way that would allow for both the prevention and real-time regulation of problems that could cause a worldwide meltdown of the financial system.

One of the most interesting facets of the \textit{Dodd-Frank Act} is the Extractive Industry Earnings Initiative (EITI), located at section 1504 of the legislation and added as a last-minute rider, which was almost certainly part of a political horse-trading deal.\(^8\) The purpose of EITI is to restrain US petroleum and mining multinationals from engaging in or facilitating corrupt practices in resource-rich, but economically poor, countries by requiring the publication of all payments made to foreign governments.\(^9\) The corollary of this disclosure requirement, as it was

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\(^3\) Today’s markets all aim to promote choice and quell information asymmetry through transparency. For a popular textbook on the subject, see Frederic S Mishkin & Stanley G Eakins, \textit{Financial Markets and Institutions}, 7th ed (Boston: Prentice Hall, 2012).

\(^4\) The earliest example of disclosure requirements that would be familiar to today’s market participants can be found in the \textit{Joint Stock Companies Act}, 1844 (UK), 7 & 8 Vict, c 111, s 4. Disclosure requirements were given teeth in \textit{Derry v Peek} (1889), 14 AC 337 at 343 HL (Eng), when directors became liable for investor losses “if a person had acted upon a belief induced by such a prospectus.” This position was subsequently codified in \textit{The Directors Liability Act}, 1890 (UK), 53 & 54 Vict, c 64, s 3(1) (director liability for losses “sustained by reason of any untrue statement in the prospectus”).


\(^9\) See US, Senate Committee on Foreign Relations, 110th Cong, \textit{The Petroleum and Poverty Paradox: Assessing US and International Community Efforts to Fight the Resource Curse} (S Prt 110-49) (Washington, DC: US Government Printing Office, 2008) (“Too often, oil money that should go to a nation’s poor ends up in the pockets of the rich, or it may be squandered on the trappings of power and massive showcase projects instead of being invested productively and equitably. In some countries, national poverty has actually increased following the discovery of oil. This “resource curse” affects us as well as producing countries. It exacerbates global poverty which can be a seedbed for terrorism, it dulls the effect of our foreign assistance, it empowers autocrats and dictators, and it can crimp world petroleum supplies by breeding instability…. This report argues that transparency in revenues, expenditure and wealth management from extractive industries is crucial to defeating
initially proposed, was that the foreign tax returns of US extractive companies would become public, thus opening up a form of disclosure that had never before been necessary in order to operate in most financial markets.

What is perhaps unique about the Dodd-Frank Act is that it requires companies to disclose data that is not necessarily indicative of their financial health. In other words, the EITI provisions suggest a shift in the needs and concerns of twenty-first century market participants—that is, members of the general public interacting with businesses as consumers or investors—who are no longer merely attuned to a company’s bottom line, but are also concerned about the social impacts resulting from a company’s behaviour. Phenomena like the benefit corporation and sustainable investment funds further support the theory that investors increasingly factor non-economic consequences into their financial decision making. On the consumer side, the prevalence of fair-trade practices and eco- and green-labelling show that today’s buyers are similarly guided by concerns that go beyond the quality and price of products, services, and goods.

Among calls for greater responsiveness to environmental or social issues, one area that has recently received much attention in the popular discourse is the question of what a given corporation provides financially to society via taxation and, by extension, the sustainability of the state as a provider of social goods. On the relationship between tax revenue and the vitality of the state, Alex and Jordan Himelfarb point to a distortion in current conversations regarding taxes in political arenas. Put simply, while proposals for government spending (e.g., on healthcare or childcare programs) inevitably involve a discussion of their cost to taxpayers, proposals for tax cuts are rarely accompanied by any articulation of the costs of such measures in terms of revenue lost by the government and social goods that the government will consequently be unable to provide. As tax-base erosion and profit shifting becomes increasingly widespread due to financial planning by corporations to minimize their tax burdens, so too does the risk that states will lack the tax revenue that is necessary to sustain their ability to respond to the resource curse. See also Susan Ariel Aaronson, “Oil and the Public Interest”, Vox (12 July 2008) online: Vox: Research-based policy analysis and commentary from leading economists (<www.voxeu.org> (“oil cravings fund and perpetuate undemocratic regimes in many energy-exporting countries.… EITI can change the behaviour of oil exporters without conditionality or force. It empowers reformist interests in resource-rich countries and effectively acts as an incentive for oil company executives and petro-state policymakers to change their behaviour”).

For the proposed regulations under the EITI legislation, see Disclosure of Payments by Resource Extraction Issuers, 77 Fed Reg 56365 (2013). The American Petroleum Institute has headed an intense lobbying campaign against the EITI provisions, which has ultimately resulted in the DC District Court vacating the regulations that would have required the full and public disclosure of foreign tax returns. See American Petroleum Institute v Securities and Exchange Commission and Oxfam America, 953 F Supp (2d) 5 (DC Cir 2013).


Most retail banks and retirement plans now offer “green”, “social”, or “sustainable” investment options. For further information, see US SIF, The Forum for Sustainable and Responsible Investment, online: The Forum for Sustainable and Responsible Investment (<www.ussif.org>.

needs of their citizens, to choose to implement programs or policies, and indeed to govern effectively.\textsuperscript{14}

In recent years, the widespread protests sparked by news of Starbucks’s tax avoidance behaviour (discussed in more detail below) are a clear indication that socially conscious members of the public have made the link between tax revenue and the health and viability of the state. As the economy slows down and we embark on what Bridgewater founder Ray Dalio terms the “great deleveraging”,\textsuperscript{15} investors and consumers from a given jurisdiction are—in the context of increased financial austerity—increasingly interested in ensuring that a company is paying its “fair share” within that jurisdiction and is not merely free riding on the taxes paid by individuals. Yet the current tax disclosure requirements do not give market participants adequate information about how companies contribute to the various jurisdictions in which they operate. Remediating this informational gap created by inadequate tax disclosure would accordingly improve the ability of the market to allocate resources efficiently and as intended by consumers and investors—that is, in a way that takes into account the social contribution of a company through its tax payments, in addition to factoring in traditional concerns about financial performance.

The thesis of this article is that market participants, both investors and consumers, would be better served by knowing exactly how much a company contributes to each jurisdiction in which it carries out business, in order to provide market participants with the ability to choose to support companies whose tax contributions allow for the continuing viability of the state as a provider of social goods. This article adopts a perspective that is primarily North American, using Apple and Starbucks as case studies, two American companies with foreign subsidiaries, as examples of the kinds of tax avoidance issues that are prevalent across the Global North. This article does not aim to present a detailed model for disclosure of tax returns in any specific jurisdiction, but rather emphasizes the importance of the concept of disclosure of the amount of taxes paid in each jurisdiction in which a company does business.\textsuperscript{16} The goal of this prescription for increased disclosure is to further the spirit of the now entrenched English securities model, based on transparency, in order to accommodate the changing needs of market participants, who are increasingly concerned with social impacts and sustainability. This article further posits that failure to disclose tax data will result in continued and increased reliance on information that is not based on fact, but instead on conjecture and rhetoric. This lack of transparency not only has the potential to impair businesses, investors, and consumers, but could also mark a doctrinal shift toward judging companies’ social contributions based on perceived purposes and benefits—indeed, a quasi-paternalistic analysis of businesses—which


\textsuperscript{16}Beyond the benefits of comprehensive disclosure of tax information, an advantage of widespread disclosure rules affecting many jurisdictions would be a limitation of the ability of companies unwilling to disclose their tax information to shirk disclosure rules by changing the jurisdictions in which they operate or are listed on the stock exchange.
is reminiscent of the American-style model. Furthermore, as shareholder and consumer activism play an increasingly large part in a business’s decision making and the functioning of the market writ large, it becomes all the more important to ensure that shareholders and consumers base their actions on the most accurate and up-to-date information as possible. To do otherwise leaves companies vulnerable to hype, misinformation campaigns, and misperceptions that could seriously impact their operations. Accordingly, any movement away from transparency and informed choice as the arbiter of market decisions should be treated with the utmost wariness and circumspection.

Part I of this article will argue that the taxes paid by a business to a state can serve as a proxy for a company’s economic contribution to that society, and can thus aid market participants within that society in making decisions based on social and sustainability concerns. First, a brief history of the social investing and eco-labelling movements will be used to frame the general shift in the interest of market participants toward metrics other than profits and price-points. Next, an in-depth investigation of the rhetoric of “fair share” in relation to corporate tax payments, with a case study of Starbucks’s UK tax affairs, will show the market’s more specific interest in business contributions to the state. Finally, the problem of inaccuracy and gaps in the current tax disclosure regime will be investigated, and as a solution, this article will prescribe full disclosure of a business’s tax returns for each jurisdiction in which it operates.

Part II of this article will further argue that, to better allow the market to measure a company’s comprehensive impact on the fisc, disclosure of tax data should also include the amounts of taxes withheld on wages, passive income payments, as well as remittances of Value-Added Taxes (VAT), a form of consumption tax, that the purchaser of a good pays on its purchase price and that sellers and manufacturers pay on the value that they have added to the price of the good (e.g., the Canadian Goods and Services Tax). After showing how such a proposal would be administered, this part will posit that these additional disclosure requirements could have positive ancillary effects with respect to tax policy, and will examine certain difficulties inherent in the calculation of contributions to the state via withholding tax that must be accounted for in order to ensure an accurate measure of a corporation’s contribution.

Building on the idea of evaluating a company’s comprehensive financial contribution to the states in which it operates, Part III will examine the potential impacts of tax-based social scores, and will further posit that a realignment of the “business versus state” paradigm with respect to taxation could serve as a solution to current problems relating to the erosion of the tax base and insufficient revenue collection. After briefly surveying theories regarding the assessment of taxes based on externals, both positive and negative, by Arthur Cecil Pigou,
Ronald Coase, and Richard Janda, this part will investigate the merits of using broad-based economic externalities to “score” a company’s total economic contribution to society. It will then discuss the mechanics of implementing such a score using Apple as a case study. Finally, this part will explore the potential for such scores to serve as a basis for taxation reform and to shift the current conception of taxation from one of antagonism between companies and the state, to one in which business and state fiscal objectives are aligned. Indeed, if the market’s desire for increased information on companies’ contributions to a given state results in a fairer and more equitable tax system—that is, one that promotes market activity within the state while also allowing the state to collect sufficient revenue—then such a policy change could materially benefit business interests as well.

The article concludes with aspirations not only for a new era of transparency in order to respond to market demands, but also for a rethinking of how business and state taxation interests can be aligned to account for both the new realities of a global economy and the sustainability of the state as a provider of social goods.

1. MEASURING ECONOMIC CONTRIBUTION VIA TAX DISCLOSURE

Today’s market participants, whether they are investors or consumers, do not base their decisions solely on economic factors. To the extent that these non-economic factors include an awareness of social and environmental externalities—and not merely phenomena like “noise trading”, hype or advertising, or other irrational decisions—two events in the 1970s arguably acted as a catalyst for this current state of affairs. The Save the Whales movement and the

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19 Noise trading is trading on a stock exchange that is not based on informed research but on perceived trends or hype, and without a comprehensive understanding of the underlying company. For more information, see generally Fischer Black, “Noise” (1986) 41:3 Journal of Finance 529.

1973 Oil Crisis\textsuperscript{21} pushed the idea of environmental sustainability, whether for species conservation or energy efficiency, into the minds of consumers. On the investment front, Socially Responsible Investing came of age in the 1960s, with union pension funds supporting companies that treated their workers well,\textsuperscript{22} and played an important role in directing money away from apartheid-era South Africa.\textsuperscript{23} Today, Socially Responsible Investment funds and organizations manage over three trillion dollars in the United States alone.\textsuperscript{24} Similarly, eco-labelling has evolved from factor- or industry-specific labels, like Energy Star or the Marine Stewardship Council, into multi-faceted, comprehensive sustainability scores that attempt to measure the totality of a product’s environmental and social impact, of which Walmart’s “sustainability index” is likely the most widely known example.\textsuperscript{25}

As the economy has slowed after the 2008 recession and shown only minimal signs of recovery, market participants have become increasingly interested in how the companies that they support are contributing to the states where they do business. In particular, the rhetoric of “paying your fair share,” which first emerged from the Obama 2012 presidential campaign as a swipe against Mitt Romney for paying an effective tax rate\textsuperscript{26} of less than half of the top statutory rate, has become part of the popular discourse. To rebut Obama’s fair share rhetoric, Romney offered the now familiar “full compliance” defence: “I’ve paid all the taxes required by

\textsuperscript{21} Also known as the “Arab Oil Embargo.”


\textsuperscript{23} \textit{Ibid}.

\textsuperscript{24} See US SIF, \textit{Report on Sustainable and Responsible Investing Trends in the United States 2012} at 11, online: The Forum for Sustainable and Responsible Investment <www.ussif.org/trends> (“more than one out of every nine dollars under professional management in the United States is invested according to strategies of sustainable and responsible investing (SRI). … the overall total of SRI assets is $3.74 trillion, a 22-percent increase since year-end 2009”). These investments include sustainable investment products such as pension, retirement, and managed fund offerings. The fact that investors do not universally subscribe to sustainable investment products does not diminish the argument that today’s market participants, whether investors or consumers, do not base their decisions solely on economic factors. This article argues not only that sustainable criteria are becoming a material concern for market participants, but also that metrics that can act as proxies or indicia of a company’s sustainable activities should be publicly released so as to increase choice and transparency in the marketplace.


\textsuperscript{26} An effective tax rate is a percentage reflecting the amount of tax that an individual or company has paid in a jurisdiction over the amount of net income attributable to the individual or company’s operations in that jurisdiction for a given tax year. Due to the difficulty of obtaining accurate numbers, including the complexities of determining where a taxpayer with offshore holdings has earned income, the effective tax rate is often an approximation.
The full tax compliance defence is similarly invoked by corporate managers in response to negative public sentiment when the media feature stories about global effective tax rates that approach zero. For example, when Apple was criticized in the media for going to great lengths to avoid paying millions of dollars in taxes, the company responded that it “has conducted all of its business with the highest of ethical standards, complying with applicable laws and accounting rules.”

1.1 Starbucks

Starbucks perhaps offers the most interesting case study of how market forces—here, consumer pressure—can directly shape a company’s tax policy. Like many multinationals, Starbucks uses creative tax planning and aggressive transfer pricing to greatly reduce its effective tax rate. In 2012, a special report from Reuters publicized the fact that the coffee maker’s UK operations had paid no tax in the past three years, and only a negligible amount since it began operations in that country. Consumers were shocked, and staged widespread protests claiming that the “social services being lost due to austerity measures enacted by the government were a direct result of such widespread corporate tax dodging.” Starbucks, like Apple, cites its full compliance with applicable tax laws and further argues that it has a duty to its shareholders to keep its tax rates low. But public opinion—and accordingly, the opinion of consumers—appears generally unmoved by these defences, especially in the face of growing threats to the welfare state due to new realities imposed by a stagnant economy. The result is increased pressure

27 “Transcript: ABC News’s David Muir Interviews Mitt Romney”, ABC News (29 July 2012) online: ABC News <http://abcnews.go.com>. Public pressure was such, however, that the candidate did in fact decide to pay more taxes than he was legally required to in 2011, by understating deductions to which he was entitled in order to maintain a tax rate of 14 percent in accordance with prior declarations (see Jeanne Sahadi, “Romney paid 14% effective tax rate in 2011”, CNN Money (21 September 2012) online: CNN Money <http://money.cnn.com>.)


30 See Tom Bergin, “Special Report: How Starbucks Avoids UK Taxes”, Reuters (15 October 2012) online: Reuters <uk.reuters.com> (“Accounts filed by its UK subsidiary show that since it opened in the UK in 1998 the company has racked up over 3 billion pounds ($4.8 billion) in coffee sales, and opened 735 outlets but paid only 8.6 million pounds in income taxes, largely due because the taxman disallowed some deductions”).


on businesses to pay what the market deems fair in each of the jurisdictions in which they operate; to do less would result in being marked a free rider and would effectively rescind what corporate social responsibility scholars term the corporation’s “social license to operate” in the marketplace. Starbucks seems to have understood the issue: the company has agreed to contribute an additional £20 million to the UK Treasury over the next two fiscal years as a gesture to reclaim the support of consumers and investors interested in companies serious about their responsibility to the jurisdictions in which they operate.

Prima facie, the Starbucks events show a proper and efficient functioning of the markets: participants received information, changed their behaviour, and the company changed its

Although £20 million paid out over two years may seem like a paltry amount compared to yearly net profits of $14.9 billion USD (see Starbucks Corporation, Form 10-K for the Fiscal Year Ended September 29, 2013 at 18, online: United States Securities and Exchange Commission <www.sec.gov>), it is important to note that the £20 million payment does not necessarily represent the totality of the costs stemming from Starbucks’s tax controversy. Furthermore, it is uncertain whether the payment was successful in quelling the adverse effects that flow from damaged public opinion.

Another issue raised by Starbucks’s £20 million payment is that it arguably undermines the compulsory nature of the taxation regime. In essence, Starbucks has volunteered to give a £20 million gift to the state in the hopes of repairing its image. It is unclear how the payment amount was determined. One could speculate that this is the amount that Starbucks deemed necessary to quell or reverse the reputational loss stemming from its tax avoidance, rather than an amount determined by a rigorous accounting assessment of what Starbucks should have paid if there were better base erosion mechanisms in place. In any case, the voluntary nature of the payment—inasmuch as that payment is labeled a tax—is unsettling. The proposition that taxation could operate as a gift to the state must be rejected, if for no other reason than the fact that this perspective undermines the rule of law—that is, a tax system no longer works if it is voluntary and based on beneficence. For more on the state’s right to tax and its supreme claim on income created in a jurisdiction, see Liam Murphy & Thomas Nagel, The Myth of Ownership: Taxes and Justice (Oxford: Oxford University Press, 2002). See also Senator Levin’s rebuttal to Rand Paul regarding the latter’s suggestion that the Permanent Subcommittee On Investigations should apologize to Apple: US, Offshore Profit Shifting and the U.S Tax Code – Part 2 (Apple Inc.) Before the Permanent Subcommittee on Investigations, 113th Cong (21 May 2013) at 12 [Apple Hearings] (“Apple is a great company, but no company should be able to determine how much it is going to pay in taxes, how many profits they are going to keep offshore, how they are going to bring them back home, using all kinds of gimmicks to avoid paying the taxes that should be paid to this country. They make use of this country. They use our legal system. They have the right to lobby here for whatever they want to do, and they do lobby here plenty. But they do not have a right to decide in my book how many taxes they are going to pay and to whom they are going to pay them. Avoiding paying taxes in this country to me is not right. The American people know it is not right”).
policy to satisfy its stakeholders. The problem, however, is that this wave of market-participant and activist activity was largely based on a single journalistic article published by Reuters, which merely estimated what Starbucks paid. In other words, the writer could not have had access to Starbucks’s tax returns (unless such information was leaked) and likely arrived at his conclusion by reverse engineering publicly available material. The fact that this single interpretation of sparse data had such striking consequences, including widespread protests, international outcry in the media, and an eventual voluntary tax payment of millions of pounds by Starbucks, highlights the potential and problematic vulnerability of fair share rhetoric, and by extension the corporations that it targets, to sensationalism, sound bites, and speculation.

Interestingly, this information asymmetry regarding the effective tax rates that corporations pay could not be remedied merely by summoning corporate management to testify before the legislature. Indeed, the problem is arguably exacerbated when Chief Executive Officers (CEOs) like Apple’s Tim Cook can state that Apple pays a tax rate of 30.5 percent and Congress—knowing full well that this number does not reflect the full income base created in the United States due to base erosion and profit shifting measures—cannot point to any source that would undermine the substantive veracity of his remarks. As demonstrated by the growing popular frustration with “native advertising” (i.e., promoted marketing disguised as online content such as a suggested post on Facebook) and “advertorials” (i.e., promotional marketing disguised as journalism or research), it seems clear that investors and consumers do not want to be manipulated by facts based on conjecture—an ability to access reliable market data is, after all, at the heart of the English securities regulation model based on disclosure. To get market participants and governments the information necessary to make informed decisions, and accordingly to protect companies from the hijacking of discourse based on sound bites and speculation, businesses should consider releasing their tax returns, for each of the jurisdictions in which they operate, to the public. The next paragraphs will address the most common arguments against this proposal.

36 See Bergin, supra note 30.
37 Even assuming that accurate information about the extent of corporate tax avoidance were available, a further issue with respect to the rhetoric of fair share is the lack of consensus about what amount of tax would constitute a fair share. As a short-form catchphrase for demanding greater responsibility on the part of corporations to the jurisdictions in which they operate, fair share is a powerful tool, but it risks becoming an over-simplification if it is not accompanied by thoughtful discussion about how to begin to calculate it.
38 Apple Hearings, supra note 35 at 37.
41 This article calls for full disclosure of company tax returns from each jurisdiction on the assumption that this form of disclosure would maximize transparency of corporate tax behaviour. Authors including Lentner, Slemrod, and Shackelford have advocated a limited form of disclosure of corporate tax returns, however, on the basis that requiring the release of a small number of “bottom
1.2 Arguments Against Tax Disclosure

1.2.1 Tax Information Already Disclosed in Accounting Statements

Two main arguments are made against the disclosure of a company’s tax returns. The first argument against this prescription is that tax information is already adequately disclosed in publicly available financial statements. Current American accounting disclosure requirements for public companies through 10-K forms provide for the disclosure of the total amount of tax owing for all of the jurisdictions in which a company operates, as well as the amount of tax paid in cash in the previous taxation year. The total net income of the company across all jurisdictions is also disclosed, but if an effective tax rate were to be calculated based on these figures, it would not be accurate enough to provide investors with information regarding precisely how much a company actually pays to various governments in taxes. First, amounts that are considered paid according to international accounting standards (i.e., what is published in corporate disclosure forms) and amounts that are actually paid to various governments in tax are often dissimilar due to timing differences between tax and financial accounting that affect when certain revenues and expenses are recognized. In addition, the required disclosure shows a total amount of tax owing as an aggregate, but does not break down that amount into tax paid in every country in which the company operates. This aggregate reporting obfuscates the tax behaviour of multinationals in particular, and many journalistic and policy advocates are currently calling for the public release of tax returns for each country in which a corporation operates. In sum, because the current disclosure requirements result in opaqueness vis-à-vis the actual contribution of a business to the state, the only way to allow market participants access to a company’s accurate, jurisdiction-specific tax information is by requiring the publication of a business’s tax returns for each jurisdiction in which it operates.


44 For authors advocating the public disclosure of IRS schedule M-3, which breaks down taxation on a jurisdiction-by-jurisdiction base, see Daniel N Shaviro, “The Optimal Relationship Between Taxable Income and Financial Accounting Income: Analysis and a Proposal” (2009) 97 Geo LJ 423
One argument against tax transparency is that it would not radically change current investing or consumer behaviour, but this would miss the point of the prescription. This article posits that jurisdiction-specific tax information, also known as country-by-country reporting, ought to be a part of any comprehensive evaluation of a company; accordingly, to the extent that such information is unavailable, the transparency and choice that are espoused by the English disclosure model is hampered.\(^45\) Market participants need not universally use such information for it to be a valid inclusion in disclosure requirements. For example, different investment styles put greater or lesser weight on the various metrics currently offered by publicly traded companies. This article argues that such information should be part of general disclosure requirements in order to give market participants a more comprehensive understanding of a company.

1.2.2 Privacy Arguments

The second argument is with respect to privacy. The proposed country-by-country reporting would mark a major change in current financial reporting standards, which have often prized the privacy of taxpayer returns.\(^46\) But taxpayers are not a homogenous group, and such privacy concerns will accordingly have greater or lesser relevance depending on the status of the taxpayer. Generally, taxpayers can be grouped into two categories: individuals, also known as natural persons, and business entities, which are often described as juridical persons. The second category, juridical persons, can be further divided into publicly and privately held entities, and the private category even further divided into those that are closely versus widely held.\(^47\) Different arguments can apply to each of these categories, and—although this article’s prescriptions do not include the disclosure of individual tax returns—each will be discussed in turn for the sake of comprehensiveness.

Concerning individuals, the main and overwhelming argument against tax transparency is privacy. Indeed, the English tax system—on which the Canadian regime is based—has always

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\(^45\) Examples of information that market participants could potentially glean from such disclosure include possible reputational risk or reward (as evinced in the Starbucks UK tax controversy); risky tax positions that could be quelled by legislative changes (witness that proposals for retroactive legislation against corporate inversions proposed by Senator Carl Levin (see e.g. US, Bill HR 4679, Stop Corporate Inversions Act of 2014, 113th Cong, 2014)); and—to the extent that taxes paid can act as a proxy for a company’s contribution to society—a quasi sustainability index for a corporation.

\(^46\) But note that, to combat corruption, US tax returns were made public in the 1920s and 1930s. See Makoto Hasegawa et al, “The Effect of Public Disclosure on Reported Taxable Income” at 1, online: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1653948> (“The US income tax contained disclosure provisions for both corporations and individuals during the Civil War, and again in the 1920’s and 1930’s; disclosure of corporate tax information received a flurry of attention in 2003, including proposed legislation introduced into the US Congress in that year. Recently, President Obama’s 2012 Framework for Business Tax Reform calls for elements of corporate income tax disclosure”).

\(^47\) This article uses the term “widely held” not as a synonym for “public”, but rather merely to identify companies that have many investors, whether public or private. Conversely, a closely held company is one with a small number of shareholders.
been concerned with the protection of an individual's private life. The recent scandal surrounding the National Security Agency’s (NSA) spying on citizens, both in the United States and abroad, suggests that those who fear the end of privacy in general, as well as the proliferation of personal information to the public bodies and persons who have no obvious right to that information, have reason for concern. In addition to the principled argument against the disclosure of what was previously considered private information, there is also a strong argument to be made that the disclosure of individual tax returns would further entrench social barriers and would invite nuisance. As regards social barriers, it seems clear that having a person's net worth easily accessible through a public directory could potentially inhibit social mobility. In terms of a potential nuisance, such disclosure would further the brazenness of already aggressive groups that seek donations from the wealthy, and could give those who would peddle get-rich-quick schemes—whether ill-advised or illegal—another mechanism by which to target the unsophisticated or the unsuspecting. Finally, some have argued that individual tax privacy can actually increase compliance by allowing governments to use strategic publicity to inflate the perception of their enforcement capacity. Accordingly, it seems clear, for the time being, that tax transparency with respect to individuals should not be pursued.

Canadian taxation, like the English system on which it is based, divides income into four “sources”—office, employment, business, and property. This division originally meant that no government official would have a complete picture of a taxpayer's wealth. The rationale for this split stemmed from privacy concerns, perhaps brought on by early government surveillance by documents like the Domesday Book or The Great Survey of England of William the Conqueror AD MLXXXVI (Southampton: Ordnance Survey Office, 1861). See generally Neil Brooks, “The Logic, Policy, and Politics of Tax Law” in Tim Edgar, Daniel Sandler & Arthur Cockfield, eds, Materials on Canadian Income Tax, 14th ed (Toronto: Carswell, 2010) at 1.


For example, many careers are already closed to certain individuals based merely on their social and economic background. See Elizabeth Rigby, “Class Barriers Keep Poor out of Professional Careers”, Financial Times (15 November 2013) online: Financial Times <www.ft.com>.


It was the brazenness of the press and the risk of schemes that ultimately caused President Coolidge to ask Congress to end tax disclosure of individuals. See Lenter, Slemrod & Shackelford, supra note 41 at 809. See also Anna Bernasek, “Should Tax Bills Be Public Information?” (13 February 2010), The New York Times, online: The New York Times <www.nytimes.com>.
Regarding business entities, especially publicly traded ones, the case for privacy in the sense discussed above is greatly attenuated. This is not to say that no concerns about the disclosure of sensitive information exist with respect to companies. Notably, disclosure of tax returns may have the unintended effect of divulging corporations' trade secrets to their competition, which may, when implementing disclosure regimes, justify some limitations on the extent of disclosure, provided that these could be implemented in a way that did not pose a risk to the transparency of the disclosure system by allowing for abuse by companies.

The most compelling principle-based argument for public disclosure is that transparency with respect to what is paid to the state should be a necessary condition for access to the public markets as well as the consumer marketplace and financial infrastructure. Others have taken this theory of benefit derived from access to public infrastructure even further by noting that companies also draw upon more diffuse benefits like public education systems, basic amenities including clean water, and the rule of law. Should market participants choose to consider corporate contributions into a particular jurisdiction, whether their own or another jurisdiction in which the company in question does business, they ought to be able to do so. Accordingly, corporate tax privacy has not always been the norm. The United States actually required that all companies publicly disclose their tax information in the 1920s and 1930s. See Hasegawa et al, supra note 46.


Corporate tax privacy has not always been the norm. The United States actually required that all companies publicly disclose their tax information in the 1920s and 1930s. See Hasegawa et al, supra note 46.

See e.g. Lenter, Slemrod & Shackelford, supra note 41 (proposing tax return disclosure that is limited to providing “bottom line items” in order to preserve trade secrets).

See generally Murphy & Nagel, supra note 35.


The question of why a market participant would be interested in a company's activities outside of his or her jurisdiction is beyond the scope of this article. However, one can imagine a plethora of reasons that consumers and investors would not want their decisions to be limited by political borders. For example, those concerned about environmental problems would no doubt be aware that pollution is not circumscribed by national borders (see e.g. Jintai Lin et al, “China’s international trade and air pollution in the United States” (2014) 111:5 PNAS 1736). Others may want to consider human rights issues, affiliation with corrupt regimes, or offshore tax evasion when making decisions (see e.g. Dave Seglins, “SNC-Lavalin paid Gadhafi Son’s Wife as Libya Fell: Ex-VP”, CBC News (27 February 2014) online: CBC News <www.cbc.ca>; “Zambian tax cheating complaint filed at OECD” (13 April 2011) online: Tax Justice Network Blog <http://taxjustice.blogspot.ca>). Finally, perhaps with a more cynical bent, market participants may want to ensure that companies are paying the minimum tax abroad in order to maximize their bottom line (see e.g. Duhigg & Kocieniewski, supra note 28 (discussing the minimal taxes paid in Luxembourg as a result of Apple's
the disclosure of tax returns seems to be a logical extension of the English security model, which provides a sound theoretical basis for this prescription.

As discussed above, business entity taxpayers can be classified as publicly owned, privately owned and widely held, and privately owned and closely held. Assuming an a priori argument that tax transparency ought to apply to businesses across the board for the reasons mentioned in the preceding paragraph, certain exceptions to this rule should be considered. First, closely held private corporations may face the same privacy and nuisance concerns as individuals. Furthermore, the compliance costs of disclosure may dampen the environment for budding companies, especially for small business. For this reason, it seems appropriate to adopt a threshold based on consolidated net worth that a company would have to pass before the disclosure regime would apply. Widely held, privately owned business entities, however, would arguably not face the same negative effects of a required disclosure policy. Tax transparency seems like a fitting prescription when one considers that, although these widely held private businesses do not have access to the public trading markets, they do use the financial system and consumer base in a way that is almost identical to public companies. In other words, viewed from the perspective of how a corporation benefits from and uses the state, the footprint of a widely held private company will be very similar to that of a public company. Finally, in relation to public companies, the case for taxpayer transparency is not at all impeded by a privacy or nuisance argument, but rather fully embodies the benefit theory argument, and would seem to be a logical extension of the transparency that has been continually sought by the English share issuance model. The current state of non-disclosure of fiscal contributions to the state has at best a tenuous place in a system that regards the completeness and accuracy of investor information as a paragon. In the long run, a shift toward greater transparency seems inevitable.

iTunes arrangement)). Note also that, under US law, companies are required to minimize any tax paid abroad to be eligible for a foreign tax credit (see US, Department of the Treasury, Internal Revenue Service, “Instructions for Form 1118” (December 2013) at 3, online: US Internal Revenue Service <www.irs.gov> (“A corporation may not claim a foreign tax credit for foreign taxes paid to a foreign country that the corporation does not legally owe, including amounts eligible for refund by the foreign country. If the corporation does not exercise its available remedies to reduce the amount of foreign tax to what it legally owes, a credit is not allowed for the excess amount’’)). The foregoing examples show that, whether or not for sustainable ends, market participants have a vested interest in knowing the details of a company’s behaviour in foreign jurisdictions.

59 One example of a private company that would qualify as being widely held because of its many shareholders would be Publix Super Markets, which has a shareholder base numbering in the thousands, but is not publicly traded as ownership is restricted to employees and family members.

60 Conair is an example of a private, closely held company that is extremely profitable and benefits from amenities made available and regulated by the state including banks, infrastructure, and consumer markets in a manner indistinguishable from public companies. This extent of benefit from state resources would seem to justify subjecting a company like Conair to the same disclosure regime as a public company, as part of the cost of gaining access to such resources, and this despite the fact that Conair has too few shareholders to require registration by the SEC.
1.3 Conclusion

Market participants want to know if the companies that they are supporting are also contributing to their communities. Corporations should also embrace the disclosure of tax information, if only for the reason that investor and consumer activism based on the rhetoric of fair share will necessarily be based on a speculative framework, which is prone to exaggeration, should the current status quo of non-disclosure stay in place. To the extent that targets of fair share activism object to charges of immorality and point to full compliance with all regulatory regimes, those businesses should have no objection to a transparent system of disclosure governance that would allow the market to observe how the state's method for funding works in practice.

As a general rebuttal to the transparency prescription, one could posit that the costs associated with the disclosure of tax information are too great. Said differently, the argument is that aggregate efficiency will not increase if the cost of compliance with tax transparency is too high, and that the benefits of transparency accordingly have a limit. Although this article recognizes that it is possible that transparency may increase costs for some companies (and the incidence of those costs would arguably fall on market participants), a pure efficiency argument misses the more important issue of balancing the rights of those selling in the markets (i.e., companies) with those buying in the markets (i.e., market participants, both consumers and investors). Given the shift in the marketplace toward greater interest in a company's sustainability, as discussed generally at the beginning of this part and more specifically with respect to Starbucks, it seems only logical to recognize such a shift with a disclosure regime that evolves with market demands.

Using Starbucks as an exemplar, however, raises the further question of whether only household names are subject to the market scrutiny discussed above. For example, would it be possible for a base metal producer or an infrastructure group to effectively fly under the radar of marketplace-participant awareness solely by virtue of their anonymity? To answer in the affirmative would be to overlook the many instances of companies that were virtually unknown to the public becoming household names due to the perception that they had taken part in nefarious activities. Take Goldman Sachs, for example: before the 2008 recession, only sophisticated investors and very high-net-worth individuals had reason to interact with this firm. Today, the bank is popularly known as the “Vampire Squid”. CEO and Chairman Lloyd Blankfein has responded by turning his once reclusive tenure into one marked by public commentary and outreach activity. Other illustrations of the phenomenon of unknown companies being thrust into the public spotlight include Talisman and Barrick Gold. These occurrences rein-

61 Downs, for example, made this argument in the political science field with respect to the cost of information for voters. See Anthony Downs, An Economic Theory of Democracy (New York: Harper & Row, 1957) at 244–246, 266–271.


64 See e.g. Alain Denault, Delphine Abadie & William Sacher, Noir Canada : Pillage, corruption et criminalité en Afrique (Montréal : Les Éditions Écosociété, 2008). Note that this publication was subject to a SLAPP lawsuit. Although the Superior Court of Quebec ruled that Barrick’s claim was
force the argument that information stimulates reactions by market participants. Accordingly, market regulation should strive to provide its participants with the maximum amount of accurate information on companies.

2. MEASURING COMPREHENSIVE ECONOMIC CONTRIBUTIONS VIA TAX WITHHOLDING

Once the argument for tax return transparency is established, it must be understood that, even in a situation where information regarding the amount of tax that a corporation pays in a given jurisdiction is accurate and not based on conjecture, the market would still lack a complete picture of a business’s contribution to the state. The auxiliary tax contributions created directly by a business’s activities—such as the wage taxes paid by its employees; taxes paid on income from passive sources like dividends, royalties, and interest; and VAT remitted on a company’s products—are not accounted for by the mere disclosure of tax returns. Anti-tax lobbying groups frequently argue that higher taxes will mean that fewer jobs can be created.65 Some CEOs go further and make open or inferred threats that, should taxes be increased, their company will be forced to move some or all of its activity to a different jurisdiction.66 Accordingly, it would seem to follow that, if the market is interested in how a company contributes to the state, it should not only consider taxes paid directly by the business, but also factor in the tax dollars that a company creates through its activities.

To ensure a more comprehensive valuation of a company’s contribution to the state, this part will propose that the taxes withheld from wages and income from passive sources, as well as any amounts remitted to the state via a VAT, should also be disclosed. Although other up- and downstream tax dollars—tax revenue attributable indirectly to a company as it has been generated for the state by virtue of the company’s economic activities—are no doubt created by a company’s activities, this policy proposal is restricted to the above-named categories out of concern for certainty and administrative ease.

With respect to certainty, the restriction of the amounts included in the auxiliary tax contribution calculation to those that have been either withheld (i.e., on wages and passive income) or remitted (i.e., as VAT) would avoid the spectre of valuation inaccuracy or inter-abusive (see Barrick Gold Corporation v Éditions Écosociété, 2011 QCCS 4232, Beaugé J), Éditions Écosociété eventually withdrew the publication and settled out of court (see “Settlement of Barrick Gold Lawsuit Against the Authors and the Publisher of Noir Canada” (18 October 2011) online: Barrick <www.barrick.com>.


66 See e.g. the general tenor of the conversation at the end of Tim Cook’s Senate hearing, Apple Hearings, supra note 35.
pretational spin that would render the proposed disclosure meaningless. Such information inaccuracies would almost certainly occur if amounts not already “in the bank”—that is, not withheld or remitted—were reported. Concerning administrative ease, the disclosure of these amounts would not impose any additional burden on the business because they are already recorded in the company’s financial records. In sum, the proposal to disclose withheld and remitted taxes aims to balance the desire to have a comprehensive picture of the contributions made by a business to each jurisdiction in which it operates with sufficient valuation safeguards to ensure that that disclosure is not susceptible to “gaming” and does not impose difficult compliance burdens on the company.

2.1 Policy Considerations

Although limiting disclosure to amounts withheld or remitted would prevent gaming because these forms of contribution rely on accounting records that provide clear proof of the amount of disbursements, it seems fair to argue that companies could easily change their withholding behaviour in order to alter the results of their disclosure in ways that the market would reward. This article argues that such a change in behaviour, to the extent that it would increase the amount of tax dollars remitted to the state, would be a positive one and would be a perfect example of how disclosure can not only shape the decisions of investors and consumers, but can also influence the business practices of companies. Although it is possible that remittance of sales taxes could be affected, the two areas most susceptible to a change in withholding behaviour would be wages and income from passive sources, and they will both be dealt with in turn. This part concludes by examining certain difficulties inherent in the calculation of contributions to the state via withholding tax that must be accounted for in order to ensure an accurate measure of a corporation’s contribution.

2.1.1 Wages

Concerning wages, one popular tax avoidance technique involves companies shifting their workers from an employee status to that of an independent contractor.67 While the economic advantages of such a change make it an attractive option for employers, it has the potential to impose costly consequences on the state and have negative social impacts. In addition to removing withholding responsibility from employers—which has been proven to increase incidence of evasion among workers68—a company using independent contractors is no longer

67 This aggressive avoidance technique, which often borders on evasion, has become so well known that the North American revenue services are taking note and stepping up their efforts to curb this practice. See e.g. Elizabeth Milito, “IRS Vows to Intensify Enforcement of Employment Tax Evasion”, National Federation of Independent Businesses (19 February 2009) online: NFIB <www.nfib.com>; Betty Wang, “IRS Cracking Down on ‘Independent Contractors”, FindLaw (31 July 2013) online: FindLaw <http://blogs.findlaw.com>; John Thompson, “Independent Contractor Enforcement: There’s More Than The IRS To Fear”, Forbes (9 May 2013) online: Forbes <www.forbes.com>.

required to contribute to government health insurance and pension regimes, thus further impairing the state’s ability to offer adequate services. To the extent that companies begin to use the traditional employee model in lieu of the more aggressive independent-contractor model for the purposes of improving their disclosure results, this article argues that such a change in behaviour would be a positive outcome, as it would result in companies contributing financially to society to a greater degree.

2.1.2 INCOME FROM PASSIVE SOURCES

On the subject of income from passive sources, such as dividends, interest, royalties, and capital gains, the current standard of taxation is that they are not subject to withholding when issued domestically but are subject to varying levels of withholding tax—prima facie determined by tax statutes but typically lowered via tax treaties—when issued internationally. For example, the statutory US tax rate applied to non-residents receiving passive income from US sources is generally 30 percent. But that same income, when issued to a recipient in a treaty country, say Canada, is subject to a reduced withholding rate of 15 percent for dividends, 10 percent for interest and royalties, or 0 percent for most capital gains. Furthermore, in the United States, the international withholding requirements on capital gains are effectively zero across the board, for both treaty and non-treaty countries. The overall amounts withheld by way of passive income distributions paid by companies to unrelated shareholders are relatively small; accordingly, disclosure of such amounts would have little impact on the comprehensive tax picture that this article’s proposed reporting of auxiliary tax payments seeks to generate.

Assuming that the status quo continues, the auxiliary tax disclosure proposal will be virtually meaningless with respect to passive income. This would change drastically, however, if companies were required to begin withholding tax on all passive income payments, both domestic and international. In addition to the aggressive corporate evasion that is the subject of this article, there is a crisis of personal tax evasion by high-net-worth individuals. One of the leading causes of such evasion is the non-inclusion of payments from passive investments

69 IRC § 871 (1981) [Internal Revenue Code].
71 Ibid, arts 11 (“Interest”), 12 (“Royalties”).
72 Ibid, art 13(4) (“Gains”).
73 This is due to the fact that most capital gains are not considered to be “fixed or determinable, annual or periodical income,” while only certain gains with a US connection are taxed under the Internal Revenue Code, supra note 69, §§ 871(b), 864(c)(2). See Lawrence Lokken, “Income Effectively Connected with U.S. Trade or Business: A Survey and Appraisal” (2008) 86:3 Taxes 57.
in an individual’s personal income return.75 To the extent that companies are required to withhold taxes from passive income, such withholdings would not only boost the amount of auxiliary tax contributions attributed to the company—which would increase its standing in the eyes of market participants who consider a business’s comprehensive economic contribution in their investing and consumption decisions—but it would also guard against a popular means of tax evasion. Incidentally, part of the concern surrounding the digital currency Bitcoin is the inability of a payor to withhold taxes and the corresponding incapacity to monitor disclosure for income tax assessment by recipients because the currency is not subjected to Treasury regulation or oversight.76 Put differently, Bitcoin offers no way for the government to get its share of the take. Given this concern for transparency by both the marketplace and the state, a move toward withholding tax on all passive income payments would seem both prudent and beneficial.

In addition to the general policy concerns about personal evasion, there is a specific structural problem with respect to passive income payments in the form of dividends from multinationals; namely, that the current tax system gives such multinationals an artificial incentive to keep money offshore instead of returning it to investors, which accordingly stilts a business’s economic behaviour. Currently, the American tax system provides that money invested abroad in active pursuits benefits from deferral until it is repatriated, or returned to, and is counted as income earned in, the home jurisdiction.77 As a result, companies prefer to benefit from a tax break, which boosts their balance sheets and rewards them with higher trading prices for their shares, instead of repatriating earnings via dividends payments and suffering a large tax hit.78 By not dispersing profits to investors, and by extension not returning profits to their investors’ home jurisdictions,79 companies starve the local economies of their investors and thus indirectly hurt the very shareholders that they are trying to serve. If disclosure of divi-

77 In the United States, income held offshore for active business is not taxed: Internal Revenue Code, supra note 69 at § 954(h). The Canadian tax system arrives at a similar result by taxing only Canadian resident corporations—non-resident corporations are only subject to Canadian tax when they carry on business in Canada or dispose of a taxable Canadian property. See Income Tax Act, RSC 1985, c 1 (5th Supp) s 2 (read with Part I, subdivision “i” “shareholders of corporations not resident in Canada” for a greater understanding of the Canadian foreign affiliate rules). Note, however, that, unlike the US legislation, the Canadian Income Tax Act often allows active income from foreign affiliates to be patriated without tax. See the exempt surplus regime in the Canadian Income Tax Act (ibid) at s 113(1)(a).
79 The term “home jurisdiction” is expressly used in lieu of residence so as to avoid the debate about what corporate residence ought to be for tax purposes, as well as to broaden the classical definition of residence to include where a company accesses public goods. (Standard corporate residence indicia include the nominal place of incorporation or the more substantive locus of management and control; some jurisdictions use exclusively one approach, while others consider both aspects.) The question of corporate residence is arguably both at the root of many of today's
2.2 Calculating Corporate Contributions to the State: Practical Complexities

Though it is beyond the scope of the present article to delve into complex questions of designing an administrative regime for disclosure, some challenges that would need to be taken into account when implementing such a system of disclosure in practice will be briefly outlined.

One notable issue is the degree to which corporations can indeed be said to generate employment, passive income, or VAT. To focus on the question of employment, as an example, commentators have noted that employment rates tend to be governed by activity on the macroeconomic level, rather than the firm level. As a result, and contrary to the now infamous rhetoric of Rand Paul during Apple's Congressional Hearings, it is an oversimplification to say that an individual firm like Apple has created jobs: “strictly speaking if Apple were wiped from history, most of those people would still have jobs but somewhere else.” In this light, where the number of jobs created by an individual corporation may not be as meaningful an indicator of its contribution to the state as initially anticipated, the factors that remain within the control of a corporation, including what kinds of jobs a corporation creates and what value such jobs produce, and which therefore may emerge as meaningful indicators of the business activities of a corporation and its effect on society, are intangible. But even if most of Apple’s workers would have found employment elsewhere, economics professor David Autor notes that “they might not have been as well paid or gratified with their work.” In this view, the direct employment numbers of a company may be important to the assessment of its contribution to the state less in their own right and more in terms of the intangibles that underpin the Organisation for Economic Co-operation and Development’s (OECD) Base Erosion and Profit Shifting (BEPS) initiative.

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82 Joshua Gans, “What Jobs Has Apple Created?”, Digitopoly (6 June 2012) online: <www.digitopoly.org/2012/06/06/what-jobs-has-apple-created>; Nick Wingfield, “Apple’s Job Creation Data Spurs an Economic Debate”, The New York Times (4 March 2012) online: The New York Times <www.nytimes.com>. A similar argument can be made in terms of VAT: “if there were no iPad, the $500 an Apple customer would have spent on the device most likely would not have been put into savings, but rather spent on some other product or service” (ibid).

83 Worstall, supra note 81.

84 Wingfield, supra note 82.
accompanied such jobs, which are inevitably more difficult to quantify and compare, requiring policy choices about how and which jobs should be valued.

These types of policy choices are not, however, foreign to the tax system. Indeed, the present practices of taxing socially costly behaviour and providing incentives through tax credits are examples of policy considerations that are integral to the tax system and a source of potential complexity when measuring the economic contribution of companies to the state via tax. For example, with respect to the calculation of VAT, administrative mechanisms would have to ensure that additional amounts of tax paid with respect to products like cigarettes, as a result of their social cost, are not accounted for when calculating a company’s contribution to the state.

One final potential issue that would need to be accounted for is that of industry bias. Notably, giving credit to companies for amounts withheld on wages will unduly favour industries that require high employment. Similarly, in the United States, where a sales tax is used instead of a VAT, meaning that companies in the supply chain that do not deal with the final consumer do not remit any taxes, giving companies credit for amounts remitted will unduly favour companies in industries that deal directly with consumers and are therefore responsible for remitting sales tax. This potential for bias must be acknowledged and considered in order to avoid giving too much credit to companies within certain industries.85

On the other hand, to the extent that generating tax dollars for the state is viewed as a sustainable undertaking and a social good by the market, taking an absolutist position that any tax dollar generated ought to be recognized and credited—no matter what biases—is more conceptually pure. Perhaps a better argument against a system of automatic crediting of tax dollars both directly and indirectly paid is that it could largely undermine any comprehensivity function that a corporate tax ought to have.86 Although the prescription of crediting indirect tax dollars raised stems from a desire to ensure that the totality of a company’s contributions is recognized, a thorough consideration of its effects will no doubt touch on the place and legitimacy of the corporate tax. This topic, despite the interesting issues it raises, is outside of the scope of this article. For the purposes of the following discussion, this article will assume that issues concerning the comprehensivity of a corporate tax that credits indirect contributions ought to be dealt with through adjustments to the baseline.

In sum, this part posits that, if the outcome of increased tax disclosure is to understand to what degree a given company contributes to the state, then it follows that such disclosure should aspire to paint a more comprehensive picture in order to ensure that the decisions of market participants are based on information that is as complete as possible. Such a view would seem to be supported by corporate management teams insofar as they have, as proof of good corporate citizenship, held up their companies’ full compliance with the tax laws in

85 For example, one way to potentially reduce the bias against low-employment industries would be to include salaries paid, normally deducted as an expense, into the denominator of the calculation that would normally appear as (taxes paid + taxes withheld) ÷ (net profit).

86 The term comprehensivity is used here to denote the role that corporate tax plays by assessing income that would otherwise be outside the tax net if only individual shareholders were taxed. For more on the notion of comprehensiveness resulting from corporate tax, see Kim Brooks, “Learning to Live With an Imperfect Tax: A Defence of the Corporate Tax” (2003) 36:3 UBC L Rev 621 at 630–636.
the countries where they do business, in combination with the fact that they created jobs and withheld income and sales taxes from their employees and customers in countries around the world. Any changes in business behaviour to present more favourable disclosure results, notably a move away from independent contractor relationships or increased dividend remittances, would not only bring about the behaviour sought by market participants, but also have the potential to curb many longstanding tax base erosion problems.

3. MEASURING ECONOMIC CONTRIBUTION VIA EXTERNALITIES AND SCORING

If market participants desire comprehensive information about a company’s contribution to the jurisdictions in which it operates, parameters of disclosure should include easily measured outputs like money paid to the state directly (measurable via tax returns) and auxiliary contributions to the state (measurable via taxes withheld on wages and passive income and VAT remitted). But to what extent should market participants consider indirect contributions via taxes generated for the state by a business’s up- and downstream economic activities, as well as other, more intangible contributions, like marketplace confidence and prestige in their investing and consumption decisions? In popular culture, perhaps the strongest statement in favour of recognizing these harder to measure contributions was Rand Paul’s rebuke of the Congressional Senate committee after their public reprimand of Apple’s tax practices. He admonished them, claiming that instead of investigating Apple’s fiscal affairs, the government should be thanking the company and celebrating what he argued was most certainly a net contribution to the economy of the United States. This part will first briefly survey the theoretical literature on net valuation and will then discuss the application of comprehensive externality valuations to the English share issuance model. Next, the phenomenon of “social scoring” and the implementation of such a mechanism will be discussed using Apple as a case study. This part will conclude by discussing how the issuance of a social score to companies could affect the policy discussion surrounding tax reform, and will in particular compare the similarities of a tax policy based on social scoring with aspects of the recent international tax reform proposal issues raised by Senator Max Baucus (D-Montana), who retired from the Senate in February of 2014 and is currently the US Ambassador to China.

87 See “Starbucks Chief Executive Defends UK Tax Payments”, supra note 32; Schultz, supra note 32 (“Starbucks consistently adheres to the local accounting rules and tax laws everywhere we do business”); Matt Warman, “Google Pays Just £6m UK Tax”, The Telegraph (8 August 2012) online: The Telegraph <www.telegraph.co.uk> (“We comply with all the tax rules in the UK. We make a big contribution to the UK economy by employing over a thousand people, helping hundreds of thousands of businesses to grow online and investing millions supporting new tech businesses in East London”).

3.1 Theoretical Analysis

In *The Economics of Welfare*, Pigou famously argues for an assessment of business taxation based on externalities, both positive and negative—that is, in order to determine what the contribution of a company should be, one must consider the amount of dollars paid directly to the state, but also the amount of money that a company has cost or generated for the state through its operations. A classic example of the Pigouvian approach is a government that charges a company extra tax to cover the cost of pollution it created through its operations. However, Coase criticizes Pigou's theory for failing to provide a sufficiently accurate picture of a company's contribution to the state by accounting only for externalities, whether positive or negative, that can be assigned a dollar value. Coase thus argued in favour of calculating a company's contribution to the state by accounting not only for the monetary cost of externalities associated with the company's operations, but also for qualitative and intangible externalities.89 Despite the lucidity of his proposal, Coase maintained utter scepticism with regard to the feasibility of his prescription, saying that he was “unable to imagine how the data needed for such a taxation system could be assembled.”90 Data collection capacities have grown exponentially since the time of Coase's writing. Accordingly, Janda has recently posited that perhaps the comprehensive assessment regime put forward by Coase is now within our grasp, thanks to advances in economic, actuarial, and accounting science.91

Assuming we could evaluate the kinds of intangible contributions by a business to the state that Coase draws attention to, as well as the entire ambit of positive and negative externalities in the form of monetary costs and contributions to the state contemplated by a classical Pigouvian approach, what role should such numbers play in the disclosure regime contemplated by this article? It is worth noting that the English share issuance model does not typically require the disclosure of projections or interpretations of data: the information provided to prospective investors in financial statements and investment prospectuses merely outlines the assumptions, based on raw data, under which the business will operate, and then leaves prospective investors to draw their own conclusions. To the extent that evaluating intangible contributions of a company, as Coase might, would require forecasting and interpretation of a company's financial information,92 it would seem to be outside of the prescription of transparency advocated by this article.

3.2 Social Scoring

Coaseian-type valuations could, however, find broad applicability to the concept of social scoring. Social scoring, for the purposes of this article, will be defined as an attempt to rate the impact of a company or product on public goods. The score most often focuses on environmental and social benefits, such as clean water, fresh air, poverty reduction, and the mitigation

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90 Ibid at 41.
92 William D Nordhaus argues that climate change models cannot be exact, but must incorporate sufficient detail to allow scientists to make accurate predictions (see *The Climate Casino: Risk, Uncertainty, and Economics for a Warming World* (Yale University Press, 2013) at 23–35). I would argue that, similarly, the assessment of the externalities of a company's activities cannot be exact, but must be exact enough to provide an indication of the company's impact on the economy.
of social ills. Assuming that a separate category of social score was developed based on a company’s contribution to the state, or that such contributions were factors in a more general social score, then it would appear that comprehensive Coaseian-type valuations would be germane and apposite.93

There are qualifications to the usefulness of economically based social scores within the marketplace however. Without proper access to accurate base sources—that is, real data based on exactly what was being contributed to the state—social scoring based on financial figures could succumb to the same problems faced by the current rhetoric of fair share as well as the informational spin and interpretation problems within current, accounting-based tax disclosure. In other words, the score rating fiscal contribution will only be as good as the sources on which it is based, and to the extent that those sources are secondary and subject to interpretation, the score and those who would rely on it remain vulnerable to manipulation.

An additional issue is that a social score attempts to furnish the market participant with a judgment rather than mere information. In this regard, the social score diverges widely from the English share issuance model based on transparency, and instead approaches the ethos of the American model based on the state’s evaluation of the business. Although judgments from analysts, pundits, and rating agencies form an important part of the market infrastructure, participants should be wary of allowing third-party analysis like a social score to occur within the framework of officially required information.

3.3 Implementation and Apple Case Study

3.3.1 Implementation

If a fair share social score were implemented, based on a company’s total economic contribution to a jurisdiction, what would it look like? Even if we were to restrict the metric solely to revenue directed toward the fisc (i.e., to simplify the calculation by ignoring more difficult to valuate benefits like reputational gain), a more sophisticated measurement of tax revenues—one that not only measures amounts paid (i.e., what is indicated on tax returns), but also looks at how much additional tax revenue was created for the state by way of the business’s activities, both up- and downstream—seems absolutely necessary in order to truly understand a company’s fiscal contribution to the state.

Two main problems exist with the proposal: the issue of finding the appropriate baseline, and the administrative complexities of attributing tax dollars paid by taxpayers separate from the business in question. The question of attributing tax dollars that have been generated indirectly by the company in other businesses that it has dealt with up- and downstream, as well

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93 Note that some could take umbrage with the assumption that monetary contributions are a proxy for a contribution to society. The arguments against this assumption would state that some societal contributions or social goods either cannot or ought not undergo monetary valuation. As a rebuttal, this article notes that a rich state treasury is often a good indicator of what kinds of social goods a person can reap. Norway, among the richest countries in the world, is an example of this assertion (see e.g. Patrick Collinson, “The Country That’s Got it All—But Is Still Saving for Tomorrow”, The Guardian (20 May 2006) online: The Guardian <www.theguardian.com>; United Nations Development Programme, Human Development Report 2014: Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience, UNDPOR, (2014) 1 at 160).
as spin-off industries, would no doubt be complex and subject to the interpretation and informational spin concerns discussed above. In terms of allocation, it would be necessary to ensure a balance between giving the company in question credit for tax revenue generated indirectly through profits made by other businesses, on the one hand, and avoiding a “double-counting” or “evisceration” phenomenon, on the other. Double-counting problems arise where the total contribution to the state is overestimated because different companies lay a creator’s claim to the same dollar. Evisceration consists of the opposite problem, where one company is prevented from claiming that it has generated a tax dollar because another company has already claimed it as being due, indirectly, to its own business operations. Secondly, the issue of a baseline (what a business ought to be paying in tax) would no doubt be the pièce de résistance of the proposed scoring mechanism, combining complex aspects of both economic and accounting science. Defining the technical parameters of such a baseline is outside the scope of this article. Instead, the argument assumes that, from both a normative and legal perspective—that is, one based on policy concerns and spelled out in legislation—society could agree and define the amount that a company ought to be paying to the government in exchange for access to its infrastructure, markets, legal regimes, workforce, and geographical and environmental benefits.

This article’s reliance on a baseline alludes to a larger problem; namely, the possibility of a governance crisis. It is possible to argue that legislators ought already to be achieving the socially just results that this article’s prescriptions seek, merely by making alterations to the substantive tax laws. One response would be to say that global tax competition, a race to the bottom to attract multinational companies, has put legislators in a position where they are unable to act.94 Another, more realist theory, is that legislators are inherently rent-seeking and that institutional governance problems are at the root of most tax policy problems.95

With respect to possible institutional issues, this article advocates market-based solutions. If, as mentioned above, changes to the substantive tax law would be impossible to achieve, then an indirect approach of using market forces to reward beneficial behaviour would seem apposite. At their core, the tax-related prescriptions that this article advocates aim to give market participants more choice. Even if a fair share social score could not be achieved by virtue of a legislative baseline, empowering such participants through information disclosure could surreptitiously avoid the spectre of total governance failure with respect to tax legislation by giving the markets accurate information about a company’s tax practices.

3.3.2 Apple

Assuming, however, that a baseline can be established, then companies would be scored based on how they under- or over-perform in relation to that baseline. In examining how the baseline would be applied, Apple, because of its famously low effective tax rates96 and zealous advocacy

96 See Duhigg & Kocieniewski, supra note 28.
before the Congressional Finance Committee\(^\text{97}\) will provide an excellent example for a case study. For this case study, let us assume that the fair share baseline, after considering Apple’s use of the US markets—both financial and consumer—as well as the benefits it obtains from US public infrastructure, dictates that Apple should pay 15 percent of its worldwide profits to the US Treasury in the form of income tax. However, after examining its US tax return and comparing the taxes paid with its profits, let us imagine that it is shown that Apple pays only 1 percent of its income earned in the United States in US taxes. Based on this measure alone, Apple would get a failing social score.

As discussed in Part II, however, such a narrow measure of a company’s contribution to the state is not reflective of the economic reality. Let us imagine that, after including the taxes withheld on wages and passive income payments, as well as remittances of VAT, Apple reached its normative obligation of paying 15 percent to the American government. Accordingly, Apple, based on this larger view, should get a “pass” on its social score.

Despite this larger conception of how a company contributes to the state, Coase and Rand Paul would argue that this “tax plus withholding” measure still does not capture the entirety of Apple’s contribution to the state. Furthermore, to the extent that market decisions are based on this score, it should, insofar as possible, aim to reflect the totality of Apple’s contribution to the US economy. Forgetting for a moment the valuation difficulties, let us assume that this calculation accurately revealed that Apple was actually contributing over and above its normative obligation to the state. In that case, Apple would get a positive fair share score.

The premise that the market will benefit from the exercise of rating companies’ contributions to the state seems sound. What is less clear, however, is how that contribution should be valued. As seen in the preceding paragraphs, different metrics can obtain vastly different results. This article has consistently advocated for the transparency of business data relating to contributions to the state based on the proposition that today’s market participants have needs that relate not only to the financial health of the company, but also to how a company contributes to society and to the jurisdictions in which it operates. The theoretical argument underlying this transparency prescription was that such a proposal was consistent with the substantive intent of the English share issuance model, on which today’s markets are based. However, to the extent that such disclosure would require the scoring of a company, this article is much more cautious. First, insofar as the score would factor in data that is not concrete—that is, information above and beyond taxes paid by, remitted, or withheld by a company—the same problems of interpretation and calculation that are present in current accounting disclosures would arise. Second, the problem of obtaining a normative fair share base line would most certainly be contentious and subject to political rancour. Finally, we should be cautious about re-appropriating judgment mechanisms reminiscent of the American share issuance model (i.e., a model subject to a “beneficial purpose” test by the state) into our financial and market regulation regimes. Although secondary sources play a large and important role in our markets, they have always existed outside of the official disclosure regime. To the extent that such a score would limit choice in the marketplace by imposing interpretations of data, it should be adopted with utmost caution.

\(^{97}\) Apple Hearings, supra note 35.
3.4 Tax Reform Implications

Until now, this article has largely maintained a market-centric focus with regard to the consequences of increased disclosure of a company's contribution to the state. Part II examined the idea that changes in business behaviour arising from a desire to meet the expectations of the market could also have a positive impact on aggressive tax avoidance issues. In this final section, the effects that a fair share social score could have on tax policy will be discussed. Before dealing with the specifics, a brief historical overview of the income tax will be provided to contextualize the issue.

Income tax as we know it today is relatively young. Speaking broadly, the income tax effectively began as a revenue raiser for the First World War. Earlier iterations of the income tax do exist, however: the first version is credited to William Pitt the Younger, England's Prime Minister and Chancellor of the Exchequer, who introduced “certain duties on income” in 1798 to help finance the war against French forces under the command of Napoleon.\(^98\) Similarly, in North America, the US Congress enacted the Revenue Act of 1861, which was designed to help pay for the expenses related to the Civil War.\(^99\) The US Supreme Court, however, ruled that these early efforts at income taxation were effectively unconstitutional.\(^100\) Income tax was accordingly unfeasible until the sixteenth amendment to the US Constitution was enacted in 1913, which explicitly gave the US government the “power to lay and collect taxes on incomes.”\(^101\) The amendment was quickly followed by the enactment of the Revenue Act of 1913—the first modern US income tax statute.\(^102\)

Income tax became entrenched after World War II in order to create the welfare state.\(^103\) Structurally speaking, a corporate tax regime was needed to ensure that individuals did not use the corporate entity as a deferral vehicle\(^104\) and because attribution to discrete shareholders...
However, from a tax policy perspective, one of the main problems with the current corporate and international tax regime is that it was designed for a brick-and-mortar, industrial-based economy that was domestically situated. In contrast, today’s business practices are international and place an increasingly marked emphasis on intangibles like information and intellectual property. Tax scholars have been grappling with this problem for the past decade, and the most recent push for comprehensive reform was released in late November 2013 by Senator Max Baucus, which among other measures, aims to reduce aggressive avoidance by large multinationals by imposing a floor on the rate at which offshore income can be assessed.

Senator Baucus advocates two elements that are relevant to social scoring. First, he proposes a minimum tax rate on offshore income, in order to stem egregious deferral practices by which income earned by US multinationals is effectively held offshore in low- or nil-tax jurisdictions for an indefinite period. Second, he proposes an additional tax on profits earned within the US market by offshore subsidiaries of US companies, in order to properly credit the state for its role in maintaining that market.

The minimum tax rate proposal addresses aggressive avoidance practices. Currently, a large percentage of profits made by US multinationals is recorded as being earned and held offshore. That income is thus exempt from US taxation until it is brought back into the United States. As businesses search for ways to avoid subjecting their profits to the 35 percent nominal rate that would apply upon returning it to the United States, the preference for hoarding retained earnings instead of returning them to shareholders becomes entrenched. When issuing a dividend becomes necessary, companies are often able to borrow money domestically on the strength of the fact that they have valuable offshore holdings, which allows them access to cash without the tax consequences of repatriating offshore income (and further allows a company to deduct the interest of such a loan as a business expense), or they simply wait until Congressional lobbying efforts result in a repatriation tax holiday—that is, a temporary reduction or elimination of the repatriation tax.


The purpose of tax holidays is ostensibly to provide a positive stimulus to the economy. In the United States, the last repatriation tax holiday was in 2004, and despite being framed as a revenue raiser and job creator, it cost the US Treasury billions and had a negative impact on employment.
Senator Baucus’s proposal would be to eliminate the advantage created by moving money offshore for tax reasons.

The proposed additional taxes on profits made by offshore subsidiaries of US companies within the US market attempts to negate the advantage of utilizing an “iTunes” model. Currently, Apple’s iTunes subsidiary is resident in Luxembourg, and, by way of some clever tax planning, manages to earn all of its profits in that jurisdiction, which are then subject to a tax rate much lower than they would be in the United States. To the extent that those profits are earned from the US consumer market, the Baucus proposal would tax those profits as if they were earned directly in the United States. The rationale behind this proposal is one of paying a fee for access; in other words, if a company is profiting from the US consumer market, which is indirectly maintained by the public goods provided by the state, then those companies should accordingly contribute to the state for such access.

Baucus’s proposal addresses the issue of base erosion and profit shifting by instituting rules that reimagine a company’s business activities in a manner that prefers substance over form. Although his ideas are meritorious, they do nothing to stop the cat-and-mouse game that has characterized income taxation since its inception. The problem is as elemental as it is systemic: business and revenue-raising interests are not aligned. Until such an alignment occurs, the problem of fiscal chicanery will continue unabated.

As a final contribution to the debate, this article will posit that the use of social scoring-type elements in the assessment of taxation could contribute to the alignment of tax policy, business realities, and marketplace desires.

The idea that social scoring could contribute to tax policy starts with conceiving of a normative fair share baseline that a company should pay on profits effectively created in a jurisdiction. In this respect, that normative amount is similar to the substantive idea of an income tax (i.e., marginal amounts based on net income), which has unfortunately become largely divorced from business reality due not only to a shift toward an international economy, but also to the lobbying efforts of multinational corporations. Companies invest heavily in lobbyists to promote these tax breaks and holidays with stupendous returns. One highly regarded study has estimated the return on investment in political influence over tax policy matters to be as high as 22,000 percent. See Raquel Alexander, Susan Scholz & Stephen W Mazza, “Measuring Rates of Return for Lobbying Expenditures: An Empirical Case Study of Tax Breaks for Multinational Corporations” (2009) 25 J.L. & Pol. 401 at 404.

The prospect of a 22,000 percent return obviously means that companies will be equally invested in shaping any legislative measures for a baseline to their advantage. The difference, however, is that it is much harder to obfuscate tax practices when information has been divulged. Assuming the transparency of a company’s tax returns, market participants would likely pressure their representatives to ensure that such a baseline would accurately represent a society’s expectations of the companies that have access to their jurisdiction’s financial markets. In essence, tax transparency would only promote positive change insofar as lobbyists could no longer hide under the cloak of opaqueness, but would rather be limited to spin, which is no doubt a powerful tool, but one that—when compared with assertions that cannot be verified—is much more susceptible to scrutiny.


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See Duhigg & Kocieniewski, supra note 28.
but also because of aggressive tax planning and avoidance. The normative baseline would be similar to Senator Baucus’s proposed minimum tax rate in the sense that it would represent a minimum contribution to the state that a company would be expected to make. However, the concepts would differ, because unlike the minimum tax rate, the fair share baseline would be credited by inputs from other sources. In other words, it would form a minimum contribution to the government, which could be fulfilled by taxes paid directly by the company, taxes withheld or remitted by the company from wages, passive income distributions, or VAT, and other economic contributions that a company makes that can be sufficiently valuated and weighted.

Let us again use Apple as a fictional case study for the application of such a proposal. As before, let us suppose a fair share baseline of 15 percent, and let us assume that Apple currently pays only 1 percent of its profits in taxes. Under a tax policy based on the fair share baseline, Apple would still owe 14 percent of its profits in taxes. This baseline approach would differ from the status quo in that Apple would be allowed to account for that difference by paying additional taxes, by withholding or remitting additional income, or by creating additional economic benefits for the state. For example, instead of paying the difference out of its own pocket, should Apple create additional jobs in the United States, the extra wage taxes collected would be credited toward the company’s tax obligation. Similarly, if, as recommended in Part II, taxes on dividends (as well as other passive distributions) were withheld, Apple could declare dividends on its offshore income and to the extent that those dividends were paid to US shareholders and the requisite taxes withheld, such amounts would also offset its amount owing. Finally, other economic contributions to the state, to the extent that they could be valuated, would similarly be taken into account and would be counted toward Apple’s baseline obligation.

By aligning state and business interests, corporate tax rates could effectively be lowered, and the state could ensure that it collects sufficient revenues. Currently, the state is prevented from raising corporate tax rates, or enforcing the rates on the books, because companies threaten to move their operations abroad to jurisdictions with lower tax rates. The Baucus proposal is a bold move in the sense that, by instituting a minimum tax rate that would effectively apply world-wide whether or not the corporation subject to the tax is situated in a low-tax jurisdiction, it calls the bluff of corporations by using the weight of the US markets to counter the pull that foreign jurisdictions have over US market-created capital. But if the past fifty years are any indication of the future, it seems clear that the current “company versus state” paradigm has the state on the losing end. Inasmuch as market participants can change the discourse concerning fair share payment and disclosure, those efforts will be marginalized if a company’s standard operating procedures are not changed. The correct tax policy response must therefore be an alignment of business and state interests. If companies are moving jobs and activities offshore merely to avoid tax, then one simple answer would be to give those businesses credit when such activities are brought back to the domestic economy. To the extent

111 Witness the general tenor of the conversation at the end of Tim Cook’s Senate hearing: Apple Hearings, supra note 35.

112 Note that in situations where operations have been moved offshore as part of a bona fide business strategy that goes beyond purely attempting to avoid taxes, this solution is unlikely to provide a sufficient incentive to move such jobs into the corporation’s home jurisdiction. For example, it would be unrealistic to expect this solution to be able to prompt a renaissance of the manufacturing
that market participants desire that businesses not be allowed to shirk their fiscal obligations in the jurisdictions in which they operate, the market transparency necessary to obtain a fair share baseline would, if allowed to influence tax policy, effectuate such a result.

4. CONCLUSION

This article has argued that the factors relevant to a market participant’s evaluation of a business can extend beyond those measuring only financial health, to include scrutiny of how the company benefits the society in which it operates. Indeed, Starbucks’s response to public outcry over its lack of tax contributions to the state serves as an example of increased awareness of the business community that consumer and investor choice may be motivated by factors other than strict financial considerations. In light of recent concern about tax dodging by large corporations, greater transparency with respect to a business’s tax contributions has the potential to permit a more enlightened and efficient allocation of resources by market participants concerned about whether the companies that they support are making an adequate contribution to society. This article has proposed the disclosure of tax returns as a means of providing market participants with information about companies’ tax practices. Such disclosure would be in line with the English share issuance model—one that favours transparency in order to inform choice—on which today’s capital markets are built. The article has further argued that, to the extent that the market is interested in the total contribution of a business to the state, the disclosure of taxes withheld on wage and passive income payments, as well as VAT remitted, is also necessary. Such transparency, especially if the passive income withholding regime were changed, could spur business behaviour that would mitigate many base erosion and profit shifting problems faced by the fiscal authorities. In contrast, the failure to disclose such tax information risks leading to increased shareholder and consumer activism based not on facts, but rather on conjecture and speculation.

The article examined how a fair share social score—that is, an evaluation of a company’s contribution to the state, measured against a normative baseline—could play into the previously discussed disclosure prescriptions. First, the article stated a general caution against using numbers subject to interpretation in the valuation of a company’s total economic contribution. Next, although the article acknowledged that secondary source opinions from analysts, rating agencies, and media pundits played an important part in the operation of the markets, it rejected their inclusion in official disclosure documents, so as not to go against the precepts of transparency and choice of the English share issuance model. To do otherwise would begin to embrace the paternalistic oversight of the American model. Finally, the article examined how a normative fair share baseline could affect the assessment of taxes. The article concludes that, by aligning the interests of businesses and the treasury, the needs of both the markets and the state could be met.

In toto, the issue is simple: market participants are now concerned about more than the bottom line, and want to ensure the sustainability and social good of their home jurisdictions. Because income tax is, in essence, designed to provide a source of revenue to the state, a company’s tax contributions are clearly an important measurement of the social benefits that it imparts to a community. Transparency is an important step toward this end and will do much

industry in the Global North, given the complex economic factors that have motivated businesses to move their manufacturing operations offshore, which go beyond mere concerns for tax avoidance.
to solve the information asymmetry currently plaguing the markets. But transparency alone will not solve the larger question of what should count as a contribution to the state. Failure to objectively question the current narrow conception of how companies benefit the states in which they operate will only perpetuate the failing “business versus state” paradigm that has arguably been central to the income tax since its inception. The sustainability of the state as a revenue raiser and provider of social services may be in its twilight if the fiscal system cannot adapt to today’s global economy and align the interests of business with those of the state.