



# Morality of Lobbying for Tax Benefits: A Kantian Perspective

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## Abstract

Multinationals' aggressive tax lobbying that involves free-riding behaviour and results in disproportional benefits to the disadvantage of other taxpayers, is problematic for several reasons. Such lobbying undermines the legitimacy of tax legislation and has a negative impact on trust in the tax system. Based on Immanuel Kant's ethical theory, this article first suggests a new normative basis for a moral duty that requires multinationals and their leaders to be transparent about their political activities and tax lobbying. Next, it introduces a new concept of transparency in respect of tax lobbying. 'Deliberative transparency' requires multinationals and their leaders not only to be open about their reasons for tax lobbying, but also to deliberate with stakeholders and, maybe even more importantly, to provide evidence supporting their lobbying positions. Finally, based on these new understandings, additional government interventions against aggressive tax lobbying are suggested, for example mandatory stakeholder consultation, reporting on stakeholder attitudes and perception, and evidence-based lobbying requirements.

**Keywords** Ethics · Kant · Multinationals · Stakeholders · Lobbying · Corporate tax · Tax incentives

## Introduction

Multinationals argue that they pay enough taxes since they are fully compliant with the law. Alphabet for example claimed that "*we seek to identify, evaluate, monitor and manage tax risks to ensure that we comply in full with our legal obligations*".<sup>1</sup> Also Shell insists to have paid a fair share of tax in the Netherlands in line with both the letter and the spirit of the law. In fact, Shell paid no corporate income taxes at all and, when asked about the details, explained that this was simply the result of Dutch tax legislation.<sup>2</sup> However, multinationals do have substantial political power which enables them to influence legislation to their own benefit (Anastasiadis et al., 2018; Oberman, 2004). As it becomes clearer that multinationals use their political power to influence tax legislation through (aggressive) political activities and tax lobbying,<sup>3</sup> and do not hesitate to show free-riding behaviour<sup>4</sup> by obtaining disproportional tax benefits at the disadvantage of other taxpayers, the argument that multinationals are fully compliant with both the letter and the spirit

of the law is being taken less seriously (Christians, 2017). Through such tax lobbying multinationals themselves have a substantial impact on the law-making process, and thus on the letter and the spirit of the law. Due to this disproportional influence of multinationals, compliance with the 'spirit' of the law as a yardstick for fair behaviour has lost its shine.

<sup>1</sup> See at <https://abc.xyz/investor/pdf/uk-tax-strategy.pdf>.

<sup>2</sup> See at <https://www.elsevierweekblad.nl/nederland/achtergrond/2019/05/shell-bevestigt-geen-winstbelasting-betaald-in-nederland-689265/>.

<sup>3</sup> The term lobbying in this article is very broad and refers to the European connotation of lobbying, which implies political action in general, as well as the US or other non-European connotations implying "*the provision of information to policy makers by individuals representing the firms interest-that is, by lobbyists; this information may be conveyed through informal meetings, formal settings, and social settings*" (Hillman & Hitt, 1999).

<sup>4</sup> Governments raise taxes for funding their activities, including the creation and provision of certain public goods. Multinationals also benefit from public goods, and by mitigating their tax contribution, they shift social costs related to such public goods to others (Christensen & Murphy, 2004, p. 39; Jallai, 2020, p. 10). Public goods are for example physical infrastructure, access to vital information (transparency), rule of law, social capital (trust in interpersonal relations and social institutions), relatively corruption-free business practices, relatively conflict-free (peaceful) environments, safety in the transportation system, liberal prerequisites for innovation, etc. (Enderle, 2018, p. 625; Kaul et al., 1999, p. 81).

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Indeed, literature suggests that multinationals, if necessary through their advisors, exert substantial influence on tax legislation. Gribnau et al. have observed that multinationals are very effective at lobbying for beneficial tax reliefs (Gribnau, 2017; Gribnau et al., 2018). Vet et al. have noted the dominant presence of multinationals and their advisors during the OECD discussions on the reform of the international tax system, and show how they seem to use their political power to push the discussion into a direction that leaves room for tax planning (Vet et al., 2021). Kaye has claimed that there are indications that US delegates succeeded in softening the OECD base erosion and profit shifting measures in order to address the concerns expressed by multinationals (Kaye, 2017). In a hearing about the role of tax advisors, the UK House of Commons' Committee of Public Accounts openly criticised a tax advisor for abusing his privilege of having an insider's role in the development of tax policy and using this privilege to solely pursue the interests of his clients (Committee of Public Accounts, 2013, p. 19).<sup>5</sup> Other studies have investigated how lobbying expenditures are associated with effective tax rates. Alexander, Mazza and Scholz describe how US multinationals realised a tax saving of 220 USD per 1 USD lobby cost (Alexander et al., 2009). Similarly, based on a dataset of US firms, Richter, Samphantharak and Timmons have reported that increasing registered lobbying expenditures by 1% appears to lower effective tax rates by somewhere in the range of 0.5 to 1.6 percentage points (Richter et al., 2009). These studies suggest that tax lobbying is very productive to reduce multinationals' effective tax rates.

However, scholars argue that such (aggressive) tax lobbying is problematic for at least two reasons. First, in democratic states aggressive tax lobbying undermines the legitimacy of tax law. Taxation is legitimate when socially accepted (Dourado, 2014). Such legitimacy is received from democratic procedures, public discussions and arguments, and parliamentary debate (Dourado, 2014; Dusarduijn, 2019). As rightly stated by Mosquera Valderrama, taxpayers represented by the democratically elected lawmaker participate in the design of the tax system (Mosquera Valderrama, 2015). Parliamentary debate should guarantee that tax design takes *everyone's interests* into account, not only those in power, and that the public interest is safeguarded (Dagan, 2013; Mosquera Valderrama, 2015). Since tax benefits are only for a limited group of taxpayers that meet the application conditions of the incentive, this function of the parliamentary debate has an important role in the legitimization of

such incentive. However, this democratic mechanism comes under pressure with aggressive lobbying when law-making is guided by excessive political power of multinationals with the objective to obtain disproportional tax benefits. With respect to law-making in parliament, Vallespinos even claims that "*lobbying has become more influential than voting in the process of decision-making*" (Vallespinos, 2020, p. 97). As a result of this display of power, other interests and voices, such as non-governmental organisations, think tanks and society at large, are underrepresented and their concerns receive too little attention (Hillenbrand et al., 2019).

Second, scholars argue that because of the concentration of power and the successful tax lobbying by multinationals, other taxpayers lose trust in the system. They have the perception that it favours multinationals that have the resources to shape it (Christians, 2017; Jallai, 2020). In addition to this problem, Christians states that as a result of the lack of trust in the tax system, taxpayers feel justified in refusing to cooperate with the system, which has a negative impact on compliance (Christians, 2017). Research indeed suggests that trust is positively related to voluntary compliance (Kirchler et al., 2007). A lack of trust in the tax system may of course have many different causes.

Still, suggestions to completely rule out political activities of multinationals are rather unrealistic and one should, consequently, take into account such activities as a fact (Anastasiadis et al., 2018; Hanlon, 2008). In addition, corporate lobbying has the advantage that it can inform governments with valuable data, specialised knowledge and expertise (OECD, 2014; Ostas, 2007). In practice, corporate lobbying includes advantages and disadvantages both to varying degrees. To keep these advantages and at the same time address free-riding behaviour, several scholars advocate for more transparency around tax lobbying (Brosens & Bossuyt, 2020; Christians, 2017). Such transparency has been associated with ethical and democratic traditions (Ostas, 2007), good governance (Bertók, 2009; Brosens & Bossuyt, 2020; Christians, 2017), and corporate social responsibility (Anastasiadis et al., 2018; Bauer, 2014; Gribnau & Jallai, 2017). However, references to ethical behaviour as a normative basis for transparency remain vague and, consequently, leave room for doubt and counterarguments. For example, some scholars warn that transparency might undermine trust in politics (Anastasiadis et al., 2018). This article contributes to the tax transparency debate. The central thesis is that multinationals and their leaders have a moral duty to be transparent about their political activities and lobbying for tax benefits.

A first novelty of this article is that based on ethical theory, it provides a new normative basis for such transparency. To evaluate the morality of lobbying one could appeal to different theories, all of which have a different perspective. Virtue ethics focus on the purpose of human existence, i.e. happiness, that consists in virtuous behaviour. Theories of

<sup>5</sup> According to the Code of Professional Conduct in Relation to Taxation of the UK Chartered Institute of Taxation tax advisors have to uphold the profession's reputation and also need to take account of the wider public interest.

consequentialism (e.g. utilitarianism) look at the result of actions. The above arguments against aggressive tax lobbying are consequentialist insofar as they blame the multinationals for the negative consequences of the abuse of their political power, such as the loss of trust in the system and a negative impact on compliance. However, the multinationals take a different perspective by arguing that how much tax they pay is irrelevant. As mentioned above, Shell admits to paying no taxes in the Netherlands. What matters according to them is that they fulfil their duties towards society since they are fully compliant with the letter and spirit of the law. These narratives take the perspective that morality is judged on the basis of duties. This article takes the same perspective and to this end builds on the deontological theory of Immanuel Kant. Kant too assesses the morality of actions on the basis of whether they fulfil our duties. In addition, his theory offers interesting insights on transparency in the context of abuse of political power, and is very promising for the question under review since Kant explicitly applies his theory to the case of the injustice of tax measures introduced by those in power (Kant, 1784, at 8:37–38).

To assess the morality of actions Kant proposes the categorical imperative as a fundamental principle that serves as guidance for moral decision-making (Herman, 2011; Kant, 1785). This principle includes the moral duty to respect the freedom of others and the freedom of others to choose their own ends (humanity principle). This article argues that a moral duty to be transparent about tax lobbying can be derived from the humanity principle. More specifically, it claims that multinationals and their leaders have a moral duty to be transparent to their stakeholders about their political activities and tax lobbying, in order to enable the latter to freely decide to what extent they want to engage in whatsoever relation with the multinational. Stakeholders include shareholders, creditors, suppliers, clients, and employees (*infra* “Respect for the Freedom of Others” Section).

A second novelty of this article is that it introduces a new concept of transparency in respect of tax lobbying: ‘deliberative transparency’. In previous research, transparency has been understood as being ‘open’, i.e. providing information about tax lobbying activities (*infra* “Deliberation in Support of Rationality” section). This article argues that the Kantian moral duty to be transparent is more demanding than mere openness. This theory suggests that multinationals should not only to be open about their lobbying, but should also listen to others and deliberate with others.

Thirdly, previous research has noted that so far transparency in lobbying is poorly specified and that it remains unclear *what* should be transparent (Anastasiadis et al., 2018). Literature suggests disclosure legislation according to which lobbyists have to register and lobbying activities have to be reported (Bertók, 2009; Crepaz, 2017; Rival & Major, 2018). Several countries have introduced such legislation.

However, empirical research shows no consistent findings indicating that these solutions reduce free-riding behaviour (Newmark, 2017; van Aaken & Voigt, 2011). The effectiveness of such regulation largely depends on the scope of application of the disclosure obligation, such as, for instance, the definition of who is a ‘lobbyist’ (Newmark, 2017), and this scope is often too narrow. This is the reason why, with respect to tax lobbying, Christians suggests a more comprehensive lobbying registry in every country based on reporting by government officials. In addition, she suggests that transparency organisations, journalists and NGO’s should analyse and use this information to create a comprehensive open-source lobbying database at the global level (Christians, 2017). However, based on the Kantian framework, this article suggests that transparency should not focus on lobbyists or on lobbying as such, but on the *motives* for tax lobbying. This focus better contributes to the normative foundations for transparency, i.e. respect for the freedom of others to choose their own ends, because it allows others to assess whether the lobbying motives are in line with their ends.

This article first deals with the question whether multinationals have moral duties (“Moral Duties of Multinationals and Their Leaders” Section). Then it proposes a new normative foundation for the moral duty to be transparent (“Respect for the Freedom of Others” Section). Section 4 introduces the concept of ‘deliberative transparency’. Section 5 concludes.

## Moral Duties of Multinationals and Their Leaders

Kant introduces the categorical imperative as the fundamental principle that serves as guidance for moral decision-making. Its basic formulation is the universality principle according to which one should “*act only in accordance with that maxim through which you can and at the same time will that it becomes a universal law*” (Kant, 1785, at 4:421). He derives this principle from the fact that humans are rational beings and have a free will (Korsgaard, 1996, pp. 25 and 38; Herman, 2011, p. 52). A maxim refers to a reason for action. Actions driven by maxims that are based on reason alone and free from all other influences, are necessarily valid for every rational being and can as such become a universal law. According to the universality test such maxims are moral.

This starting point based on the rationality of human beings may suggest that only individuals have moral duties and, consequently, not corporation, like multinationals. The secondary literature is not consistent on this matter. Altman claims that a corporation lacks the capacity to reason. Because there is no collective will apart from any intentions of the individual agents who act as members of the corporation, a corporation itself has no moral duties (Altman, 2007).

Others argue that corporations do have moral duties; their own free will is embedded in the corporation's mission statement, policies and decision-making structures (Bowie, 1999; Haji, 2006; Hess, 2014; MacArthur, 2019).

Kant himself does not explicitly answer the question whether corporations are moral persons, but he does acknowledge the existence of a 'moral person' other than individuals. Indeed, Kant explicitly qualifies the state itself as a 'moral person' ("*einer moralischen Person*") (Kant, 1795, at 8:344; MacArthur, 2019). The state represents the collective will of its citizens ("*den allgemein vereinigten Willen*") (Kant, 1797, at 6:313). In *Die Metaphysik der Sitten* (The Metaphysics of Morals) he claims that the state has a moral duty, by a categorical imperative, to strive after its well-being (Kant, 1797, at 6:318).

To a certain extent the reasoning of Kant in respect of the state as a 'moral person' can by analogy also be applied to corporations and multinationals.<sup>6</sup> Also multinationals are 'contracts' that represent a collective will, i.e. the corporate will of their incorporators and other leaders. Multinationals do not have the same subjective intention as individuals, but do have collective, in this case corporate, intentions that are embedded in the corporation's mission statement, policies and decision-making structures. Through the contract this corporate intention becomes a separate will, and the corporation becomes an independent moral person. The corporate intention is the reason behind the corporation's actions.

Throughout history, regulation has fostered morality in corporate actions to varying degrees. Ciepley (2019, 2020) elaborates on how initially corporations had to provide public benefits in exchange for the privileges which come with incorporation (e.g. limited liability). However, in the 19th and early twentieth centuries this responsibility has gradually been downsized and the concept of public benefit increasingly faded into the background (Ciepley, 2019). Recently, the pendulum seems to be moving back in the other direction. For example, in France regulation now stipulates that a corporation must be run with due regard to the social and environmental impacts of its activity (Segrestin et al., 2021).

The fact that the corporation has moral duties, does not derogate to the fact that also the leaders of multinationals (i.e. shareholders, directors, tax managers) have their own moral duties. These leaders have their own maxims, intentions and reasons to act. They have a duty to conceive, incorporate and organise the corporations in such a way that the corporation's mission statement, policies

and decision-making structures respond to the categorical imperative (Altman, 2007; Lenz, 2018). Looked at from this perspective, the multinational also indirectly bears moral duties. Consequently, this article takes the position that corporations, like multinationals, do have moral duties either because the corporation as a whole has moral duties or because the leaders of the corporation have moral duties.

The remaining part of this article focuses on the morality of lobbying for tax benefits. Section 3 argues that multinationals have a duty to be transparent about their lobbying for beneficial tax treatment. Such duty is derived from Kant's humanity principle.

## Respect for the Freedom of Others

The humanity principle is the second formulation of Kant's categorical imperative. For Kant, humanity is our rational nature, which exists as an end in itself (Kant, 1785, at 4:428). It is the capacity by which we choose an end in the first place (Korsgaard, 1996). To treat humanity as an end is to respect one's own capacity and the capacity of others to choose their own ends (Kant, 1785, at 4:429). This principle assumes that one respects that each of us has a free will. One must never consider human beings merely as a tool to achieve one's own ends, or as being incapable of having any ends at all (Zinkin, 2016). The humanity principle does not preclude relations in which human beings mutually benefit from each other. However, in these relations the other person's capacity to freely choose his/her own ends must be respected (Patrone, 2018; Borowski, 1998).

Secondary literature on the humanity principle has highlighted that only by being transparent about one's own reasons to act, a person can enable others to choose their own ends and to freely decide whether to have a relation with that person. Zinkin argued

By not being open with my maxims, I limit the capacity of another to make a rational choice, and hence do not treat her as an end in herself. [...] I treat them as a non-rational being who has no interest in the moral value of an action (Zinkin, 2016, p. 244).

Applied to the case at hand, this means that acting respectfully with others requires multinationals and their leaders to be transparent about their political activities and tax lobbying at least when such information is important for others to freely and well-informedly make decisions with respect to their own ends. The availability of such information enables others to determine whether their ends are in line with having a relation with the multinational. If the multinational keeps this information secret and nevertheless engages in a relation with this other person, this person's ends are neglected and the multinational views the other

<sup>6</sup> Or more specifically to the 'corporate firm', if it is assumed that, as suggested by Ciepley (2020), a distinction should be made between the corporation as abstract legal entity without members on the one hand, and the corporate firm on the other.

as simply a mean, with no respect for the freedom of the other or for his/her capability to make his/her own rational decisions.

Imagine, for example, that it comes to the attention of a brilliant recently graduated engineer that a certain multinational regards corporate social responsibility ('CSR') as highly important. The multinational indeed clearly integrates social (labour standards and working conditions, social equity, human rights) and environmental (eco-friendly, responsible sourcing) concerns in its business operations. Because of this social responsibility, the engineer decides to apply for a job with the multinational and she is accepted. Taking into account the fact that this employee highly considers CSR, one can easily imagine that she also values the fact that her employer pays its fair share of tax and does not engage in aggressive tax lobbying. It can indeed be argued that paying a proper amount of taxes is part of sustainable behaviour (Van de Vijver et al., 2020; Singer, 2013). The fact that in this example the employee was not aware of aggressive tax lobbying activities limits her ability to freely decide whether she indeed wants to work for that employer or, alternatively, whether she would prefer to look for an employer that is truly responsible including in respect of taxation. In such case, the multinational has no respect for the free choice of the employee to choose an employer that is aligned with her own ends and values; the employer simply sees the brilliant engineer as a mean for its own business activities.

From Kant's reasoning it can additionally be derived that the closer the relationship between a multinational and a certain person, the greater weight the moral duty has. The humanity principle indeed does not require, and this would be unrealistic, for everyone to make reasons for every decision or action public (Zinkin, 2016). However, the closer the relationship the more relevant it becomes for others to know the reasons for a person's action in order to be able to freely decide whether such relationship is indeed in line with his/her own ends. Multinationals typically have closer relationships with their stakeholders. In a broad sense these include not only employees but also shareholders, creditors, suppliers, clients, employees and all other parties with whom the multinational conducts its business.

Which persons need information about the political activities and tax lobbying of multinationals in order to be able to freely decide about their own ends? The answer to this question has not been the subject of much research so far and opens opportunities for future research. Meanwhile, some indications can be found in research about the impact of tax behaviour of multinationals on employees and consumers.

Whether aggressive tax lobbying specifically impacts the attractiveness of employers, like in the above example of the brilliant engineer, has not been the subject of research so far. In general, younger employees seem to have developed much sensitivity for social responsibility of their employer

(McGlone et al., 2011) which suggests that also transparency about tax lobbying may become more important. In addition, Kovermann and Velte note that employees are also taxpayers and may consider the fact that their employer benefits from a lower tax burden or engages in aggressive tax planning as unfair (Kovermann & Velte, 2019). Research suggests that enterprises with stronger unions avoid less taxes (Chyz et al., 2013). This limited research so far indicates that employees may find information about tax lobbying important to evaluate the attractiveness of an employer. However, such information is only publicly available to a limited extent. For example, as mentioned in "Introduction", lobbying registries are often too narrow. An employee looking for information on lobbying activities of his/her future employer will, consequently, often not find it. Providing sufficient information in order to enable these (future) employees to freely take well-informed decisions about their professional engagement contributes to a respectful treatment of these employees. Responsible tax behaviour and lobbying may even play a positive role in successful recruitment strategies. Withholding such information, on the contrary, means that the employer considers its employees merely as means for its business activities and does not recognise the free will and own ends of the employees.

Next, research also suggests that consumers take into account the tax behaviour of multinationals. Hardeck and Hertl published a study in which they focused on the impact of media attention for tax strategies of multinationals on the commercial success of the latter. This study shows that aggressive tax planning undermines commercial success in this way that the willingness of consumers to pay a certain price decreases (Hardeck & Hertl, 2014). Having respect for consumers implies that multinationals give sufficient information in order to enable their consumers to freely take well-informed decisions about their purchases.

Multinationals can include information about their lobbying activities in a publicly disclosed tax policy statement or other voluntary public reporting documents. The Global Reporting Initiative ('GRI') shows how this moral duty can be put into practice. The GRI is an international non-profit organisation of corporations promoting transparency and sustainability reporting. The GRI was founded in 1997 in response to the Exxon Valdez oil spill scandal. Since then, the GRI has published various reporting standards, including a tax reporting standard (applicable as from 1 January 2021).<sup>7</sup> The tax reporting standard acknowledges that corporations' tax practices, including lobbying activities related to tax, are of interest to various stakeholders. Disclosure 207-3-a-ii therefore provides that the corporation should report a description of the approach to public policy advocacy on

<sup>7</sup> See at [www.globalreporting.org/](http://www.globalreporting.org/).

tax. This includes (i) its lobbying activities related to tax, (2) whether the corporation is a member of, or contributes to, any representative associations or committees that participate in public advocacy on tax, including the nature of the corporations' contribution, and (3) its stances on significant issues related to tax that it addresses in its public policy advocacy, and any differences between its advocacy positions and its stated policies, goals, or other public positions.<sup>8</sup>

The next section elaborates more into detail on the content of transparency in Kantian terms. *How* should multinationals be transparent when it concerns tax lobbying?

## Deliberative Transparency

### Deliberation in Support of Rationality

In previous research, transparency has been understood as providing information (Seer, 2019; Allevi & Celesti, 2016). This means that from an ethical perspective, multinationals should provide information about their tax lobbying activities. According to Schnackenberg and Tomlinson, this information provision has three dimensions: information disclosure, clarity and accuracy (Schnackenberg & Tomlinson, 2016). Baume and Papadopoulos claim that such transparency contributes to the quality of deliberation, since in the presence of the public in order to avoid losing credibility one must justify their conduct and cannot simply invoke selfish benefits (Baume & Papadopoulos, 2018; Elster, 2000). Naurin claims that transparency should be supplemented with publicity, which means that the content of the information should not merely be available but also actually reach the public and become known (Naurin, 2006). Gribnau and Jallai claim that 'openness' as such is not sufficient. Transparency should also be driven by an intrinsic motivation to do what is right, just and fair. It should not be seen as merely an instrument to enhance the firm's reputation (Gribnau & Jallai, 2018).

This section shows how the Kantian concept of transparency is, however, more demanding and also includes listening to others and deliberating with others. Since actions of policymakers affect others, Kant suggests that these requirements are especially important in the context of politics (Kant, 1784). Kant understands the term 'policymakers' in a broad sense, also including for example priests or societies of clergymen (Kant, 1784, at 8:37). As in current times multinationals and their leaders have political power (*supra* "Introduction" section), the guidance offered by Kant equally applies to them. Transparency about political

activities not only contributes to respectfulness towards stakeholders (*supra* "Respect for the Freedom of Others" Section), but this section shows that transparency at the same time enables policymakers to assess whether their lobbying positions are rational and can as such become a universal law. As mentioned in "Moral Duties of Multinationals and Their Leaders" Section, rationality is at the core of Kant's ethical theory. This universality principle provides further guidance on the content of transparency in Kantian terms.

What Kant means here is that we must be able to will that a maxim of our action becomes a universal law (Korsgaard, 1996, p. 81). The term 'will' refers to rational thinking, and has to hold for all rational beings. It cannot be derived from human temperament or feelings (Kant, 1785, at 4:425). Some actions cannot even be *conceived* as a universal law without contradiction. Kant gives the example of a person who makes a promise that he knows he will not be able to keep. Such a maxim cannot become a universal law. A universal law that anyone can make promises without keeping them, would lead to promises no longer being credible. As a result, the intention of a promise would become impossible (Kant, 1785, at 4:422). As in the example, typically this concerns actions driven by self-interest (Herman, 2011, p. 52). Other actions are not in that way self-contradictory, but are still something that *nobody could will* to become a universal law, because such a will would contradict itself (Kant, 1785, at 4:424). Kant gives the example of a person who sees someone else struggling with great hardship. This person asks himself the question whether he should help. According to Kant, although a universal law prescribing that one does not help others is conceivable, it is impossible to want such a universal law. For one can imagine situations in which the first-mentioned person needs help himself, and with a universal law denying help to others, he would be deprived of it (Kant, 1785, at 4:423).

Rephrased in the context of corporate tax lobbying this means that in order to evaluate the morality of lobbying positions, multinationals should consider whether they can and at the same time will that the underlying maxims become a universal law. For example, is lobbying to achieve tax benefits resulting in disproportionately low effective tax rates in countries where multinationals have business activities, moral in Kantian terms? The maxim of the intention to pay no (or very little) taxes while benefiting from a state's legal and economic system, cannot be conceived as a universal law (Lenz, 2018, p. 683; Preuss, 2012, p. 3). Such action is driven by self-interest. The lack of financial state resources resulting from a universal tax exemption would endanger the functioning and even the existence of the state. Without the legal and economic system of the state, the corporation would not be able to organise its business activities and would even not exist since it derives its

<sup>8</sup> See at <https://www.globalreporting.org/how-to-use-the-gri-standards/gri-standards-english-language/>.

personality from the legal system. As a result, such intention is self-contradictory.<sup>9</sup>

Other examples may be less clear-cut. The maxims might be maxims that are only valid for the policymaker, and might not be valid for others, given their perspective (Wallace, 2009). How can policymakers assess whether their maxims can be conceived and willed as a universal law? Here the importance of transparency is emphasised. Indeed, in *Was ist Aufklärung?* (What is Enlightenment?) Kant suggests that policymakers can assess the rationality of their maxims through deliberation with the public. Deliberation with others enables those in power to test their maxims in order to be rational and achieve enlightenment (Kant, 1784, at 8:37–38).<sup>10</sup> Korsgaard claims that the “*public character of reasons is indeed created by the reciprocal exchange, the sharing, of the reasons of individuals*”. Reasons must be inherently shareable. Then it is possible to think the issues through together. She calls this view ‘publicity as shareability’ (Korsgaard, 1996, pp. 135 and 142). Similarly, Herman states that “*my own rational abilities are enhanced and supported by the good reasoning of others*” (Herman, 2011, p. 54). Interestingly, Kant explicitly applies this theory to tax legislation. He claims that with respect to taxation and the injustice of tax measures, citizens should be allowed to publicly voice their concerns and objections in order to enable those in power to evaluate their tax policy (Kant, 1784, at 8:37–38).

Accordingly, also multinationals should listen to others and deliberate with others in order to fully grasp to what extent the maxims underlying the lobbying are valid for others. They should allow others to voice their concerns and objections. Only then can the multinational truly ascertain whether its lobbying position is rational.

In line with this theoretical analysis, the Global Reporting Initiative acknowledges that stakeholder engagement can enable corporations to understand evolving expectations related to tax. According to the GRI it can give corporations insight into potential future regulatory changes and enable the organisation to better manage its risks and impacts. The GRI tax reporting standard provides guidance on how deliberation with stakeholders in the context of tax can be put into practice. Disclosure 207–3-a-iii provides that corporations should give a description of their process for collecting and considering the views and concerns of stakeholders, including external stakeholders. The corporation can also provide examples of how stakeholder feedback has influenced the approach to tax, the tax strategy, or the tax practices of the

corporation [8]. To stimulate deliberation with stakeholders, also governments may encourage corporations to reach out to society more explicitly (e.g. through employee, consumer and other stakeholder meetings or consultations). Governments may consider legislation providing mandatory stakeholder consultation, reporting on stakeholder attitudes and perceptions, and stakeholder representation on boards (Bauer, 2014; Hillenbrand et al., 2019).

This section argued how multinationals and their leaders should be transparent about their political activities and lobbying positions. The next section focuses more deeply on *what* exactly multinationals and their leaders should be transparent.

## Deliberation About Motives

Previous research noted that so far transparency in lobbying is poorly specified. It remains unclear *what* should be transparent (Anastasiadis et al., 2018). This section shows that the Kantian framework suggests that transparency should especially concern the *motives* for lobbying. According to Kant, a ‘motive’ is a “*subjective principle of volition*” (Kant, 1785, at 4:401). It refers to a reason for action. As explained in “[Moral Duties of Multinationals and Their Leaders](#)” Section, multinationals do not have the same subjective intentions as individuals, but do have corporate intentions that follow from the corporation’s mission statement, policies and decision-making structures. Rephrased in the context of tax lobbying by multinationals, the term motive could refer to a wide variety of reasons, like lowering effective tax rates, maximising shareholder return, and also reasons driven by societal gains, like encouraging innovation and growth. For example, in the pharmaceutical industry Johnson & Johnson discloses in its Tax Policy Statement that it engages in lobbying for tax legislation that encourages innovation and growth:

We seek to be a valued partner to governments and advocate for tax legislation that provides clarity and encourages innovation and growth.<sup>11</sup>

The motive to lobby for R&D corporate tax benefits might, however, also be different. A multinational might have an underlying (secret) motive to lower its effective tax rate no matter what, solely in order to maximise shareholder return.

As mentioned above, the regulation of corporate purpose has been through an evolution. It is disputed in literature whether a corporation’s sole responsibility is to maximise shareholder return. According to the shareholder theorists,

<sup>9</sup> And this is also the reason why taxation of people’s commerce and of the economy is justified, according to Kant (Kant, 1797, at 6:325).

<sup>10</sup> Jürgen Habermas’ discourse ethics feature the same idea (Geenens, 2017; Iwasa, 2013; Morris, 2009; Thorseth, 2008).

<sup>11</sup> <https://www.jnj.com/about-jnj/company-statements/tax-policy-statement>.

the corporate goal should be to increasing profits to the benefit of the shareholders since the latter provide capital to the corporations (Friedman, 1970; Jahn & Brühl, 2018; Miller & Davis-Nozemack, 2016). Conversely, others argue that corporations should also take into account the interests of stakeholders and society at large (Dubink, 2015; Dierksmeier, 2013; Mansell, 2013; Freeman, 1984). Business ethicists argue that Kant's categorical imperative indeed supports a principle of respect for the freedom of not only shareholders but also other stakeholders and requires corporate leaders to take into account the interests of these stakeholder (Gibson, 2000; Mansell, 2013). This article does not elaborate on this question, but argues that corporations have a moral duty to be transparent about underlying motives. If the corporation's lobbying is solely driven by maximising shareholder return, it has a moral duty to be transparent about such lobbying position.

This focus on the *motives* of tax lobbying makes it possible to refute some objections against transparency. An important objection is that too much transparency leads to even more opacity. The concern is that either a bulk of information and details negatively affects the understanding of the information and leads to a wrong interpretation (Devereux & Vella, 2014; Gribnau, 2016) or, on the contrary, that transparency cannot grasp the complexity of reality (Anastasiadis et al., 2018). This concern may be justified to the extent that transparency means disclosing information about facts, persons and activities. However, the focus on the motives behind tax lobbying makes it possible to uncover something clearly delimited that touches the centre of the moral evaluation whether a certain behaviour is in line with one's own ends (humanity principle) and with rational reasoning (universality principle). Any additional information, like information about the identity of the lobbyist and about actual contacts with government officials, is useful as long as it is supportive to uncover the multinationals' underlying motives for tax lobbying. The observation that transparency about the *motives* of tax lobbying is difficult to monitor and measure is not necessarily a problem, since the focus of this article is transparency of tax lobbying as a *moral* duty (not a legal obligation that must be monitored and enforced).

Legislative transparency initiatives so far focus on the identity of the lobbyist and lobbying activities as such, but not on the motives for lobbying. Some multinationals are to a certain extent transparent about their reasons for lobbying on a voluntary basis. As mentioned above, Johnson & Johnson claims that its underlying reason for tax lobbying is to contribute to tax legislation that provides clarity and encourages innovation and growth (see Footnote 11). While this statement is in line with the Kantian test, it remains very general. To give more insight on the lobbying motives of corporations, disclosure 207-3-a-ii of the Global Reporting Initiative provides that the corporation could describe any

differences between its advocacy positions and its stated policies, goals, or other public positions (see Footnote 8). This is the case when, like in the example of the young engineer discussed in "Respect for the Freedom of Others" Section, corporations claim to regard corporate social responsibility as highly important, but take a different stance in the field of issues related to taxation. Accordingly, such reporting would provide the young engineer with the information she needs to take a well-informed decision about her professional engagement with the employer of the example.

The next section shows how the moral theory of Kant, in addition to listening and deliberating about motives, adds a new element to *what* exactly multinationals and their leaders should be transparent about. This new element addresses the concern that those in power might be hypocritical about their motives.

### Protection Against Hypocrisy: Evidence-Based Lobbying

According to Kant, transparency is not only a requirement for a respectful relation between persons, but also offers protection against abuse of power. He recognises that in reality policymakers may be hypocritical about their reasons for action, publicly stating that they are acting for the benefit of public interest, while in fact they are selfishly trying to achieve legal claims merely for their own benefit (Clinger, 2017). In order to address this hypocrisy, Kant states in *Zum ewigen Frieden* (Perpetual Peace) that, a legal claim should *be capable of publicity*, and also *require publicity* in order not to miss its goal (Kant, 1795, at 8:381 & 8:386).

The first component of this test concerns the question whether a legal claim is capable of publicity or, on the contrary, should remain secret in order not to defeat its own purpose. Kant gives the example of rebellion. Is rebellion a legitimate means against an alleged tyrant? The answer lies in the test whether the maxim of the intention to revolt on occasion is capable of publicity. This test shows the illegitimacy of rebellion since if in the establishment of a constitution the condition is made that the people may in certain cases employ force against its 'chief', then he would not be the 'chief' and no state would be possible. The maxim, if openly acknowledged, would make its own purpose impossible. In order to succeed, it would have to be kept secret (Kant, 1795, Appendix II).

The second component is more difficult to deeply understand, and Kantian commentators have less elaborated on it. This test implies that only legal claims that *require* full disclosure in order to reach their goal are legitimate (Laursen, 1986). Tax benefits are a good example to understand this second component, which for the purpose of this example can be rephrased as follows: This test not only requires that the motives for introducing a tax incentive are capable of



transparency, but also that transparency is required in order for the tax incentive not to miss its goals. For instance, tax benefits to stimulate R&D have motives that are probably *capable of transparency* since stimulating R&D is generally a common concern. The fact that such tax incentives are transparently introduced in the legislation does not defeat the purpose on the incentive. On the contrary, such an incentive *requires transparency* in order to achieve the required behaviour, i.e. more R&D. If this incentive would remain secret, businesses would not be aware of this incentive and, consequently, would not be stimulated to change their behaviour. However, when policymakers advocate for tax benefits on the basis of hypocrite intentions that look rational at first sight, but, in reality, have secret intentions that remain hidden, this condition is not met. Korsgaard explains that for this test one should look at whether the alleged intention can effectively be attained with the proposal (Korsgaard, 1996). In other words: is the proposed action effective to attain the intention? Rephrased for the purpose of the example above: will the tax incentive effectively stimulate R&D? The lack of effectiveness may suggest hypocrisy.

Many countries have introduced a patent box regime according to which income from patents or similar intellectual property rights benefits from a beneficial tax treatment. In general, patent boxes receive a lot of support based on the argument that this tax benefit intends to stimulate research and development, which is considered to contribute to the well-being of each of us. Businesses of the pharmaceutical and other industries have used their political power to argue for the introduction of patent box regimes and to shape these regimes to their own benefit.<sup>12</sup> In the United Kingdom, the legislation was drafted by a working party consisting of representatives of large corporations, including GlaxoSmith-Kline, Rolls-Royce and Shell (Sikka, 2013). Also in other countries it is not a secret that the draft patent box legislation was prepared by lawyers working for multinationals.<sup>13</sup>

Although lobbying for the patent box seems morally justified, a closer look raises questions. The doubt is fuelled by the fact that international organisations and academic scholars challenge the effectiveness of the patent box. Studies indeed suggest that tax incentives for *investments* in research and development like a tax credit for research remuneration (input), are more effective than tax incentives for patent *income* like the patent box (output) (CPB, 2013; Dumont, 2015; International Monetary Fund, 2016; Schoonackers,

2020; Straathof et al., 2014). A study of the International Monetary Fund concludes that:

patent boxes (which reduce taxes on income from intellectual property) are often not cost-effective in stimulating R&D. In some cases, they are simply part of an aggressive tax competition strategy (IMF, 2016).

This triggers the question whether the underlying motive for lobbying for the patent box is truly to stimulate research and development, or merely achieving a reduction of the effective tax rate irrespective of the corporation's contribution to innovation. The morality of tax lobbying by multinationals and their leaders would improve not only when multinationals are open about their motives, listen to others and deliberate with others, but also when they start providing more evidence that their proposals are indeed effective to attain the publicly stated motives. This also implies that multinationals consult the available scientific research, economic models or experiences in other jurisdictions, and share such information with the public. Governments may consider supporting such evidence-based lobbying with legislation introducing mandatory impact assessment requirements for lobbyist, in order to assess the potential and the actual effectiveness of tax benefits.

## Conclusion

Kantian ethical theory provides a normative basis for a moral duty of multinationals and their leaders to be transparent about their political activities and tax lobbying. Such transparency requires multinationals and their leaders not only to be open about their reasons for tax lobbying, but also to listen to their stakeholders and to deliberate with them. Employees, consumers and other stakeholders should be able to digest the information and have the opportunity to voice concerns or objections and to share expertise. Evidence-based lobbying contributes to the morality of tax lobbying since evidence about the effectiveness of multinationals' proposals to achieve the publicly stated motive better enables stakeholders to assess the rationality of such motives and protects society against hypocrisy. Governments may consider legislation that supports such transparency, like mandatory stakeholder consultation, reporting on stakeholders' attitudes and perception, stakeholder representation on boards, and impact assessment requirements for lobbyists.

## Declarations

**Conflict of interest** Not applicable.

**Research Involving Human Participants and/or Animals** Not applicable.

<sup>12</sup> BE: Parliamentary documents, Explanatory Memorandum, Doc 51 3058/015, 14 (2007); UK: Lobbying Wins Tax Break for Breeders' Rights, *Horticulture Week* (23 March 2012).

<sup>13</sup> BE: *Vif-L'Express* (23 November 2012), see at [www.levif.be/actua-lite/magazine/comment-gsk-s-est-taille-une-loi-fiscale-sur-mesure/article-normal-910511.html?cookie\\_check=1602054766](http://www.levif.be/actua-lite/magazine/comment-gsk-s-est-taille-une-loi-fiscale-sur-mesure/article-normal-910511.html?cookie_check=1602054766).

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