

# CORPORATE SOCIAL RESPONSIBILITY & TAX POLICY

Tax Challenges for MNEs, Aalto University 21.4.2022

Lauri Finér

Doctoral candidate, Faculty of Law, University of Helsinki  
Special adviser, Ministry of Finance



# BASIC TENSIONS

Enterprises multinational – tax laws national

Seperate juridical entities are tax subjects – not MNEs

*”Businesswise MNEs could care less about juridical group structure.”*



# AGENDA

1. Debt shifting and Case Caruna
2. How are MNEs taxed?
3. Corporate social responsibility (CSR) and taxation
4. Who determines national tax laws?

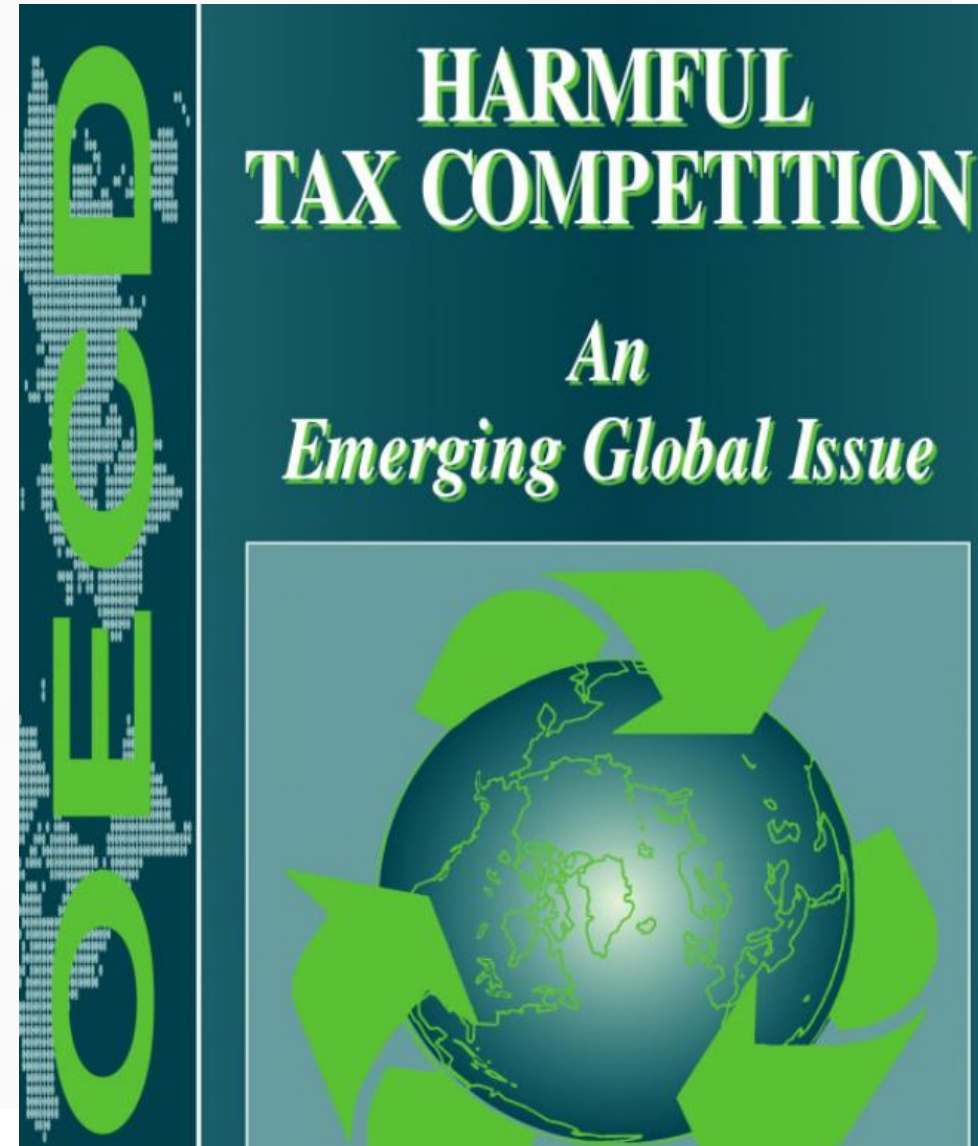


# 1. DEBT SHIFTING AND CASE CARUNA



# CONCEPTS 1/2

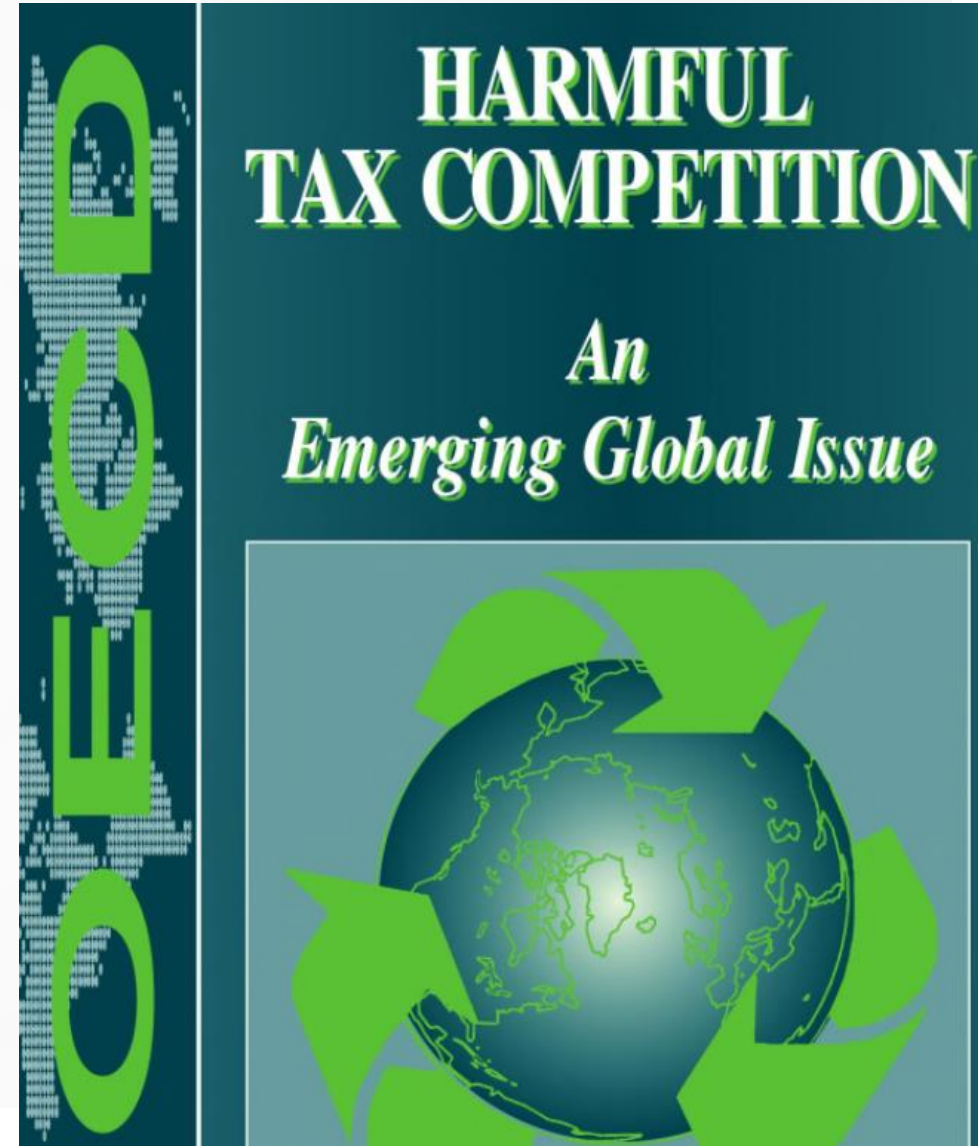
- **MNEs tax avoidance (aggressive tax planning) = profit shifting** = tax planning arrangements that shift profits generated in a jurisdiction are to a lower tax jurisdiction
  - Is tackled by broadening tax bases using e.g. anti-tax avoidance measures (= section of law or convention article that tackles profit shifting, other tax avoidance and harmful tax competition, e.g. general anti-tax avoidance rules, interest deduction limitation rules)
- Should be separated tax evasion related to foreign investments
  - Tax evasion is tackled by transparency, tax control and cooperation between authorities





## CONCEPTS 2/2

- **Harmful tax competition** = form of tax competition that abuses sovereignty of other countries by e.g. attracting offshore income
- Tax havens exercise extreme form of harmful tax competition
- Corporate tax haven – attracts profit shifting (often legal) through low taxation
- Secrecy jurisdiction – attracts tax evasion (often illegal) by providing secrecy that allows hiding assets offshore





# THIN CAPITALIZATION = DEBT SHIFTING

Firm Oy

Holding Oy

---

Lux SRL

---

Owners



# DEBT SHIFTING TIMELINE

**1600s** English and Dutch East India Companies first MNCs (?)

**1915** first transfer pricing rules in UK (USA 1917), transfer pricing and profit shifting were known already in 1800s

**1920s** principles of MNCs taxation – arm's length principle/separate entity doctrine (League of Nations Model Tax Convention)

**1971** first thin capitalization rules in Canada

**1970s** Wide discussion on the problems of international tax regime within UN, decelerates in the 1980s. Also mentions in Finland.

**1998** OECD: Harmful Tax Competition: An Emerging Global Issue

**2007–2009** Financial crisis and several data leaks (e.g. UBS)

**2011** scoop about tax avoidance of health care company Mehiläinen – implementation of IDLR begins (came to force in 2014)

**2013->** OECD:n BEPS project (e.g. OECD best practice approach on interest deduction limitation rules, 2016)

**2016** EU Anti-tax avoidance directive (ATAD), implemented 2018, in force 2019 (e.g. IDLR minimum standard)

**2016–2021** Finnish IDLR "leaks" (Caruna, Elenia, Sponda...)

**2021** IDLR amended 2022

**2022** IDLR equity escape rule amended again 2023?

**2024?** OECD two-pillar solution to address the tax challenges arising from digitalisation and globalisation (e.g. 15% minimum CIT)

**2024?** updated EU Commission proposal on common and consolidated corporate income tax rate ("BEFIT"), etc. etc.





# FINNISH INTEREST DEDUCTION LIMITATION RULE IN BRIEF (EVL 18 A §)

- External interest costs deductible up to 3 000 000 € (deemed on separate entity level = a MNE may deduct several times)
- Related party net interest costs deductible when max 500 000 €
- Higher interest costs deductible when less than 25% of operating profit corrected by depreciations (tax "EBITD")
- Higher interests deductible on later years with no time limit (e.g. loss-making entities)
- Exceptions that allow deduction of all interest costs: e.g. equity escape rule, finance companies
- Finnish equity escape rule = all interest cost deductible if the equity ratio of the MNC group lower than the given entity of the group

9



# KONSERNIN LAAJA TULOSLASKELMA

Milj. euroa	Liite	1-12/2017	1-12/2016
<b>LIKEVAIHTO</b>	2	5 040,0	4 657,9
Valmiiden ja keskeneräisten tuotteiden varastojen muutos		14,6	64,8
Liiketoiminnan muut tuotot	2,4	60,3	70,5
Materiaalit ja palvelut	2,5	-3 308,4	-3 132,7
Henkilöstökulut	2,5	589,5	-626,3
Poistot ja arvonalentumiset	2,6	-249,7	-244,3
Liiketoiminnan muut kulut	2,5	335,3	-347,5
<b>LIIKETULOS</b>		<b>581,0</b>	442,3
Osuus osakkuus- ja yhteisyritysten tuloksista		17,1	-1,1
Kurssierot	7	-3,3	-5,7
Muut rahoitustuotot	7	3,9	4,2
Muut rahoituskulut	7	-92,4	-79,1
<b>TILIKAUDEN TULOS ENNEN VEROJA</b>		<b>586,2</b>	360,6
Tuloverot	8	-102,3	-80,7
<b>TILIKAUDEN TULOS</b>		<b>483,9</b>	279,9

$$EBITD \times 25 \% = (581 + 249,7) \times 25 \% = 207,7 \text{ m€}$$

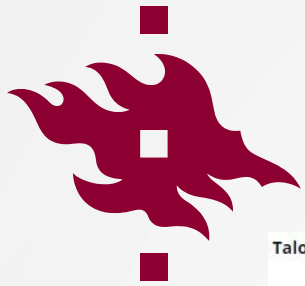
$$\text{Net interest costs} = 92,4 - 3,9 = 88,5 \text{ m€} < 207,7 \text{ m€}$$

→ All interest costs deductible



# CARUNA

- Founded in 2014, when had acquired kun oli Fortumin electrical networks with 2,5 billion €
- Electricity distribution companies are "natural monopolies" – pricing and profits are regulated, still highly profitable
- Caruna is the largest electricity distribution company in Finland with over 700 000 clients
- Owners (after 2021 ownership changes)
  - Elo (7,5 %)
  - AMF Pension 12,5 %, earlier KEVA)
  - Ontario Teachers' (40 %, earlier OMERS)
  - KKR (40 %, earlier First State Investments)



# YLE 31.1.2016

Talous

## Yhtiö teki 50 miljoonan euron voitot sähkönsiirrosta Suomessa – verot lähes olemattomat

Sähkön siirtohintojen rajuista nostoista päättäneen verkkoyhtiön Carunan omistukset kulkevat Alankomaiden kautta. Yhtiö on rakentanut miljardien eurojen lainaketjun, jonka vuoksi se ei juuri maksa yhteisöveroja Suomessa.



Sähköverkkoyhtiö Carunan sähköasema Espoon Keilaniemessä. Kuva: Yle

JYRI HÄNNINEN

31.1.2016 • Päivitetty 2.2.2016 14:11



# / YLE 2.9.2021

Talous

## Finnwatch moittii jälleen Carunaa verosuunnittelusta: viime vuonna valtiolta jäi saamatta 10 miljoonaa

Sähkönsiirtoyhtiö Caruna kiistää verojen välttelyn ja puolustaa tasevapaussääntöön perustuvaa menettelyään verkkoihin tekemillään investoinneilla. Finnwatch vaatii lainsäädäntöön muutoksia.



Caruna kuuluu Suomen suurimpien jakeluverkkoyhtiöiden joukkoon. Kuva: Henrietta Hassinen / Yle

JARMO KOPONEN

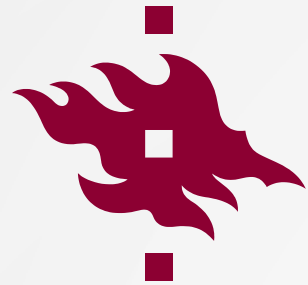
2.9.2021



# Konsernin tuloslaskelma (IFRS)

## KONSERNIN TULOSLASKELMA (IFRS)

1 000 eur	Liite	2017	2016
<b>LIKEVAIHTO</b>		<b>426 427</b>	<b>384 028</b>
Liiketoiminnan muut tuotot	4	6 012	7 626
Muuttuvat kulut		-88 116	-81 851
Henkilöstökulut	9	-20 362	-21 806
Liiketoiminnan muut kulut	5	-54 386	-55 679
Poistot ja arvonalentumiset	8	-123 894	-112 926
		-266 758	-272 262
<b>LIKEVOITTO</b>		<b>145 681</b>	<b>119 392</b>
Rahoitustuotot	6	6 415	4 263
Rahoituskulut	7	-135 577	-177 211
Rahoituserät yhteensä		-129 162	-172 948
<b>VOITTO/TAPPIO ENNEN VEROJA</b>		<b>16 519</b>	<b>-53 556</b>
Tuloverot	10	12 259	21 925
<b>TILIKAUDEN VOITTO/TAPPIO</b>		<b>28 778</b>	<b>-31 631</b>
Jakautuminen			
Emoyhtiön omistajille		28 778	-31 631



## KONSERNITASE (IFRS)

1 000 euroa	Liite	31.12.2017	31.12.2016
<b>Oma pääoma ja velat</b>			
Osakepääoma		3	3
Sijoitetun vapaan oman pääoman rahasto		171 204	171 204
Muut rahastot		-2 511	-2 477
Kertyneet voittovarot		-296 374	-325 152
<b>Oma pääoma yhteensä</b>		<b>-127 678</b>	<b>-156 422</b>
<b>Pitkäaikaiset velat</b>			
Korolliset velat	15,16	3 174 068	3 032 925
Johdannaissopimukset	15,16	24 679	31 323
Laskennalliset verovelat	10	521 158	539 763
Varaukset	20	208	246
Eläkevelvoitteet	21	160	111
Muut pitkäaikaiset velat	15,16	304 546	304 957
<b>Pitkäaikaiset velat yhteensä</b>		<b>4 024 819</b>	<b>3 909 325</b>
<b>Lyhytaikaiset velat</b>			
Ostovelat	15,16,22	55 316	53 344
Muut velat	22	35 451	32 860
Johdannaissopimukset	15,16	11	665
Varaukset	20	160	480
Muut lyhytaikaiset velat	22	49 443	56 174
<b>Lyhytaikaiset velat yhteensä</b>		<b>140 381</b>	<b>143 523</b>
<b>Velat yhteensä</b>		<b>4 165 200</b>	<b>4 052 848</b>
<b>Oma pääoma ja velat yhteensä</b>		<b>4 037 522</b>	<b>3 896 426</b>





## KOROLLISET LAINAT JA MUUT VELAT

1 000 EUR	Korko %	Juoksuaika	2017	2016
Pitkäaikaiset korolliset lainat ja muut velat				
Osakaslaina	8,50 %	2047	933 642	933 642
IBLA-lainat				
IBLA-laina 18v	2,74 %	2034	75 000	75 000
IBLA-laina 20v	2,83 %	2036	50 000	50 000
IBLA-laina 25v	2,97 %	2041	35 000	35 000
IBLA-laina 27v	3,00 %	2043	135 000	135 000
IBLA-laina 30v	3,03 %	2046	220 000	220 000
IBLA-laina 15v	2,57 %	2031	75 000	75 000
IBLA-laina 18v	2,74 %	2034	75 000	75 000
IBLA-laina 15v	2,57 %	2031	25 000	25 000
IBLA-laina 20v	2,83 %	2036	40 000	40 000
IBLA-laina 22v	2,90 %	2038	40 000	40 000
IBLA-laina 25v	2,97 %	2041	40 000	40 000
IBLA-laina 15v	2,57 %	2031	78 000	78 000
IBLA-laina 15v	2,57 %	2031	82 000	82 000
IBLA-laina 10v	2,04 %	2026	10 000	10 000
IBLA-laina 25v	2,97 %	2041	50 000	50 000
IBLA-laina 15v	2,57 %	2031	75 000	75 000
IBLA-laina 10v	1,69 %	2026	60 000	60 000
IBLA-laina 10v	3,18 %	2026	62 536	71 151
IBLA-laina 13v	1,93 %	2029	75 000	75 000
IBLA-laina 20v	2,42 %	2036	125 000	125 000
IBLA-laina 7v	1,50 %	2023	500 000	500 000
IBLA-laina 20v	2,70 %	2037	100 000	-
EIP-laina	0,43 %	2027	200 000	-
Investointilaina	0,55 %		20 000	170 000
Lainojen järjestelykulut			-7 110	-6 868
Pitkäaikaiset korolliset lainat ja muut velat yhteensä			3 174 068	3 032 925
Korolliset lainat ja muut velat yhteensä			3 174 068	3 032 925



Valtiovarainministeriö julkaisi 19.1.2018 luonnoksen ja lausuntopyynnön korkovähennysrajoituksesta tuloverotuksessa, joka on tarkoitus ottaa käyttöön vuoden 2019 alusta alkaen. Luonnoksen mukaan korkovähennysrajoitus laajenisi ja kiristyy merkittävästi, mikä tulisi lisäämään Carunan tuloverotusta. Caruna analysoi korkovähennysoikeuden rajoittamisen vaikutuksia vuoden 2018 aikana.





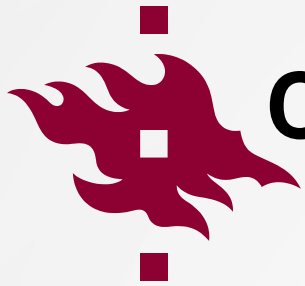
# FINNWATCH: AVOIDED TAX 2015 – 2020: 67 M€

Caruna konserni milj.€	2020	2019	2018	2017	2016	2015
Liikevoitto	171	167	154	146	119	26
+ poistot & arvonalentumiset	133	136	133	124	113	105
= Oikaistu elinkeinotoiminnan tulos	304	304	287	270	232	130
25% EBITD:sta	76	76	72	67	58	33
Korkotuotot	2	4	6	6	4	0
Korkokulut*	127	135	136	133	135	124
Nettokorkokulut	125	131	130	127	131	124
EBITD-säännöllä vähennettävissä	76	76	72	67	58	33
Nettokorkokulut ylittävät ebitd-rajan (+)	49	55	58	59	73	92
Etuyhteyslainojen korot	67	75	80	80	81	89
Väh.kelvottomien korkokulujen määrä**	49	55	58	59	73	89
Tasevapautuksesta saatu verohyöty (20%)	10	11	12	12	15	18

\* Lakimuutoksesta johtuen vuosien 2019 ja 2020 korkokulujen laskentatapa eroaa aiemmista vuosista.

Vuodesta 2019 alkaen lukuun sisältyvät korkokulujen ohella myös muut rahoituskulut.

\*\* Väh.kelvottomien korkojen määrä, jos tasevapautusta ei olisi sovellettu.



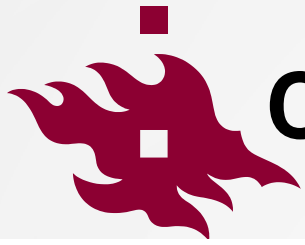
# CASE RB – BUSINESS MODEL RESTRUCTURING

Table 1. RB Group sales and tax figures, 2009–16

Group	2009	2010	2011	2012	2013	2014	2015	2016
Employees	24900	27200	37800	35900	37100	37200	34700	34700
Operating revenue (£m)	7771	8491	9553	9580	10048	9527	8882	9891
Gross profit (£m)	4779	5263	5836	5699	6211	5964	5424	6026
Gross margin (%)	61%	62%	61%	59%	62%	63%	61%	61%
Operating profit (£m)	1891	2098	2386	2397	2664	2800	2241	2410
Operating margin (%)	24%	25%	25%	25%	27%	29%	25%	24%
Profit before tax (£m)	1892	2136	2376	2408	2314	2495	2208	2394
Tax (£m)	474	566	622	583	574	553	463	558
ETR (%)	25%	26%	26%	24%	25%	22%	21%	23%
Net profit after tax (£m)	1418	1568	1745	1821	1739	3223	1743	1832
Effect of lower rates (£m)	-55	-9	-9	11	67	-177	-145	-45
Taxation advisory services (£m)	0.9	1.4	1.4	4.3	1.7	2.1	1.2	1
<i>Theoretical tax bill on profit before tax at 25% (£m)</i>	473	534	594	602	579	623.8	552.0	598.5
<i>Tax savings of effective rate vs. 25% (£m)</i>	-1	-32	-28	19	5	70.8	89.0	40.5
<b>TOTAL TAX SAVINGS 2014–16 (£m)</b>								<b>200.3</b>

Note: The ETRs for 2011–16 are reported in RB's annual reports. The 2009 and 2010 ETRs were calculated by Oxfam based on RB's reported income tax costs and pre-tax profits. There might be minor differences in the formulae used. The tax services were not specified between compliance and advisory in 2009 and 2010; the figures in the table represent the sum total for both of these years. From 2011, the figures for tax advisory were available.

Source: RB annual reports. Available at: <https://www.rb.com/investors/investor-information/>. The researchers' own calculations and numbers are shown in red.



# CASE RB – BUSINESS MODEL RESTRUCTURING

Figure 2. The Netherlands hub contribution to RB Group profit (2009–15)

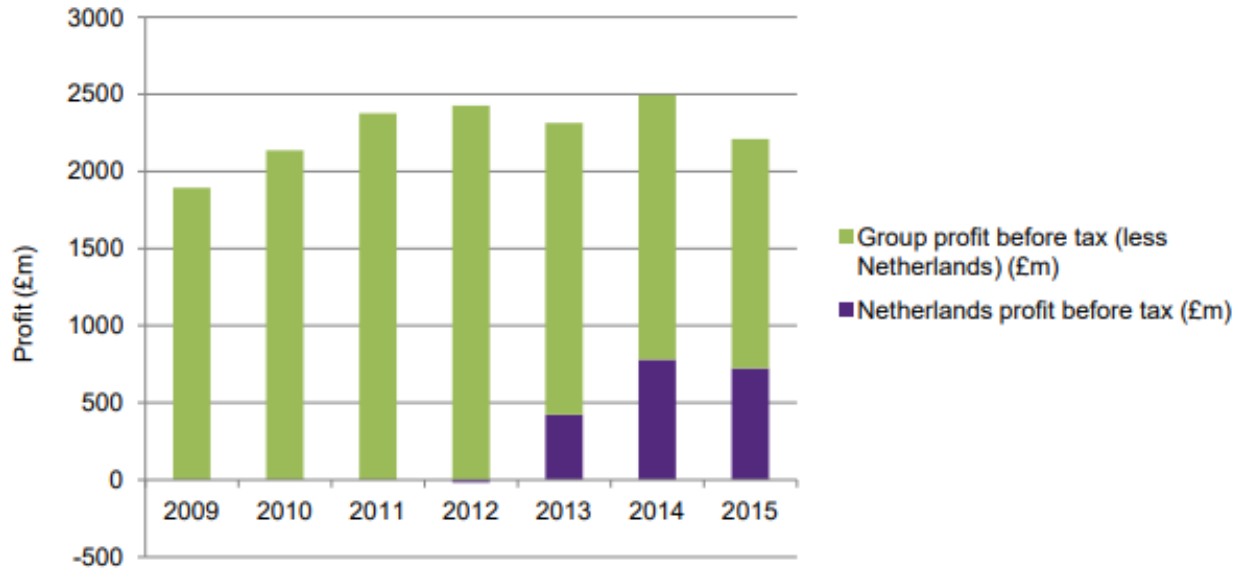


Figure 3. Returns per employee, Group vs. the Netherlands hub (2015)

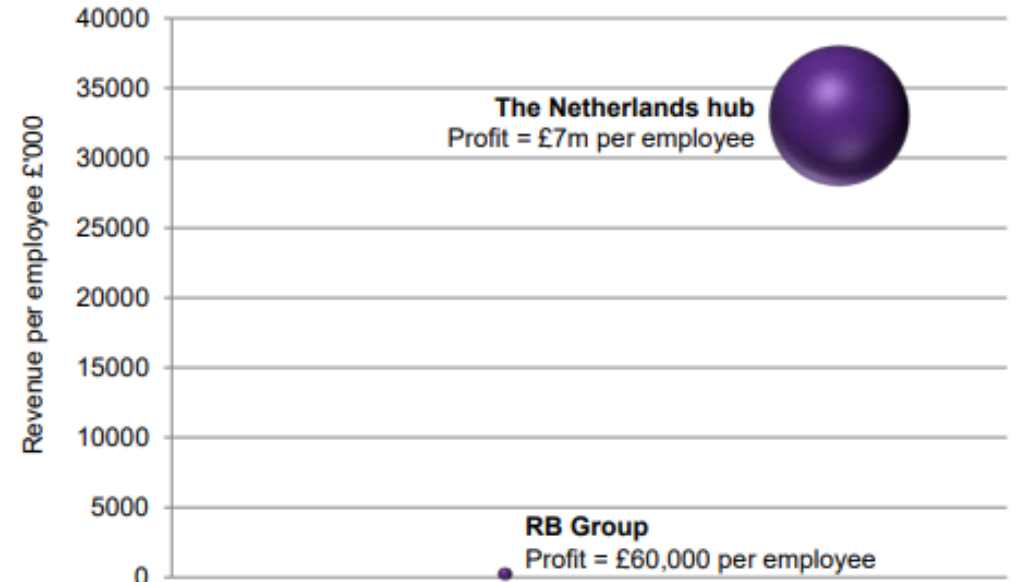


Table 2. Figures for RB's regional hub in the Netherlands, 2009–15

RB (ENA) B.V.	2009	2010	2011	2012	2013	2014	2015
Exchange rate: EUR/GBP	0.88953	0.85428	0.83688	0.83612	0.83744	0.73466	0.73466
Operating revenue (£m)				0	940	1571	3512
Operating profit (£m)				-17	428	762	719
Operating margin (%)					45%	49%	20%
Profit before tax (£m)				-17	423	779	724
Tax (£m)				-1	30	54	54
ETR (%)				6.2%	7.2%	6.9%	7.4%
Net profit after tax (£m)				-18	393	726	670



## 2. HOW ARE MNES TAXED?

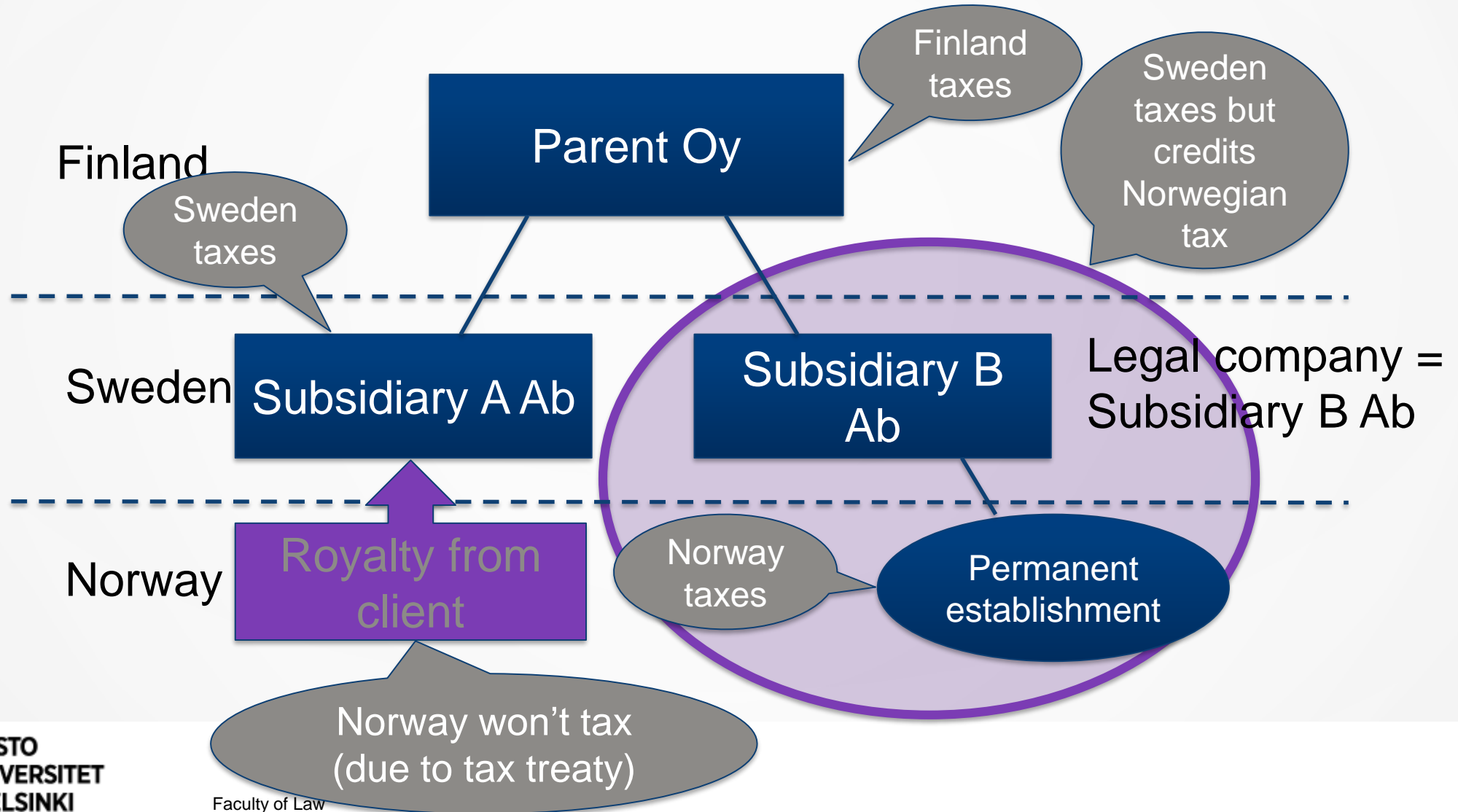


# ORGANIZATION PERSPECTIVE





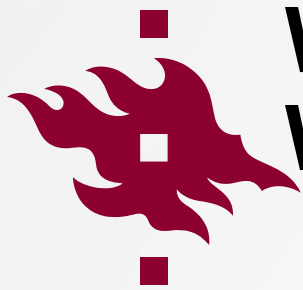
# TAXATION PERSPECTIVE





# MNES TAXATION IN BRIEF

- Source country taxation = MNEs generally taxed where the operations (employees) are
- Arm's length principle and separate entity doctrine = fiction where separate entities of MNEs are deemed independent in their transactions (= transfer pricing)
- Transfer prices generally determined using OECD methods (TP Guidelines)
- The system facilitates profit shifting (tax avoidance) by arranging group transaction and structure as well as transfer mispricing (illegal)
- Most common profit shifting methods:
  - Debt shifting (thin capitalization)
  - Business model restructurings and immaterial property restructurings
- Dividend taxation mostly in owners' resident jurisdictions and partially in parent company resident jurisdiction (intra-group dividends wholly or mostly tax exempt with so-called participation exemptions)

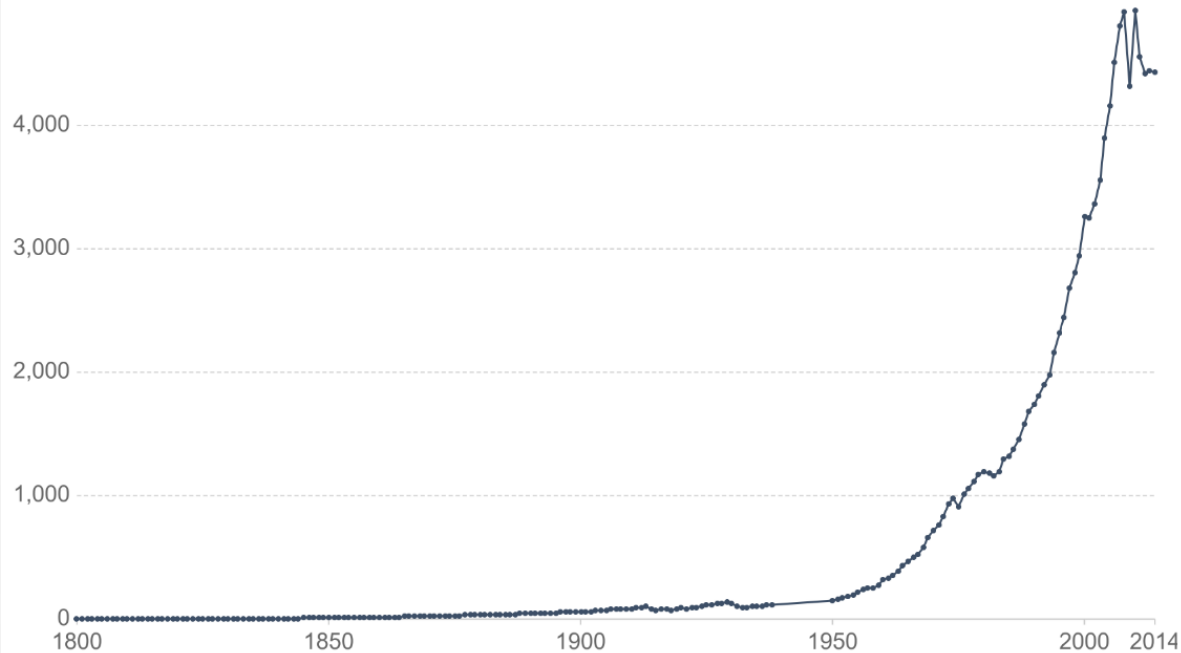


# WORLD TRADE HAS SURGED – UP TO 70% WITHIN MNES (PLANNED PRICING)

## The value of global exports

Time series of value of world exports at constant prices, relative to 1913 (i.e. values correspond to world export volumes indexed at 1913=100)

Our World  
in Data



Source: Federico and Tena-Junguito (2016)

OurWorldInData.org/international-trade • CC BY

## Value of exported goods as share of GDP, 1827 to 2014

Estimates correspond to merchandise export-to-GDP ratios.

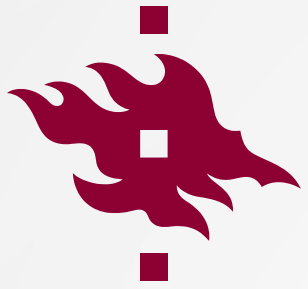
Our World  
in Data



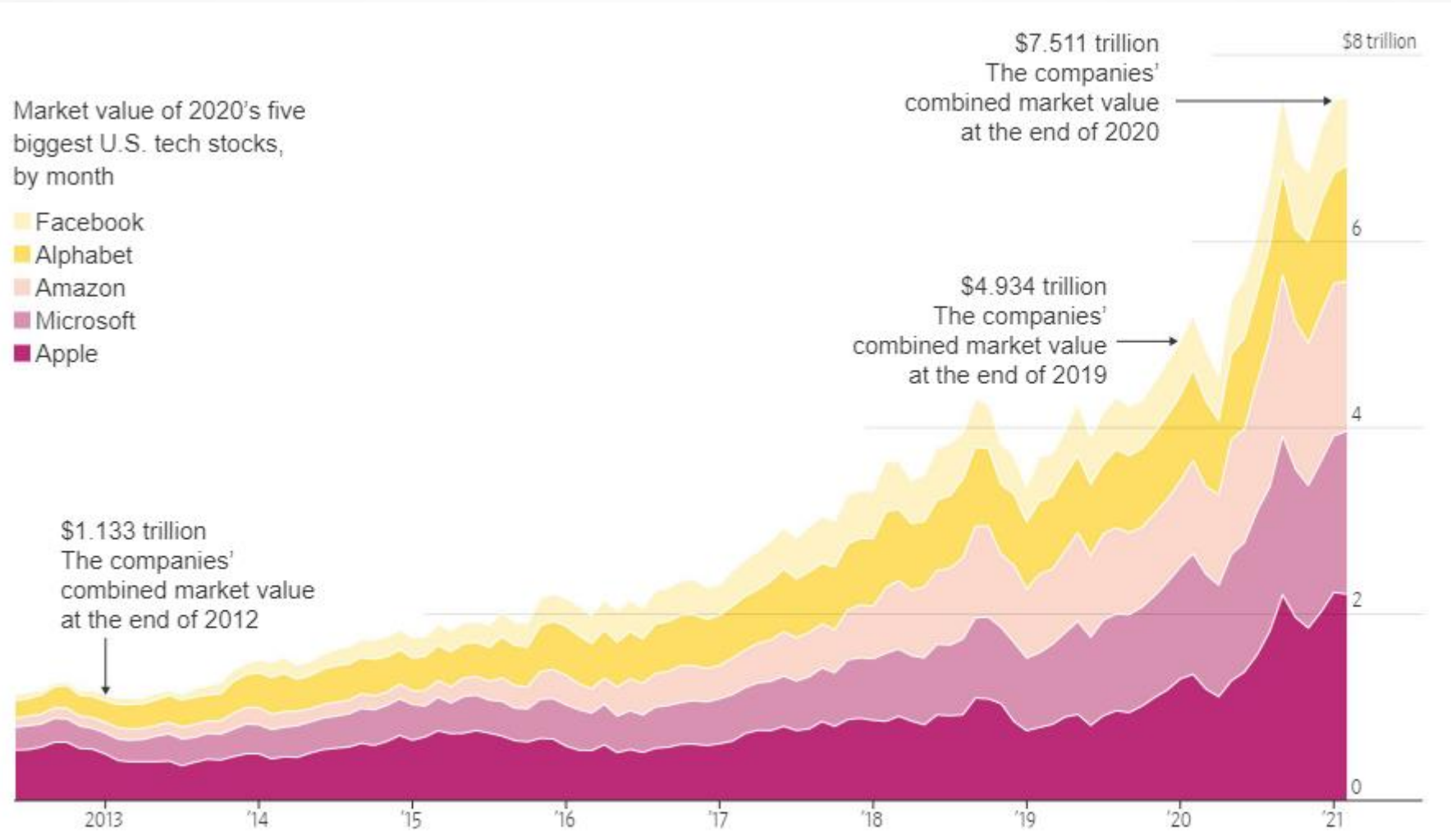
Source: Fouquin and Hugot (CEPII 2016)

CC BY



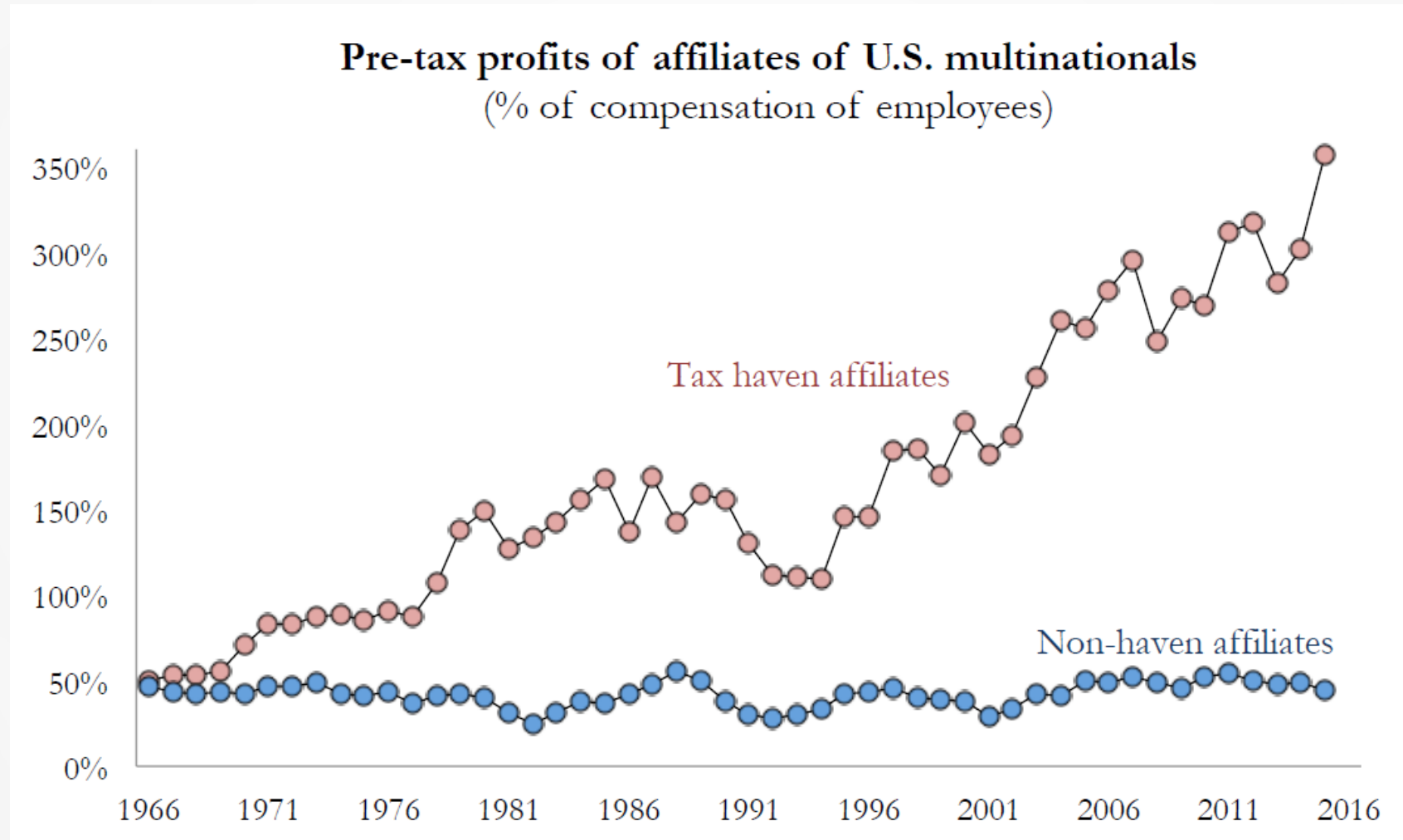


# GLOBAL DIGITAL "MONOPOLIES" HAVE AGGRAVATED PROBLEMS OF PROFIT SHIFTING



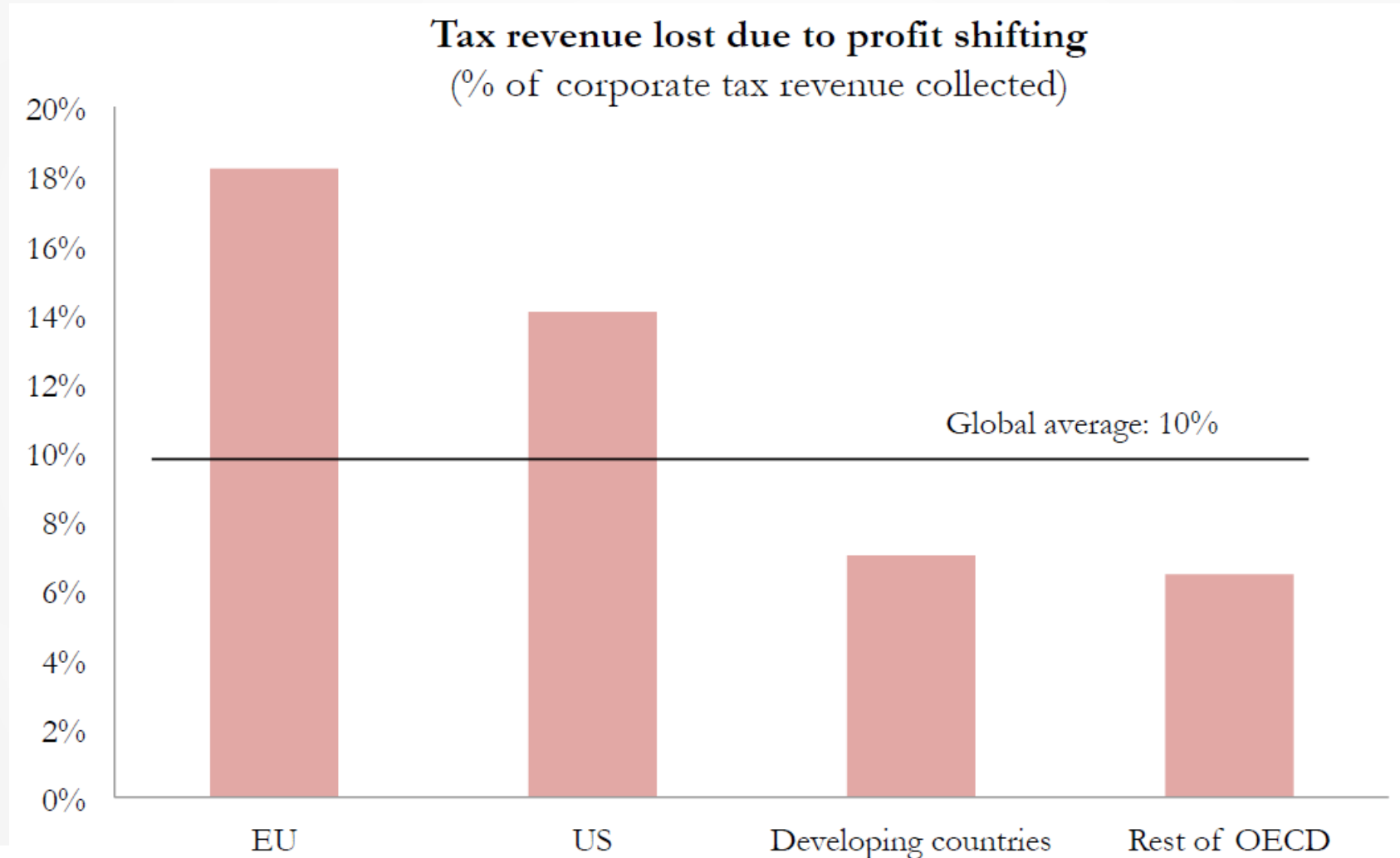


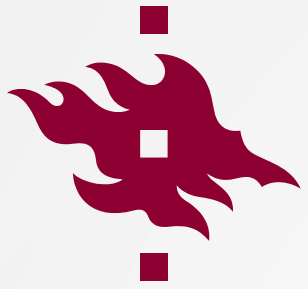
# PROFITS SHOWN IN CORPORATE TAX HAVENS



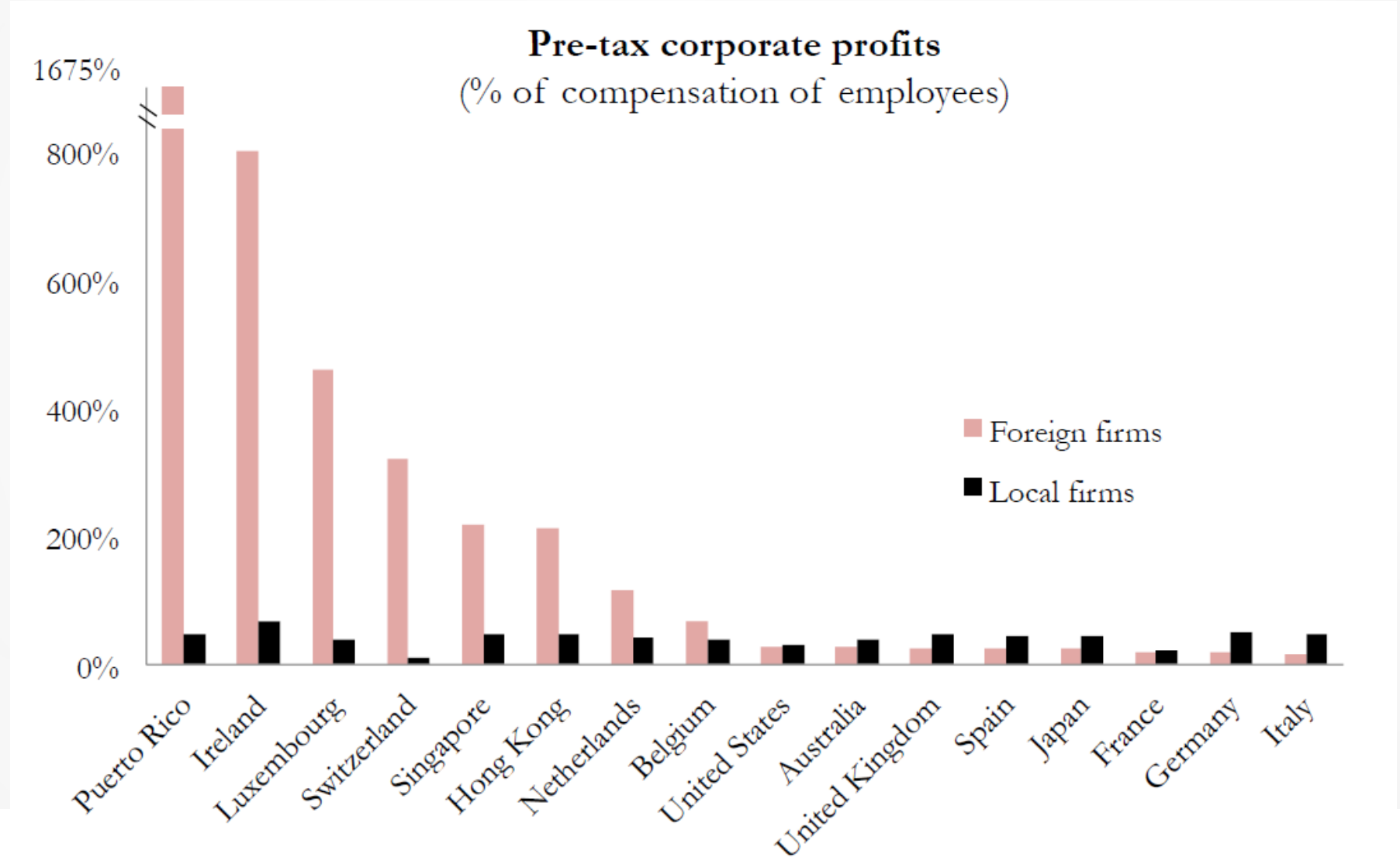


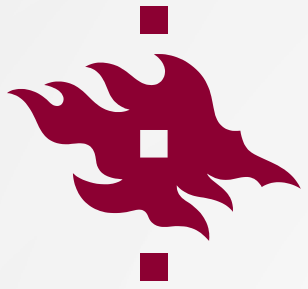
# WHO LOSES?



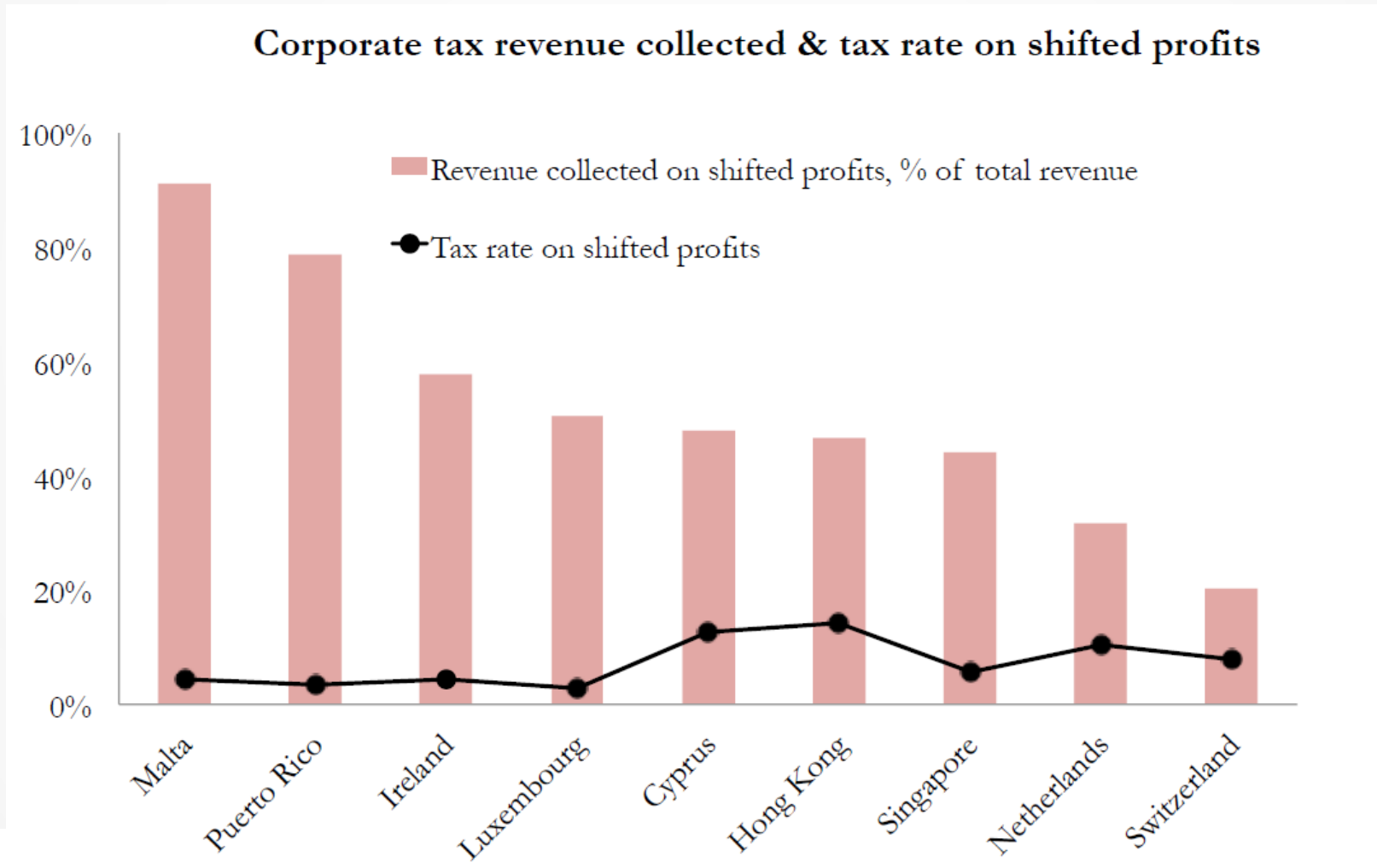


# WHO WINS?





# HARMFUL TAX COMPETITION HAS MEANT TAX RATES BELOW 10%





# 3. CORPORATE SOCIAL RESPONSIBILITY (CSR) AND TAXATION



# CIT FROM INVESTOR PERSPECTIVE = COST

- (c) bringing the operating assets and the cash flows of the networks business within the same group entity as interest costs and financing cash flows, resulting in a simpler and more reliable servicing of debt and allowing a more efficient use of available tax deductions; this results in an estimated cumulative positive cash flow impact of EUR 100 million over the next 10 years as against the current position that has been adopted to ensure tax deductions are in line with the stated intention of applicable tax laws;

Source: Elenia bond offering document 21.2.2020



# WHAT IS CSR (EU COMMISSION DEFINITION)?

*“**CSR is the responsibility of enterprises for their impact on society. CSR should be company led. Public authorities can play a supporting role through a smart mix of voluntary policy measures and, where necessary, complementary regulation.**”*

*Companies can become socially responsible by:*

- ***following the law;***
- ***integrating social, environmental, ethical, consumer, and human rights concerns into their business strategy and operations.”***



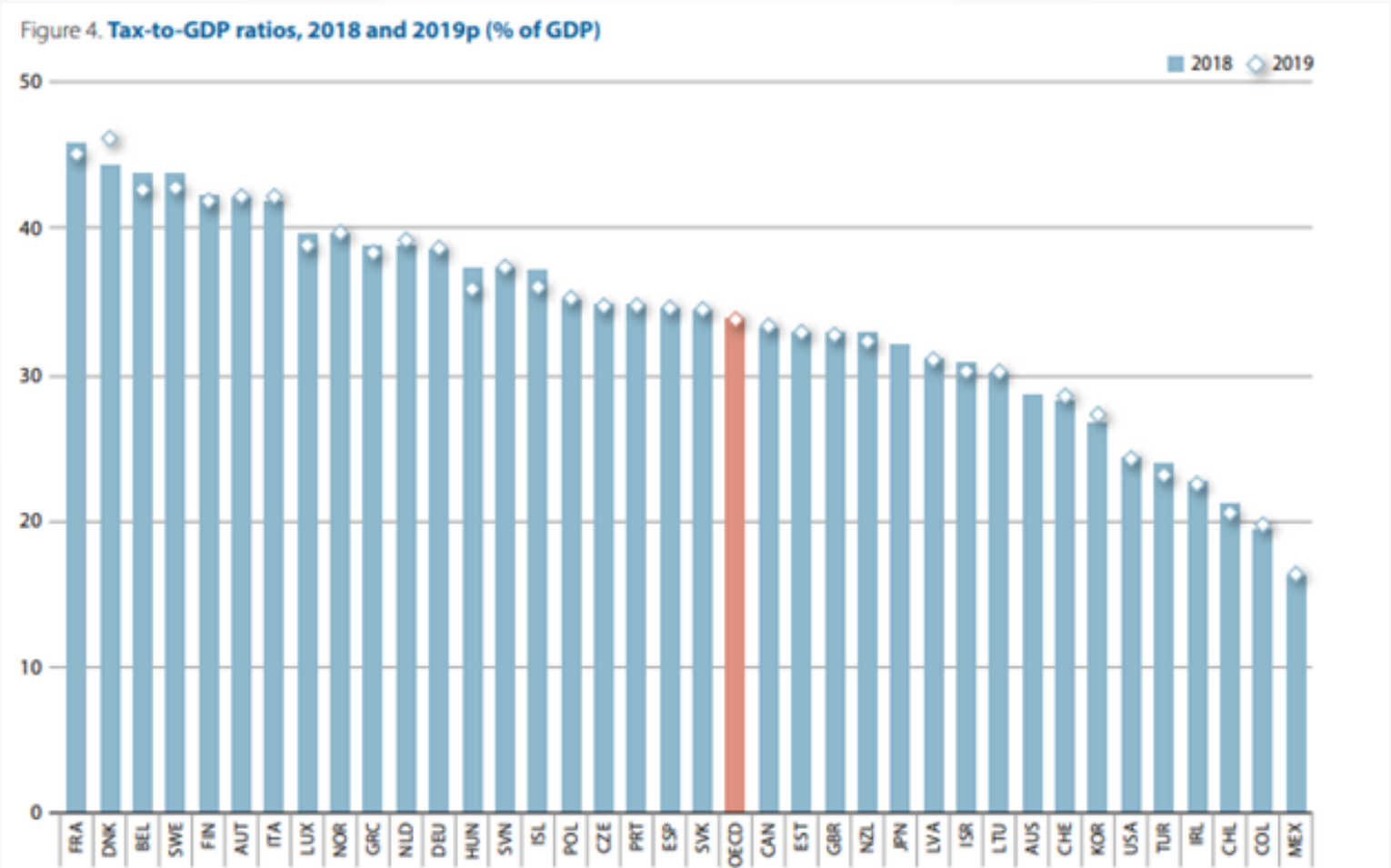


# TAXES ARE HUMAN RIGHTS ISSUE

- Tax avoidance has impact on human rights
  - Tax revenues necessary to secure basic human rights especially in developing countries (economic, social and cultural rights, legal protection)
  - Inequal taxation violates equality principle
- Responsible tax policy requires more than merely following the law (OECD, UN, EU...)
- MNEs are also political players – take part in defining the law

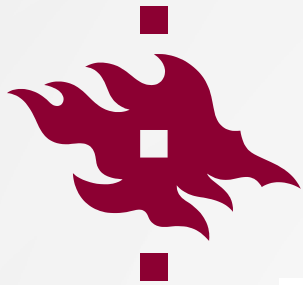


# TAXES HIGHER IN DEVELOPED COUNTRIES



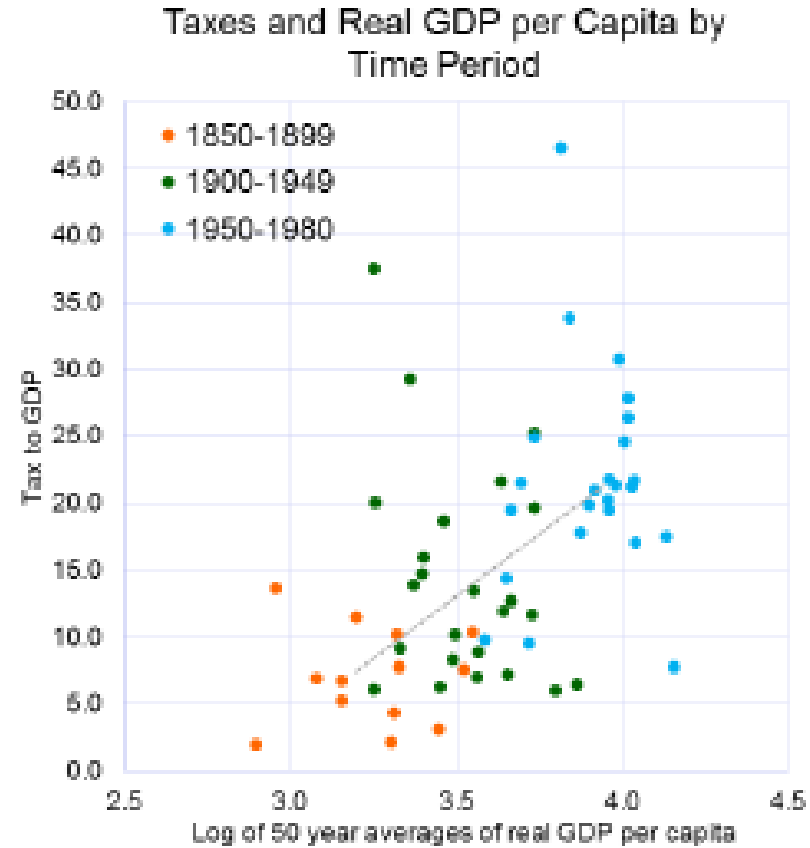
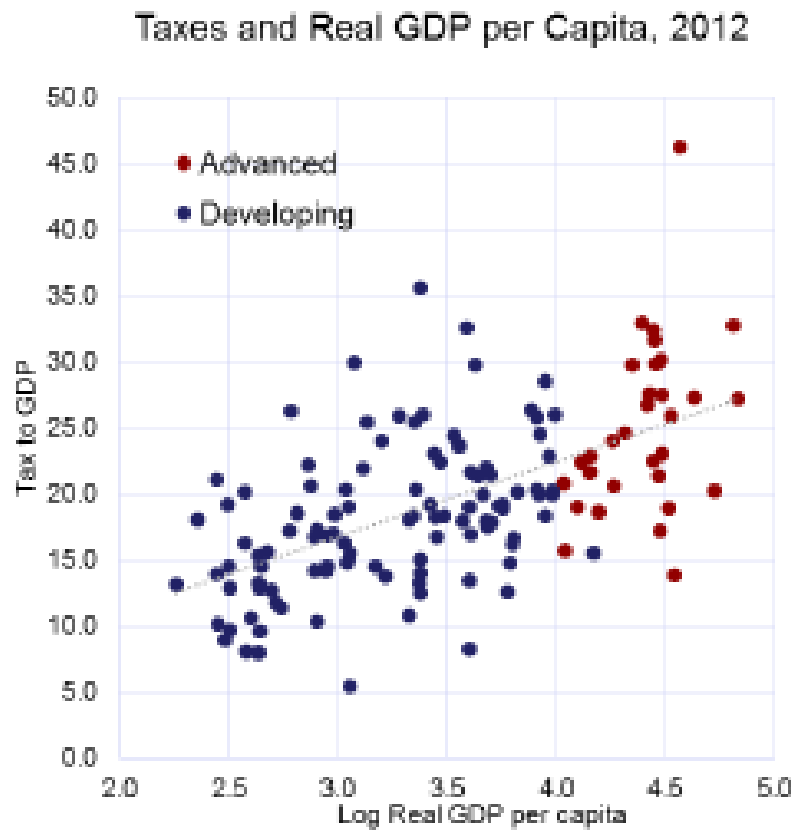
Notes: Preliminary data for 2019 were not available for Australia and Japan.

Source: Data from Revenue Statistics 2020, <http://oe.cd/revenue-statistics>



# TAXES HIGHER IN DEVELOPED COUNTRIES

Figure 3. Tax to GDP and Income Levels

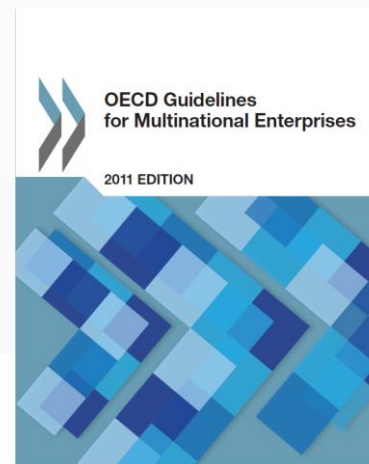


Sources: International Historical Statistics, World Economic Outlook, and authors' estimates



# OECD GUIDELINES FOR MNES

*“It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. **In particular, enterprises should comply with both the letter and spirit of the tax laws and regulations of the countries in which they operate.** Complying with the spirit of the law means discerning and following the intention of the legislature.”*





# RESPONSIBLE TAX IN PRACTICE

- Compliance: tax returns and other tax procedures
- Transparency
  - Accounting IFRS/GAAP
  - Tax footprints and tax policies
  - Country by country reporting (CBCR)
- Tax planning
  - Aggressive vs. conservative



# ”FOUR RS OF TAX”

1. Revenue – taxes necessary to fund public services and benefits
2. Redistribution – taxes necessary to tackle income and wealth inequality (justice, ability to pay)
3. Repricing – taxes necessary to steer consumption and production to gain external benefits and minimize external costs (e.g. carbon pricing)
4. Representation – taxes are important part of democratic processes and so-called social contract (Hobbes, Locke) as they make sovereign government accountable to tax payers



# WHAT IS THE ROLE OF CIT?

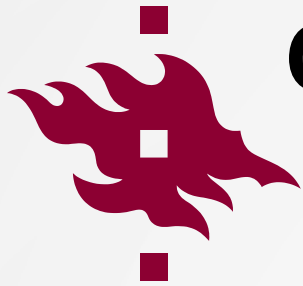
- Necessary part of progressive tax system (part of income tax for some of the highest earning individuals together with capital income tax on dividends)
- "Back stop" for earned income tax – tackles income shifting
- Society's share of corporate profits as a compensation for infrastructure, educated employees, protection of property etc.
- Good tax in terms of investment and ability to pay since income tax is levied on net income and only after investment is profitable.



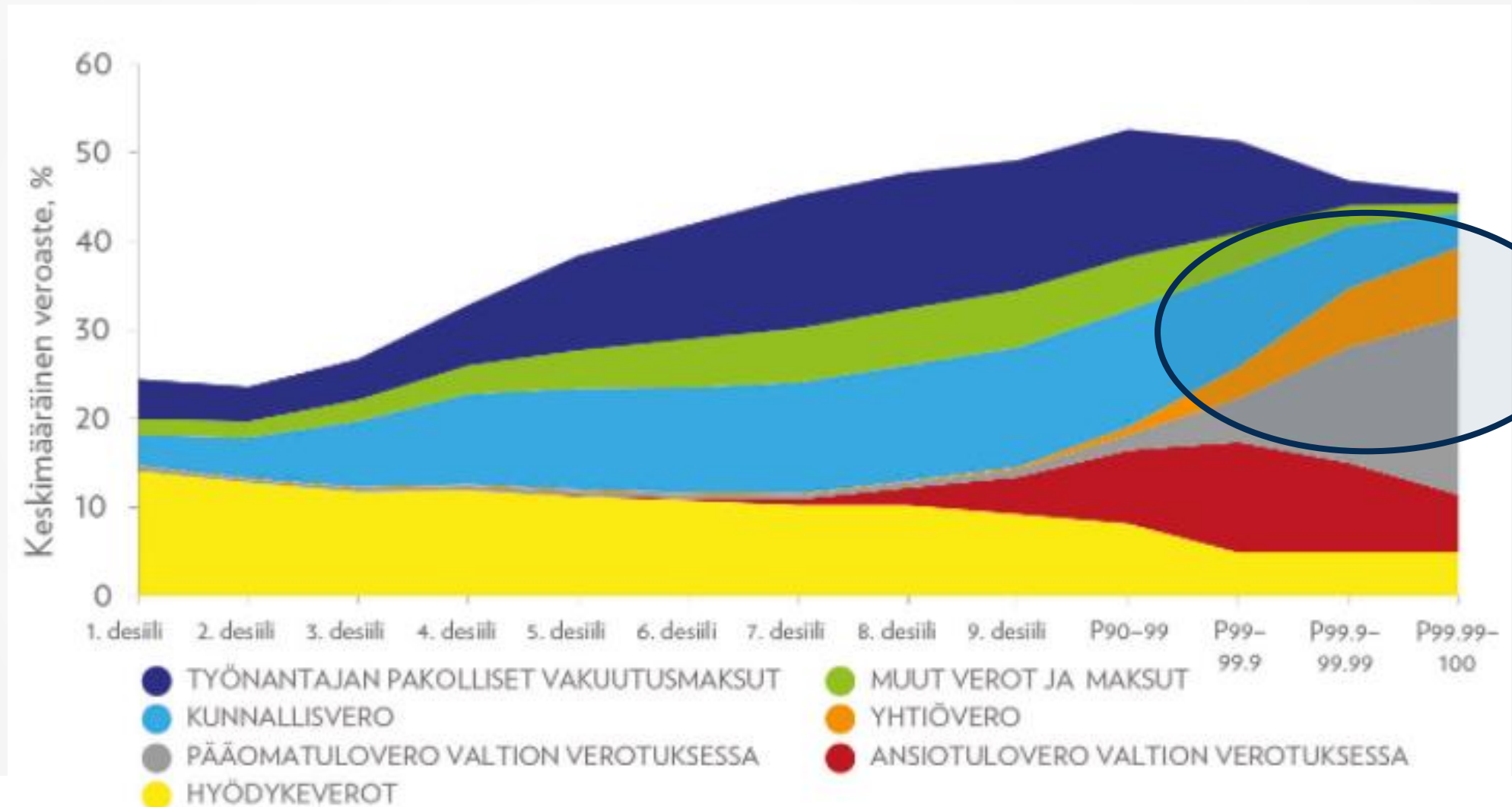
# WHY INSUFFICIENT ANTI-TAX AVOIDANCE MEASURES HARM PUBLIC INTEREST (OECD, IMF, JNE.)?

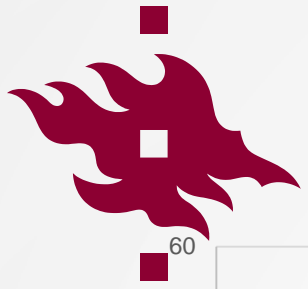
- a) Tax base erosion causes revenue losses that make it difficult to fund public services and benefits efficiently.
  - E.g. Tørsløv, Wier, Zucman 2022: Global tax losses 200 billion\$ (10 % of CIT levies), Finland 1 billion€ (15 %)
- b) Harmful tax competition decreases sovereignty of nations and level of democracy.
- c) It increases inequality between countries.
- d) It increases inequality between enterprises and harms functioning of markets and growth.
- e) It increases inequality between different groups. The wealthy benefit.



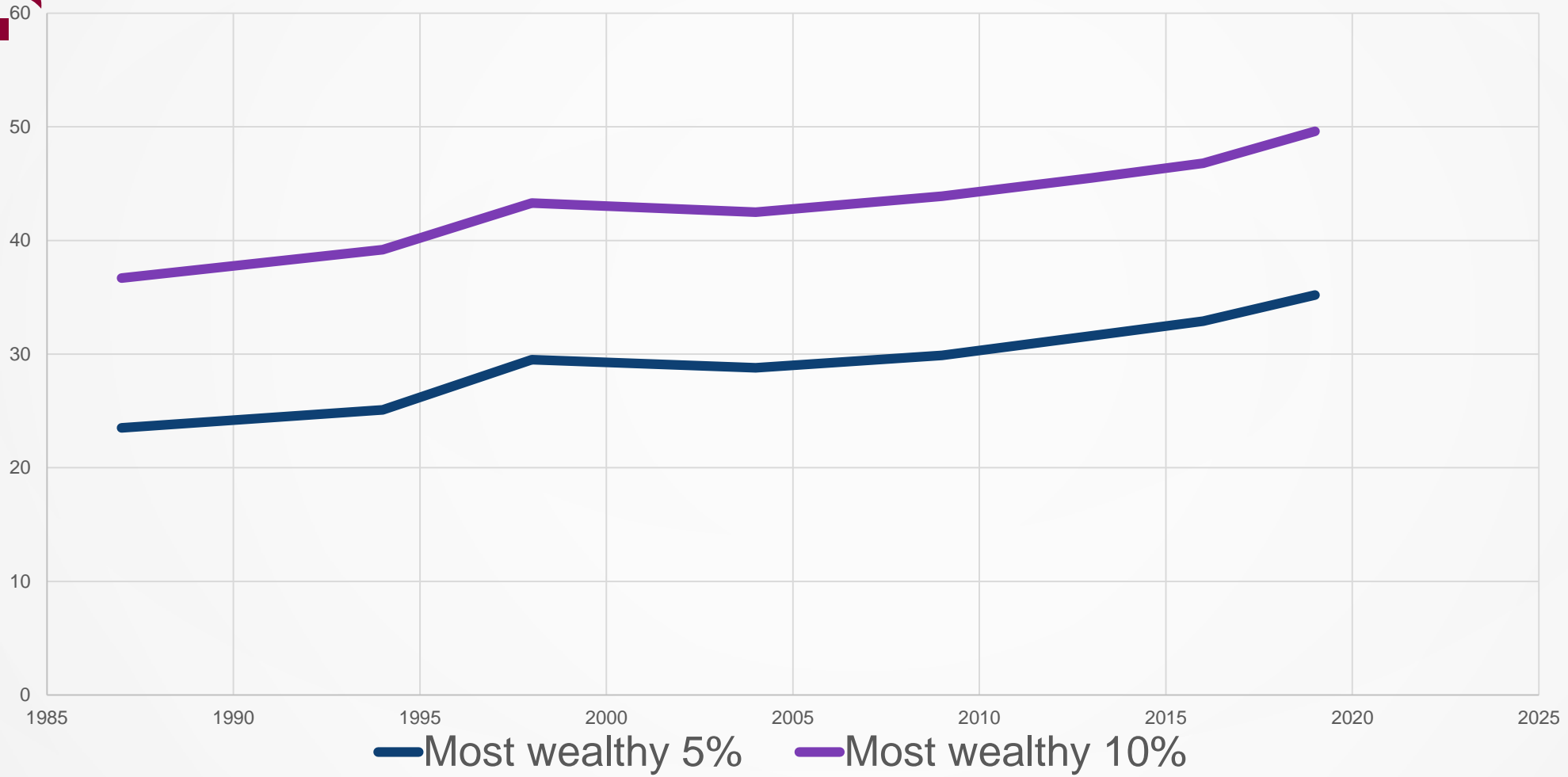


# CIT = TAX FOR THE WEALTHY





# Most wealthy households' share of total net wealth in Finland 1987–2019



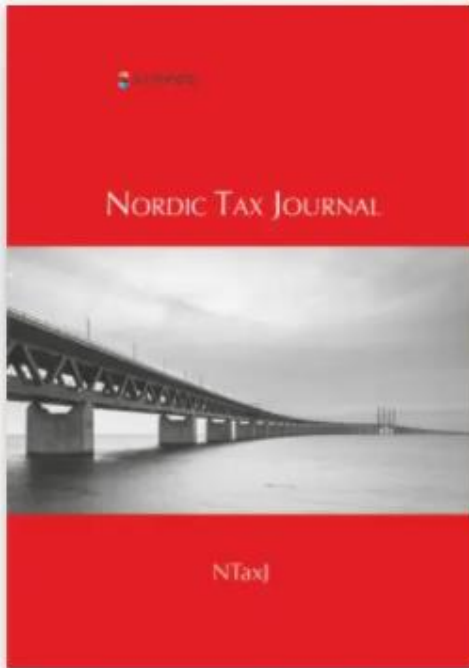


## **4. WHO DETERMINES NATIONAL TAX LAWS?**



# WHO ARE THE TAX POLICY PLAYERS IN FINLAND?

- Formally:
  - Parliament
  - Government
  - Civil servants (Ministry of Finance Tax Department)
- In practice also:
  - Political parties
  - Interest groups – regarding corporate tax mostly corporate interest groups (EK, SY, K3, FA etc.)
  - Other NGOs (represent perspective defined in their rules, e.g. human rights)
  - Corporate tax advisors (big4) and in-house tax specialist
  - Tax law researchers (represent the perspective of academic discipline)
  - Economics researchers (represent the perspective of academic discipline)
  - Tax administration officials and other tax specialists
  - Others?



Nordic Tax Journal

Journal Details

 Open Access

## Who generated the loopholes? A case study of corporate tax advisors' regulatory capture over anti-tax avoidance legislation in Finland

[Lauri Finér](#)

Published Online: 05 Oct 2021

Page range: -

Received: 05 Feb 2021

Accepted: 29 Jun 2021

DOI: <https://doi.org/10.2478/ntaxj-2021-0005>

© 2021 Lauri Finér, published by Sciendo

This work is licensed under the Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License.



# DEBT SHIFTING TIMELINE

**1971** first thin capitalization rules in Canada

**1970s** First documented mentions of thin capitalization in Finland.

**2009** First ministry of finance report on IDLRs

**2011** scoop about tax avoidance of health care company Mehiläinen – implementation of IDLR begins

**2012** IDLR passes parliament. In force 2014.

**2013->** OECD:n BEPS project (e.g. OECD best practice approach on interest deduction limitation rules, 2016)

**2016** EU Anti-tax avoidance directive (ATAD, e.g. IDLR minimum standard)

**2016–2021** Finnish IDLR "leaks" (Caruna, Elenia, Sponda...)

**2018** ATAD implemented 2018, in force 2019

**2021** IDLR amended 2022

**2022** IDLR equity escape rule amended again 2023?

**2024?** OECD two-pillar solution to address the tax challenges arising from digitalisation and globalisation (e.g. 15% minimum CIT)



# WHAT IS A REGULATORY CAPTURE (STIGLER 1971)?

- Regulatory capture occurs when all these three criteria are met within a policy process (Carpenter & Moss 2014, OECD 2017a):
  1. There is an explicitly defined policy goal that either helps or harms the public interest.
  2. The corporations consciously intervene in the policy process to extract rents or minimize their regulatory costs.
  3. The public interest is abused due to the intervention. Liittyy yritysten toimintaan, muut vaikuttamiseen osallistuvat tahot eivät yleensä tavoittele voittoa (ihmisoikeusjärjestöt jne.).
- Should be distinguished from lobbying: lobbying is a regulatory capture tool, but does not necessarily harm public interest.
- Who set the agenda? Strong vs. weak regulatory capture.



# EARLIER EMPIRICAL EVIDENCE ON REGULATORY CAPTURE

- Mostly econometric research methods (literary review e.g. Carpenter & Moss 2014, OECD 2017a):
  - Has studied e.g. correlation between company profits and their executives' political networks (Faccio, Mazulis & McConnell 2006 etc.)
- The deficiency of these studies is that they fail to show the causal connection between a specific lobbying event and its consequence. (Carpenter & Moss 2014):

*“Perhaps the deepest problem with much of the research on regulatory capture is not merely its tendency to overstate the evidence for capture, but its lack of nuance in describing how and to what degree capture works in particular settings.”*

- Lobbying in general has been studied with various methods in different disciplines also in Finland:
  - E.g. the role of corporate interest groups and labor unions has been relatively big in Finland yritysetujärjestöjen ja ammattiliittojen suuri rooli Suomessa (Vesa, Kantola & Binderkrantz 2018, Hirvola et al. 2021)





# EARLIER RESEARCH ON TAX LOBBYING

- Technicality of tax legislation emphasizes impact of tax specialists on tax legislation (Surrey 1957 etc.)
- *Epistemic nature* of tax specialists' communities might have silenced critical discussion and blocked tax reforms (Forstater & Christensen 2017 etc.)
- The role of tax advisory companies ("*Big Four*") been significant in legislation as well as its application (*global wealth chains*, Seabrooke & Wigan 2016, Christensen 2020a jne.)
- Tax scholars' financial interests could impact interpretation of law as well as their tax policy positions (Raitasuo 2019 and 2021)



# RESEARCH METHODOLOGY

- Case study / qualitative content analysis (Schreier 2012, Christensen 2020a)
- I analyzed all 148 specialist statements on IDLR that were submitted in different phases of enacting the rule between 2009–2018. Additionally I analysed the context and impact of the rule and amendments made to it during the processes.
- Analysoin lausunnot ja aiemman kirjallisuuden ja seuraavien tutkimuskysymysten pohjalta:
  1. Which stakeholder groups were involved?
  2. Were the stakeholders for or against the suggestions?
  3. What amendments did they request? E.g., did they request more/less effective tax avoidance legislation?
  4. How did different stakeholder groups respond to the consultations? How did their background and interests appear in their views?
  5. Whose comments were taken into account if the consultation influenced the corresponding rule?
- I also conducted two semi-structured interviews to validate the credibility of my findings (Hirsjärvi and Hurme 2000).



# STRENGTHS AND LIMITATIONS OF MY METHODOLOGY

- Systematic and interdisciplinary qualitative analysis allowed to perceive causality more accurately than previous econometric studies.
- Wide research material based on several case studies allowed quantitative analysis and increased reliability and validity of the analysis.
- Same methodology could be used in other policy research as consultation documents in Finland are generally public.
- Limitations:
  - Generalizability? The study covered one little-known and technical section in tax law.
  - What was invisible? Also other things have impact on tax law that are not visible in consultation statements, and their significance could not be analyzed (informal lobbying, political decisionmakers and their relative strengths, research, civil servants, media, public discussion etc)



# FINNISH LAW DRAFTING PROCESS



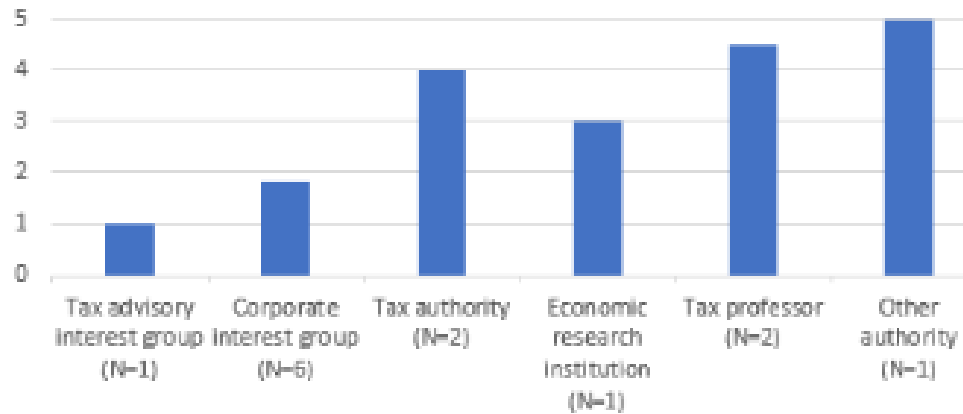


# WHY THE FINNISH IDLR DOES NOT PROTECT PUBLIC INTEREST?

- It facilitates debt shifting and benefits only a few dozen MNCs where as hundreds of thousands other Finnish companies must pay their CIT in full.
- The IDLR deviates from OECD best practice
- Finnish IDLR is unique due to its various exceptions that have facilitated debt shifting(e.g. equite escape rule)



# CONSULTATION 2009



**Figure 1: Should an IDLR be adopted?**

**View (1–5):**

- 1 – Should not be adopted
- 2 – Should not be adopted with reservation
- 3 – No opinion
- 4 – Should be adopted with reservation
- 5 – Should be adopted



**Figure 2: What kind of rule should be adopted?**

**Type (1–3):**

- 1 – Should apply merely to artificial arrangements
- 2 – No opinion on type
- 3 – Fixed ratio rule



# CONSULTATION 2009

Statement	Stakeholder	Stakeholder group	View	Type
1.	Confederation of Finnish Industries	Corporate interest group	1	1
2.	Family Business Network Finland	Corporate interest group	3	1
3.	Federation of Finnish Enterprises	Corporate interest group	1	1
4.	Finance Finland	Corporate interest group	1	1
5.	Finnish Chamber of Commerce	Corporate interest group	2	1
6.	Taxpayers Association of Finland	Corporate interest group	3	1
7.	VATT Institute for Economic Research	Economic research institution	3	2
8.	Financial Markets Department of the Ministry of Finance	Other authority	5	1
9.	Association of Finnish Tax Advisors	Tax advisory interest group	1	1
10.	Finnish Tax Administration	Tax authority	4	3
11.	Large Taxpayers' Office	Tax authority	4	3
12.	Marjaana Holmlinen	Tax professor	5	1
13.	Seppo Penttilä	Tax professor	4	2

## View (1–5):

- 1 – Should not be adopted
- 2 – Should not be adopted with reservation
- 3 – No opinion
- 4 – Should be adopted with reservation
- 5 – Should be adopted

## Type (1–3):

- 1 – Should apply merely to artificial arrangements
- 2 – No opinion on type
- 3 – Fixed ratio rule



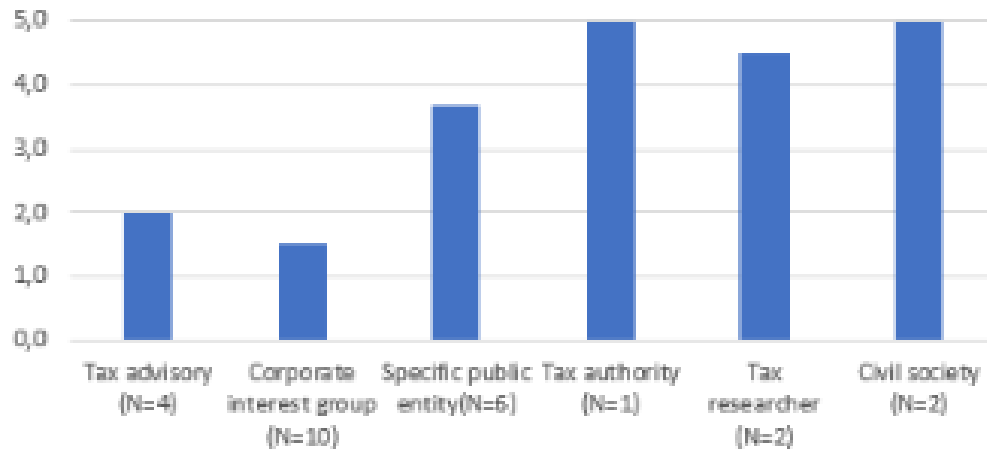
## OBSERVATIONS 2009

- Large Taxpayers' Office analyzed 23 fiscally significant debt arrangements, that decreased tax levies by over 100 million € annually.
- EK: “Tax avoidance is merely a theoretical phenomenon that does not have significant impact on Finnish CIT returns as the GAAR and transfer pricing rules allow possible abuse to be tackled.”
- Professor Helminen (University of Helsinki): “The Finnish tax regime has been exceptionally favorable for taxpayers compared to the relevant reference countries. This situation has been well-known for a long period and the contrast to the other countries has increased as they have adopted new thin capitalization rules. It is clear that taxpayers have actively exploited this loophole with the help from tax advisors by making specifically cross-border tax arrangements. This has naturally meant losses of tax revenue for Finland.”





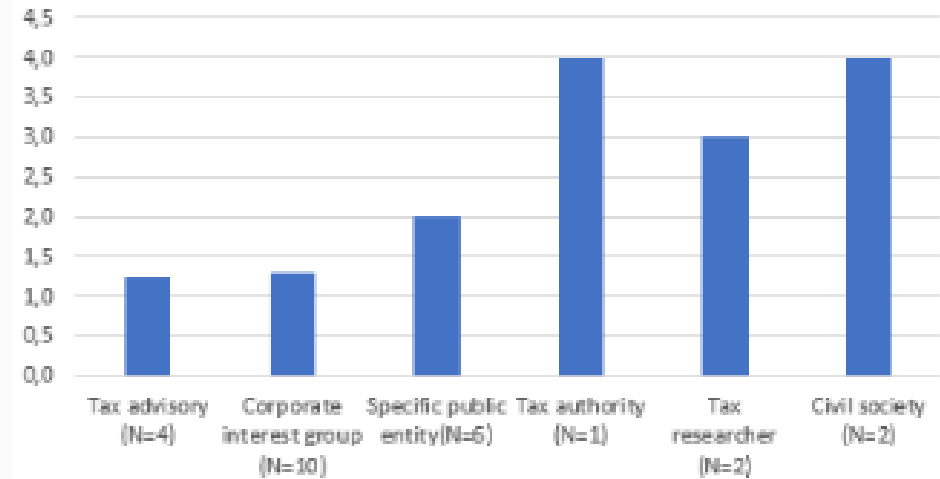
# CONSULTATION 1/2012



**Figure 3:** Should the interest deduction limitation rule be adopted?

**View**

- 1 – Should not be adopted
- 2 – Should not be adopted with reservation
- 3 – No opinion
- 4 – Should be adopted with reservation
- 5 – Should be adopted



**Figure 4:** What kind of rule should be adopted?

**Type**

- 1 – Should be a lot less extensive
- 2 – Should be little less extensive
- 3 – No opinion
- 4 – As proposed
- 5 – Should be more extensive



# CONSULTATION 1/2012

Statement	Stakeholder	Stakeholder group	View	Type	EFR	Ex	Delay	Real estate ex	Specific public entity
1.	Confederation of Finnish Industries	Corporate interest group	1	1	1	1	1	1	0
2.	Federation of Finnish Enterprises	Corporate interest group	2	2	0	1	0	0	0
3.	Finance Finland	Corporate interest group	1	1	1	0	1	0	0
4.	Finnish Chamber of Commerce	Corporate interest group	1	1	1	1	0	0	0
5.	Finnish Energy	Corporate interest group	1	1	1	1	1	1	0
6.	Finnish Venture Capital Association FVCA	Corporate interest group	1	1	1	1	0	0	0
7.	INFRA – Infra Contractors Association In Finland	Corporate interest group	3	2	0	0	0	0	0
8.	RAKLI - The Finnish Association of Building Owners and Construction Clients	Corporate interest group	1	1	0	1	1	0	0
9.	Taxpayers Association of Finland	Corporate interest group	3	2	0	0	0	0	0
10.	The Family Business Network Finland	Corporate interest group	1	1	1	1	0	0	0
11.	Attac Finland	Economic democracy NGO	5	4	0	0	0	0	0
12.	Tieyhtiö Valtatie 7 Oy	Public infrastructure company	2	2	0	0	0	0	1
13.	Association of Finnish Local and Regional Authorities	Municipalities interest group	5	2	0	0	0	0	1
14.	City of Helsinki	Municipality	5	2	0	0	0	0	1
15.	The Finnish Transport Infrastructure Agency	Other authority	3	2	0	0	0	0	1
16.	The Finnish Pension Alliance TELA	Pension funds interest group	3	2	0	0	0	0	1
17.	Municipality Finance Plc	Public Authorities' Finance company	4	2	0	0	0	0	1
18.	PWC Finland	Tax advisory company	3	2	0	0	1	0	0
19.	The Association for Authorized Public Accountant (KHT-yhdistys ry)	Tax advisory interest group	2	1	0	0	1	0	0
20.	The Association of Finnish Tax Advisors	Tax advisory interest group	1	1	1	1	1	0	0
21.	The Finnish Bar Association	Tax advisory interest group	2	1	1	1	0	0	0
22.	The Finnish Tax Administration	Tax authority	5	4	0	0	0	0	0
23.	Marjaana Helminen	Tax professor	5	4	0	0	0	0	0
24.	Pauli K. Mattila	Doctor in tax law	4	2	0	1	0	0	0
25.	The Central Organisation of Finnish Trade Unions SAK	Trade union	5	4	0	0	0	0	0

## View

- 1 – Should not be adopted
- 2 – Should not be adopted with reservation
- 3 – No opinion
- 4 – Should be adopted with reservation
- 5 – Should be adopted

## Type

- 1 – Should be lot let extensive
- 2 – Should be little less extensive
- 3 – No opinion
- 4 – As proposed
- 5 – Should be more extensive

## Equity escape rule / Delay until 2014 / Real estate exemption / Specific public interest

- 1 – Yes
- 2 – No



# OBSERVATIONS 2012

- Generally no references to academic research.
- EK 2012:
  - "The proposed general limitation of interest deduction will be applied to all Finnish groups independent of if there is any tax avoidance. This will harm finance of nearly all Finnish corporate groups."
  - "The IDLR will increase investment costs and decrease the desire to invest in Finland."
- VATT 2017:
  - "The IDLR seems to be an effective measure against profit shifting. We did not observe any harmful consequences from the reform."



# AMENDMENTS BASED ON CONSULTATIONS

- Equity escape rule.
  - Exception for finance companies.
  - Exception for real estate investment companies.
  - Postponement of inception 2013 → 2014.
- These changes facilitated debt shifting and causes annual tax losses of at least tens of millions.



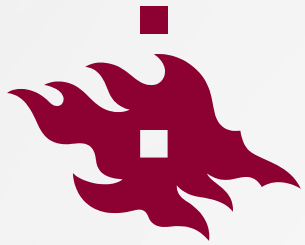
# CONCLUSIONS – ENTERPRISES

- Weak regulatory capture 2012 and 2018:
  - At least eight different amendments to legislation after 2012 and 2018 consultations that decreased tax revenue by at least tens of millions euroa annually (total impact at least hundreds of millions).
  - Only a few dozen MNEs benefited as the amendments facilitated profit shifting.
  - The initial agenda was set by civil society, media, international organizations, officials.
- The role of corporate interest groups and tax advisors significant:
  - The statements representing corporate interests outnumbered statements presenting wider public interests such the human right perspective (e.g. by 19 to 3 in 2018)
  - This role visible in other influence as well (media, informal lobbying etc.)?



# CONCLUSIONS – OTHERS

- Role of tax scholars limited
  - Dominating legal-dogmatic research method not that relevant from tax policy perspective.
  - Role of epistemic communities and economic interests?
- The role of economic scholars almost non-existent
  - Finnish academic economic research on profit shifting scarce.
- The role of other NGOs still small, but has grown.



# OTHER CONCLUSIONS

- Political profit-seeking:
  - MNCs and their representants are important political players: tax policy is a tool profit-seeking.
- The role of officials and civil servants has grown. The role of Ministry of Finance was decisive in 2009 and 2012. Later the OECD and EU have taken the initiative in drafting new rules.



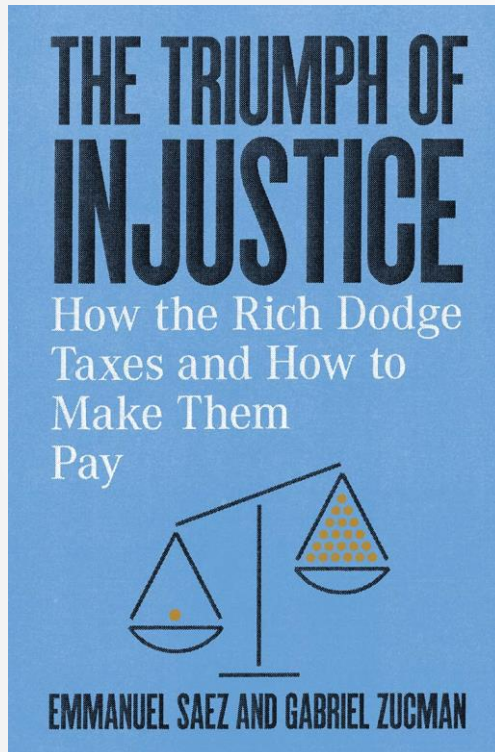
# HOW TO TACKLE REGULATORY CAPTURE

- Main problems: lack of knowledge on highly technical tax regime and imbalance of resources between parties representing the corporate and public interest. Possible solutions (OECD 2017a):
  1. Levelling the playing field: Parties necessary to support public interest should be better represented.
  2. Ensuring transparency and access to information.
    - Lobbying register (transparency of informal lobbying)
    - More independent academic research.
    - Civil servants should complement the deficiencies of academic research in law drafting process (impact assessment):
  3. Promoting accountability of decision-makers through Supreme Audit Institutions, competition authorities and regulatory agencies.
  4. Address inherent capture risks at organizational levels through internal integrity policies.





# ADDITIONAL READING



Veropolitiikka-blogi:

<https://veropolitiikka.blog/>

OECD website on BEPS:

<https://www.oecd.org/tax/beps/>

More about Caruna and Elenia:

<https://finnwatch.org/fi/tutkimukset/872-verovaelttely-saehkoensiirtoalalla-jatkuu>

Tørsløv, Wier & Zucman: Missing Profits

<https://missingprofits.world/>