“We have a long history at Starbucks of doing the right thing, and we also know that being responsible in business is also good for the bottom line and with that confidence we know that this is the right action to take. ... We have committed to paying corporation tax in the U.K., beyond what the law requires, and regardless of whether we’re profitable in the next two years, because our customers have said to us that they think we can and should do more.”

— Kris Engskov, managing director of Starbucks U.K., December 2012

It is well accepted that corporations require various legal licenses to do business in a state. But Starbucks’s recent dealings in the U.K. confirm that businesses also need what corporate social responsibility experts call a “social license to operate.” Companies may now in effect be required to pay an amount of tax over and above what is legally required in order to safeguard public approval of their ongoing operations. But even as the OECD moves forward on a project to salvage the international tax system from its tattered, century-old remains, the tax standards articulated by governments will no longer be enough to guarantee safe passage for multinationals. Instead, companies may have to deal with a much more volatile — and fickle — tax policy regime: one developed on the fly by public opinion.

**How Starbucks Lost Its Social License**

Starbucks lost its social license to operate in December 2012, when activists descended on 40 of its retail locations throughout the U.K. to protest the company’s failure to pay taxes in that country. In some locations, protestors set up crèches and women’s refuges to represent the social services being lost because of austerity measures enacted in the midst of widespread corporate tax dodging by multinationals like Starbucks. The activists targeted Starbucks after a parliamentary investigative committee demanded an accounting from it and other multinational companies that had been called out in a Reuters news story for having paid little or no taxes to the U.K. — despite consistently delivering annual financial statements showing growing sales in that country. The committee wanted to know how Starbucks could claim to lose money 14 years in a row for tax purposes, yet be continually expanding its franchise throughout the country.

Starbucks answered the committee with the same response the public has heard from other high-profile companies that have been called to account for their extremely low effective worldwide tax rates: It had paid all the taxes that were legally due, in all the jurisdictions in which it operated. This statement has been reiterated by CEOs of multinationals such as Google, Apple, and Amazon, all of whom have been called on to explain their global low-tax profiles. Presidential candidate Mitt Romney issued a similar response when his low tax rate became national news, stating that voters would want him to follow the law and pay only what the tax code requires. Paying more than the required amount, he said, would preclude his eligibility for the presidency. It was also the defense offered by Bono when protesters attending a U2 concert hoisted a banner emblazoned with the command “U Pay Tax 2”
to oppose the corporate migration of the band from its home country of Ireland to the tax-friendly Netherlands.

Bono in particular seemed hurt that his fans would find fault with his band’s tax practices, given his long-standing dedication to altruism throughout the world. By contrast, corporate managers have appeared little more than mildly surprised by the sudden fuss over something they have been doing for decades. Yet Starbucks ultimately determined that it had taken a reputational hit under the charge of tax dodging and that this had imposed — and would continue to impose — too high a cost to ignore, ultimately affecting its ability to continue to do business in the U.K.

At What Price Restoration?

Within a few days of the parliamentary hearings, Starbucks announced that it now understood that its customers clearly expected more than mere compliance with the tax laws as written; accordingly, it would voluntarily pay as much as £20 million in corporate tax over 2013 and 2014. In other words, the money would be paid regardless of whether the company was profitable for tax purposes over that period. Of course, it was not identifiably Starbucks’s customers who had charged the company with tax dodging. Rather, it was the media first, followed by the U.K. Parliament’s Public Accounts Committee, and finally UK Uncut, a grass-roots activist group that has targeted a number of high-profile brand names for public naming and shaming on the issue of tax dodging, including HSBC, Vodafone, Cadbury, and Johnnie Walker. Those demanding Starbucks’s compliance with standards beyond what the domestic law required represented a broad group of people with divergent interests in the company’s fiscal affairs.

Followers of corporate social responsibility trends will recognize these events as evidence that the concept of the social license to operate is real and can carry serious financial consequences for violators of community standards. The foundation of the social license is that mere compliance with domestic law is not always sufficient to do business in a globalized and legally pluralized world. When the rule of law produces an outcome that offends public sensibilities, compliance with community standards — which are typically higher than legal standards — becomes expected. The punishment for violation of community standards can be expensive, even if the offenders were unaware that their actions would cause offense. Social sanction, unlike legal regulation, does not unfold through careful deliberation and a consideration of legal niceties such as the principle against imposing retroactive legislation.

Corporate managers around the world have come to understand over the past two decades that compliance with various local laws cannot shield them if they are deemed to violate international standards of conduct, especially regarding working conditions or environmental impact. International business law scholars point to the global public backlash, and the corporate response thereto, in cases such as Nike and Apple for the treatment of workers in China, and Royal Dutch Shell for environmental damage caused in Nigeria as examples that demonstrate the existence of the social license to operate. It turns out that companies fundamentally rely on tacit acceptance by the communities that are affected by their operations, even when there is no formalized relationship of rights and responsibilities. Moreover, the relevant community is potentially global in scope. Calls for compliance with community standards, rather than legal standards alone, have become increasingly common in places where the underlying legal structures governing corporate behavior are perceived to be weak — especially in poor countries with vulnerable populations.

But the Starbucks story, along with a growing list of stories about public anger regarding apparent low- and nil-tax outcomes enjoyed by many multinationals, suggests that the social license to operate has expanded beyond labor and environmental issues, and beyond poor countries. A company’s social license may now encompass international community standards on what fairness in taxation requires. Nonbusiness and nongovernmental individuals and organizations throughout the world have identified themselves as stakeholders with interests in the behavior of multinational corporations. These stakeholders have explicitly connected the low taxes paid by multinationals with the erosion of social services in poor and rich countries alike, and they are using various forms of social protest to articulate their own standards for fairness in taxation. In Starbucks’s case, activists have in effect added a beyond-legal-compliance tax requirement to ensure the company’s continued social license to operate in the U.K.

For some, however, £20 million was not enough to restore Starbucks’s license to operate in the U.K., or globally. UK Uncut vowed to continue its street-level demonstrations despite the company’s promise; other commentators responded that Starbucks had proven nothing more than that the payment of corporate tax is now entirely voluntary and that this could not remedy the ongoing effort to avoid paying tax as a systematic business strategy. Even today, one can join the “Boycott Starbucks (Tax Dodgers)” group on Facebook (a company that itself has faced the prospect of an increasingly expensive social license to operate).

Activists concerned with tax justice typically favor greater transparency in multinational tax dealings, for the very purpose of increasing their ability to impose a social license to operate. That is why organizations such as Publish What You Pay, the Tax Justice Network, ActionAid, and others continue to call for public disclosure of tax payments on a country-by-country and even project-by-project basis. Their belief is that exposing how national corporate taxation laws actually play out in practice will generate greater public demand for fairness in taxation, and thereby create the
means for reform with respect to the taxation of multi-
nationals. If governments do not respond to this de-
mand by altering domestic legislation, we should ex-
pect an increase in public efforts to condition 
multinationals’ social license to operate upon voluntary 
 adherence to a higher standard.

Merging Social and Legal Demands

This is a very volatile status quo. The OECD, the 
G-20, and various national leaders are being called on 
to respond — and respond quickly — to the public out-
cry over tax dodging. Governments are using these in-
tergovernmental institutions to express their collective 
intent to tighten the grip on the profits of multination-
als. At the same time, the global competition for capi-
tal continues unabated, and that means governments 
are continuing to enact and defend tax environments 
that are favorable to multinationals. This includes such 
preferential regimes as the patent box, which the U.K. 
has recently adopted. But these are precisely the kinds 
of measures that will reduce the taxes paid by multi-
national companies: That is their point and their purpose.

Between the two poles of tax cooperation and tax 
competition, compromises are likely to be made that 
will tend to preserve the global tax situation for most 
multinational companies in the foreseeable future. For 
their part, multinationals continue to encourage policy-
makers to adopt tax reforms in their favor. Starbucks 
wrote a letter of wishes to a U.S. House Ways and 
Means Committee working group convened by Reps. 
Devin Nunes, R-Calif., and Earl Blumenauer, D-Ore., 
for the purpose of exploring major tax reform. In it, 
Starbucks called for the U.S. to move to a territorial tax 
system, reduce its tax rate, and protect its foreign tax 
credits, among other measures designed to reduce Star-
bucks’s tax burden on a global basis.

Starbucks’s tax reform wish list seems particularly 
unreflective in the wake of the company’s experiences 
in the U.K. Perhaps Starbucks expects no impact on its 
social license to operate in the U.S., even if it success-
fully reduces its tax payments here. But the message 
from the OECD in its base erosion and profit shifting 
project and the response from professionals in the U.S. 
tax community are that reputational risk is a very real 
phenomenon facing multinationals if the public judges 
them to be too successful in reducing their tax bills.

Starbucks’s experience overseas demonstrates that ig-
noring reputational risk carries a potentially high cost: 
acquiescence to the unpredictable and uncontrollable 
terms of a social license to operate.

Activists have shown that they cannot be dispensed 
with by platitudes about legal compliance. They have 
flagged higher tax payments as a major component of 
multinationals’ global social license to operate, even if 
they have not yet articulated the precise amount to be 
paid. What is certain is that the price for Starbucks’s 
social license to operate is above that apparently re-
quired by current law. The same appears to be true for 
many other multinationals that provide popular serv-
ices and products around the world. If governments 
don’t make tax reform changes that meet the demands 
of activists, multinationals face the very real risk of a 
conflicting plurality of legal requirements and extrale-
gal standards. For multinationals, that makes for an 
uncertain future: one in effect shaped by activist vigi-
lantism.