



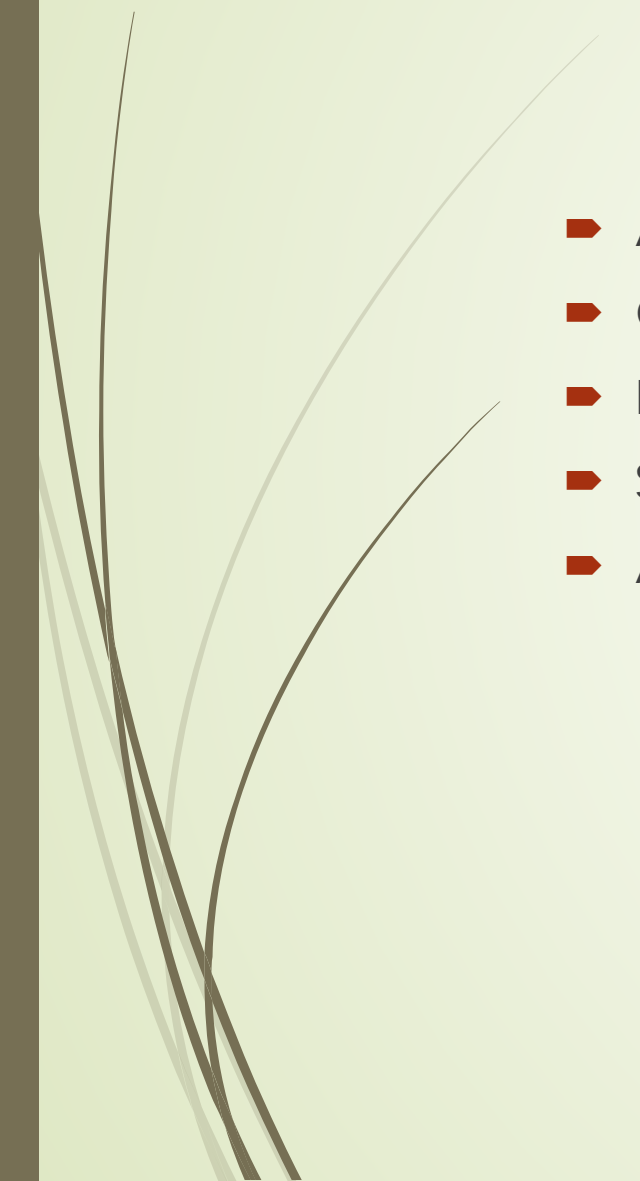
RE-THINKING THE THEORIES OF TAXATION IN
AN INTERCONNECTED WORLD:

Canada's Complicity in Tax Avoidance in Africa.

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Canada at 150

- ▶ A member of the OECD
 - ▶ Canadian companies as large players in the extractive industries
 - ▶ Massive ongoing transfer pricing abuses
 - ▶ Socio-economic implications of the transfer pricing abuses
 - ▶ Appropriate tax theories in an inter-connected world
- 



A member of the OECD

- ▶ One of 35 member countries, joined in 1961.
- ▶ The treatment of multinational entities as separate entities
- ▶ The institution of the arm's length standard of income allocation
- ▶ Article 9 of the OECD Model Treaty Provision:
 - ▶ "Where
 - ▶ A) an enterprise of a contracting state participates directly or indirectly in the management, control or capital of an enterprise of the other contracting state, or
 - ▶ B) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a contracting state and an enterprise of the other contracting state,
 - ▶ And in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly."



A member of the OECD (Contd)

- ▶ The use of transfer pricing methodologies in the allocation of income among related entities.
- ▶ Limitations of transfer pricing methodologies:
 1. Complex transfer pricing methodologies (CUP; Cost Plus; Resale Price Method; TNMM; Profit Split Method).
 2. Absence of comparable data and inability to compel data disclosure.
 3. Absence of domestic resources and no African-developed database- reliance on Amadeus and Orbis.
 4. Lack of knowledge, capacity and resources among tax authorities, especially developing countries



Canadian companies are large players in the extractive industries in Africa

- ▶ In Ghana- Canadian companies (Kingross Mining Ltd. and Endeavour Mining Corp) are engaged in the exploration of gold in the country.
- ▶ In Zambia_ Canadian companies (First Quantum Minerals Ltd. and Barrick Gold Corp) are engaged in the exploration of cobalt and copper.
- ▶ In Tanzania- Barrick Gold Corp is famous for its extractive activities in gold, tanzanite and diamond in Tanzania.
- ▶ In South Africa, Canadian companies (Diamcor Mining Inc. and Eastern Platinum Limited) are actively engaged in the exploration of diamond and PGM metals in South Africa
- ▶ A common feature- tax treaties, modelled after the OECD's, with these countries.



Massive ongoing transfer pricing abuses

- ▶ Canadian Barrick Gold Corp. (through its subsidiary, Acacia Mining) accused of dodging more than \$40 million in corporate taxes, through “sophisticated scheme of tax evasion”. Company failed to pay any corporate taxes in Tanzania between 2010 to 2013, while it paid more than \$400 million in dividends to its shareholders from its gold-mining activities in Tanzania- The Globe and Mail
- ▶ Recently, the Tanzania government has hit a \$190 billion tax bill on Acacia Mining, subsidiary of the Canadian company, Barrick Gold.
- ▶ Canadian companies- First Quantum and African Barrick Gold- contribute to the loss of \$3 billion a year from corporate tax dodging in Zambia
- ▶ The Mbeki Report revealed that African countries lose over \$50 billion annually in illicit financial flows (IFFs), transfer mispricing being a significant cause of this revenue loss.



Socio-economic implications of transfer pricing abuses

- ▶ Taxation is key to the character and functioning of the state, the economy and society as a whole- Solomon Picciotto
- ▶ Zambia- 74% of the population live on less than a \$1.25 a day and 6 million people are undernourished; health care and schools suffer.
- ▶ Denial of basic economic, social and cultural rights of African countries.
- ▶ Shifts the tax burdens to individuals, who are the poor ones.
- ▶ Erodes inter-nation and inter-taxpayer equities.



Relationship between Theories and Practice

- ▶ Theories provide the foundations for our beliefs and actions and they have played important roles in the election of tax systems.
- ▶ The separate entity theory- Salomon v Salomon case
- ▶ Fiscal Sovereignty theory: See, “Brennan and Buchannan, “The Power to Tax: Analytical Foundations of a Fiscal Constitution” on power to tax and the regulatory power of a fiscal constitution. Rise of supranational bodies and erosion of economic and political determinism.
- ▶ The Ability to Pay theory: credited to Adam Smith. Relationship between fair tax and ability to pay.
- ▶ The cost and benefit theory (Equivalence theory): Adam Smith



Today's Right Theories

- ▶ The Economic Allegiance Theory- Georg Von Schanz (measures the relationship between a taxing state and the income or person to be taxed)/
- ▶ Theory of FDI and MNE
 1. Hymer's theory of FDI and MNE- introduced the reason for the MNE structure and foreign direct investments by MNEs; also distinguished between purely financial investment (i.e. from portfolio investment) and investment by large firms for production purposes); focused attention upon the MNE as the institution for international production, rather than international exchange.
 2. why firms become transnational; to the modalities of their activities; to FDI as their main activity; to why some countries become host or home (or both) for TNCs and FDI.
 3. Hymer's determinants of FDI: removal of competition; advantages which some firms possess in a particular activity.
 4. Important feature: ownership and control of their assets; internalization of trade



Today's Right Theories (contd.)

- Global Economy Theory: credited to Gary Gereffi
- Globalization of production and trade, cross-border investment and finance have become the hallmarks of economic globalization;
- Lists the three new aspects of modern world trade as: the rise of intra-industry and intra-product trade in intermediate inputs; ability of producers to “slice up the value chain,” by breaking a production process into many geographically separated steps; and the emergence of global production networks framework that highlights how these shifts have altered governance structures and the distribution of gains in the global economy.