The Taxcast transcript, June 2022: Amazon's tax challenge

Naomi: "Hello and welcome to the Taxcast, the Tax Justice Network podcast. We're all about fixing our economies so they work for all of us. I'm your host, Naomi Fowler. You can find us on most podcast apps. Our website is www.thetaxcast.com If you're on twitter, we're on @thetaxcast. And if you want to make sure you never miss a Taxcast, email me on naomi@taxjustice.net and I'll put you on the subscriber's list. OK, here's a question for you - how many shareholders meetings have you been to? Probably none, because most of us aren't really knowingly shareholders. If we're lucky enough to have some kind of pension we're paying into we are shareholders, but we probably don't know what we're invested in. And while you might read all about high frequency trading and crazily fickle shareholders who only hold a share for a matter of seconds, pension funds, churches and unions tend to be a bit different. And they can wield quite a lot of clout, even for an Amazon or a Google. Because if they decide to offload their shares, it can be a big deal. So anyway, shareholder's meetings used to be pretty staid and boring affairs. But, as inequality has boomed along with corporate profits, corporate AGMs are increasingly becoming sites of protest.

[Clips of protest]

This is Shell's recent AGM – these protesters disrupted Shell's meeting for 40 minutes demonstrating against mega profits from unbridled, state subsidised environmental destruction. Companies like Shell have seen those kinds of protests before. But you never particularly think of things like dreary old pension funds as fighting to reform the broken corporate tax system, do you? But they're turning out to be a thorn in the side of big companies at their carefully managed AGMs. They might not be as noisy as those protestors, but these big companies want their AGMs to be shiny, seamless, polite choruses of agreement. The mainstream media may not be reporting on the clash of values going on at these AGMs, but a change in the consciousness of investors is happening, and it's been happening for a while. And the Amazons of this world don't like it one bit:"

Katie: "Amazon has taken advantage of the pandemic to move all of their AGM online. It is a wholly virtual AGM, despite a lot of the rest of society opening up, they have decided to keep the AGM entirely online rather than moving to an in-person or even hybrid approach to the AGM."

Naomi: "This is Katie Hepworth of the organisation Pensions & Investment Research Consultants, or PIRC. It was founded by local government pension funds in the UK and supports institutional investors with responsible investment. It's interesting, Katie, that Amazon has responded to the pandemic to take such good care of their shareholders when they certainly didn't do that for their workers!"

Katie: "Yeah. And look throughout the process, they have just shown that they are afraid of oversight, all the way to the way in which they presented the vote at the AGM."

Naomi: "Right, because at their recent AGM there was a proposal from shareholders to vote for much better tax transparency at Amazon!"

Katie: “Yeah, they elected not to publish the vote, during the AGM proper, and instead investors had to wait until, you know, 4:59pm the day before, you know, the Friday before the Memorial day long weekend. So this is a company that does not want to give its own investors the oversight of its operations.”

Naomi: “Yeah! But investors, pensions funds need to know a fair bit of information about what a company is actually up to in order to invest. They want to know, increasingly, whether the company is exploiting workers, polluting rivers, poisoning the planet. And now, after years of tax justice campaigning raising the issue of tax fairness, investors want to know whether the company is paying their fair share, and if they’re being secretive about their taxes. Because doing the wrong thing on tax can damage the reputation of a company, and as we’ve discovered this month, it can cost the company retrospectively. In France a judge recently approved a settlement that forces McDonalds to pay €1.2 billion in fines, penalties and back taxes. It’s France’s biggest ever corporate tax dodging settlement. And when the EU started investigating them, McDonald's moved their tax base to London, where they’re also paying not very much in taxes. Now campaigners War on Want are calling on the UK tax authorities to investigate. Amazon’s also settled various tax claims - a €200 million tax claim in 2018 in France, and in 2017 €100 million to settle a tax dispute in Italy. Wouldn’t it just be easier to pay the damn tax?! But as you’ll see, many big companies will do what they can to wriggle out of doing the right thing, won’t they?! Let’s get back to Katie Hepworth of PIRC:”

Naomi: “Can you explain the process first of all? So as I understand it, there's a meeting every year, an AGM where shareholders get to put forward resolutions and they get to vote on them. Um, so does that mean that you are Amazon shareholders or maybe shareholder activists? How does that work?”

Katie: “Yeah, so we've worked together with Amazon shareholders to file this shareholder proposal. Shareholders need to hold Amazon stocks for at least a year before they can file a shareholder proposal and they need to have held a minimum of 25,000 US dollars in order to file, and at that point they're allowed to kind of put a proposal to the board of the company and have other shareholders vote on that.”

Naomi: “I see. So tell me about the proposal that was put forward by the shareholders that you worked on then to vote on. What was it asking for?”

Katie: “Yep. So we filed this proposal with two shareholders, the Missionary Oblates, which is a US based religious fund and Greater Manchester pension fund, one of the largest UK pension funds at the moment. And what we were asking for is that the board produce a tax transparency report in line with the GRI tax standard. Now, for those that haven't heard about the tax standard and what it entails, the GRI is asking for companies to report against four separate indicators: the first is that they provide a governance report, so they talk about who in the company is responsible for tax planning, who is responsible for overseeing tax risk. It also asks companies to talk about their engagement with other stakeholders, and that includes tax authorities, but also NGOs and other civil society organisations about their tax practices. And finally, I think one of the most significant things for us is that the GRI tax standard asks that companies produce public country by country reporting of their financial and tax information. And so what it does is it asks companies to disaggregate this information by every single country that they operate in so that shareholders and other organisations can see, um, where companies are paying their tax or where they're not paying their tax."

Naomi: "Right, right, so it's pretty full on tax transparency, isn't it? And so Amazon didn't like this resolution, they tried to appeal to the US regulator the SEC, that's the Securities and Exchange Commission to stop this resolution being presented, they don't want to publicly reveal their tax activities. So they tried to stop it even getting debated and voted on, and they tried to say that tax matters for the company, it's an internal affair and they said that this tax information wasn't useful or informative for shareholders and that they already declare lots of tax information that other corporations don't, right?"

Katie: "Yeah, that's correct. So they used what is a small provision in the securities and exchange commissions act to try and argue that shareholders shouldn't be allowed to vote on this proposal and that's an argument that shareholders should not be able to kind of vote or make proposals on issues that pertain to the every day business of the board and the management of the company. There is one exception to this where a proposal is about a significant social policy issue, there is an argument to be made that shareholders should be able to vote on this issue because it represents an unusual risk to the company, that should, you know, have additional oversight. In the past tax transparency resolutions have never passed a challenge at the SEC. This is what was historic about our resolution. And I think it reflects really the transformation of tax into a political issue globally."

Naomi: "Yes, it's really interesting that this time the regulator, the SEC decided to reject Amazon's attempt to stop that resolution and let it be heard and go ahead for a vote at the AGM because they have previously declined all sorts of attempts at social policy-related resolutions at AGMs, so it is really interesting, that shift."

Katie: "Yeah. I think it is, yeah, and I think it does show and one of the things that I think was really important to getting it over the line was the general support by the investment sector. So we circulated a letter in support of the shareholder proposal to the SEC, and that was signed by investors with 3.5 trillion in assets under management. Significantly, the shareholders that signed that letter are not just the usual suspects, it's not who you would expect to be signing a tax letter."

Naomi: "The churches, the unions…"

Katie: "It's the churches, the unions, impact investors, ethical investors. We saw some of the largest asset owners and managers in the world sign onto this from the Norges bank, the Norwegian pension fund, other large pension funds, and including some American retail funds as well. So what it means is that this is an issue that's now transcended ethical investment, and it is seen as a core sustainability and governance issue for funds."

Naomi: "Here's Jason Ward, of CICTAR, the Centre for International Tax Accountability and Research:"

Jason: “Obviously, yeah, it's a hugely significant step for the SEC to approve this and to dismiss Amazon's efforts to have it tossed out. This paves the way for us to continue to file this resolution again at Amazon next year and get an even higher vote and to continue to take this to other US tax dodging entities as well. It's a really strong show of support for a first ever resolution of its kind and I think it's an indication too that investors take this matter pretty seriously. I think in the past people thought that investors only point of view was maximising returns to shareholders and I think this shows that that's significantly shifted, that there are serious risks involved to shareholders about aggressive tax strategies and that rules are changing dramatically and in flux. And Amazon for one has been at the focus of a lot of global attention. It's a situation where both Presidents Trump and Biden specifically named the company as a tax dodger and, you know, along with dozens of other world leaders kind of pointing to Amazon as a specific example of an incredible tax dodger, so hugely significant. I think also the other thing that is not a tax perspective, but what the GRI and public country by country reporting does is - investors are completely in the dark in terms of information about any US multinational because essentially you can find out how much tax they paid in the US, but the rest of the world is a lump sum figure and is completely useless. And that's not just true for taxes, it's true for revenues, for profits, and for payroll figures, lots of different basic financial information that investors have no clue about without this type of reporting. So we're obviously driving this because we care about them paying a fair share in paying taxes, but there's lots of other reasons why investors kind of need this level of transparency to make informed decisions about which companies they wanna own and whether or not Amazon's business strategy or any other company's business strategy is appropriate. Not just ethical, but you know, where are they losing money? Where are they making money? Nobody knows because it's not reported.”

Naomi: “Yeah. I mean, it seems the height of arrogance really to actually face off against your own investors and say, no, no, you don't need to know this information. We have it, we know it, but you don't need to know it, when you actually think about what they're doing, that is really pretty outrageous. If I was an investor or you know, a shareholder in Amazon not be pretty annoyed!”

Katie: “Yeah, the company already has this information and it already makes this information available to the tax authority, so really all we're asking them to do is to make it public. There is no additional work for them in making this information public. We are seeing a lot of companies already start to report this information so we have leading companies that have voluntarily adopted the standard - companies like Shell, companies like Randstad, a labour high provider, Orsted, none of them have actually suffered commercially from providing this additional oversight of their operations and, you know, really it has allowed for a greater engagement and a discussion of what they're doing.”

Naomi: “Right. How was the AGM itself, how was that?”

Katie: “So each filer got two minutes to present their proposal as a pre-record, and each of the proposals were put up one after the other. Technically according to the agenda, there was a space for questions at the end of those proposals. However, Amazon did not take questions and instead directed shareholders to their notice of meeting rather than taking questions on the proposals themselves. So again, this is just showing that Amazon is not making itself available to shareholders, it is not willing to meet with shareholders and it is just kind of repeating a practice that it's done for years on the issue of tax and also worker's rights issues."

Naomi: "Right – let's hear that actual proposal which was made at the online AGM:

Father Shamus Finn: "My fellow shareholders members of the board and Mr. Chairman, my name is Father Shamus Finn, and I'm here this morning to represent the missionary Oblates of Mary Immaculate and the OIP trust with the Greater Manchester pension fund have presented resolution number 12, with the support of investors with 3.5 trillion dollars in assets. In the 21st century, the issues of transparency, accountability, and accuracy in regular reporting by public corporations has attracted new levels of scrutiny by those who rely on this information as they decide what companies to include in their portfolios. The stability and security of the global financial system is dependent on the legal standards and rules that have been established in numerous jurisdictions and adapted by organisations all over the world. As the world continues to face serious challenges, such as pandemics and social environmental catastrophes, confidence in many longstanding institutions that we have relied on, including those that operate in the financial sector is at its lowest in generations. Marshalling the commitments and the resources to respond to these challenges is everyone's responsibility, including public corporations like our company Amazon. The resolution that we have presented is grounded on legal, moral, and ethical foundations that were designed to promote and protect the common good, serve to foster prosperity and support the well-ordered functioning of societies for centuries. Responsible and sustainable corporations should want to have a reputation for doing their fair share to make such a vision a reality. Instead, Amazon has been named as one of the handful of companies who have worked to stymie efforts to reform the global tax regulatory system. Tax avoidance negatively impacts communities, increases risks to investors. Issuing the kind of report that our resolution is requesting will be a good way to demonstrate the resolve of our company to join with other leading companies and work with investors to deliver a global economy that works for all. Thank you."

Naomi: "There you go, that doesn't sound like something to get so very upset over or try to stop even being heard, but then we're reasonable people who think that companies should behave decently when it comes to tax, and a whole load of other things. I'm going to ask you about the result of the shareholder's vote on this, but before that, just for some context and comparison, back in 2014 I reported on the Taxcast on Google's annual shareholder meeting and a proposal that was made back then on ethical tax principles. I'll play you a bit from the proposal itself and then the reaction from one of the shareholders to that proposal which is quite interesting, let's just have a listen:"

Clip of proposing shareholder: "We think tax avoidance threatens future innovation and growth, and more. Ultimately corporate tax avoidance is a threat to government and to the rule of law. And no investor or company can really succeed very long without a functioning government and legal system. As fiduciaries and long term investors we need resilient economies and societies that can stand up to the inevitable shocks that the future will bring. So we think Google's board should ask itself what is the end game here? How long can our company and our economy survive if corporations continue a race to the bottom on tax? So today your shareholders are asking you to set a higher standard. Thank you." (Applause)

Disgruntled shareholder responding: "The proposal to pay more taxes is outrageous. Why did you allow that to go through? What a stupid idea! Why doesn't Google fight at the SEC to throw these crappy proposals out?!"

Naomi: "Ha, he's not happy is he?! And just note that he's asking there why Google didn't try to get the SEC to stop that proposal even being heard, as Amazon just tried to do, and failed! Let's hear the details of how that vote back in 2014 went from Adam Kanzer of Domini Social Investments who was involved, who I spoke to at the time:"

Adam Kanzer: "Well…this is possibly the lowest vote I've ever received on a shareholder proposal. First off it's important to understand the structure of the voting. So the three top executives hold an additional class of shares that grants them 10 votes for every share. So normal shareholders get one vote per share, they get ten votes per share. So, they control more than 60% of the vote. And in some cases depending on how many shareholders actually vote it could be upwards of 70% of the vote. So I didn't expect to get a very high vote and I know this is a new issue for a lot of investors. And I think also you know a lot of investors have this knee jerk reaction when you raise the question of corporate tax. The assumption is that tax minimisation is in shareholders' best interests and why would I encourage a company to pay more in tax? That being said, the vote was even lower than I expected, so we get a 1% vote - if you kick out the management controlled shares, it only rises to 4%. Still extremely low but a very high percentage of abstentions, so close to 20% of shareholders abstained, which to me means that there's a lot of large institutional investors out there that are on the fence about this issue, that don't have a policy and did not want to go so far as to vote with management or to vote against, you know, they really couldn't quite work it out yet. So, I'm not that surprised that the vote was very low and I'm heartened by the fact that there were so many investors that chose to abstain."

Naomi: "OK, so that was 2014. So, Katie, what was the result of the vote at Amazon's AGM in 2022, once Amazon did finally release that information to shareholders?"

Katie: "So look, we got a huge vote at the AGM, so one in five independent shareholders voted for the tax transparency proposal, which is a huge number for a first time proposal."

Naomi: "So, the final vote tally was 17.5%. But bear in mind Amazon CEO Jeff Bezos and other directors collectively own 13% of the company and they'll always vote with the management, right, so if you take their shareholdings out of the picture, it's a better reflection of what the independent shareholders are really thinking about tax. And that vote tally is 21%."

Katie: "Yeah. I think it's important to note that 20% of the vote or one in five shareholders is usually enough to get companies to start taking an issue seriously, and you would expect at that point that companies would actually start to look at an issue, start to meet with shareholders, to understand what the issue is that shareholders are raising with the board and what steps the company can take to address the concerns of shareholders. Shareholder proposals are not binding in a sense so what it is about doing is influencing the company and we often see companies start to move at that point."

Naomi: "So a better result than you'd expected. Amazon and many companies need more pushing, so how else can we push them to do what we want on tax justice? Jason, let's talk about procurement:"

Jason: "Yeah. So, Amazon, it's government contracting business is growing incredibly fast, particularly in the last couple of years, and driven in part by the pandemic which accelerated the process, right? Every government everywhere around the world is moving to cloud based platforms and Amazon web services is the number one global provider of those services. So everybody knows Amazon as being their retail company and you can get your package shipped to you super quickly, but really that business is a very low margin business, they don't make a lot of money on that. It's a huge business, it's a growing business, but historically there's not a large profit margin in there. On the cloud computing side they make tonnes of money. It's highly, highly, highly profitable. And it's the public sector in large part that's driving that that profit in those margins. So absolutely it's a form of madness to be kind of giving large government contracts to multinationals that don't pay their taxes, it seems that that's a very common sense provision that all governments at every level should be looking at, and there are probably alternative companies that you could use, but if you're gonna go with an Amazon why not make it a condition of their contract, that they publish country by country reporting as a simple condition? It's not excluding them from getting the contract, it's saying, we'll give you this contract, but under these conditions. This type of business is happening at every level of government so for example, in the United States, you know, you have school boards, school districts that are contracting with Amazon, local cities, counties, states, and this is true globally. There's no reason why any, at any level, they can't make that same requirement. And if a company like Amazon doesn't wanna abide by that, thankfully there are competitors who can provide those services."

Naomi: "Right, right, it's a really difficult one that, I know there's been work ongoing for years to try to bring in those type of conditions on bidding for public contracts, but is it over optimistic in your view for me to say that tax transparency feels inevitable? You know, corporations could be dragged kicking and screaming, or they can just see the way the water's flowing and kind of jump in. Am I being over optimistic in your view?"

Jason: "Uh, no, I don't think you're being, I think that we will see people taking the lead and we do have examples of that already, right? A company like Vodafone, who's still dodging its taxes, but has championed transparency. And Randstad, which is the world's largest temporary worker labour hire multinational, they do public country by country reporting and it shows you that they're shifting their profits to places like Luxembourg and Singapore, and Vodafone not that different, but hey, it's a very positive step for them to be kind of transparent about what they're doing and it's up to others to decide what consequences, for governments to decide whether that's a company that they should be contracting, or with consumers to decide whether that's behaviour that they wanna support. But right now governments don't have that information available to them unless the company makes it public because they can't make a procurement decision based on information that the tax office is required by law to keep secret. So the only way we can inform contracting and public opinion is to make that information public because one part of the government can't share it with the other, because it's illegal for them to do that at this point in time. We have just had an election in Australia and under the new government they have committed to public country by country reporting for all multinationals. And there are specific provisions that they sort of took to the election around contracting as well so we're optimistic of getting some reform here, and obviously the European Union did push forward a very weak form of country by country reporting, which is just European member states and its problematic blacklist of tax haven countries. But nonetheless, there is a growing global trend to require mandatory tax transparency proposals. And just to add to that as well, I think that this effort is really helping to shift the dialogue in the United States in particular as well around the SEC rule making process and the financial accounting standards board who are actively looking at requirements for country by country reporting, not on a voluntary basis, but mandatory. And we have, you know, legislation that has passed the US House of Representatives in support of full public country by country reporting and so the fact that some of the world's largest investors are now out there in favour of it helps to push those conversations further along as well."

Naomi: "Right. And also there is this question about reputation, I mean, I probably wouldn't be going around, if I was a shareholder of anything, which I'm not, but if I was, I probably wouldn't be going around telling people, 'hey, I'm a shareholder with Amazon' because there is massive kind of reputational risk and a kind of increasing shame attached to connection with a company that is not being transparent, not treating its workers well, and pretty much riding rough shod over all sorts of principles that we think increasingly as societies are important to us."

Katie: "Yeah, on that point what we found was a number of tax aware investors and a number of the investors that have really led the push globally, not just on tax disclosure, but also on tax avoidance as an investment issue and the importance of fair taxation and responsible taxation, did not hold Amazon, so they'd already divested from Amazon on the basis of their labour practices, on the basis of their tax practices and on their human rights practices. And so we do see that there is a reputational risk associated with these companies, and that really to bring about change and to bring about greater legitimacy and restore faith, not just in these companies, but the overall tax system, we really need this kind of reporting. I just wanna go back a step as well, to your original question around is this kind of reporting inevitable? And I think it is, I think where we're at with tax reporting is where climate reporting was 10 years ago. And if we look at the history of climate reporting, um, then we can see the importance of actually starting to target individual companies over tax disclosure and the way shareholder proposals at individual companies about their climate disclosure snowballed into regulatory reform for mandatory disclosure. I think what we're seeing now is that different countries are exploring mandatory disclosure, but they're often faced with a lot of lobbying by the same corporations that wanna keep their reporting secret. And if we can take away the legitimacy of this kind of lobbying and of a failure to disclose on tax, then we might be able to see some of that mandatory legislation being kind of rolled out in multiple jurisdictions and see cross sector transformation."

Jason: "I think Amazon is also, I mean, it's just a perfect example of how the global tax system is utterly broken and in need of a massive overhaul, right? This is a company that was taken to court by the IRS, the Internal Revenue Service, the tax authority in the United States and by the European Union. And in both cases, the case of them avoiding taxes via subsidiaries in Luxembourg was absolutely clear, but the courts ruled in favour of the company and under existing laws the courts determined that that behaviour was legitimate. And I think, you know, any bystander looking at this should come to the conclusion that that should not be legal, acceptable behaviour and I think, you know, obviously transparency doesn't stop the abuse, but it’s on the pathway there to changing corporate behaviour.”

Naomi: “Well it shines a light on it doesn’t it? What's next?”

Katie: “Look, I think the vote puts other companies on notice that investors expect greater transparency. We're now exploring where else we can follow similar proposals so obviously tech companies with their history of tax dodging and poor disclosure are really high up on the list for us. In addition to that, we are also engaging with companies across a range of sectors around their tax practices. These are in, we're looking at companies in sectors that have a reliance on public contracts, because we do believe that there is a responsibility of companies that rely on government revenue for their contracts to disclose where and how they're paying their taxes, looking at infrastructure utilities and the care sector as our core sector, in addition to filing more shareholder proposals over the fall and spring seasons.”

Naomi: “So, watch out for more shareholder proposals, coming to an AGM near you. My thanks to Katie Hepworth of Pensions and Investment Research Consultants, and to Jason Ward of the Centre for International Tax Accountability and Research. Check out the show notes for some further reading on this. You’ve been listening to the Taxcast from the Tax Justice Network. We’ll be back with you next month, bye for now.”