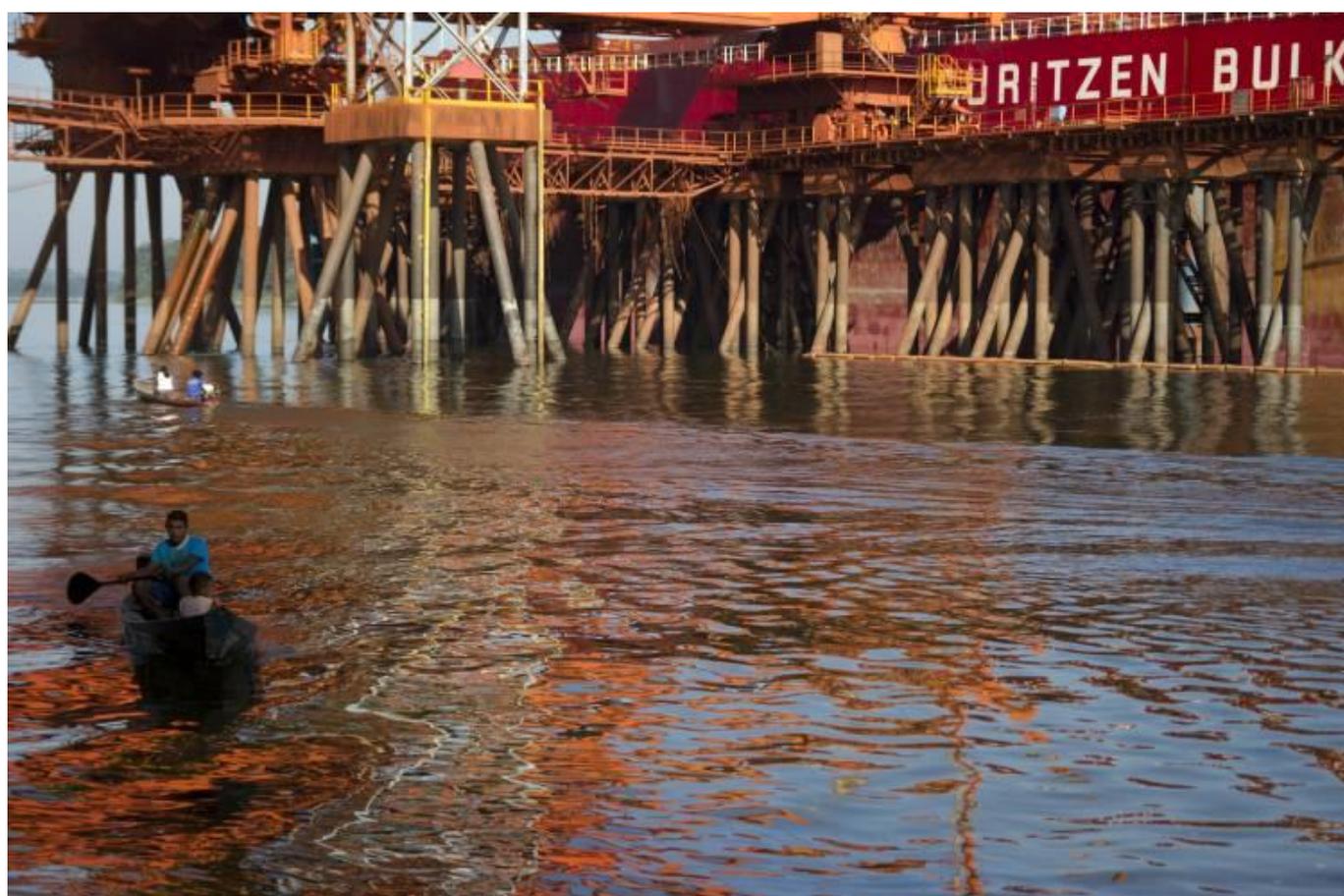


Trapped in Illicit Finance

How abusive tax and trade practices harm human rights

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Christian Aid exists to create a world where everyone can live a full life, free from poverty. We are a global movement of people, churches and local organisations who passionately champion dignity, equality and justice worldwide. We are the changemakers, the peacemakers, the mighty of heart.

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Cover: Part of the mining operation of Mineração Rio do Norte, a Brazilian company (with international shareholders including the British-Australian company BHP Billiton). In the foreground, a quilombola canoe. In the background, part of a huge ship involved in mining bauxite, one of the main ingredients in aluminium, out of the Trombetas river, a tributary of the Amazon. Mineração Rio do Norte is now seeking to extend its operations to an area of quilombola land. The quilombola community that lays claim to this land is very worried – their bid for collective ownership of the land title has not been processed yet, even though they applied years ago. In the words of quilombola activist Domingos Printes, 'Instead, the mining company will get permission to the mine there. We are worried because the company has money and power.' Christian Aid partner CPI supports quilombolas, the descendants of escaped slaves who ran away from Brazil's early plantations and ranches and hid in the rainforest, to win the collective titles to their lands, and to protect them against threats such as timber and mining companies. This constitutes protection of both the quilombola people and the rainforest itself.

Photo credit: Christian Aid / Tabitha Ross

Foreword

The world today faces unprecedented challenges – economic, environmental, social, political – even as we seem to be much less equipped to deal with them. Across the world, citizens who want their governments to implement policies to reduce inequalities, address climate change and looming ecological disaster, provide better public services and amenities, ensure social protection, generate quality employment and so on, are always confronted with one question: where is the money? We are constantly told that governments cannot afford the necessary expenditure; that running fiscal deficits will lead to financial chaos and crisis; and that raising taxes will simply drive away investment.

So we are made to feel that our governments are effectively helpless in dealing with the multiple crises facing our societies and economies, and all we can do is turn to the private sector and appeal to their generosity and social conscience. Even the United Nations (UN) increasingly talks of drawing in private sector participation to finance the Sustainable Development Goals (SDGs), apparently conceding that public finance to meet these goals is not available.

But this is not just misleading; it is simply wrong. Governments are constrained in their resources because they tolerate widespread tax evasion and avoidance. Knowingly or unknowingly, they have allowed companies and wealthy individuals to escape from paying their fair share of taxes – sometimes illegally, but very often completely legally – taking advantage of legal loopholes and using tax arbitrage practices that exploit differential tax rates and the existence of tax havens. This is why it is important to broaden the definition of illicit financial flows (IFFs) to a rights-based definition, as this report does, to include all cross-border flows of money that are either illegal or abusive of laws in their origin, or during their movement or use.

The losses in public revenues from IFFs are absolutely massive. This report estimates that public revenue losses from IFFs amount to around US \$416bn every year. This amount could have gone towards meeting some of the necessary expenditures mentioned earlier, and certainly made a significant contribution to financing the SDGs that the global community has signed on to. Indeed, IFFs – both illegal and legal – are a major constraint to development and the achievement of human rights today.

The pervasive nature of IFFs is even distorting our understanding of the extent of international economic integration. Research from the UN Conference on Trade and Development (UNCTAD) has shown how a growing share of the value added even in merchandise trade, accrues to ‘intangibles’.¹ Because so much of this trade is now organised into global value chains by transnational corporations (TNCs), these entities can allocate their intangible trade in ways that minimise their global tax liabilities. In other words, a significant part of such trade could be fictitious, declared only for more effective tax avoidance. International investment data are similarly compromised. A new study by the International Monetary Fund (IMF) and University of Copenhagen economists has found that ‘phantom’ (non-existent) foreign direct investment (FDI) has jumped up from 30% of global recorded FDI a decade ago to around 40% today.² Most of this is due to the tax-dodging practices of TNCs – such phantom FDI is predominantly hosted by a few well-known tax havens, with Luxemburg and the Netherlands accounting for nearly half. The ‘Double Irish with a Dutch sandwich’ practices, which creatively use a combination of low or no tax rates with other loopholes, are now proliferating and have become the typical tax reduction strategies of TNCs.



‘Governments are constrained in their resources because they tolerate widespread tax evasion and avoidance. Knowingly or unknowingly, they have allowed companies and wealthy individuals to escape from paying their fair share of taxes – sometimes illegally, but very often completely legally’

All this makes this report both extremely topical and hugely important. The report clearly identifies various measures that are routinely adopted to evade or avoid taxes, and describes their adverse and sometimes even horrifying impacts on various countries ranging, from Argentina to Nepal, as well as on several advanced economies. It moves away from purely 'legalistic' approaches to identify urgent and feasible actions that could reduce or even eliminate different forms of IFFs. The recommendations are detailed and precise; and most of all, they are eminently doable. This is why this report should be essential reading not just for policy makers, but for citizens across the world, if we are to create a political climate in which IFFs are no longer tolerated, so that the necessary resources to meet declared social goals can be generated.



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List of key terms and acronyms

Base Erosion and Profit Shifting (BEPS)	The BEPS project, concluded in 2015, was coordinated by the OECD and also involved the G20 countries. It sought to reform international tax standards.
Beneficial owner (BO)	The real person or group of people that control(s) and benefit(s) from a corporation, trust or account. The Financial Transparency Coalition (FTC) advocates that all beneficial ownership information of companies and trusts be made publicly accessible.
Bilateral investment treaty (BIT)	Countries negotiate investment treaties that provide rights and responsibilities for both investors and states. They often include investor-state dispute settlement (ISDS) provisions, which provide for the appointment of arbitrators should disputes arise.
Double tax agreement (DTA)	By concluding DTAs, countries reach a negotiated settlement that restricts their source and residence taxation rights in a compatible manner, alleviating double taxation and allocating taxing rights between the parties. DTAs often shift the balance of taxing rights away from countries in the global South
Financial Action Task Force (FATF)	The FATF was created in 1989 by the Group of 7 (G7) countries to combat money laundering and terrorist financing. In 2012, tax crimes were made a money laundering offence.
Illicit financial flows (IFFs)	This term refers to money that is illegally or legally but abusively earned, transferred or utilised. These funds typically originate from three sources: commercial tax-related; criminal activities, including the drugs trade; and bribery and theft by corrupt government officials.
Organisation for Economic Cooperation and Development	The OECD is an intergovernmental economic organisation with 36 member countries, founded in 1961 to stimulate economic growth and world trade. Since 1995 the OECD has published and updated its Transfer Pricing Guidelines to set norms for the taxation of TNCs.

Secrecy jurisdictions	Secrecy jurisdictions are cities, states or countries whose laws allow banking or financial information to be kept secret under most circumstances. Such jurisdictions may create a legal structure specifically for the use of non-residents.
Tax abuse	A term used by human rights practitioners to refer to tax practices that are considered contrary to the spirit of the law, human rights norms and principles. This may encompass largely similar practices to what is called 'legal' tax avoidance based on a narrower interpretation of the law.
Tax avoidance	A term used in the accounting world to define what is legal tax minimisation within the law, rather than what is illegal (tax evasion). The accounting profession assumes that something that is not explicitly illegal must therefore be legal; and many anti-avoidance schemes exploit loopholes, different tax rates in DTAs and other discrepancies between jurisdictions.
Tax evasion	A term used by the accounting profession to define what is illegal tax minimisation. These practices take place in a legal vacuum, amid legal uncertainty or in the context of financial secrecy or lack of public information and information exchange, where the risk of discovery is small.
Transfer pricing	Over 50% of world trade takes place within large TNCs. The price of transactions between related companies, in particular companies within the same multinational group. Governments set rules to determine how transfer pricing should be undertaken for tax purposes (eg, since the level of transfer pricing affects the taxable profits of the different branches or subsidiaries of a TNC).
Trade mis-invoicing	The practice of misdeclaring the value of goods imported or exported to evade or abuse customs duties and taxes, circumvent quotas or launder money. This is often made with unrelated parties, but this can be difficult to determine in the absence of full ownership information. Exports are often understated, while imports are often overstated.

Executive summary

On September 26, 2019, world leaders will gather at the UN General Assembly (UNGA) in New York, for high-level talks on finance for development. One burning question on the agenda is the financial chasm facing the SDGs.

Adopted by the UNGA in 2015, the 17 goals offer a roadmap for ending poverty, protecting the planet and ensuring prosperity for all, by 2030. But with little over a decade to go, vast amounts of public and private finance still need to be found if they are to be realised within the timeframe. The funding gap for delivering the goals from private sector sources alone is estimated at \$2.5tn.

In this report, Christian Aid and our partners propose a simple solution for plugging some of this funding gap: we must stop tolerating the abusive, unethical, immoral illicit financial flows (IFFs) that rob the poor to enrich the wealthy.

Our estimates show that IFFs cause tax losses of \$416bn in the global South. This is money that could enable governments to deliver much-needed public services, and bring us closer to a world where all experience dignity, equality and justice. As eminent economist Professor Jayati Ghosh stated in the report foreword: 'Illicit financial flows – both illegal and legal – may be the major constraint to development and achieving human rights today'.

World leaders have previously committed to fight IFFs. At the Third International Conference on Financing for Development (FfD) in 2015, participants agreed to 'substantially reduce illicit financial flows by 2030, with a view to eventually eliminating them'. A similar commitment was made when the UN 2030 Agenda was agreed.

However – and this is the crucial point – what has been missing until now has been a robust definition of IFFs.

Governments of the global North insist on a legalistic definition that would only capture flows of money universally accepted as being illegal, eg, money laundering or corruption. However, we and many of our partners in the global South believe what matters is not whether flows of money or tax practices are legal, but whether they are abusive, harmful or limit governments' ability to deliver on their human rights obligations.

For instance, this report documents abusive practices that have harmed Nepal – a country that is still recovering from a major earthquake in 2015. The events outlined below shine a light on our broken economy and underscore the urgent need to stem the bleeding caused by IFFs.

That's why Christian Aid is calling for the debate around IFFs to shift towards a rights-based one. We want the definition of IFFs broadened to refer to 'cross-border flows of money that are either illegal or abusive of laws in their origin, or during their movement or use'. It is not about whether it's illegal, but immoral.

Christian Aid also believes the UN should establish structures to define IFFs based on this rights-based definition. This would require the UN to play a more prominent role in setting the rules and conventions for taxing TNCs, and to expedite international tax cooperation by establishing a UN tax body to decide on taxing rules.

Addressing IFFs is not just about funding the SDGs – important as this is. It is also about addressing the systemic issues that continue to undermine poor countries' abilities to raise revenue and move beyond a reliance on aid. In that respect it is a stand-alone process: one that is not just tied to the 2030 Agenda for Sustainable Development, but which is grounded in justice and equity.

Our estimates show that illicit financial flows strip poorer nations of revenue losses to the tune of \$416bn per year.

This is through practices including tax abuses and avoidance by TNCs and wealthy individuals, and tax losses due to tax evasion arising from companies who deliberately misprice goods and commodities to minimise tax liability.

Introduction: Illicit financial flows are a violation of human rights

An exact definition of IFFs has not been agreed internationally; but for the purposes of this report, the term can be defined simply as money that leaves countries where it should in fact be contributing to development efforts and the achievement of human rights. In other words, IFFs may be defined as **'flows of money that are either illegal or abusive of laws in their origin, or during their movement or use'**.

These include practices such as tax abuse, abusive tax incentives, abusive use of bilateral and multilateral trade treaties, misuse of double tax treaties, odious debt, abusive use of mutual arbitration procedures, harmful tax practices, unjust investment agreements, money laundering, trade mis-invoicing, abusive transfer pricing, illicit money transfers, crime, bribery, the illicit drugs trade, corruption and the 'offshore' trust industry.³

The issue is ultimately about the power of who makes the rules and norms in the global economy regarding these issues. For too long, they have been decided in clubs of countries comprising mainly of, or led by, the global North such as the G7 or the G20, or indeed the OECD that does not take the legitimate interests of countries in the global South adequately into consideration.

Tackling IFFs is not a new concern. For decades, the issue has been discussed either as capital flight or in terms of tax avoidance;⁴ and more recently, to understand the activities of multinational enterprises,⁵ and in terms of wealth held offshore.⁶ The novelty is grouping these practices together within an internationally agreed definition of IFFs, along with transnational crime and corrupt activities.

Combining these practices presents us with a fuller, more frightening picture of how today's global financial system is centred on secrecy jurisdictions and corporate tax havens that facilitate these activities, as well as corruption and transnational organised crime. There is no way to achieve the ambitious 2030 Agenda and the SDGs without stopping the bleeding of hundreds of billions of dollars in IFFs.

The momentum for tackling IFFs is coming from governments, civil society and regional bodies from the global South such as the African Union that have long highlighted the damage caused by IFFs. Notably, in 2015 a coalition of African organisations launched a civil society campaign called Stop the Bleeding in a bid to highlight the billions of dollars illicitly flowing out of Africa each year.⁷ Many African governments, and the Group of 77 of countries in the global South in the UNGA, raise the issue of IFFs in their interventions.⁸

If the definition of IFFs in the 2030 Agenda and the SDGs (an initial draft definition is expected by the end of 2019) includes only activities that are already illegal – such as corruption, crime and tax evasion – there will be no mandate from the 2030 Agenda to tackle tax abuses that far outweigh these other activities in terms of revenues lost from countries in the global South. There is a risk that, under the guise of 'licit' financial flows via tax havens, this will only exacerbate the problem.

Reducing and eliminating IFFs has been agreed as an objective for all countries at the very highest levels, but there are differences of opinion as to how IFFs should be defined. The SDGs, in SDG 16.4, pledge to 'significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime' by 2030.⁹ In the SDG process, this

'We're not accusing you of being illegal, we're accusing you of being immoral.'

Margaret Hodge, Chair of the Public Accounts Committee, speaking to Google's vice president for Europe Matt Brittin during a UK parliamentary hearing on 12 November 2013.

target on IFFs currently lacks a definition and a dataset, meaning that it is a Tier 3 indicator that should be upgraded by the end of 2019 to a Tier 2 indicator with a proposed definition.

Meanwhile, at the Third International Conference on Financing for Development, held in Addis Ababa in 2015, participants concluded that all countries should work towards ‘substantially reduc[ing] IFFs by 2030, with a view to eventually eliminating them, including by combating tax evasion and corruption through strengthened national regulation and increased international cooperation’, as well as reducing opportunities for tax avoidance.¹⁰

Since the Addis Ababa Action Agenda (AAAA) and the 2030 Agenda were agreed, the follow-up process concerning different components of IFFs has been led by the UNCTAD and the UN Office on Drug and Crime (UNODC). Meanwhile, the secretariat of the UN Financing for Sustainable Development Office has analysed the situation and concluded that there is a ‘grey zone’ in which the dividing line between legal and illegal financial flows is blurred due to a lack of resources, a lack of access to data and discrepancies between how data are reported to tax authorities, the media, and shareholders in private databases.¹¹

In this report, we highlight what goes on in this grey zone and propose the use of principles derived from international human rights law to understand practices that constitute harmful activities even though they may not be illegal in all jurisdictions where a TNC has operations; where a transaction is taking place, in terms of trade mispricing issues; or where wealth is held offshore. The problem lies in the mismatches, misunderstandings and lack of commonly agreed principles between the global North and the global South in terms of international economic governance that give rise to IFFs, as seen in Figure 1.

Figure 1: Legality, illicitness or illegality of actions depending on country or jurisdiction

Transaction studied	Host country position	Intermediary jurisdiction position	Headquarter country position
Ncell in Nepal	Illegal after Parliamentary Accounts Committee and Supreme Court case	Legal	Legal and challenged through investor-state dispute settlement mechanism
FQM in Zambia	Illegal after audit or investigation that concluded smuggling had taken place	Legal	Legal
Tenchint in Argentina	Legal until challenged by authorities	Legal	Legal
Outokumpu in Finland	Most likely illegal in Russia if proof of mispricing found	Legal	Legal, and unsuccessfully challenged by prosecutors
Football related commercial rights in Argentina	Legal until challenged	Legal	Legal
Individual wealth of Argentinians held in British Virgin Islands	Illegal tax evasion	Legal, information requests considered to prevent international tax evasion	N/A
Oil mispricing in Ghana	Illegal but not discovered initially	Legal	Legal
Mauritius–India trade and investment under a tax treaty	Legal	Legal	Legal
Ireland–Ghana trade and investment under a tax treaty	Legal unless challenged by tax or other authorities to be illegal or harmful	Legal	Legal
Amazon deforestation in Brazil	Legal unless breaking rules on tax, capital gains or moratorium on deforestation	Legal	Legal

Source: Author’s own analysis based on case studies in this report.

The definition of IFFs is being debated both within international development frameworks and in human rights monitoring bodies. It is an important definition, as it will determine the mandates at the global level to monitor the financial system, national efforts to combat IFFs in the Global South, and international development cooperation as well as south-south cooperation. Figure 2 outlines four different approaches to IFFs.

Figure 2: Four different approaches to defining illicit financial flows

Approach	Legalistic	Normative	Developmental	Rights-based
Definition of IFFs	'[I]llegal movements of money or capital from one country to another.' ¹²	'An international flow of money, which is illegally acquired, transferred or used.' But also stating that, 'where such rules do not exist or are not effective, tax avoidance can be a major component of IFFs'. ¹³	'An international flow of money that has a negative impact on an economy when all direct and indirect effects in the context of the specific political economy of the society are taken into account.' ¹⁴	'We consider that Illicit financial flows are generated from financial activities and practices that cause harm, or that are illegal, and are abusive in their use of instruments and agreements in the international financial and economic system.' ¹⁵
What is included?	Corruption, organised crime, illegal exploitation of natural resources, fraud in international trade and tax evasion are as harmful as the diversion of money from public priorities.	Drug trafficking, human trafficking, bribery of officials, theft of state assets, tax abuse (corporate, individual) and market abuse (conflicts of interest, regulatory abuse).	Activities that impact on development outcomes, understood as the livelihoods of the poorest and marginalised, economic growth impacts and revenue collection impacts.	Rights as well as duties and responsibility to respect the rights of others.
Key initiatives	Recovery of stolen assets, UN Convention against Corruption, FATF assessments, OECD Global Forum on Taxation.	Tax administration, contract negotiations, trade-related financial leakages, reform of global economic governance regarding illicit transfers, including the question of tax havens.	UNCTAD monitoring of trade mispricing; activities to study illicit economies on the ground from a development and livelihood perspective.	UN human rights monitoring system; treaty bodies such as the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the International Covenant on Economic, Social and Cultural Rights; regional human rights bodies such as African Commission on Human and Peoples' Rights (ACHPR) and national human rights bodies.
Key questions that arise	Whose law? What about conflicting legal orders, grey zones and weaknesses of regulators versus perpetrators?	Whose norms? What are their boundaries?	Whose theory of development impact? What if the approach generates incentives for instability?	How does a human rights framework contribute to understanding and accountability as regards IFFs?
Institutions that rely on this approach	OECD, UK government, European Commission, World Bank, UNODC.	The Mbeki Report, African Union, UN Economic Commission for Africa, UN DESA, European Parliament.	Blankenburg and Khan on harm of illicit activities, ¹⁶ Gutierrez on illicit economies, ¹⁷ UNCTAD.	UN Office of the High Commissioner on Human Rights, ACHPR, Kathmandu Declaration on IFFs.

Source: Adapted from European Centre for Development Policy Management (ECDPM) 2018 with 'rights-based definitions' added.¹⁸

The first definition, which we call 'legalistic', is what is also often described as a narrow definition of IFFs, used by a number of international organisations, including the World Bank, the IMF, the OECD and UNODC. The OECD refers to 'a set of methods and practices aimed at transferring financial capital out of a country in contravention of national or international laws'.¹⁹

The second definition is what we would call 'normative': it defines IFFs in terms of a normative problem in how laws, rules and regulations are actually established, rather than focusing merely on the letter of the law. This definition is supported by the High Level Panel (HLP) on IFFs in Africa, established by His Excellency Mr. Thabo Mbeki, former president of South Africa.

Reading this definition carefully, we can see both a narrow legalistic definition, as included in the introduction of the report of the HLP; and a broader normative definition, as included in the commentary cited in Figure 2.²⁰ What is considered 'illegitimate' is discussed through case study evidence and covers practices such as corrupt government deals, tax abuse, abusive tax incentives and other concerns that further expand the focus of the discussion on IFFs.

The third definition builds on the first and second definitions, as it tries to define a normative framework around what should be considered 'illegitimate'. This effort has been led by Blankenburg and Kahn, who argue that, '**A minimal definition of an illicit capital flow has to consider both the direct and the indirect effects of the flow and has to assess these effects in the context of the specific political settlement of the country in question...**'²¹

This definition is supported mainly by UNCTAD, which has analysed IFFs in terms of their economic and development losses. Under this definition, UNCTAD considers that '**the key criterion used is whether such tax-motivated IFFs are justified from an economic point of view**'.²² If considerable tax losses are associated with IFFs, UNCTAD considers that these serve to undermine development outcomes that require greater fiscal capabilities.

This third definition thus takes into account the developmental implications of IFFs in assessing whether they are indeed illicit in the broadest sense, both morally and in terms of their economic development effects. In arguing for this broader definition, UNCTAD stated in its 2014 Trade and Development Report: 'It is generally accepted that the narrow definition is inadequate for describing tax-motivated IFFs. It fails to take into account several practices designed to reduce tax liability which go against the interests of society and ultimately harm the majority of the citizens, even if they cannot be proved to be illegal.'²³

This developmental lens also assists in determining whether some currently illegal activities are sufficiently harmful to warrant the deployment of law enforcement agencies' scarce resources:

'People living in dangerous places make choices and build relationships with "unusual actors" to enable economic transactions and some form of order to survive. They spontaneously find ways to help themselves, typically by relying on informal, including illicit, economic activities, to tide them over. They are consequently stigmatised as criminals, and therefore regarded as outside the purview of official development.'²⁴

Finally, the fourth definition – as proposed by this report – also builds on the first and second definitions, but views the issue through a rights-based lens. The definition therefore includes all aspects of tax abuse and tax avoidance, as these have a significant impact on the availability of public resources for realising human rights and upholding the rule of law. This is the view of the UN Human Rights Council (UNHRC), as particularly outlined in the 2015 report by

the independent expert Juan Pablo Bohoslavsky, on the effects of foreign debt and other related international financial obligations of states on the full enjoyment of all human rights, particularly economic, social and cultural rights.²⁵ He stated that:

‘activities related to illicit funds can also be clustered according to the illicit motivations involved. Those may be market and regulatory abuse, tax abuse, tax evasion, or abuse of power, including the theft of State funds and assets, and the profit from crime or corruption. Commonly used methods to evade or avoid taxation include trade misinvoicing and transfer mispricing.’

Also, the African Commission on Human and Peoples’ Rights (ACHPR) ‘defines illicit, in the context of illicit financial flows, to include that which is illegal and *contra bonos mores*, disguised as legal or concealed within a legal framework’.²⁶ Furthermore, the UNHRC has stated that: ‘Tax evasion and abuse are considered to be responsible for the majority of all illicit financial outflows, followed by illicit financial flows relating to criminal activities, such as drug and human trafficking, the illicit arms trade, terrorism and corruption-based illicit financial flows.’²⁷

The wider definitions also mean a wider definition of losses arising from IFFs, which we estimate here amounting to \$416bn, calculated as a sum total of all tax revenue losses using low-end estimates in the table below in Figure 3.

Figure 3: Illicit Financial Flow related capital losses and revenue losses

Type of financial harm	Trade mispricing	Offshore wealth	Corporate tax abuses
Capital flow loss	\$940bn-\$1,690bn (1)	NA	N/A
Capital stock loss	NA	\$3,192bn (3)	
Tax revenue loss	\$158bn-\$317bn (2)	\$58bn (4)	\$200bn (5)

Notes:

(1) Global Financial Integrity, January 2019, low-end estimate is trade mispricing using IMF DOTS-based estimate, while high-end estimate is the UNCTAD COMTRADE-based estimate.

(2) Global Financial Integrity, June 2019a; Global Financial Integrity, June 2019b; Global Financial Integrity, June 2019c, these three studies of tax losses arising from trade mispricing give a range of 16.9% in Egypt to 17.6% in India and 18.8% in Indonesia. We use the lowest estimate and IMF DOTS low-end trade mispricing estimate for \$158bn, while highest 17.7% and high-end COMTRADE-based method for \$317bn.

(3) Zucman 2017, here we have the total wealth offshore figure of \$8,700bn, of which we exclude high-income countries according to 2019 World Bank classification to arrive at \$3,192bn for countries in the global South.²⁸

(4) Zucman, Alstadsæter and Johannesen 2019 for method of calculating revenue loss from the offshore stock of capital, using data from Zucman et al we disaggregate the share of countries in the global South to include 52% of Asian offshore wealth (excluding high-income Asian countries), all of Latin American and Caribbean countries, all of African countries and Russia as it is in 2019 classified by the World Bank an upper middle-income country

(5) IMF 2015

Key processes to combat such practices include periodic reviews of the human rights situations of countries, complaint mechanisms that establish accountability for aspects of human rights violations, and regional and international human rights treaty processes and judicial forums through which cases involving IFFs may be pursued. Moreover, the concept of ‘harm’ in the analysis of the independent expert is broader than mere economic harm; while he adds that:

‘Failure to respect social, economic and cultural rights is frequently not exclusively due to unavailability of public funds. However, illicit financial

‘Tax evasion and abuse are considered to be responsible for the majority of all illicit financial outflows, followed by illicit financial flows relating to criminal activities, based illicit financial flows ... and corruption-based illicit financial flows.’

outflows from countries in the global South and tax abuse in industrialized countries have clearly limited the fiscal space of governments to ensure the progressive realization of social, economic and cultural rights.²⁹

All states are bound by the Charter of the UN and all treaties must conform with it – in particular, with Articles 1, 2, 55 and 56. A human rights-inspired definition of IFFs would therefore include not only explicitly illegal activities, but also activities that are against good conduct and morals, as well as activities that hinder the realisation of human rights and the SDGs. The funds lost through such transactions and practices could go a long way towards financing human rights and the SDGs, as outlined below.

Figure 4: Human rights and SDGs

Human rights indicator	Human rights affected and link to SDGs
820 million people around the world are undernourished, while 2.01 billion people are in moderate or severe food insecurity.	Right to food. Violates Article 11 of the ICESCR – the human right to an adequate standard of living, which includes adequate food, clothing and housing. SDG indicator 2.1.1 (prevalence of undernourishment). SDG indicator 2.1.1 (prevalence of moderate or severe food insecurity).
2,000 million people lack access to essential medicine. At least half of the world’s population of 7.3 billion do not have full coverage of essential health services. Over 800 million people (almost 12% of the world’s population) spend at least 10% of their household budgets on healthcare. Sub-Saharan Africa suffers from the highest maternal mortality rate (MMR), at 920 maternal deaths per 100,000 live births, followed by South Asia, with an MMR of 500. This compares with an MMR of 8 in industrialised countries.	Right to health right to life. Violates Article 12 of the ICESCR and Article 1 of the Alma-Ata Declaration. It is not the mere right to health, but rather the highest attainable standard of health, which is a higher threshold. Violates Article 3 and 6 of Convention on the Rights of the Child. Violates Article 12 of CEDAW. SDG 3.8 (achieve universal health coverage, including financial risk protection, access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines). SDG 3.1 (MMR).
844 million do not have access to even a basic drinking water service, while 2.1 billion lack access to safe, readily available water at home. Meanwhile, 2.3 billion still do not have basic sanitation services and 4.5 billion lack safely managed sanitation.	Right to water and sanitation, right to life. SDG 6.1 (by 2030, achieve universal and equitable access to safe water and sanitation for all). SDG 6.2 (access to adequate and equitable sanitation and hygiene).
880 million residents – representing 29.7 per cent of the urban population in 2014 in the developing world – lived in slums in 2014.	Right to housing. Violates Article 11 of the ICESCR – the human right to an adequate standard of living, which includes adequate food, clothing and housing. SDG 11.1 (access for all to adequate, safe and affordable housing and basic services).

International human rights law is still evolving and gaps remain in relation to both the duties of non-state actors and the further regulation of inter-state relations, so that one state’s actions do not harm the enjoyment of human rights in other states. Important developments since the adoption of the Universal Declaration include the adoption in 1966 of the International Covenant on Economic, Social and Cultural Rights (ICESCR),³⁰ which binds the 170³¹ signatory states to economic and social rights obligations written in law.³²

The ICESCR sets out a minimum threshold to ensure the achievement of each economic and social right; above this minimum, the duties of states in this regard depend on the maximum available resources for the immediate and progressive realisation of economic and social rights. According to the ICESCR, a violation of economic and social rights occurs ‘when a State pursues, by action or omission, a policy or practice which deliberately contravenes or

ignores obligations of the Covenant, or fails to achieve the required standard of conduct or result'.³³

We argue that IFFs – especially those conducted through secrecy jurisdictions and corporate tax haven states that facilitate such IFFs, including tax abuses – constitute such a violation of human rights.

Moreover, governments are obliged to cooperate internationally to deploy the maximum available resources for the universal fulfilment of economic, social and cultural rights, and to create an international environment that is conducive to meeting this goal. The ICESCR also refers to 'international assistance and co-operation' as counting towards a state's available resources to realise economic and social rights.

This should not be limited to international development aid, but should also include the provision of technical capacity to tackle all types of IFFs – for instance, to help reinforce tax systems and build administrative resources, and to ensure policy coherence so that one state's actions do not harm the capacity of other states.

While there is a healthy debate regarding the precise nature of states' extraterritorial obligations, the 2011 Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights represent a landmark international expert opinion in this regard.³⁴ Tax-related spillover analysis is a method that has been used by the IMF and certain governments, including those of Ireland and the Netherlands. It is also important to open up such analysis to public comment and scrutiny by relevant decision makers and elected representatives.

The following discussion addresses the three types of IFFs that are explored in this report. Part one discusses tax abuses by TNCs; Part two discusses trade mispricing from the perspective of lost tax revenues; and Part three discusses tax abuses resulting from the use of offshore tax havens by wealthy individuals.

Part one: Tax abuses by transnational corporations

TNCs are essentially companies that operate in multiple countries and autonomous jurisdictions. As these countries and territories have different (at times conflicting) tax and financial laws, the international tax system is a patchwork with loopholes and mismatches that companies (and the wealthy individuals who own them) can exploit to pay less tax – either legally (albeit often through abusive practices) or illegally, in the hope that they will not get caught due to the high degree of secrecy and complexity that characterises the international financial system.

A TNC is taxed separately for each of its legal entities in each territory in which it operates. Thus, if a TNC has 200 different subsidiaries and affiliates, each one of them must file its own tax return. This separate treatment of the different legal entities of TNCs is set out in the OECD Transfer Pricing Guidelines, even though – for strategic purposes, and in the eyes of shareholders who seek to profit from the activities of the entire group, rather than those of its individual parts – the company is essentially a single entity.³⁵ These separate entities are assumed to be trading at ‘arm’s length’ – that is, as if they were unrelated parties – under the OECD Transfer Pricing Guidelines.

Meanwhile, human rights norms – such as the UN Guiding Principles on Business and Human Rights³⁶ and various laws on mandatory human rights due diligence in Europe³⁷ – establish that companies should be treated as single entities in light of their human rights obligations for their entire global operations, including their supply chains. Corporate accountability efforts also point in this direction, including the EU Non-financial Reporting Directive, the US Dodd-Frank Act and the UK Modern Slavery Act. The tax and human rights angle on treating corporates as single strategic entities has thus far had little impact on the cross-border tax treatment of TNCs; but it is logical to treat companies as single taxable entities with respect to international human rights norms.

TNCs – for good reason – pool some of their resources in shared intra-group functions, such as financing, procurement, sales, human resources, brands, patents and management services, which are held in a specific subsidiary or subsidiaries and sold on to other subsidiaries as corporate services. If these ‘transfer prices’ are established at abusively low or high levels, they can be used for ‘profit shifting’, which often aims to reduce profits in high-tax countries and jurisdictions and report profits from such collective functions in low-tax countries and jurisdictions. TNCs may seek to maximise their profits (often post-tax profits rather than pre-tax profits) at a global level by routing trade, financing and investment through countries and jurisdictions that present tax advantages.

This type of behaviour is the focus of the OECD’s Base Erosion and Profit Shifting (BEPS) project, which aimed to end such practices, but has largely failed to do so due to a lack of agreement on how to tax TNCs globally. At present, the UN only has an expert committee on international tax matters, whose members are restricted to commenting on such matters in their expert capacity as individuals, rather than proposing plans for new rules and regulations on the taxation of TNCs. Countries in the global South have called for the establishment of a UN-based tax commission (or a UN tax body) to negotiate how best to tax TNCs and improve transparency and accountability in international tax matters.

The taxation of cross-border transactions such as interest, royalty, dividend and other intra-firm payments is often governed by double tax agreements (DTAs), such as the Ireland-Ghana DTA and the Mauritius-India DTA discussed on the

next few pages. The applicable tax rates are often set at ever-lower levels in the hope that this will increase investment, despite the lack of evidence to support this view. In other cases, DTAs may allow companies to avoid paying capital gains tax (CGT) – as happened in the case of Ncell, discussed below in which the parties invoked the Nepal-Norway DTA to claim that no CGT was payable. Also, more recently, some companies have invoked bilateral investment treaties (BITs) which contain investor-state dispute settlement (ISDS) clauses to challenge tax charges levied in countries in the global South, as also seen in the case of Ncell.

In the following case studies, we explore recent tax controversies in Nepal, Argentina, Ghana and India to try to understand how the lack of an international tax consensus is harming countries in the global South, despite their best efforts to tackle tax abuses by TNCs.

Capital gains tax unpaid on sale of Ncell in Nepal

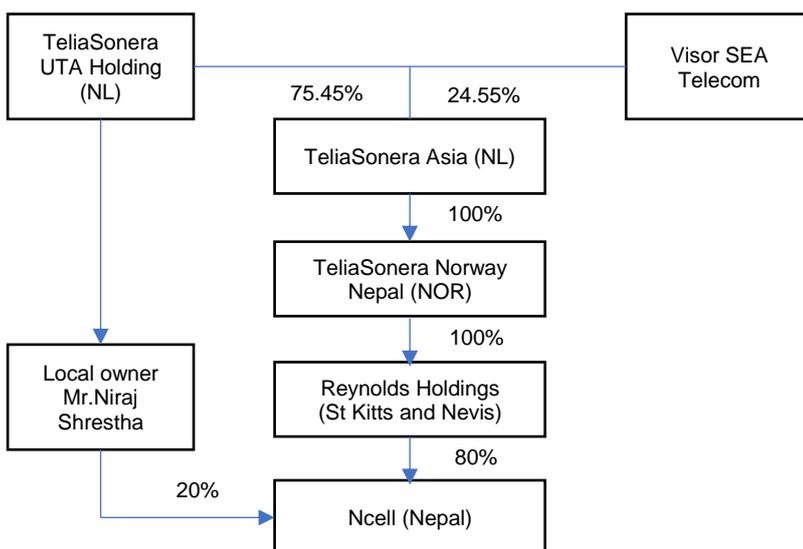
By Dr. Uddhab Pyakurel

Tax revenue is crucially needed in Nepal.

Ncell is Nepal’s largest telecoms operator. From 2010 to 2016 it was owned by a Swedish-based telecoms company Telia, and bought by a Malaysian telecoms company Axiata in 2016. However, this acquisition caused national controversy over the applicable CGT on the transaction.

The Nepalese FDI law requires a local ownership of 20%. Two separate Telia holdings were involved in the sale which together were sold for \$1.03bn. In addition, once we take the assets of Ncell into account (its cash position of \$284m), the total value of the acquisition is amounted to \$1.362bn as shown in the Figure 5 below (Telia was at the time of the transaction called TeliaSonera).

Figure 5: Holding structure of Ncell by Telia



Source: Telia 2015³⁸

There was a divergence of opinion in the Nepali administration and the government over the tax implications of the sale. Under one school of thought, CGT should be payable at a rate of 25% on the profits from the increase in the value of Ncell’s assets during Telia’s ownership.³⁹ The Nepali Large Taxpayer Office (LTPO) determined that Telia had made a capital gain of NPR143.65bn through the sale. Applying the CGT rate of 25% would result in a tax bill of NPR35.91bn.⁴⁰ If we look at the year 2016 when Ncell was sold, public health

Below: Deepmaya, her husband Laxman and their children were supported by Christian Aid in the aftermath of the Nepal earthquake in 2015. Abusive tax practices following the sale of Nepal’s largest telecoms operator have led to controversy over a disputed \$344m capital gains tax bill. Photo credit: Christian Aid



expenditure stood at NPR40 billion⁴¹, this almost amounts to the of CGT claimed.

Under the other school of thought, the deal was viewed as a foreign transaction where the shares of Reynolds Holdings (a St Kitts and Nevis-based holding company) were sold by Telia Sonera Asia (based in the Netherlands) to Axiata Investments (UK) Ltd⁴²; and because on paper the transfer took place outside Nepal, no CGT should be due. This, incidentally, was also the position maintained by both Telia and Axiata.

The Income Tax Act (2058) of Nepal includes no clear provisions on offshore indirect deals, as it is unlikely that such transactions were envisaged at the time the legislation was drafted.⁴³ According to clause 57 of the act, foreign investors are liable to pay CGT at a rate of 25%; and as the physical assets of Ncell changed ownership and these assets were based in Nepal, the case seemed clear to some.

However, Ncell and Telia argued to avoid capital gains tax was not due in Nepal on the ownership change, as Reynolds Holdings remained Ncell's parent company after the transaction and therefore that nothing had changed in the sense of the Income Tax Act terms of ownership.

Telia's representatives visited Nepalese politicians including the Prime Minister, the finance minister and other key decision makers before they concluded the deal.⁴⁴ According to former Finance Secretary Rameshwar Khanal, the expectation from these meetings was that Telia would pay the lowest possible amount of tax and potentially even have no CGT liability at all.⁴⁵

These meetings, which on their face appear to be lobbying suggests that Telia envisaged a risk that the Nepalese authorities would vie a CGT liability in Nepal as owing on the sale of Ncell, , and that there was a sufficient tax risk in the structure of the corporate structure sale to warrant discussions with Nepalese politicians at a high level. To mitigate this risk, the sale and purchase agreement signed between Telia, Axiata and Visor SEA Telecom is reported to have included warranties from the sellers to settle tax and other liabilities arising in Nepal.⁴⁶

Meanwhile, the controversy came under such intense scrutiny in the press and among trade unions that even the Public Accounts Committee of Parliament invited various stakeholders to discuss the Ncell share transfer and its revenue implications for Nepal. Thereafter, the Public Accounts Committee revived the CGT issue, directing the Ministry of Finance to recover the tax due within three months. The Parliament clearly stated that 25% of the profits from the sale of Ncell should be paid as CGT.⁴⁷

However, the cabinet, led by Pushpa Kamal Dahal, subsequently decided not to collect the CGT. The decision came under harsh criticism from civil society and the general public, and was condemned to be 'supportive of tax avoidance'. To its critics, the cabinet's decision to absolve Ncell of its CGT liability meant that Nepal would lose a huge amount of revenue.⁴⁸

In the wake of a Swedish public television documentary on the deal,⁴⁹ Telia defended its position as follows:

'Due to the complex ownership structure, the transaction consisted of two parts: one foreign where the seller was a partly Telia-owned company registered in Norway, and one local part in Nepal. The company position is that there are no tax obligations in Nepal on the foreign part of the transaction. Instead any taxes levied on the transaction should be paid in Norway, a country which has a double

'Ncell, Axiata and Telia attempted to avoid paying capital gains tax concerning the ownership change, arguing that Reynolds Holdings remained Ncell's parent company and therefore that nothing had changed'

taxation agreement with Nepal in which Nepal has waived its right to tax in favour of Norway.⁵⁰

However, Telia's argument that under the DTA between Nepal and Norway tax should be paid in Norway fails to give the full picture, as the immediate shareholder of Ncell seems to have been the St Kitts and Nevis-based Reynolds Holdings Ltd, rather than a Norwegian entity. Also others argue that as the final seller is the Telia's Swedish headquarter company, citing the Norway-Nepal Tax Treaty is an issue of abusive treaty shopping.⁵¹ Reynolds Investment's location in St Kitts and Nevis would most likely allow it to benefit from a low-tax environment; while concluding the sale of Ncell's assets in the Netherlands would mean that it would most likely be exempt from CGT according to Dutch law.

The DTA between Norway and Nepal dates back to 1996.⁵² Clause 13.5. of the DTA does not explicitly seek to tax indirect offshore capital gains and exempts any taxes not foreseen in the treaty. This clause should be reconsidered by both Norway and Nepal from the perspective of its extraterritorial impact on a third party in these two or other countries through a so-called 'tax spillover' analysis. Not to mention this provides opportunities for tax abuse. In defending its tax position, Telia further accused Nepal of rampant corruption, citing its 130th-place ranking in Transparency International's Corruption Perceptions Index.⁵³ A ranking that is in fact misleading because it is based on perceptions rather than an impact assessment of laws and behaviours.

Under pressure from civil society, trade unions and the Nepalese Parliament, together with the local and global media, Ncell – and effectively Axiata, as the new owner – have so far deposited NPR23.6bn (\$230.6m at the time) at the Nepalese tax office in two parts: NPR9.97bn (\$90.97m) in May 2016 and NPR13.6bn (\$130.6m) in June 2017. These sums were paid out by Axiata. Whether Axiata can seek to recover these sums under the warranties understood to be in the sale agreement⁵⁴ with Telia is not known.

Of this sum, NPR2.1bn (\$20.1m) covered a fine imposed against Axiata by the tax office for delayed payment. Interestingly, the tax of NPR13.6bn (\$130.6m) was paid by Ncell to the LTPO just two days after the Commission for the Investigation of Abuse of Authority arrested the Chief of the Inland Revenue Department due to allegations of corruption and tax abuses in his previous role at the Tax Settlement Commission.⁵⁵

On 4 January 2018 the LTPO asked NCell, and thus effectively its new owner Axiata, to increase its total payable amount of tax to NPR65.4bn (almost \$569m), as this includes the original charge, and in addition interest due to late payment, payable within 15 days, issuing a public notice to this effect in various newspapers. The public notice stated that Ncell owed NPR60.71bn (almost \$522m) – inclusive of all payable tax, interest and fees – as assessed on 30 June 2017; and an additional NPR4.69bn (almost \$40) further to the tax and interest assessment made on 2 January 2018.⁵⁶

The government of Nepal thus sought to use its leverage and influence to compel Ncell to pay the tax, together with late payment interest, by barring dividend repatriations until the CGT issue relating to the Ncell acquisition is resolved.⁵⁷ Nepal Rastra Bank, the central bank of Nepal, also issued a directive prohibiting banks and financial institutions from offering exchange facilities to Ncell, Axiata (Ncell's current owner) and Reynolds Holdings Ltd (subsidiary of Axiata).⁵⁸ The decision was reversed in December 2017 to allow dividend repatriation again as judges stated that obstruction of dividend repatriation would adversely affect the company and its shareholders.⁵⁹

In April 2019, a group of Nepali individuals filed a public interest litigation against Ncell Private Limited (Case 074-WO-0475), to essentially recover the full tax charge with the late interest and fines, that then would amount to NPR63 billion (\$548m). The letter by the tax authority was issued to Axiata as a follow-up to the full written order of the Supreme Court issued on 9 April 2019, which related to its oral order dated 6 February 2019 in a public interest litigation filed by Mr Dwarikanath Dhungel and other claimants. Axiata considers that CGT should not be applicable on offshore transfers of assets, and even if applicable any balance not paid in CGT should be paid by the seller, ie, Telia.

On 16 April 2019, the LPTO issued a written order to Ncell, stating that the assessment regarding Telia in relation to the transaction had been transferred to Ncell, and that the balance due of CGT due as a result of the transaction was NPR39.06bn. The LPTO ordered Ncell to deposit this amount within seven days (ie, by 22 April 2019). Ncell made an appeal and won. Following this, the total liability was reduced to NPR45 billion. The operator has already paid NPR23 billion of this total, so the outstanding amount remains NPR22 billion as far as publicly communicated.⁶⁰ Nepal's Parliament has requested to hold a hearing as some lawmakers want to re-examine the court decision due to the Supreme Court's ruling of August 26 which reduced the outstanding tax liability on Ncell's buyout deal.

In the latest twist in the tale, Axiata's UK subsidiary and NCell have filed a request for arbitration with the International Centre for the Settlement of Investment Disputes (ICSID),⁶¹ part of the World Bank Group, based in Washington DC, regarding the CGT bill. The instrument cited by Axiata UK is the 1993 UK-Nepal BIT, which has an ISDS clause designating the ICSID as the forum for the resolution of disputes. Axiata UK claims that the tax office calculated the CGT bill incorrectly. The case remains pending as of September 2019, with no date for hearings as yet announced. The arbitration may take years to conclude, will cost both sides a substantial sum, and may result in an order either directing Nepal to repay Axiata all taxes it has collected thus far or upholding the decisions.⁶²

It would be prudent to clarify whether CGT is applicable to all transactions, irrespective of the location of assets in a holding structure on paper. In fact, this change was requested by the Supreme Court decision to look into clarifying tax treaties Nepal has in these cases. While this change to international tax laws and norms could ideally solve the situation, it is important for both Nepal and other treaty partners in tax, investment or trade agreements such as Norway and the UK to conduct so-called spillover analysis to understand extraterritorial obligations of their treaties against abuses. This should lead to renegotiating tax, trade and investment treaties with partners where harmful clauses are identified so that international treaties should not be used to overturn tax rulings in Nepal.

Spanish tax loophole deprives Latin America of revenues

By Tomás Julio Lukin

Spain introduced a new law on holding companies in 1995. The law includes a regime for holding companies called Empresa de Tenencia de Valores Extranjeros (ETVE), which has allowed Spain to compete with the 'abusive' holding schemes offered in some European countries, such as Ireland and Belgium.⁶³ According to the Spanish Trade Department, this has become especially important given that, between 2010 to 2018, an average of 34.2% of all FDI flows related to these corporate structures.

During the first decade of the 21st century, many big local corporate groups and multinationals operating in Argentina modified their ownership structures, adding an ETVE company between their local operations and their actual owners. According to the Argentine tax authorities, this simple administrative procedure constituted an abusive interpretation of the DTA signed between both countries in 1994, which allowed companies to avoid between \$60m-\$80m in tax every year.⁶⁴

An ETVE is a regular legal entity which is fully subject to the normal Spanish corporate tax rate of 25%, with the sole distinction of an exemption for dividends and capital gains derived from foreign subsidiaries. Once an ETVE had been established, companies in Argentina were thus exempt from personal asset tax in the country, which is levied on shareholders at a rate of 0.5% in relation to their participation in local entities. The exemption under Article 22 of the DTA, combined with the benefits of the Spanish special holding company regime, effectively created a 'double no taxation' mechanism.

This channel was exploited by TNCs from Brazil, Canada, Chile, France, Germany, India, Italy, Switzerland and the United States, as well as by Argentine companies. According to an official investigation conducted by the Argentine authorities, at least 51 corporate groups changed their ownership structures to avoid paying personal asset tax. These included Petrobras, Peugeot-Citroën, McCain, Acindar-ArcelorMittal, Hewlett Packard, Volkswagen, Quilmes-AmBev, Kimberly Clark, Atanor-Albaugh, Bayer, Danone, Walmart, Holcim, Juan Minetti, Cencosud, Monsanto and Techint.

Conceived to 'facilitate' and 'stimulate' the operations of Spanish companies such as Santander Bank and Repsol in Argentina, the abused exemption was widely promoted in university textbooks and on the websites of financial advisers. According to the Amicorp Group:

'The main tax benefits of a Spanish holding company are: total participation exemption for dividends and capital gains realized on the disposal of shares; absence of a withholding tax on distribution of non-Spanish source dividends; full deductibility of interest payments; no capital duty on share-for-share contributions and on the issue of share capital for entities established in certain provinces; exemption of overseas branch income; Spain allows interest relief on borrowings to finance the acquisition of shares in foreign subsidiaries; and availability of pre-transaction rulings.'

The website of a financial adviser explicitly stated that, 'provided the foreign shareholder receiving the distributions from the ETVE is not located in a tax haven, distributions may flow through this jurisdiction and out again to another jurisdiction'.

The online promotional brochure of the financial adviser was published in 2017; so it appears that although the loophole to avoid personal asset tax in the South American country was closed in 2013, after the DTA was renegotiated at

TNCs from the following countries have exploited the Spanish tax loophole:

- Argentina
- Brazil
- Canada
- Chile
- France
- Germany
- India
- Italy
- Switzerland
- United States

Argentina's request,⁶⁵ some (potentially abusive) tax benefits derived from the Spanish ETVE regime are still in place.⁶⁶ Spain is not included in any blacklists and ranks 52nd in the Financial Secrecy Index developed by the Tax Justice Network; but its special holding companies regime, together with a substantial network of DTAs signed primarily with former colonies in Latin America, provides for generous tax benefits which – at least according to the Argentinian tax authorities – present abundant opportunities for IFFs. And the resulting damage is not limited to Argentina.

Techint Group in Argentina

The Techint Group is a multinational steel, oil, construction and engineering conglomerate which in 2017 had total revenues of \$18.5bn and 55,400 permanent employees worldwide. The group is controlled by Paolo Rocca, the grandson of the Argentine-Italian founder and the richest man in Argentina, with a net worth of \$9.7bn, according to Forbes magazine. Although Rocca resides with his family in Argentina, the Techint Group is ultimately owned by a Dutch foundation called Rocca and Partners Stichting Administratiekantoor Aandelen San Faustin (RP STAK).

That foundation controls a Luxembourg company called San Faustin, which oversees the two main branches of the group: Techint Holdings and Tenaris, both of which are also incorporated in the European duchy. Tenaris holds Techint's biggest business in Argentina: steel producer Siderar, which since privatisation has become one of the key pillars for the group's worldwide expansion.

In 2008 Siderar added a Spanish ETVE to its ownership structure. Public reports sent to local market regulators show that the structure designed for Techint Group in this regard was more complex than usual. According to the Argentinian tax authorities, the income tax paid by the company between 2002 to 2007 in the name of its Luxembourg shareholder, amounted to around \$23m.

The following year, the scheme changed and the duchy company was no longer Siderar's direct owner. Company accountants interposed two new entities between them: Dirken Company in Uruguay and Ternium International España in Spain. This new ownership structure, which was reported to the stock market in December 2008, allowed the Techint Group subsidiary to avoid paying around \$20m in taxes between 2008 to 2010.

While several companies agreed to amend their tax returns once the 'double no taxation' mechanism was reported by the Argentinian authorities, Siderar refused to rectify the situation and instead went to the fiscal courts to challenge the formal claim issued by the government to collect the avoided taxes plus interest.

Until 2016, Siderar's annual report indicated that the company's lawyers and accountants were confident that they would ultimately prevail in an appeal before the National Fiscal Court. However, Siderar subsequently changed course, availing of a 'tax amnesty' offered by the government to end the dispute while benefiting from a generous reduction in the payment due.⁶⁷

'Tax amnesty' is not the most accurate term for this process; it is rather an out-of-court settlement offer made by the tax authority to taxpayers that could be pursued for tax evasion, but are allowed to settle claims as abusive avoidance. While such settlements bring in revenue, they also erode overall trust in the tax system and may make other taxpayers less willing to be transparent and compliant with the tax laws.

The case-study shows that harmful tax practices such as Spain's regime for ETVE holding companies should be studied from the perspective of

extraterritorial human rights obligations by relevant human rights bodies, and additionally conduct spillover tax analysis to understand the revenue losses to other countries caused by such tax practices. Meanwhile, Argentina and other affected countries should seek to place this corporate structure on their risk assessment lists, or tax haven lists for tax inspections. All companies should be compelled to produce public country-by-country reporting to understand where they allocate taxable profits, and how much taxes are paid.

Argentina is today in a debt crisis, with the largest IMF bailout in history, \$56bn, being administered, with significant social costs linked to fiscal austerity cuts on public services, pensions while also administering regressive tax increases mainly hurting the poor and marginalised populations. While debt management and debt workout mechanisms are separate from tax collection, the reasons why Argentina ended up taking out debt are partly related to low levels of tax collection from international trade and TNCs.

Irish double tax agreement threatens revenue losses in Ghana

By Mike Lewis

This case study tells a political story rather than a technical one. It shows how some governments are continuing to ignore new international anti-avoidance standards, and the advice of their own civil servants, in pursuing tax agreements that may create new avenues for tax avoidance and deprive countries in the global South of taxing rights.

DTAs can resolve tax dilemmas for companies and citizens living and working between two countries, or investing in one country's economy from another. If they are incautiously or exploitatively drafted, however, DTAs can unfairly deprive countries in the global South of taxing rights that are vital to reduce aid dependency, protect their citizens' rights and develop their economies. They can also open up new loopholes for profit shifting and other forms of cross-border tax avoidance. In 2014, usually conservative IMF tax policy staff advised that 'developing countries... would be well advised to sign treaties only with considerable caution'.⁶⁸

Ireland is expanding its network of DTAs. As this already encompasses numerous agreements with developed economies, Ireland is now particularly focused on signing new treaties with emerging economies. Of eight treaties currently awaiting final signature and/or ratification, five are with countries in the global South.⁶⁹ As part of its new Africa strategy launched in 2011, Ireland targeted four emerging African economies for new DTAs, including Ghana.

Ghana is the lowest-income of Ireland's current prospective DTA partners. A booming middle-income economy, it is also a vulnerable one which is still a (small) recipient of Irish aid.⁷⁰ Over one in 20 Ghanaian children still die before their fifth birthday; and despite major improvements, almost 4 million Ghanaian children still live below the poverty line.⁷¹ Ghana's tax revenues also remain vulnerable: Ghana collects only around 16% of its GDP in tax revenues, compared to 25-30% for most European economies.⁷²

Although, from Ireland's perspective, Ghana may be a relatively small investment and trading partner, the new Ireland-Ghana DTA matters greatly to Ghana, because according to Ghanaian statistics, **since 2012 Ireland has become Ghana's largest source of FDI**. By 2016 (the most recent year for which Ghanaian-reported FDI data are available), Irish FDI constituted one-third of Ghana's entire reported FDI stock.⁷³ Limiting Ghana's taxing rights over income, profits and economic activity between Ireland and Ghana may thus have a significant impact on Ghanaian tax revenues.

Both parties signed the DTA in February 2018. Although approved by Ireland's Parliament in October 2018, it still requires approval and ratification by the Ghanaian Parliament, meaning that the DTA's entry into force now rests on whether Ghanaian institutions find it abusive or harmful, and request further changes to the treaty.

Imbalances of the Ghana-Ireland DTA

- **The DTA will cut Ghanaian withholding tax on royalties to Ireland from the domestic 15% rate to 8%, and on (closely related) technical services fees from 20% to 10%.** Such withholding taxes not only are an important source of CTR for countries in the global South, providing a share of tax revenues from income arising in their country,

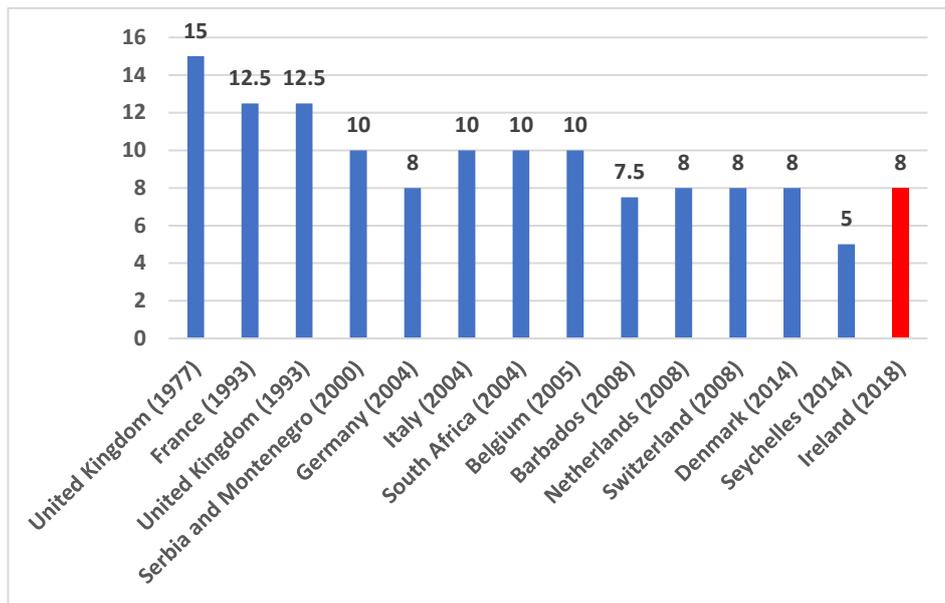
'If they are incautiously or exploitatively drafted, DTAs can unfairly deprive countries in the global South of taxing rights that are vital to reduce aid dependency, protect their citizens' rights and develop their economies'

but also act as a defensive measure against profit shifting through large cross-border payments of interest or royalty fees. Although this is not the largest reduction in royalty or technical services withholding tax included in Ghana's bilateral tax treaties to date, it is among the largest for royalties (Figure 6). It also carries a particular risk since (as Christian Aid pointed out in its Impossible Structures report)⁷⁴ Ireland is Europe's primary conduit for profit shifting via royalty payments, due to its favourable onshore tax environment for intellectual property, through the availability of tax avoidance schemes such as the 'Double Irish' and (until recently) the 'Single Malt', and facilitated by the absence in most cases of an outbound Irish withholding tax on royalties.⁷⁵

- **The DTA will deny Ghana the right to tax capital gains from the sale of assets in its territory (other than immovable property), if the sale is executed through the offshore sale of shares in an Irish holding company. This contradicts the recommendations of both the IMF and the UN Tax Committee.**⁷⁶ Since Ireland appears, according to Ghanaian statistics, to be the largest single source of direct investment in Ghana's economy, this provision could potentially deprive Ghana of very large tax revenues when valuable Ghanaian assets change hands. The IMF has noted that single transactions of this kind have individually deprived some countries in the global South of potential tax revenues of several billions of dollars.⁷⁷
- **The DTA lacks any of the anti-avoidance provisions which OECD member states, including Ireland, agreed in 2015 were necessary to provide 'the minimum level of protection against treaty abuse'.** It is therefore fully non-compliant with the OECD's BEPS project against tax avoidance and profit shifting, which Ireland has repeatedly pledged to implement in full. Although Ireland has since written to the Ghanaian government to discuss adding such provisions, it has nonetheless pushed ahead with ratification of the DTA prior to the inclusion of any such amendments.

These features arguably contradict the Irish government's own commitments in Ireland's international tax strategy: to support 'improvements in domestic resource mobilisation [tax revenues] in partner [developing] countries', including through Ireland's own domestic tax policies;⁷⁸ and to fully implement the OECD's BEPS project to prevent corporate tax avoidance.⁷⁹

Figure 6: Royalty withholding tax rates in Ghana DTAs (%)



Source: ActionAid / International Centre for Tax and Development Tax Treaty Dataset.

Significantly, in pursuing withholding tax reductions, Irish negotiators ignored assessments by parts of the Irish government itself about the benefits and risks of such changes for vulnerable developing economies.

An internal memo written by the Africa section of the Department of Foreign Affairs and Trade for ministerial discussions around the tax treaty negotiations initiated by Ireland’s Africa strategy in 2012 warned that: ‘Recent empirical literature has been inconclusive in estimating the effect of double taxation agreements on foreign direct investment in countries in the global South, with conclusions ranging from a positive, to a negative, to no effect.’⁸⁰

The memo stated specifically that minimising withholding taxes (a defence against tax avoidance) ‘would clearly not be encouraged in relation to developing nations’.⁸¹ Yet internal papers and interviews with participants indicate that Irish negotiators pushed for even lower withholding taxes than in the final treaty: a demand which the Ghanaian delegation rejected, bringing the treaty negotiations to a halt for over eight months. Agreement was reached after the Irish ambassador to Ghana went over the heads of the Ghanaian Revenue Authority and Finance Ministry experts negotiating the treaty to lobby the Ghanaian Deputy Minister of Finance directly; and after Ireland proposed, as an alternative to further withholding tax cuts, a risky ‘Most Favoured Nation’ clause granting Ireland further rate cuts if Ghana agrees lower rates with any other countries in the future.⁸²

The India-Mauritius nexus of illicit financing

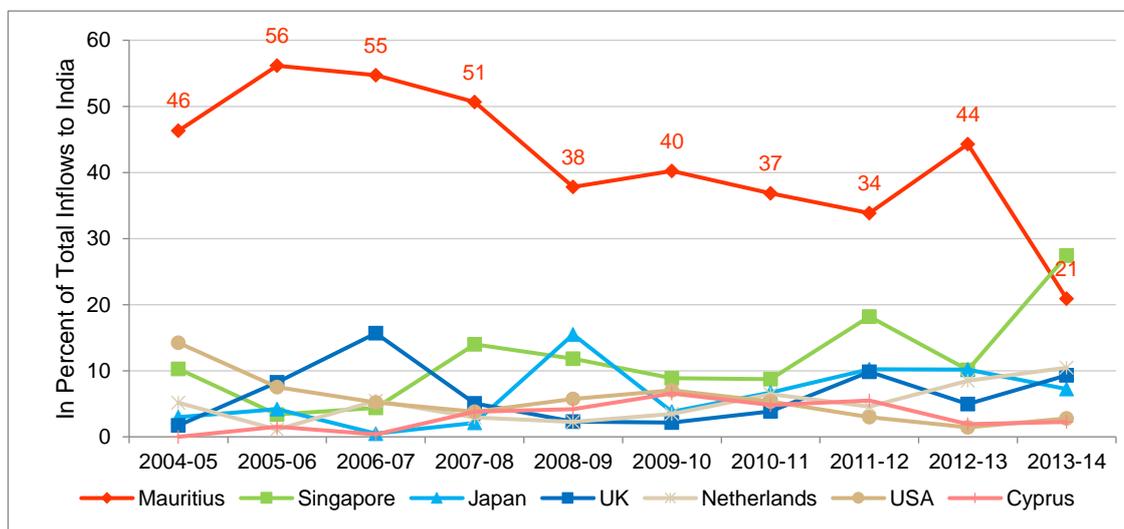
By Neeti Biyani and Sakshi Rai

A new investigation, dubbed ‘Mauritius Leaks’, was launched by the International Consortium of Investigative Journalists (ICIJ) earlier this year.⁸³ Based on 2 million confidential records obtained from the Mauritius office of Bermuda-based offshore law firm Conyers Dill and Pearman, the leaks reveal how the island nation’s sophisticated financial and legal systems facilitate tax abuse by diverting tax revenues from developing African, Middle Eastern and Asian countries to line the pockets of powerful TNCs and oligarchs – while simultaneously benefiting Mauritius in terms of some jobs in handling the money and registration fees for companies providing financial services.

The TNCs involved include high-profile names such as GMR Holdings, Apollo Hospitals, Jindal Steel and Power, and Kolte-Patil Developers. In statements the companies have maintained that their corporate structuring is fully compliant with Indian law and regulation.⁸⁴

Mauritius’s significant role as a key jurisdiction for routing FDI and ‘round-tripping’ Indian funds back to India to mask their origin is well documented.⁸⁵ About 22% of all entities – after adjusting data for defunct entities – disclosed by Mauritius Leaks have India as their sole country, or one of their countries, of activity. A study previously conducted by the Centre for Budget and Governance Accountability (CBGA) stated that the top two jurisdictions, Mauritius and Singapore, together contributed more FDI to India than the rest of the world combined. A look at the trend suggests that over the years, Mauritius has been a ceding ground to Singapore (see Figure 7).

Figure 7: FDI inflows trend by country reported, 2004-14



Source: Foreign Direct Investment in India and the Role of Tax, Suraj Jaiswal (2017) Havens. Centre for Budget and Governance Accountability.
 Notes: Calculation based on ISID’s FDI dataset.

The Economic Survey of India (2015-16) further noted that:

‘[T]hese inflows need perhaps to be examined more closely to determine whether they constitute actual investment or are diversions from other sources to avail of tax benefits under the Double Tax Avoidance Agreement that these countries have with India.’⁸⁶

India-controlled FDI is likely to be a combination of funds raised overseas and round-tripping. The period 2004-14 also coincided with a dramatic increase in

trade mispricing and unrecorded hot money flows, according to the Global Financial Integrity (GFI) methodology on IFFs. Some 68% of FDI into India is routed through conduit countries, while 6% is unidentified FDI in the official dataset. If we focus on the Mauritius route, there are various ways in which these practices give rise both to tax abuses in terms of misaligning and misreporting corporate income, and potentially also to trade mispricing to evade customs duties and export/import taxes.

Making the offshore leap

From its origins as an idyllic island nation, in 1989 Mauritius made a concerted decision to follow in the footsteps of numerous British Crown Dependencies and began transforming itself into an offshore financial centre. Seeking to diversify its largely agrarian economy, Mauritius positioned itself as a jurisdiction of choice for TNCs and investors looking to invest in Africa.

Through the enactment of the Mauritius Offshore Business Activity Act (1992), which governs the country's offshore financial services sector, along with the introduction of low taxes and a network of investment promotion and protection agreements (IPPAs) (commonly known as Bilateral Investment Treaties or BITs), foreign-owned holding companies are essentially protected and allowed to become Mauritian resident companies.⁸⁷ This incentivises businesses and investors to invest in other regions – mainly in Africa and Asia – while operating under the Mauritian flag.

Often including detailed provisions on taxing rights, these IPPAs constrict the taxing rights of countries in the global South, as profits are shifted to low-tax jurisdictions such as Mauritius, thus depriving countries in the global South of the revenues they rightfully deserve. 'Significant activity' in Mauritius can be reported as long as a company has a minimal corporate presence there – one person is often enough – and the Mauritius subsidiary can call itself a financing, procurement, management services or other intra-firm corporate service provider that charges other parts of the company.

The IPPA network provides measures against any efforts towards expropriation and nationalisation by partner countries as its motive. Due to the nature of IPPAs, today they are mainly used to litigate against tax claims that are applicable under domestic law, but could be interpreted differently outside of the country by arbitration courts. Countries often end up losing money through litigation, penalties and compensation if investors are unable to recover the investments they have made.⁸⁸

Despite evidence that DTAAAs cause considerable and unnecessary loss of revenue from countries in the global South, resource-strapped low-income countries in particular are often forced to enter into unfair and unjust treaties to attract FDI in the absence of any alternatives.⁸⁹

Because of how DTAAAs are generally negotiated, the residence country (usually a developed country) ends up receiving a larger chunk of taxing profits than the country in which economic value is actually created (usually a developing country). It is common for TNCs to indulge in treaty shopping to avoid their tax liabilities, as Mauritius Leaks has also revealed.

Challenging the broken system

In mid-2018, India's capital markets regulator, the Securities and Exchange Board of India (SEBI), compiled a list of 25 high-risk jurisdictions which included Mauritius. However, this list is not publicly available. Invoking an immediate reaction from the government of Mauritius, SEBI had to issue a

'Bilateral investment treaties and double tax agreements ... constrict the taxing rights of countries in the global South, as profits are shifted to low-tax jurisdictions such as Mauritius – thus depriving countries in the global South of the revenues they rightfully deserve'

statement reassuring the Mauritian government that no such list had in fact been compiled.⁹⁰

For over 30 years, firms have been able to avoid paying CGT on sales using the Mauritius-India Double Tax Avoidance Agreement (DTAA)⁹¹ signed in 1982, as proven by Mauritius Leaks. In 2016 India revised this 33-year-old DTAA with Mauritius, which effectively saw a 55% decline in FDI inflows in 2018 compared to 2017. Although India began the process of renegotiating BITs with a new model, older treaties that are yet to expire can still be invoked by investors for claims.

To increase accountability on the part of foreign investors and combat money laundering, India should reduce its 'significant beneficial interest' disclosure threshold to 10% or below and extend its 'know your customer' norms to entities such as limited liability partnerships, trusts, foundations, cooperative societies and associations – especially for investments routed through high-risk jurisdictions. Lobbying groups on several occasions have vehemently opposed such measures.

The loss of revenue through illicit activities has serious implications for countries in the global South and cannot be prevented without a fair and transparent system that works for everyone. It is therefore imperative to level this uneven playing field where countries in the global South would be able to negotiate, inform and apply rules on international tax on an equal footing.

Part two: Lost tax due to trade mispricing and trade mis-invoicing

International trade is not what it seems. Trade mispricing has become a multibillion-dollar industry⁹², in which trade handling companies identify the least costly way to make a paper trail of payments for goods, which often has nothing to do with their physical movement. Unrelated importers and exporters utilise offshore tax havens to route trade on paper to reduce the taxes paid on border transactions, as they provide secrecy for practices such as double invoicing and mis-invoicing – sub-categories of the umbrella term ‘trade mispricing’.

When we talk about imports and exports, many think that goods flow from one country to another relatively directly; and this is what is shown in the international trade data maintained by the UN Comtrade database and the IMF’s Direction of Trade Statistics (DOTS). There are some legitimate discrepancies in the import value reported for the same set of imports in the receiving country and the export value in the exporting country that relate to shipments via transit countries, regarding how goods are declared in value (‘Free on Board’ is often used, but not by all countries).

The volumes of potential trade mispricing are absolutely eye-watering. A representative sample of 30 African countries from 1970 to 2015 revealed that these countries lost a combined \$1.4tn through capital flight over the 46-year period; including interest earnings lost on capital flight brought the cumulative amount to \$1.8tn.⁹³ The average outflow from Africa for the years 2010 to 15 was estimated at \$63bn under this methodology, lost mainly from oil-rich African nations. In 2016 the African Union HLP on IFFs, chaired by His Excellency Mr. Thabo Mbeki, stated that:

‘The implications of all these studies are that IFFs from Africa range from at least \$30bn to \$60bn a year. These lower-end figures indicated to us that in reality Africa is a net creditor to the world rather than a net debtor.’⁹⁴

The best estimates of tax losses due to trade mispricing come from GFI, which has estimated that trade mispricing (encompassing both illicit outflows and illicit inflows) in 2015 caused losses of \$940bn, based on the UN Comtrade data, while higher IMF DOTS would show a loss of \$1,690bn.⁹⁵ Both of these figures, attempt to estimate mismatches between the declared import price and the export price in the same pair of countries or vice versa.

GFI conducted case studies to estimate the tax losses incurred as a result of trade mispricing in three different countries, finding that these ranged from 16.9% in Egypt to 17.6% in India and 18.8% in Indonesia. If this range of 16.9% to 18.8% is applied globally, it reveals that trade mispricing causes tax losses of between **\$158bn-\$317bn** from the developing world depending on the data used to make the low-end or the high-end estimate. We use here the lowest end data, and low-end estimate of tax losses to make the global figure used in the headline figure.

Authorities and courts are trying to find ways to tackle this behaviour through enhancing beneficial ownership transparency; ensuring that companies file accounts in all countries and that relevant customs information is available on world market prices of goods; promoting exchange of information; and seeking to criminalise practices such as ‘smuggling’ or ‘fraud’ when different invoices are presented on opposite sides of the border.

‘The volumes of potential trade mispricing are absolutely eye-watering’

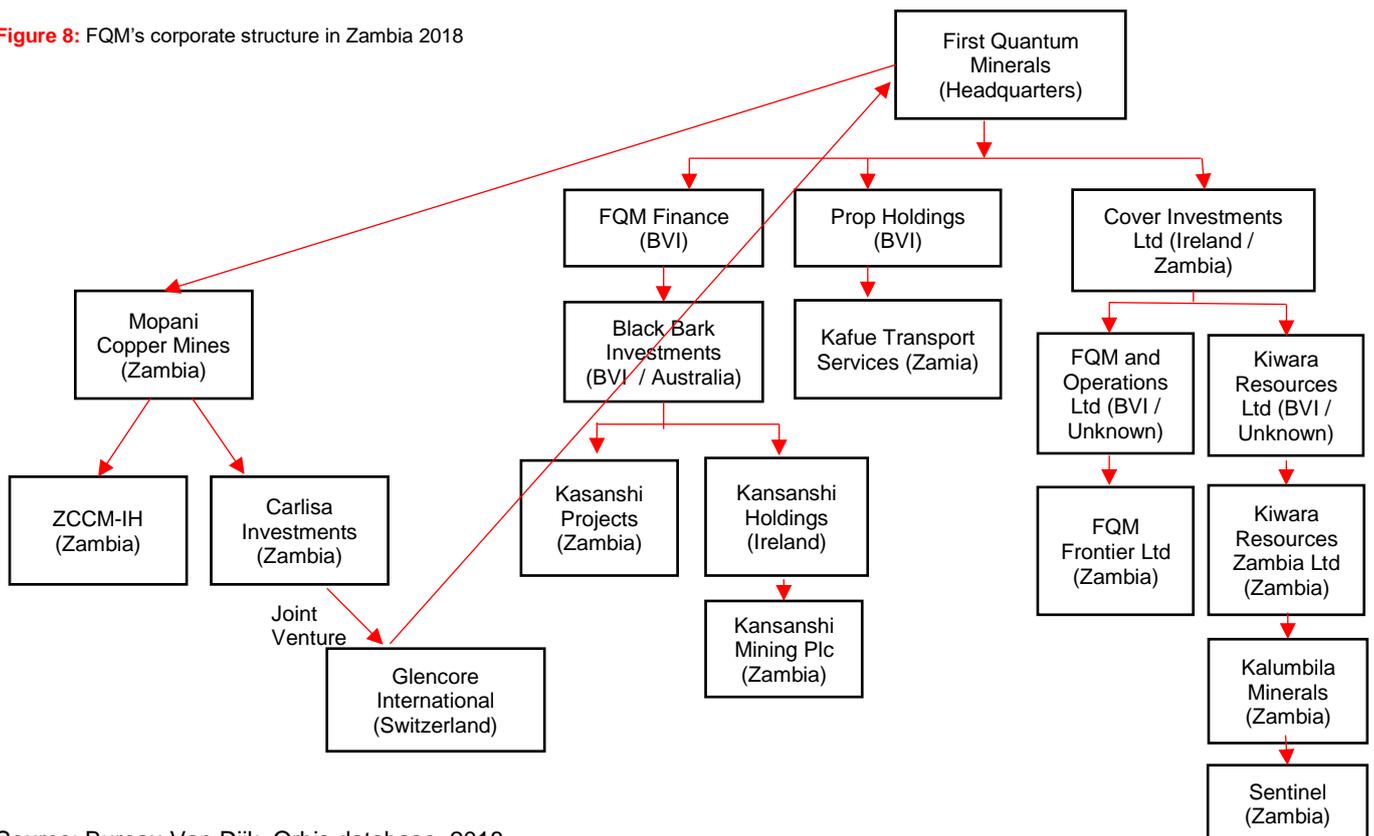
Zambia's copper sector mispricing abuses

By Prof Attiya Waris

First Quantum Minerals (FQM) is Zambia's largest mining company and largest single taxpayer, and has been lauded as contributing more than one-third of the Zambian government's income.⁹⁶ The 2015/2016 Extractive Industry Transparency Initiative (EITI) data reveals that the Kansanshi mine provided 22% of tax revenue, while 7% was provided by another subsidiary. The main types of taxes that FQM pays in Zambia are mineral royalties, followed by other types of taxes. It is evident that the collection of mineral royalties is relatively simple; the debate thus centres on the declaration of correct production volumes and payments to governments, including in EITI reporting.⁹⁷

FQM is listed on both the Toronto Stock Exchange and the London Stock Exchange, and operates mining projects globally. It has a number of local affiliates in Zambia, all with separate accounts. The available data reveals discrepancies between the information regarding FQM registered with the Zambian companies registry and that held in the Orbis database. For instance, while cover investments is shown to have been incorporated in Zambia in one database search for FQM and Operations Ltd, in the Orbis database there is no record of cover investments.

Figure 8: FQM's corporate structure in Zambia 2018



Source: Bureau Van Dijk, Orbis database, 2018

The Zambian Revenue Authority is reportedly accessing information from Orbis and other proprietary company information databases in order to improve its audits.⁹⁸ The FQM data sheet, on the other hand, indicates that the company is incorporated in Ireland. These discrepancies make tax audits and tax assessments more difficult in the absence of full country-by-country reporting under the OECD initiative, due to the lack of information exchange with other revenue authorities. The quickest way to facilitate full country-by-country reporting would be to make the filings mandated by the OECD public and available to all, including the revenue authorities of countries in the global South.

FQM and its subsidiaries in Zambia are subject to various taxes, from employee income taxes to VAT, mineral royalties and corporate taxes, among others. However, the EITI disclosure for the year 2016 is not sub-divided by the types of taxes paid, so sensitive tax information – such as corporate income tax payments per country of operation – is unavailable.⁹⁹ From the corporate structure of FQM, depicted in Figure 8, we can see that its Zambian operations involve offshore companies in the British Virgin Islands (BVI) and Ireland.

The current lack of transparency affords abundant opportunities for transfer pricing abuses. According to a claim before the Lusaka High Court, between 2007 and 2014, FQM directors ordered over \$2.3bn of Kansanshi profits to be borrowed to FQM Finance Limited, which performs treasury functions for the group.¹⁰⁰ FQM Finance then allegedly started investing these funds from the Kansanshi mine to grow the group without the consent of the government-owned local minority shareholder, ZCCM-IH. According to sources close to ZCCM-IH, its claim includes \$228m in interest on the \$2.3bn, as well as a further 20% of the principal amount (\$570m).¹⁰¹ FQM and the Kansanshi Mining PLC state that they are firmly of the view that the allegations are untrue.¹⁰² The proceedings are still underway in the Lusaka High Court as of August 2019.

TNCs may claim error or negligence by their directors and top-level management regarding transactions such as loans. However, if directors make the same misrepresentations over and over, in the full knowledge that the information is incorrect, but without correcting it accordingly, this ceases to be a mistake. In the ZCCM-IH case, the directors of FQM Canada, FQM Finance and Kansanshi Holdings made false representations about the loan transactions to ZCCM-IH with full knowledge of the true facts.¹⁰³

A third case involving FQM was revealed in March 2018, when FQM received an \$8bn charge relating to unpaid import duties arising from misdeclarations.¹⁰⁴ The assessment concerned the under-declaration and non-declaration of import duties on capital items, consumables and spare parts for use at the Sentinel mine from January 2013 to December 2017.¹⁰⁵ Following a five-year tax investigation, the losses were calculated at \$540m, which was found to amount to smuggling in the form of misdeclared customs duties. In the case of smuggling charges, criminal fines may be imposed.

The fine sought to be imposed on FQM has been duly calculated at \$2.1bn, as smuggling is punishable by a threefold fine in addition to the assessed amount, with a further late payment charge of \$5.7bn, according to the company's own disclosure. FQM refuted the assessment. In July 2019 a settlement was reached for an undisclosed amount.¹⁰⁶ The Zambian Revenue Authority has cited taxpayer confidentiality in this case, as it is likely that the settlement is for much less than the full amount assessed. FQM stated that ““The amount agreed was in line with the company's previously disclosed expectations and no further action is required,”¹⁰⁷

In the past, civil society groups have also taken non-judicial action against FQM and other mining companies in Zambia for suspected IFFs that have led to reduced revenues. In April 2011 various NGOs filed a complaint against FQM and Glencore International AG with the Canadian and Swiss authorities, alleging tax evasion by the two companies through their subsidiary Mopani Copper Mines Plc.¹⁰⁸ These complaints were informed by the audit results, which showed how the two companies had manipulated their accounts, in violation of the OECD Guidelines on Multinational Enterprises.

Oil and gold smuggling and mispricing in Ghana

By Abena Yirenkyiwa Afari

According to Ghana's National Petroleum Authority (NPA), the country loses approximately \$200m every year in taxes due to oil sector misreporting.¹⁰⁹ The NPA made this statement after eight oil marketing companies (OMCs) in the downstream petroleum sector were found to have evaded taxes on oil exports in Ghana in 2018 due to underreporting and non-declaration of oil exports. As a result of this discovery, the NPA suspended them from operating for periods of one to six months.¹¹⁰ The OMCs question denied the charges.¹¹¹

As of July 2018, there were 15 OMCs and 33 bulk distribution companies (BDCs) operating in Ghana. The tax evasion discovered involved almost half of these OMCs, confirming that under-reporting is a systemic issue. The volume of misdeclared or undeclared exports totalled 19,214,850 litres of exports, valued at GHS87.24m (approximately \$16m). Part of the controversy is that two of the suspended companies are not OMCs, but rather BDCs; the two BDCs have been suspended for under-reporting exports, while the OMCs they work with were investigated for tax evasion.

It has also been found that in the gold exporting sector, customs data provided by governments to the UN Comtrade database reveals that the United Arab Emirates (UAE) has been a prime destination for gold from many African states for many years.

'There is a lot of gold leaving Africa without being captured in our records,' said Frank Mugenyi, a senior adviser on industrial development at the African Union who set up the organisation's minerals unit. 'The UAE is cashing in on the unregulated environment in Africa.'¹¹²

In 2016, the UAE reported a much higher value of gold imports from some African countries than it stated it had exported. This, trade economists say, is a red flag for illicit activity; and for Ghana has amounted to potential trade mispricing of \$609m, causing substantial revenue losses.

The problem results from the number of independent operators which are exporting petroleum and gold products out of Ghana, together with a low level of export inspections and a weak reporting mechanism in terms of exports, which is open to abuse. To fight fraud, the NPA has established a taskforce to fight smuggling, through cooperation with the Ghana Revenue Authority and other actors.¹¹³

Trade mispricing in oil and gold sales puts a significant strain on public revenues in Ghana. Oil export volumes from each operator would need to be monitored more closely by the relevant Ghanaian authorities through data collection, traceability of sales in cooperation with the countries where the oil is being sold. Artisanal gold mining is notoriously difficult to monitor. However, new standards are being developed to cover responsible conduct of gold miners in gold supply chains, and to do so a Fairtrade gold label was launched in 2013.¹¹⁴ It requires paying all applicable taxes, and royalties, adhering to anti-corruption and grievance policies for misconduct, as well as paying a fair trade premium to help gold mining communities, often adversely affected by pollution from gold mining.

Below: Amina Issah Ebanyinle designs beaded footwear, which she will later sell, in Ellebelle District, Ghana. Amina was trained as part of Christian Aid's GEOP project, which aims to promote job creation and increase sustainable economies in Ghana. Eight countries in the downstream petroleum sector were found to have evaded taxes on oil exports in Ghana in 2018. Photo credit: Christian Aid/Lema Concepts Africa.



Russia-EU trade mis-invoicing via Finland

By Matti Kohonen

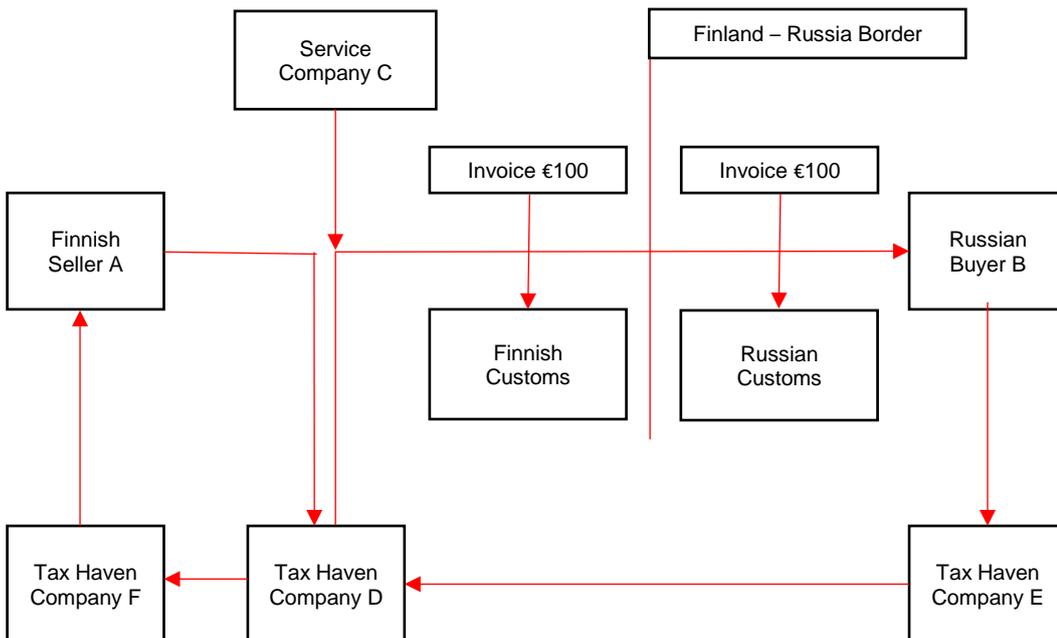
Finland is a transit country in the wider trade between the EU and Russia. Both parties apply customs duties at the border – on the EU side, according to the customs union common tariff; and on the Russian side, according to its own tariff schedules.

Statistical analysis reveal substantial discrepancies in the declared prices for different categories of goods. One estimate from 2004 stated that the value of goods on the European side of the border was 50% lower than the corresponding value on the Russian side of the border. The highest import and export price discrepancy – at 70% – was found in UK-Russia trade, followed by Netherlands-Russia trade (67%); Finland-Russia trade came third, with a discrepancy of about 56%.¹¹⁵ Finnish think tank sources suggest that when transit trade is taken into account, the price discrepancy for Finland-Russia trade would still be some 32%. Other estimates from Finnish customs suggest that for certain goods, up to 20% of all trade is subject to double invoicing.¹¹⁶

For years, the authorities on both sides have tried to investigate the phenomenon, whereby different invoices are presented on either side of the border – most often, to evade customs duties and levies on the Russian side. The former head of Russian customs suggested that this practice is facilitated by a lack of customs cooperation.¹¹⁷ Discrepancies in declared imports and exports between the EU and Russia amount to 41% of all trade, according to Finnish customs.¹¹⁸

In a common scheme, a false invoice is prepared by a Finnish export company, warehouse company or importing company at the request of the Russian exporter or importer.¹¹⁹ It is also common to alter the weight or labelling of goods. The more valuable the goods, the higher the customs duties payable in Russia. However, today this simplified practice of double invoicing involves a significant reputational risk of corruption accusations and parliamentary scrutiny in Finland; it is also increasingly the subject of criminal investigations for different types of fraud. Due to these risks, ever more complex schemes using conduit companies.

Figure 9: Double invoicing via tax havens in Finland-Russia trade



Source: E Koskinen, 2013¹²⁰

The fraud involves either the seller or the buyer changing the customs declaration by using a separate service company, before the goods clear Russian customs. Assuming that the import tariff is 20% on a transaction worth €100, this results in an IFF of €10 on the base of €100 (ie, the difference between 20% of €100 and 20% of €50). While the Russian buyer is the main beneficiary, the Finnish seller also benefits indirectly, as it looks more competitive to the Russian buyer due to the double invoicing scheme.

Goods destined for Russia are sold at a loss to one or several conduit or shell companies, with the last in the chain preparing a fake invoice. The losses of the undervalued sale are covered by a money transfer, often effected through secretive shell companies – in the example illustrated in Figure 9, via tax haven companies E and F. The purpose of the number of conduit and shell companies involved is to make it difficult for the Russian authorities to determine the real origin and value of the goods provided. Other aspects of this practice may include altering purchase contracts, changing accounting data or entering into debt arrangements. The conduit company is often located in a tax haven or in Finland, while the service company is located in Finland.

One of the most well-known cases of alleged double invoicing to come before the Finnish courts involved Finnish mining company Outokumpu, which was charged with money-laundering offences relating to double invoicing.¹²¹ However, the charges were dismissed on both counts. The case involved supposed mis-invoicing by its Russian subsidiary, ZAO Outokumpu, which was said to take the following form. A Russian buyer made a pre-payment – often to an account located in a tax haven – which was then paid into one of Outokumpu's accounts. The companies mentioned as buyers and sellers in the official Russian documents often did not exist, but rather were shell companies established solely for the purpose of these transactions. Unidentified payments were checked by Outokumpu's office against ZAO Outokumpu's order records and orders were matched accordingly.

At the border, the goods were taken together with the relevant documentation required in Finland to a warehouse company, Saimaa Lines Ltd, which exchanged the documents for documents supplied by the Russian client for presentation to Russian customs. The discrepancies in the documents mainly related to client declarations, the identity of the seller and the price and quality of the goods. On the instruction of the Russian client, the goods and documents were sent to a Russian warehouse company, which then presented them to Russian customs. According to court records, the price of the goods declared to Russian customs was just 6% of their total value. The Russian client gained a significant economic benefit, paying less customs duties and taxes.¹²²

The case was ultimately thought to have been dismissed due to a lack of evidence of tax evasion in Russia. Outokumpu denied all money laundering charges and has been found innocent of the charges.¹²³ The case has however prompted a debate as to when trade mis-invoicing is found to have taken place, whether that should be a predicate offence for money laundering, as money laundering committed abroad is also a crime in other jurisdictions.

If sanctions and fines are imposed on Finnish companies, one might ask whether these are targeting the right actors, given that it is Russian companies that are demanding double invoicing. Ideally, the Russian customs and tax authorities would have access to beneficial ownership information in tax havens. However, trade transparency is also important and information exchange on customs declarations is needed.

Part three: Secretive and untaxed offshore wealth

Latest figures of the funds held offshore globally put the problem at \$8,700bn, of which we estimate here that \$3,192bn belong to countries in the global South. In some cases of human rights abuses, it is the capital loss that is more significant, say in case of a criminal case or a divorce settlement, in other cases it's the tax loss that creates a human rights concern due to depriving public revenue in the form of income and capital gains taxes, and also inheritance and wealth taxation losses in countries where these taxes apply. Zucman also estimates that only 25% of all offshore wealth is declared in countries where their real owners reside, and estimates that tax losses of all types amount globally to \$170bn, of which we estimate here based on developing country categories that \$58bn belong to the global South.

The Panama Papers scandal, when a whistle was blown of an offshore 'magic circle' law firm, with 11.5 million of documents of compromising files leaked, making it a total of 2.6 terabytes of data. This leaked data alone led to the recovery of unpaid taxes by individuals and corporates worth \$1.2bn – equivalent to one-third of the Swiss aid budget. Any member of the public can now search the database called 'Offshore Leaks' hosted by the ICIJ.

While the amounts of money leaving countries in the global South due to offshore activity may be smaller, when viewed as a proportion of their GDP, these amounts often surpass their equivalents in wealthy nations. For example, the Democratic Republic of Congo lost nearly five times more from the Swiss leaks scandal than Germany when considered as a percentage of GDP.¹²⁴ Similarly, the exposure of the Central African Republic was 11 times that of the US and the exposure of Kenya nine times that of Canada.

When it comes to recouping lost tax revenue, it is more valuable to receive information from places such as Mauritius, Switzerland and the Cayman Islands – places that are known to shelter offshore assets. None of the world's 31 low-income economies and just 21 of the world's 109 middle-income economies benefit from the automatic exchange of information along the OECD model. This is in direct contrast to high-income countries: 55 of the world's 78 such countries benefit from the automatic exchange of information. It would be far easier to have all beneficial ownership data of companies and trusts included in a public register in each jurisdiction – something that the UK, the Netherlands and Norway have already implemented, and which British Overseas Territories have committed to implement by 2022 (although this timeframe has already slipped to 2023).

Argentine wealth held in BVI revealed in the Panama Papers

By Tomás Julio Lukin

The 2.6 terabytes of files leaked from Mossack Fonseca in the Panama Papers exposed fragmented details of the practices of 214,000 companies established between 1977 and 2015. The leaks revealed the BVI as the most popular destination for structures established by the offshore law firm. In total, some 113,646 international business companies have been incorporated in the British Overseas Territory. Panama ranks a distant second place, as home to 48,360 of the companies revealed in the leak. The numbers make sense: the BVI is almost exclusively a haven for the registration of companies and the formation of trusts, almost all of which will keep their bank accounts and other financial assets in a different jurisdiction. The key issue with the BVI's secrecy is not

financial secrecy, but rather commercial and legal secrecy. Holding a BVI account in itself is not illegal. However, due to secrecy and low-taxation, they provide a platform for those who wish to conduct illicit activities through such companies.

The pre-eminence of the BVI over other offshore jurisdictions is also evident when the database is searched for national presences. The island companies identified in the Panama Papers represent around one-third of all corporate structures owned by relevant Argentines. The activities of these BVI companies range from owning real estate investments to holding contracts, receiving royalties and controlling bank accounts and other financial assets. As mentioned previously, (almost) none of those assets were actually held in the Caribbean island.

Conflicting interests and football rights

Argentina's national football team not only won two FIFA World Cups in 1978 and 1986, but has long boasted some of the world's most popular players, such as Lionel Messi and Sergio Aguero. Television rights, advertising, sponsorship, merchandising, collectible stickers, clothing licences, online content, school supplies and videogames are all elements of its multimillion-dollar business. One example of the lucrative nature of its activities is the \$28m contract negotiated and signed by the Argentine Football Association (AFA) in 2017 selling the TV rights to 20 friendly matches between 2018 to 2022.

In the early 2000s, sports marketing business Puntogol Sport, Technology and Marketing Sociedad Anonima (Puntogol ST&M SA) was the AFA's exclusive commercial agent for most of those activities. When this company was registered, its directors included Martín Redrado, a well-known local economist who specialised in trade and finance; he later became a high-level public official and subsequently president of the Central Bank. In 2004 a political dispute over whether the footballs for the professional championships should be imported from a TNC or bought from a prestigious local company triggered accusations of a conflict of interest and violations of the public ethics law against Redrado.

At the time Puntogol ST&M was involved in this debate, its alleged representative was also the country's acting Secretary for International Economic Relations. Redrado denied any conflict, making assurances that he had resigned from the company in 2002 before accepting the government post. The local commercial records supported his claims; but 12 years later, a dossier leaked from Mossack Fonseca suggest that the public were not informed of the whole picture. Although Redrado had resigned from the Argentine branch of the firm, he remained acting CEO, director and shareholder of BVI company Puntogol Corp, which owned 62.24% of Puntogol ST&M SA.

The first time Redrado is mentioned in the Panama Papers is in a file from January 2001, which reveals him to be the director and legal representative in Argentina of the BVI company. At the time, he was also authorised to operate the firm's Chase Manhattan Bank account; although he didn't hold a position in public office. The next time his name crops up in the 46-page dossier from Mossack Fonseca is in January 2002, when Argentina was suffering from the worst economic crisis in its history. On the same day that Redrado was officially appointed as Secretary for International Economic Relations, he also signed his first document for Puntogol Corp. However, this did not concern his resignation, but rather the incorporation of a new shareholder entity in BVI called Scarlet Investment, which became the owner of 6% of the offshore sports marketing company.

Under BVI law, details of the beneficial owners of companies are not placed on government record, but are merely recorded by company service providers. By

'The key issue with the BVI's secrecy is not financial secrecy, but rather commercial and legal secrecy'

law, these resident agents are obliged to obtain information on the identities of the shareholders and beneficial owners of the companies they register, as part of their due diligence procedures.

Between 2005 and 2008, the BVI Financial Investigation Agency passed on more than 100 requests for beneficial ownership information to Mossack Fonseca, probably the largest resident agent in the jurisdiction. The agency received the requested information in just five cases. Even after heightened due diligence obligations were introduced in 2008, Mossack Fonseca failed to provide ownership information in 70 of about 500 requests. This was not the case regarding Puntogol Corp or Scarlet Investment, however, because no one in Argentina ever officially or legally requested details of their owners.

In 2003, after Redrado had already been representing Argentina as a high-level public official for one year, a Puntogol Corp directors' meeting file stated that he had stepped down from his directorship 'for professional reasons that do not allow him to hold that position'. But even once his role as a director had ended, he remained the company's legal representative in Argentina, as well as a relevant shareholder. Once again citing professional and personal reasons, Redrado retroactively resigned from this role when he was appointed president of the Central Bank in 2004.

No documents in the Panama Papers indicate any sale or transfer of Redrado's shares in the BVI company; but the ICIJ's Offshore Leaks database confirms that Scarlet Investment was dissolved in 2006. After being replaced at the Central Bank in 2010, Redrado returned to private consultancy and became a senior economic adviser to the World Bank and a member of the World Trade Organization Dispute Settlement Body. Redrado did not respond to the author's requests for comment.

Amazon destruction fuelled by offshore finance

By Marcos Lopes Filho

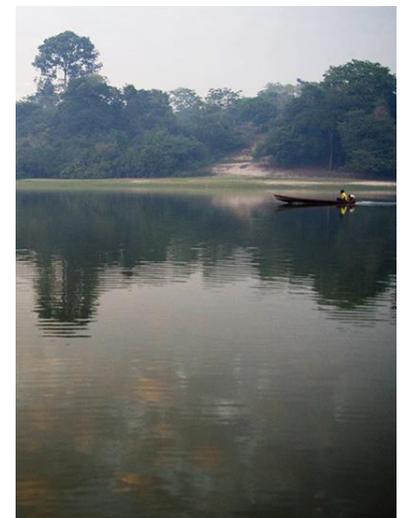
The Amazon basin has suffered extensive deforestation, despite the resistance of more than 34 million indigenous peoples, quilombolas (formerly enslaved people who escaped and formed self-governing communities with Afro-descendent heritage in Latin America and the Caribbean) and riverside communities living in the sub-region, made up of more than 390 different peoples speaking more than 240 different languages.¹²⁵

Additionally, even its status as an iconic ecosystem with unique biological values and the critical role it plays in the global climate system has not been enough to protect it from predatory models of economic exploitation. According to the UN Economic Commission for Latin America and the Caribbean, the share of primary product exports among the total exports of pan-Amazonian countries is soaring, with the exception of Guyana.¹²⁶

In Brazil, this process is coupled with a trend of so-called deindustrialisation, making the country's dependence on commodity (especially soy) production and exportation even more complex. It is within this context of global capitalism that the race for access to, and control of, Amazonian resources has intensified, driven primarily by TNCs which are often financed through foreign investment, in a new economic cycle known as 'commodity consensus' or the 'new extractive' model.¹²⁷

The extractive activities of corporations are dependent on access to various forms of external capital (eg, loans and equity capital) that allow them to commence or expand their operations. Tighter regulation of such transactions

Below: Early morning mists in Abui village, Oriximiná. With the support of a local Christian Aid partner, this quilombola community gained the legal collective title to the lands where they have lived for generations. They have used this land title to protect the Amazon from deforestation by a timber company. Photo credit: Christian Aid.



would thus be one way to help halt this financial support for the deforestation of the Amazon.

As one example of mineral exploration in the Amazon, Mineração Rio do Norte – which has attracted foreign investment from international mining companies such as Rio Tinto (12%) and Norsk Hydro (5%) – is conducting bauxite mining in the Oriximiná municipality in the state of Pará. Affected communities claim that its projects have progressed through a policy of ‘divide and rule’ among the quilombolas. Some want to block exploration in new areas; some have accepted compensation in exchange for allowing mining; and some are against any initiatives that could make things harder for the mining company.¹²⁸

Another example is provided by Vancouver-based mining company Gold Mining Ltd, which owns a mine called Boa Vista Gold Inc, also in the state of Pará. According to Gold Mining Ltd’s annual accounts for 2018, Boa Vista Gold Inc is incorporated in the BVI.¹²⁹ The ownership structure, revealed in the Panama Papers,¹³⁰ shows that its shareholders include both private shareholders and corporates via offshore structures.¹³¹ Asset sales are also being affected through these offshore structures.

The ownership of this company was transferred to a Canadian company called Gold Corporation’s subsidiary Brazilian Gold Corporation, which signed a Definitive Agreement through its wholly owned British Virgin Islands-registered subsidiary Cabral Resources (BVI) Ltd with Golden Tapajós Mineração Ltda, Octa Mineração, Ltda and D’Gold Mineral, Ltda. The agreement is for the **acquisition of a 51% interest in Boa Vista Gold Inc** that will be the indirect holder of the rights to the Boa Vista Project through its ownership of Golden Tapajós. Some **55% of Boa Vista Gold, which is incorporated in the BVI**, is owned by Octa Mineração and 45% by D’Gold.¹³²

Tax considerations are also a key factor in promoting agribusiness operations in the Brazilian Amazon. According to Christian Aid partner Instituto de Estudos Socioeconômicos (INESC), the Brazilian government is offering a total of BRL7bn (\$1.7bn) in tax incentives for the purchase of agricultural pesticides and other chemicals,¹³³ primarily through exemptions from a tax called Cofins that is directly allocated to finance Brazil’s public health system.¹³⁴

The tax incentives for agrotoxics are part of a wider system of tax incentives, most of them secretive and estimated at the federal level in 2017 to amount to BRL354.7bn (\$89bn) or 30% of all revenue collected by the government. At present, it’s not possible to determine who is benefiting from these tax incentives. INESC has launched a campaign called #SóAcreditoVendo (#SeeingsBelieving) to call for greater transparency with regard to the tax incentives, and for the introduction of socio-economic and environmental objectives to guide how they are granted. INESC assumes that most of these incentives are benefiting the wealthiest people in Brazilian society: large landowners with extensive interests in commodities such as soya and beef that Brazil exports in large quantities.

A further concern is that nobody actually knows who owns vast amounts of the Amazon. More transparent beneficial ownership data concerning the real owners of companies would confirm who actually owns recently deforested parts of the Amazon and areas affected by forest fires. A recent study conducted by Brazil’s National Space Research Institute revealed an 88% increase in the destruction of the Amazon and case-study evidence points to significant connections to secretive offshore tax havens.

These connections to offshore tax havens are also having an impact on the rights of indigenous people. In just one area called Gleba Nova Olinda II in the state of Pará, part of the wider Amazon ecosystem,¹³⁵ the inhabitants whose

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human rights are being violated are defending their right to traditional indigenous and quilombola land use.¹³⁶ Tax incentives were introduced in 2012 for individuals and companies that wished to commence commercial agriculture and other activities in the area;¹³⁷ but the indigenous and quilombola people living there could not identify whether the new owners were operating legally or illegally, due to the lack of corporate transparency.¹³⁸

Tax havens also provide financing for cattle farming and soy cultivation enterprises. The extent to which this capital is channelled through tax havens remained obscure until a major investigation was published in Nature.¹³⁹ The study revealed that between October 2000 and August 2011, 68% of all investigated foreign capital provided to nine major companies in the soy and beef sectors in the Brazilian Amazon was transferred through one or more tax havens. Companies deny any wrong doing, and state compliance with all laws in all countries where they operate. Cargill, however in their response to the authors state their rationale: ‘These holding companies play a vital role in global risk management, providing safeguards through bilateral investment protection treaties and income tax treaties.’¹⁴⁰

Figure 10: Total amount transferred to selected companies from tax havens (million USD), 2000-2011

Country	Beef sector	Soy sector
Cayman Islands	2,281	13,750
Bahamas	408	1,229
Netherlands Antilles	295	201
Panama	30	72
Ireland	3	0
Singapore	0	23
Switzerland	0	18
Luxembourg	0	10
British Virgin Islands	0	8

Source: Tax havens and global environmental degradation, V Galaz et al, 2019.¹⁴¹

Figure 11 shows transfers of foreign capital to these companies channelled through tax haven jurisdictions from 2000 to 2011. The financial transactions whose value and currency must be declared to the Central Bank of Brazil tracks these foreign investment and lending transactions. The categories used here are the same that the Central Bank of Brazil uses in its published data.

Figure 11: FDI via tax havens into Brazil's soy and beef sector

Focal company	Loans received (million USD)	Loans from subsidiary in a tax haven (% total loans)	Cash in advance received (million USD)	Cash in advance from subsidiary in a tax haven (% total cash in advance)
Amaggi	162	0	272	0
ADM	1,666	100	0	NA

Bertin	1,032	33.9	844	0
Bunge	307	54.1	6,830	100
Cargill	4,321	91.6	2,734	82.7
JBS	1,776	63.4	1,628	54.9
Louis Dreyfus	0	NA	704	0
Marfrig	764	0	1,070	0
Minerva	3	0	504	49.6

Source: Tax havens and global environmental degradation, V Galaz et al, 2019.¹⁴²

The transactions via offshore tax havens are significant, and lending and intra-firm cash transfers offer a potential route to corporate tax avoidance and abuse. There is no evidence any of the companies have been investigated for offshore tax abuses by the Brazilian federal tax authority, and the companies consider that they are acting within the law. Offshore financing most likely reduces the cost of financing operations in Brazil, and provides a legal position for defending their land titles with investment protection agreements.

A soy moratorium was introduced in response to a public outcry over Amazon deforestation for the purposes of soy cultivation by grain companies including Cargill, Bunge and Brazil's Amaggi. Soy producers and environmental NGOs signed the voluntary Amazon Soy Moratorium, which banned the direct conversion of Amazon forests to soy after 2006.

However, the traceability of soy is problematic, as is the identification of beneficial owners of land held in offshore tax havens; this makes it difficult to enforce the moratorium on soy from illegally logged areas, which depends more on voluntary declarations than on verifiable data. Secretive offshore financing and company ownership make it harder to understand who is benefiting from the destruction of the Amazon, while also providing cheap financing in comparison to domestic financing sources.

Ultimately all company and land ownership should be listed in a public register in Brazil, and safeguards should be in place to protect against the harm caused by investments from offshore tax havens, which may further contribute to IFFs. Tracing of FDI should be made transparent in Brazil (reversing the 2011 suspension of publishing data). Data should also be provided in an open data format for easier analysis.

Conclusions

Towards a rights-based definition of illicit financial flows

In this report, we have presented four types of definitions of IFFs, to identify where different institutional and non-state actors sit in terms of the definitions that are currently used. A definition of illicit financial flows based on international human rights law is sorely needed, as is proposed here.

IFFs have different impacts in countries in the global South, where there is inadequate funding for public services such as primary education, public hospitals, water and sanitation, social protection, gender equality programmes and public infrastructure, which especially meet the needs of marginalised communities. IFFs also have a disproportionate impact on women's rights, due to the unequal position of women in society. The impact is greatest in the countries in the global South; which is also where the need for reliable public financing for public services is greatest, to achieve all rights, including social and economic rights and commitments.

As the lack of resources is a key factor that hinders the enjoyment of rights and the duty to deliver on those rights, the principles of international cooperation should require governments in both global North and global South to assist other countries in mobilising revenues to meet their rights obligations and achieve the SDGs. This recognises the need for a stronger relationship between rights and their financing than that in, for instance, the 2030 Agenda and the SDGs.¹⁴³

One way to establish this stronger relationship between rights and their financing is to establish a rights-based definition of IFFs that not only addresses concerns over what is 'illicit', by encompassing both illegal and abusive practices, but also offers a set of accountability measures to pursue both illegal and abusive practices in different ways. The following conclusions build on the Kathmandu Declaration on 'Curbing Illicit Financial Flows: Restoring Justice for Human Rights', as we promote this vision of tackling IFFs from a human rights angle.¹⁴⁴

The case studies presented in this report support this conclusion, as they demonstrate the potential human rights impacts of abusive practices that do not fully qualify as 'illegal'. They confirm that although such practices may not always be illegal in all jurisdictions that they touch, they nonetheless cause harm in terms of public revenue losses. In our view, they should therefore be included in the definition of IFFs, due to the harm they cause in the context of the SDGs and human rights frameworks.

The global South is often on the front lines in fighting IFFs, ranging from trade mis-invoicing to tax avoidance and evasion; while many such activities continue to be deemed legal and legitimate in developed nations and tax havens. Therefore, there is a critical need for countries in the global South to inform and frame the discourse and politics of the language surrounding IFFs, including in regional and global forums.

The efforts to tackle IFFs and other forms of tax abuse should focus on offering meaningful access to remedies for all victims – especially the most marginalised communities in society, which face disproportionate burdens from IFFs and other tax abuses that deprive states of valuable resources. Such remedies may take various forms, including restitution, compensation, rehabilitation and guarantees of non-recurrence; and may involve judicial, quasi-judicial and non-judicial accountability mechanisms.

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Recommendations

The key recommendation of this report is to shift the debate concerning IFFs towards a rights-based definition – a definition that is based not merely on what is already illegal, but also on what is harmful and abusive. Everything else flows from this first recommendation of a rights-based definition of IFFs.

Rights-based definition of IFFs

- The UN, as a representative and inclusive organisation, should establish structures to define IFFs based on human rights definitions and, in particular, should implement this in indicators and targets under SDG Goals 16 and 17 – especially Targets 16.4, 16.5, 16.7 and 17.1 – as well as in the FfD follow-up, monitoring and review process, to identify and stop all IFFs.

Beneficial ownership

- Governments should establish public registers of verified beneficial ownership information on all legal entities (companies, trusts, foundations, associations and cooperative societies); and all banks should know the true beneficial owner(s) of all accounts held with them.
- International standards such as the EITI should be adopted, while beneficial ownership, asset ownership and other registers should be publicly available for scrutiny in an open data format in all jurisdictions.
- Protection should be afforded to tax and financial secrecy related whistleblowers, who should be recognised as human rights defenders, given the public interest in securing revenue for achieving rights.

Country-by-country reporting

- Policymakers should require TNCs to publicly disclose their revenues, profits, losses, sales, taxes paid, subsidiaries and staff levels on a country-by-country basis.

Tax information exchange

- All countries should actively participate in the worldwide movement towards the automatic exchange of tax information, as endorsed by the OECD and the G20.
- Automatic exchange of information agreements that are signed between governments should be published online to the public, to highlight the scope and conditions of such agreements.

Trade mis-invoicing

- Deliberate trade mis-invoicing for the purpose of evading or avoiding VAT, customs duties, income taxes, excise taxes or any other form of government revenues should be made illegal, even if the falsified documents are presented on the other side of the trade border.
- Customs agencies should treat trade transactions involving tax havens with the highest level of scrutiny and request additional due diligence.
- Governments should significantly boost their customs enforcement by training officers to better detect intentional trade mis-invoicing, particularly through access to real-time world market pricing information at a detailed commodity level.

Double tax agreements

- Governments should conduct spillover analysis regarding their DTAs especially where the treaty partner is a developing country.

- This analysis should also involve the participation of civil society, trade unions, parliament and other stakeholders on the basis of human rights principles outlined in looking at extraterritorial obligations of states

BITs and other trade and investment promotion agreements

- Developing countries should conduct a human rights impact assessment for all BITs negotiated with their partners in the global North in order to caution state policy space in addressing adverse impact of investments on human rights. This should be in line with the UN Guiding Principles on Business and Human Rights.
- As these agreements detail taxing rights and have implications for revenue mobilisation, they must be opened up to public comment for a period of 60 days, be subject to parliamentary debate, and be scrutinised for tax-related spillover analysis in order to understand the extraterritorial obligations of states with regard to revenue mobilisation and governance impacts in other states.
- BITs should require investors that channel funds through tax havens to declare the significant beneficial interest (eg, at a level of 10%), and to apply 'know your customer' checks as part of a due diligence process before proceeding.

Transparency of FDI bank transfers

- FDI statistics should be publicly published as was the case in Brazil before 2011 and still is in India, in open data formats for public, media and investor scrutiny.
- Bank transfers including SWIFT and other payment systems should provide aggregate data on the direction of bank transfers and financial transactions of all types (including currencies and derivatives).

Governance impact

- Legal entities engaged in the financing of political parties should proactively disclose information under freedom of information, access to information and other public disclosure laws, as relevant in each country, to prevent political funding or campaign funding via secretive offshore financial structures.
- Regional cooperation among countries in the global South is crucial to build a political agenda aimed at protecting taxing rights and the tax sovereignty of countries in the global South, and at curbing IFFs.

Abusive tax practices and financial secrecy

- Countries should refrain from creating abusive and harmful tax practices that deprive revenue from other jurisdictions, and should conduct ongoing impact analysis of their tax policies.
- Non-tax haven countries should draw up lists of high-risk jurisdictions for public institutions to use for due diligence purposes in monitoring trade, investment and public investment.

International tax reform

- Governments should support the establishment of an inclusive UN intergovernmental Tax Commission, in which all countries would enjoy equal status, to set international tax norms and policies, as well as regional tax bodies to address tax-related concerns of IFFs.
- Reform the taxation of corporates should be based on an inclusive UN-led process to establish taxing rights over the activities of TNCs.

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