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A different perspective on Tax Inspectors Without Borders

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List of acronyms

ATAF	African Tax Administration Forum
BEPS	Base Erosion and Profit Shifting
CIAT	Inter American Center of Tax Administrations
DFID	Department for International Development (UK Government)
DGFIP	Direction Générale des Finance Publiques (French Government)
EU	European Union
EOI	Exchange of Information
FDI	Foreign direct investment
FfD	Financing for Development
GATJ	Global Alliance for Tax Justice
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit (German Development Agency)
GPEDC	Global Partnership for Economic Development Co-operation
G20	Group of Twenty (international forum)
GRA	Ghana Revenue Authority
HMRC	Her Majesty's Revenue & Customs (UK Government)
ICAI	Independent Commission for Aid Impact
ICIJ	International Consortium of Investigative Journalists
IMF	International Monetary Fund
iFUSE	Investment Facility for Utilising Specialist Expertise
KRA	Kenya Revenue Authority
MAEDI	Ministère des Affaires Étrangères et du Développement International (French Government)
MoF	Ministry of Finance
MNCs	Multinational corporations
NL	The Netherlands
OECD	Organisation for Economic Co-operation and Development
PwC	PricewaterhouseCoopers
RRA	Rwanda Revenue Authority
TIWB	Tax Inspectors Without Borders
TJN	Tax Justice Network
ToR	Terms of reference
TP	Transfer Pricing
UN	United Nations
UNCTD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNTC	United Nations Committee of Experts on International Cooperation in Tax Matters (UN Tax Committee)
US	United States of America
WB	World Bank
XOF	West African CFA Franc

Executive summary

Taxation of multinational corporations is of utmost importance to developing countries, which on average generate around 10% of government revenues from this source. However, there are clear indications that the current international system is not working. One type of tax avoidance alone is currently costing developing countries between \$70 billion and \$120 billion per year. While often considered highly immoral, such international tax avoidance is often, technically speaking, legal.

One of the solutions proposed to developing countries to increase their capacity to collect taxes from MNCs' activities in their territory is the offer of 'capacity development' and 'technical assistance' on taxation. While there is broad agreement that this is important and urgent, questions arise about how capacity development and technical assistance should be carried out. In particular, the importance of respecting the principles of aid effectiveness and avoiding conflicts of interest between the providers and recipients are central issues.

The Tax Inspectors Without Borders (TIWB) initiative was launched in 2013 as a pilot project by the Organisation for Economic Development and Cooperation (OECD) – also known as the 'Rich Countries' Club'. In 2015, the United Nations Development Programme (UNDP) joined the initiative, which is now jointly managed by the OECD and UNDP. One of the special features of the initiative is that it entails a deployment of foreign experts directly into the tax administrations of developing countries – an area that is highly sensitive.

However, the outcome of the TIWB pilot phase has not been thoroughly analysed or discussed, and while the initiative has been widely communicated through the media, the amount of publicly available information about the actual content and experiences of TIWB is extremely limited.

This report looks at the current design of TIWB, as well as three TIWB pilots which have taken place between the UK and Rwanda; the Netherlands and Ghana; and France and Senegal, respectively. It looks at official information available about TIWB and draws on interviews with experts. However, since it has not been possible to access detailed information about the TIWB pilot phase through public sources, this report has also drawn on internal unpublished OECD documents, with the aim of shedding new light on the issue.

The main findings are as follows:

- The internal OECD documents on the TIWB deployments indicate that neither Rwanda, Ghana nor Senegal were leading the processes when the TIWB pilot projects in their countries were initiated. For example, it is mentioned that the UK was "in the lead during the whole process" and that Rwanda had a "low level of comprehension" of the TIWB concept. Similarly, it is said that the Netherlands was "in the lead", that 'Ghana had a passive role in the process', and that there was 'no involvement' of Senegal in the drafting of terms of reference for the France-Senegal project. This not only seems to be contrary to the aid effectiveness principle on developing country ownership and leadership, it also indicates a clear contradiction to one of the main characteristics of the initiative as stated in the TIWB Toolkit.
- Serious conflicts of interest seem to have occurred, and there is a clear risk of further conflicts. In the case of the UK and Rwanda, PricewaterhouseCoopers (PWC), a company which provides advice to multinational corporations on their tax planning, played a central management role in the pilot project. Furthermore, in all three cases, the donor countries – which are in these cases also providing experts to be deployed into the tax administrations of the recipient countries – have substantial corporate interests in the recipient country.
- Despite a number of changes having occurred since the pilot phase, today the TIWB still does not seem to have a clear mechanism for avoiding similar problems in the future.
- Only very limited information is publicly available about the TIWB process itself and the design of the projects, deployments, actors involved and funding. This is despite the fact that taxation is a highly political issue in which the public has a strong interest.

Recommendations

Building on these conclusions, this report makes the following recommendations regarding TIWB:

- 1. Leadership and ownership of developing countries must be ensured.** Developing country leadership must start at the project identification and development stage, and prevail until the end of the project, including when drawing conclusions about the outcome of the project.
- 2. Conflicts of interest must be avoided.** Current or former employees of governments with a high amount of harmful tax practices and/or substantial corporate interests in the developing countries receiving the assistance have a high risk of conflicts of interest. So do MNCs that have a direct financial interest in tax matters of the recipient country, as well as international tax advisors that have MNCs as clients. While these actors and experts can provide input and views for the process, the TIWB projects must be managed and implemented by institutions and individuals who are free of conflicts of interest. A clear mechanism to identify and analyse risks of conflicts of interest would be a first important step in this process.
- 3. TIWB must have a clear mechanism to ensure that basic principles are respected.** This is a necessity to ensure the TIWB projects match the principles on issues such as developing country leadership and avoiding conflicts of interest. This mechanism must apply to both the TIWB projects where the TIWB Secretariat is directly involved, as well as the other projects included in the initiative (including so-called 'TIWB-style projects').
- 4. TIWB should be managed by a neutral international secretariat.** The recipient countries must be the drivers and the international secretariat must be located in a neutral, open and inclusive body where all countries participate on an equal footing. The most obvious solution is to make the TIWB initiative fully managed by the UN.
- 5. South-South cooperation must be strengthened.** This should include, but not be limited to, increased possibilities of using developing country experts for capacity development and technical assistance in other developing countries. Regional co-operation should be reinforced and available to all developing countries who want to pursue it as a way to build their capacity, as well as to strengthen their internal co-operation on tax matters.
- 6. The matching of experts and recipient country should be based on recipient country demand and happen through a neutral international coordinating body, or through regional coordination mechanisms.** Developing countries must be able to select the experts they would like to work with, even in cases where this expert might not be included in the 'pool of experts' offered by the TIWB Secretariat. TIWB donors should not be approaching potential recipient countries directly, and support for TIWB should never be tied to conditions about which experts to deploy. The international Secretariat must be neutral and able provide support to developing and developed countries alike.
- 7. Deployment of foreigners into developing country tax administrations should not be a default option.** Deployment of foreign experts into the tax administrations will not always be the best and most suitable solution, and other approaches should also be considered. Furthermore, the value and possibilities for applying resources to hire and maintain qualified staff in developing country tax administrations should always be considered. Tax Inspectors Without Borders should also include options for developing country tax administrators to travel to developed country tax administrations to gain knowledge and access to information which can increase their ability to ensure that MNCs pay a fair share of taxes in their countries.
- 8. Proposals for changes in the tax systems of developing countries (including tax administration) must fully respect democratic processes, be transparent and subject to public debate.** It is important that changes to developing country tax systems (including tax administration) are not simply considered an unpolitical technical matter that can be decided in a confidential agreement between a donor and a recipient country government. Parliamentarians, journalists and stakeholders must be able to follow every step of the process. In order to ensure this, it is important that the public is provided with up-to-date and specific information about each project, its origin, its objectives, key elements, implementation plan, its outcome and the role of each of the actors involved in the project. Through independent evaluations with public summaries, the results of TIWB projects can become an important part of the public debate and ensure accountability.
- 9. Capacity development and technical assistance on tax matters cannot stand alone.** Direct tax assistance to developing countries must be supplemented by reform of the global tax rules and governance system. Developing countries must have a seat at the table when global tax standards and rules are negotiated, in order to ensure that their interests and concerns are fully represented, and that the global tax system works for all countries. Therefore, an intergovernmental body on tax matters should be established under the UN.

Introduction

Global tax standards and developing countries

Global tax standards address issues such as taxation of multinational corporations (MNCs), international cooperation, exchange of information and division of taxing rights between governments. These issues are of utmost importance for developing countries and their ability to mobilise financing for development. For example, taxes paid by corporations account for 47 per cent of total government revenue of developing countries, of which 23 per cent is from foreign MNCs (equating to around 10% of government revenues).¹ Therefore, the capacity to collect taxes linked to the activities of MNCs in these countries is significant. There are, however, clear indications that the current international system is not working. The United Nations Conference on Trade and Development (UNCTAD) has estimated that one type of international corporate tax avoidance alone is costing developing countries between \$70 billion and \$120 billion per year.² While often considered highly immoral, such international tax avoidance is often, technically speaking, legal.

For the past 50 years, the Organisation for Economic Development and Cooperation (OECD) – also known as the ‘Rich Countries’ Club’ – has been the key decision-maker for international tax standards, including in the area of taxation of MNCs.³ In more recent years, selected developing countries, and in particular those that are members of the Group of 20 (G20), have been included in the decision-making while the vast majority of the world’s developing countries have remained excluded.⁴

In July 2015, as the world’s governments gathered for the Third Financing for Development (FfD) Conference in Addis Ababa, one of the last outstanding issues in the negotiations was a demand from developing countries to get a seat at the table when global tax standards are decided.⁵ This would in reality mean that global standard setting should take place at the United Nations (UN), where all countries have a seat at the table, rather than at the OECD. In the end, due to strong resistance from OECD member states, the proposal was rejected.⁶

In parallel, during the FfD conference, a group of over 30 developed and developing countries joined a new partnership called the Addis Tax Initiative. Among other things, this initiative aims to substantially increase the support for capacity development and technical assistance on tax matters.⁷

“Developing countries have demanded a seat at the table because they recognise that the current global tax system is causing a devastating bleeding of resources from the world’s poorest countries. When the rich countries rejected this request, they rejected global democracy and the chance to establish true international cooperation in tax matters. I find it unacceptable that they offer capacity development for developing countries as an alternative. It’s a paternalist approach which reduces the role of developing countries in reforming international tax rules to that of trainees to be drilled to implement rules and principles agreed by the rich countries.”

Dereje Alemayehu

Chair of the Global Alliance for Tax Justice (GATJ)

A few months after the FfD conference, the OECD and G20 finalised two years of negotiations and adopted almost 2,000 pages of new international standards for international taxation under what is known as the Action Plan on Base Erosion and Profit Shifting (BEPS).⁸ The BEPS package builds on an international OECD transfer pricing system, which has received a lot of criticism. For example, ActionAid has highlighted that the system is “open to abuse and heavily demanding on the resources of national tax authorities in poorer countries.”⁹

Throughout the BEPS negotiations, more than 100 countries were once again excluded from the decision-making process.¹⁰ However, after the adoption of the BEPS outcome, the OECD announced that all developing countries would now be invited to join the implementation of the BEPS decisions, through a so-called ‘Inclusive Framework’. As a condition for joining the framework, the developing countries will have to commit to following the decisions that have already been made. If developing countries decide to join, they can be invited to participate in further elaboration of BEPS.¹¹ A similar approach was taken by the OECD a few years ago, when the international standards on exchange of tax information were developed. While the standards themselves were negotiated and agreed in a closed forum, all countries were invited to follow the standards and join a body known as the Global Forum, which will ensure that countries comply with the standards.¹² The establishment of these international ‘implementation bodies’ does not change the fact that there is still no international body where all developing countries can participate on an equal footing in the agenda setting and negotiation of international tax standards.

Technical assistance and capacity development

The issues of technical assistance and capacity development for developing countries on taxation have received a great deal of attention over recent years. Developing countries, donor countries and international institutions, as well as forums such as the G20 and the OECD, have identified the strengthening of developing countries' capacity to collect taxes as a priority.¹³

However, as current efforts to provide technical assistance and develop the capacity of developing countries' tax administrations so they can tax MNCs are unfolding, serious questions are starting to surface. This includes questions about the development impact of the advice that developing countries are being given, and about the tensions between the interests of the countries and organisations giving the advice and the interests of the developing countries receiving it. At the root of this discussion is recognition that the taxation of MNCs is an inherently political issue that cannot be dealt with solely as a technical problem to be solved by experts. Additional questions relate to the fact that some of the partner countries offering to help developing countries to design and administer their tax systems can have conflicts of interest. This can occur, for example, when a partner country is also home country to some of the MNCs that the developing countries are trying to tax, or is engaged in so-called 'tax competition', whereby governments compete with each other in providing tax advantages to MNCs in order to attract investments.

This report will dig deeper into these issues, while focusing on the initiative known as Tax Inspectors Without Borders (TIWB) and some of its pilot projects. TIWB was launched as a pilot project by the OECD in 2013 and is an initiative that, in the words of the OECD, complements and "consolidates the impact of [other capacity development] programmes",¹⁴ such as programmes focused on introducing or changing transfer pricing laws in developing countries.¹⁵

The TIWB initiative has received international recognition over the last few years. Both the 2013 G20 and G8 final declarations supported it, stating (respectively), "we welcome the OECD Tax Inspectors Without Borders"¹⁶ and "we will take practical steps to support this initiative, including by making tax experts available."¹⁷ Also, the Mbeki High Level Panel report on Illicit Financial Flows from Africa, adopted by 54 Heads of State through the African Union, referred to TIWB as "a very good example of how developed countries can help African countries overcome capacity constraints."¹⁸

During the Third Financing for Development conference in Addis Ababa, the United Nations Development Programme (UNDP) joined forces with the OECD to support TIWB. As Helen Clark – the Administrator of UNDP – stated, "[UNDP] is pleased to join OECD to take TIWB to scale. There is strong demand from tax administrations in developing countries for practical assistance like this. Our joint programme (...) aims to meet this demand, building on the success of the pilot phase."¹⁹

The fact that TIWB is now getting scaled up makes it even more important to look at the outcome of the TIWB pilot phase. Unfortunately, while the existence of this initiative has been widely communicated through the media, the amount of publicly available information about the actual content of, and experiences with, TIWB is extremely limited. In particular, it has not been possible to access detailed information about the TIWB pilot phase through public sources. Therefore this report has drawn on internal unpublished OECD documents as well as interviews with experts from governments, international institutions and civil society organisations. The aim is to shed new light on the emerging discussion about initiatives such as TIWB and the role they play for developing countries trying to mobilise tax income to fund their futures.

Capacity development and technical assistance in developing countries

Capacity development, sometimes referred to as capacity building, is described by the OECD as “the process by which people, organisations and society as a whole initiate, strengthen, create, adapt and maintain capacity over time”. Technical assistance is described as “activities designed to increase the capacity of developing countries.”²⁰

Specifically looking at taxation, the United Nations Committee of Experts on International Cooperation in Tax Matters, also known as the UN’s Tax Committee (UNTC), distinguishes between seven substantive areas of capacity development and technical assistance on tax issues:²¹

1. **Tax policy:** adopt best practices in application of economic concepts to taxation.
2. **Tax administration strategy:** adopt best practices in organising the process of administering, collecting and enforcing the tax laws.
3. **Legal drafting:** provide drafting assistance to the governmental body that translates policy into legal text.
4. **Tax administration implementation:** implementation of tax administration strategies.
5. **Training and knowledge management:** training for tax authorities to adopt tax policy measures and develop technical skills.
6. **Judicial reform:** provide policy and legal advice to actors who resolve tax disputes.
7. **Private sector development:** improve the investment environment.

In addition to the OECD and UNDP, the International Monetary Fund (IMF) and the World Bank Group (WB) are also significant actors within the area of capacity development and technical assistance in developing countries.²² However, they are by no means the only actors in this area. The type of actors providing capacity development and technical assistance in taxation is vast, and varies greatly, but the UNTC classifies them as follows:²³

- International and regional agencies
- International financial institutions
- Regional development banks
- Bilateral aid agencies
- Tax administration networks
- Training institutes
- Non-governmental organisations and journalists²⁴

The territorial range of capacity development and technical assistance on taxation covers almost all developing countries, and can include more than two or three donors involved in the same country. This could generate some cases of duplication of effort and lack of coordination among actors, as the German Development Agency (GIZ) points out.²⁵ As an example, in 2010, the study by the GIZ *Mapping Survey: Taxation and Development* found that donors were providing some kind of tax assistance in more than 100 countries worldwide.²⁶

The debate on capacity development and technical assistance on tax

“Capacity is understood as the ability of people, organisations and society as a whole to manage their affairs successfully.”

OECD²⁷

Capacity development and technical assistance on taxation has been a component of the development agenda for many years. The issue is also a topic of ongoing discussions and various debates among a range of actors involved in development.

Magdalena Sepúlveda, former **UN Special Rapporteur on Extreme Poverty and Human Rights**, recommends that “[States should] provide, when in a position and requested to do so, funding and technical assistance to strengthen the capacity of tax authorities in less developed countries to collect taxes and to adhere to international agreements that benefit them.”²⁸

The **UN Secretary General** affirmed in the Synthesis Report of the Secretary General on the Post-2015 Agenda that “provisions should be made to increase funding to facilitate capacities to implement tax reforms, thus improving domestic resource mobilization.”²⁹

The **G20** stated in 2013 that “Developing countries should be able to reap the benefits of a more transparent international tax system, and to enhance their revenue capacity, as mobilizing domestic resources is critical to financing development (...) [G20 members] will seek to provide capacity building support to them [developing countries].”³⁰

The **IMF** has highlighted that “there are emerging concerns and issues requiring greater attention. Challenges in international taxation and from regional integration are intensifying, and call for close cooperation on tax matters – including with advanced economies – in both policy and administration, as well as further support for capacity building.”³¹

The report of the **Mbeki High Level Panel** on Illicit Financial Flows from Africa pointed out how these illicit flows “can be reduced and stemmed only by enhancing and improving relevant capacities across the board. This requires a dedicated and up-scaled effort to provide resources (...) it also means strengthening existing institutions by giving them the necessary autonomy and tools with which to carry out their duties.”³²

Several civil society organisations have also advocated for an increase in resources for capacity development and technical assistance:

Save the Children has recommended that the international community has to “provide financial and technical support to developing countries, as requested, to improve tax compliance and support the establishment of objective measures to track progress in the capacity improvement of tax administration systems”.

Christian Aid has recommended that in order to “ameliorate the information and power asymmetries [linked to transfer pricing] we suggest the creation of increased technical capacity and expertise [is necessary].”³⁴

However, despite the recognition that capacity development and technical assistance for developing countries is needed on tax matters, there are many concerns that do not only arise from theoretical points of view, but also from real world analysis and practical evaluations.

An **ActionAid** study highlights that “technical assistance is often overpriced and ineffective, and in the worst cases destroys rather than builds the capacity of the poorest countries (...) [and] continues to be identified, designed and managed by donors themselves, tied to donor countries’ own firms, poorly coordinated, and based on a set of often untested assumptions about expatriate expertise and recipient ignorance.”³⁵

Tax Justice Network (TJN) has stated that “there is always the possibility that assistance provided by particular governments, or International Organisations, will reflect the political and economic interests of the governments or organisations providing assistance, as well as business interests that might be influential within those governments or organisations.”³⁶

Eurodad and **ActionAid**, in the joint report *Approaches and Impact: IFI tax policy in developing countries*, analyse the role that international financial institutions – and especially the IMF – have played on tax policy reform during the last decade in developing countries. The report points out that “one of the fears about the tax policy advice delivered through technical assistance is that it is not home grown, but that the role taken on by the IMF as an ‘external advisor’ becomes one in which they carry through a reform agenda which is not owned by the permanent revenue officials.”³⁷

Also among the main international institutions themselves, several concerns have previously been raised about the way capacity development and technical assistance has been carried out.

In the conclusion of an *Evaluation of the Technical Assistance* provided by the IMF from 2005, the **IMF** affirms that “as far as institution building is concerned, progress has generally been achieved in enhancing the technical capabilities of the agencies (...) significant variability was found, however, on whether agencies have been able to make full use of those increased capabilities in order to have an impact on the ground or on the ultimate objectives of [technical assistance].”³⁸ More recently, in a document titled *Revenue Mobilization in Developing Countries*, the IMF affirmed that “the Fund has come to occupy a leading role in advising on tax matters [in developing countries] its advice has been (...) sometimes controversial.”³⁹

The previously mentioned **Mbeki High Level Panel** report also recognises that “it is somewhat contradictory for developed countries to continue to provide technical assistance and development aid to Africa while at the same time maintaining tax rules that enable the bleeding of the continent’s resources.”⁴⁰

There have also been some concerns from the **academic world**. For example, **Dr. Attiya Waris**, senior lecturer at the Nairobi University specialising in tax law and development, has produced several reports on tax issues in African countries. In her report, *Taxing Intra-Company Transfers: the Law and its Application in Rwanda*, Waris analyses the case of Rwanda in connection with transfer pricing application. She challenges the choice of the OECD model on transfer pricing in developing countries and asks why other alternatives are not on the table. She highlights that “the OECD approach has the greatest financing behind it to explain and use it and, therefore, to lobby for it at country level.”⁴¹

Eurodad believes that more resources should be devoted to strengthening tax administrations in developing countries. However, a key criterion, which should be applied to capacity development and technical assistance as well as to official development assistance in general, is whether it is carried out in full accordance with international principles on aid effectiveness, including host country ownership. It is also vital that all kinds of conflicts of interest are avoided.

International principles for aid effectiveness and taxation

Building on the 2005 Paris Declaration on Aid Effectiveness,⁴² the OECD has led the development of specific principles for international engagement in supporting developing countries in revenue matters, which were later supported by the Global Partnership for Effective Development Cooperation (GPEDC).⁴³ The 10 principles⁴⁴ concern the following themes:

- 1. Follow the leadership of government and coordinate at the country level:** This principle includes the recognition that governments in developing countries are responsible for articulating their policy and administration needs, and that international assistance providers should operate according to the Paris Declaration commitments of ownership and alignment, follow the lead of partner country governments and ensure coordination among donors.
- 2. Do no harm.** This principle underlines that donors are responsible for ensuring that their actions do not damage the revenue prospects of developing countries and should be sensitive to local conditions. It also underlines that developing country tax authorities should have the independence to operate in accordance with their country's legal framework.
- 3. Take a 'whole of government' approach to maximise policy coherence and aid effectiveness:** This principle underlines the importance of donor countries promoting policy coherence within their own countries to ensure that development objectives are also incorporated in the broader government agenda. The principle also underlines that donors should provide a flexible and complementary mix of support, including, for example, budget support.
- 4. Take account of international aspects of taxation:** This principle underlines that donor countries should work with developing countries at the international level to enhance their participation in fora where international revenue matters, norms and standards are debated and agreed.
- 5. Balance revenue collection imperatives with fairness, equity and governance considerations:** This principle highlights that international support should encourage consideration of the trade-offs between revenue imperatives, effective enforcement mechanisms and social and governance objectives, and that taxation is a key instrument for addressing inequalities.
- 6. Encourage transparency in revenue matters:** This principle highlights the importance of transparency at both international and national level, including around areas such as tax incentives and misuse of transfer pricing.
- 7. Strengthen revenue and expenditure linkages:** This principle highlights that donors strengthen accountability and policy dialogue by strengthening revenue and expenditure linkages.
- 8. Promote sustainability in revenue collection systems:** This principle highlights that international support can play an important role in introducing sustainability in national revenue generation as well as broader sustainability issues.
- 9. Encourage broad-based dialogue on revenue matters that includes civil society, business and other stakeholders:** This principle highlights that some donors can be well placed to engage a broader group of stakeholders, such as parliaments, civil society, labour unions, media and business associations, in their efforts to participate in tax dialogue, to monitor the operations of revenue authorities, and to hold governments to account for their revenue and expenditure policies.
- 10. Measure progress and build the knowledge base on revenue matters:** This principle underlines that, with the support of development partners, developing countries should lead the development of country specific indicators for measuring progress on a broad set of governance and social objectives. Furthermore, international providers should build on existing efforts to ensure that externally funded interventions are evaluated and lessons are shared for use at both the country and international levels.

Tax inspectors without borders

“Tax Inspectors Without Borders (...) is just a dating platform.”

Pascal Saint-Amans

Director Centre for Tax Policy and Administration, OECD⁴⁵

The Broader Context

This report focuses on the TIWB initiative. However, this initiative should be seen in the broader context of the Tax and Development programme that the OECD is running jointly with other technical assistance providers.⁴⁶ The Transfer Pricing Programme provides ‘support for developing countries seeking to implement or strengthen their transfer pricing rules’.⁴⁷ While the Transfer Pricing Programme provides assistance for developing countries to write and update their actual legislation on transfer pricing, TIWB focuses on implementation. In particular, it focuses on the auditing process, where the initiative provides on-site assistance linked to real audit cases. According to the OECD, the Transfer Pricing programme can put the ‘building blocks in place for effective transfer pricing regimes’, after which TIWB projects, for instance, can be used to consolidate the impact.⁴⁸

TIWB projects can, for example, include pre-audit risk assessment, case selection, investigatory techniques, and specific audit cases involving international tax issues including transfer pricing issues and anti-avoidance rules.⁴⁹

About taxation of multinational corporations

Taxation of MNCs is often far from an exact science. If the legislation of a country follows the OECD standards, the tax administration of that country must use the so-called ‘Arm’s Length Principle’⁵⁰ to determine how large a share of the company’s profits ‘belong’ to their country (and can therefore be taxed by them), and how large a share ‘belongs’ to other countries. Since the Arm’s Length Principle leaves a lot of room for interpretation, there is a lot of discretion involved in the auditing process. This has in turn given rise to the increased use of a specific type of tax rulings, also known as ‘comfort letters’ or ‘sweetheart deals’, which are agreements between tax administrations and individual MNCs determining upfront how the arm’s length principle will be applied in each case. Advocates of these type of tax rulings, such as PwC, highlight that they are a way of ‘removing uncertainty from transfer pricing.’⁵¹

From the perspective of TIWB, it is important to underline that auditing of MNCs is not a simple matter of following a clear and strict law. It is a process that involves making assessments, judgments and decisions, which can have a high impact on the overall level of taxation of the MNC. In some cases, taxation of MNCs is in the end settled through a bilateral negotiation between the government and the company, such as in the case of Google and the UK.⁵² In other cases, conflicts between the MNC and the tax administration can result in court cases.

Linked to this is another issue of decision-making by the tax administration, namely how large a portion of the corporation’s profit to claim for taxation in the country. Governments in general have endorsed the principle that two countries should not tax the same profits and, therefore, if the auditing tax administration decides to claim a higher amount of the overall profits of an MNC, there will be less profits available for other countries to tax. This, in turn, can lead to conflicts with other countries. From the perspective of TIWB, it is thus important to bear in mind that tax administrations from different countries can in some cases have conflicting interests.

History of TIWB

The idea of creating a group of tax advisors to be deployed in developing countries – and even the inception of the name itself – has been floated by the Tax Justice Network (TJN) since 2004.⁵³ The idea was officially raised in November 2011 by TJN’s Director John Christensen during a meeting of the German Development Agency (GIZ) in Bonn, Germany. The initiative, he pointed out, should be independent from the OECD and should not be limited to audits but instead should be open to more comprehensive support to developing countries, mainly on taxing MNCs and the issue of transfer pricing.⁵⁴

The initiative gained support from the German government and the United States of America (US). In a conference on transparency held in Tunisia in 2012, a US government representative suggested the creation of a ‘Financial Services Corps’. This ‘SWAT team’ should, according to the representative: “consist of volunteer experts from the public and private sectors who will provide technical assistance to transition countries.”⁵⁵

The OECD TIWB initiative was first announced in May 2012 at the OECD’s Task Force on Tax and Development plenary meeting in Cape Town, South Africa⁵⁶ and, following a feasibility study which was adopted in June 2013, TIWB was established as a project.⁵⁷ After that, the project went into a pilot phase, which is described below.

During the Third UN Conference on Financing for Development (FfD) in Ethiopia in July 2015, TIWB was officially launched as a partnership between the OECD and the UN Development Programme (UNDP). At the time, the OECD and UNDP wrote, 'the OECD's technical competence in tax matters and its network of tax experts will be complemented by UNDP's country-level presence around the world, its access to policy makers at the highest level and its policy and programme expertise in public financial management'. The announcement also highlighted that the strength of the participation of UNDP is going to be its presence in many developing countries.⁵⁸

Objective, Mandate and Goal

According to the TIWB toolkit, the objective of TIWB is "to enable the sharing of tax audit knowledge and skills with tax administrations in developing countries through a targeted, real time 'learning by doing' approach. Selected experts will work with local tax officials directly on current audits and audit-related issues concerning international tax matters and general audit practices relevant for specific cases. This is a niche area of tax audit assistance, given its focus on providing assistance on real, current cases."⁵⁹ It had an initial 18-month mandate from June 2013 to December 2014 to carry out pilot projects before the initiative officially became fully operational in 2016.⁶⁰ The project is now in a phase that will last until the end of 2019.⁶¹

According to the materials developed by the OECD during the pilot phase,⁶² TIWB is expected to: 1) increase voluntary compliance and combat non-compliance; 2) improve investment climate and tax audit skills; 3) enhance state-society relations; 4) foster international tax dialogue; 5) increase potential revenues collected; 6) improve quality and consistency of tax audits.

During the next phase (2016-2019), the OECD and UNDP have set the goal of supporting 100 deployments of experts to developing countries.⁶³

Secretariat, Management and Governance

In the new phase of the TIWB project, the TIWB Secretariat will be jointly managed by the OECD and UNDP. As in the pilot phase, the OECD will still be the hosts of the Secretariat.

In spring 2016, the former Assistant Manager of the International Tax Office at the Kenya Revenue Authority (KRA), James Karanja, was appointed as the head of the TIWB initiative.⁶⁵ In a statement, the Commissioner General of the KRA, John Njiraini, said: "The appointment is expected to cement KRA's co-operation with the OECD which goes back as far as 2008 when Kenya commenced a very productive and still active capacity building engagement on transfer pricing."⁶⁶

The Secretariat will match demand for with supply of experts to be deployed in developing countries, as well as monitoring and evaluating the deployments. The Secretariat will be supported by UNDP offices in developing countries, which will promote TIWB to senior officials and ministers, assist host administrations in completing the request procedures, establish, coordinate and facilitate each TIWB expert deployment, as well as develop and monitor any follow-up activities in this area.⁶⁷

In the pilot phase, TIWB had an Advisory Board that included representatives of regional tax administration networks (ATAF and CIAT), the business sector (OECD's Business and Industry Advisory Council), civil society (CCFD-Terre Solidaire)⁶⁸ and governments (France, Papua New Guinea and UK).⁶⁹

TIWB now has a new Governance Board to complement the Advisory Board (which has a more technical role). The Governance Board has the following key responsibilities:⁷⁰

- Promote the TIWB initiative to potential recipients, providers of tax audit experts, civil society, international and regional organisations and the international development community;
- Identify and encourage opportunities for greater South-South cooperation;
- Build political support for the TIWB initiative in both potential provider and recipient countries;
- Assist the TIWB fundraising activities by identifying and engaging with potential donors;
- Monitor the work plan and review the activities of the TIWB Secretariat and the TIWB Fund;
- Endorse the annual report;
- Incorporate lessons and opportunities for enhancing the TIWB initiative identified through the Board's promotion and fundraising activities;
- Endorse progress and achievements of TIWB through annual reporting.

The board is currently co-chaired by the OECD's Secretary General and UNDP's Administrator⁷¹ and has the following members:⁷²

- Emilia Peres (former Minister of Finance of Timor-Leste);
- Lilianne Ploumen (Minister for Foreign Trade and Development Cooperation of the Netherlands);
- Mauricio Cárdenas Santa María (Minister of Finance and Public Credit of Colombia);
- Andrew Treusch (Chief Executive Officer of the Canada Revenue Agency)
- Ngozi Okonjo-Iweala (former Minister of Finance, Nigeria);
- Paul Collier (Professor of Economics and Public Policy, University of Oxford)
- John Christensen (Director, Tax Justice Network).

Financing for TIWB deployments will be channelled through UNDP, and funding for the Secretariat and the operations of the Governance Board will be channelled through the OECD.⁷³

TIWB in practice

Host country leadership

During the pilot phase, the Secretariat created a comprehensive toolkit, which served as a practical guide to implementing TIWB in developing countries. This toolkit makes it clear that: "The TIWB process is structured on the basis of a high-degree of active host administration involvement. The goal is to promote project ownership while using TIWB tools to create an effective and productive arrangement tailored to the host administration's objectives. The host administration therefore leads the TIWB audit assistance process from the moment it makes the request for expert assistance."⁷⁴

TIWB is different from many other capacity development and technical assistance projects in the sense that it includes a very specific type of 'hands on' approach. Experts from the supplier country can get directly engaged in processes related to auditing of MNCs, and in some instances become directly engaged in specific cases – an area that can be highly sensitive, for example due to the increased risk of conflicts of interest, as well as legal and confidentiality issues (see below).

Stepwise approach

The toolkit also includes different points such as the definition of the scope of TIWB, duration, mode and timing of assistance, issues and questions related to the expert (the tax inspector), as well as the following nine steps in the process for a developing country to request an expert:

1. The host administration that wants to request an expert has to review the questions included in the toolkit, including:
 - a. In your country, are foreign nationals permitted to work in the public service and – in particular – the tax administration?
 - b. Are there any restrictions on the type of work foreign nationals can carry out within your tax administration?
 - c. Are there any legal requirements that must be met before a foreign national may work in the tax administration of your country?
 - d. Will your administration assume legal liability for any act or omission of the expert during the course of his/her work for your administration?
 - e. In the event of alleged fraud or other deliberate wrongdoing (through act or omission) by the expert, will your administration assume responsibility for all reasonable costs incurred by the expert in defending those allegations?
 - f. Will your administration assume responsibility for the safety of the expert?
 - g. Do your audit planning processes allow you to identify the entities that you intend to audit with the assistance of the TIWB expert at least two months in advance of the proposed programme start date?
 - h. Do the proposed audit activities to be undertaken with expert assistance include joint audit activities or bilateral or multilateral discussions or negotiations with other countries?
2. Complete the TIWB Assistance Request Form.
3. TIWB Secretariat will contact the host administration to confirm the reception of the Request Form.
4. The Secretariat will provide details of potential experts.
5. The host administration will have to contact the experts.
6. Agree the Terms of Reference with the expert and the partner administration – in case the expert is still serving.
7. Determine clear objectives and indicators for measuring the impact of the programme.
8. The audit assistance commences.
9. Once concluded, an impact assessment must be undertaken.

Matching of experts and host country

Regarding the matching of experts with developing country needs, the OECD states that: "Developing country tax authorities request audit assistance, which is matched to appropriate expertise drawn from a pool of currently serving tax officials or recently retired tax officials."⁷⁵

In the TIWB pilot projects in Ghana, Rwanda and Senegal, the experts deployed in the developing countries were all serving tax officials from the donor countries – Netherlands, UK and France, respectively. When experts are – in the future – drawn from a pool of experts, there is likely to be more cases where the donor country and the country supplying the expert (supplier country) are two different countries. According to the OECD and UNDP, South-South deployments are also a growing element of TIWB programmes, which could increase the trend of donor country and supplier country being two different countries.⁷⁶ There is, however, a risk that some donors will tie their support to a specific expert to be deployed – for example an employee of the donor's own tax administration (see, for example, below under 'The UK and tax assistance').

Potential conflicts of interest and legal constraints

The direct involvement of foreigners in the work of the tax administration of a developing country can, in some cases, introduce particular risks of conflicts of interest.

One example is the case where some of the MNCs operating in the host country are based in, or have strong connections to, the country supplying the expert. Even in the case where the expert is not directly dealing with the audit cases of these particular MNCs, the expert can end up in a situation of potential conflicts of interest. This can, for example, occur if the expert is training the tax administration of the developing country in how large a share of an MNC's profit to claim for taxation in the developing country. If the developing country generally starts claiming larger shares of MNCs' profits, it can lead to less profits being available for taxation in the other countries where these corporations are present, including in the home country of the expert. Tax audit trainings can also lead to an increase in the amount of taxes MNCs have to pay in developing countries, which some home countries of MNCs might have a general concern with, because of a wish to ensure that 'their MNCs' are profitable. This, again, can place the expert in a potential conflict of interest between the developing country and his/her home country.

Another potential source of conflict of interest is the case where the supplier country is among the countries that have structures or loopholes in their legislation that provide opportunities for MNCs to avoid taxation. While these setups are often legal, they can result in substantial losses of tax income in other countries where MNCs are operating, including developing countries. As described in Box 1, the governments of countries that have such structures tend to defend them and argue that they, are in fact, legitimate elements of so-called 'tax competition,' rather than harmful tax practices. In cases where MNCs operating in the developing countries are using such structures in the supplier country to avoid taxation, a conflict of interest, can arise for the expert. Since the expert is often a former or current employee of the supplier country's tax administration, the expert can end up in the difficult situation of either having to train the host country tax administration to identify financial transfers to his/her own country as a risk factor in relation to tax avoidance of MNCs, or remaining loyal to the government that is his/her current or former employer, by arguing that no structures or loopholes in the supplier country's tax legislation are a reason for concern.

Regarding how to manage potential conflicts of interest, the TIWB toolkit says that '[t]he host administration and the expert together determine whether there is a potential conflict of interest'. The toolkit also highlights that host countries can consider different responses to potential conflicts of interest, including: reallocating the expert to other audit cases; limiting the role of the expert in the audit; discussing the issue with the company which is about to be audited; or selecting another TIWB expert for the project. Regarding the last option, the toolkit underlines that: "Where the expert is a currently serving tax official, the host administration should contact the partner administration prior to changing the terms of, or terminating, the TIWB programme due to potential conflict of interest. This will allow the partner administration the opportunity to discuss the proposed changes to, or termination of, the TIWB programme with the host administration and the expert before a final decision is made."⁷⁷

The Toolkit also highlights that: "[w]here conflict of interest is likely to arise, providing expert assistance on the bases of anonymised tax files can be an effective approach to overcome the potential of conflict while also retaining the benefits of working on current audit issues."⁷⁸

The Toolkit underlines that anonymised cases can also be a solution to another problem that might arise, namely the instances where the host country has "legal or policy restrictions on a non-national's full involvement in audit activities."⁷⁹

Box 1: Tackling harmful tax practices

Within the European Union (EU), the discussion about whether Member States are deliberately providing opportunities for MNCs to avoid taxation has been raging for years. In 2015, Der Spiegel online gained access to confidential documents describing how the Netherlands, Belgium and Luxembourg have caused strong concerns within other EU member states by protecting tax practices that could provide opportunities for MNCs to avoid paying taxes.

More recently, a study commissioned by the European Commission looked at 33 indicators of structures that facilitate or allow aggressive tax planning. The study found that the tax system of the Netherlands has 17 of the 33 indicators (higher than any other EU country), followed by Belgium with 16. Both countries have also become subjects of state aid cases launched by the European Commission.

In the case of the Netherlands, the Commission has found that tax advantages granted to Starbucks constituted illegal state aid, and in the case of Belgium the same was the case for a special Belgian tax scheme that granted tax advantages to specific MNCs.

A similar state aid case was launched by the Commission against Luxembourg, a country that also received much international attention after the 'LuxLeaks scandal'. This revealed that hundreds of MNCs had obtained secret "sweetheart deals" from the tax administration of Luxembourg, allowing them to avoid large amounts of tax payments globally. That said, the above-mentioned study 'only' found 13 indicators for risk of aggressive tax planning in Luxembourg.

All three governments have appealed against the European Commission's decision in the state aid cases.

Sources:

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European Commission. SA.38374 State aid implemented by the Netherlands to Starbucks; SA. 37667 Excess Profit exemption in Belgium – Art. 185§2 b) CIR92; and SA.38375 State aid which Luxembourg granted to Fiat. European Commission website, accessed 30 September 2016: http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38374 , http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_37667 and http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38375

TIWB pilot projects

Overall results of the pilot phase

During a Secretariat review⁸⁰ of TIWB in December 2014, the OECD provided an overview of TIWB pilot projects, which is outlined below, along with an update on the current state of each project indicated in brackets.⁸¹

1. Ghana – Netherlands (suspended due to outbreak of Ebola but currently ongoing)
2. Ghana – South Africa (not started)
3. Albania – Italy (concluded)
4. Malawi – Ireland (not started)
5. Rwanda – UK (on hold)⁸²
6. Lesotho – UK (ongoing)
7. Senegal – France (phase I completed and Phase II program expected late 2016)
8. Papua New Guinea – (on hold)
9. Moldova – Sweden (now run as part of a wider Swedish support program for Moldova)
10. Vietnam – retired expert (due to commence in 2017)
11. Costa Rica (commencing in September 2016 with support from Spain)
12. Colombia (not started)

As can be seen, some of the pilot projects did not in the end materialise, and other projects have been added to the list of what the OECD and UNDP refer to as 'TIWB style projects'. This concept covers three different types of projects: Projects conducted by individual 'supplier' countries to tax administrations in developing countries, where UNDP and the OECD are not directly involved, but promote the projects and draw lessons and experience; Tax audit assistance work performed on anonymised cases by OECD officials during Transfer Pricing workshops in developing countries; and lastly so-called 'pure' TIWB programmes set up with the involvement of the TIWB Secretariat.⁸³

The OECD and UNDP highlight that "To date, TIWB has delivered a conservatively estimated 185 million USD in additional revenues from programmes across Africa, Asia and Latin America."⁸⁴ The OECD explains⁸⁵ that the USD 185 million is a sum of the following results:

- **Albania:** An audit performed with TIWB assistance by Italy resulted in a transfer pricing adjustment for 2014 equalling 7% of the Earnings Before Interest and Taxes of an Albanian resident subsidiary of a multinational enterprise.
- **Colombia:** Increase in tax revenue from USD 5.83 million in 2012 to USD 33 million in 2014 = USD 27.17 million;
- **Kenya:** Increase in tax revenue from USD 52 million in 2012 to USD 107 million in 2014 = USD 55 million;
- **Senegal:** increased revenue from their TIWB project with France: audit adjustments have resulted in an additional USD 12.3 million of tax revenue in 2015;

- **Vietnam:** Increase in tax revenue from USD 3.9 million in 2013 to USD 40 million in 2014 = USD 36.1 million;
- **Zambia:** Increase in tax revenues from USD 3.22 million in 2012 to USD 7.91 million in 2013 = USD 4.69 million; and
- **Zimbabwe:** Revenue from investigations work increased from USD 160 million in 2014 to USD 211 million in the first nine months of 2015 = USD 51 million.

It should be noted that the projects in Zambia, Zimbabwe, Vietnam, Colombia and Kenya are not so-called 'pure TIWB programmes', but rather audit assistance on anonymised cases under the Transfer Pricing programme, which was launched in 2011 and is being implemented by the OECD and a number of other donors. This Transfer Pricing programme is different from 'pure TIWB programmes' in the sense that it also may include concrete changes to the legislation of the developing country – a feature which is not normally part of TIWB. Furthermore, unlike the TIWB model, it does not focus on deployment of foreign experts to participate directly in the tax administration of a developing country. Instead, it consists of training of the developing country tax administrators, for example through training workshops.⁸⁶

This report focuses on the type of pilot projects that follow the pure TIWB model, meaning that the TIWB Secretariat has been involved and the project involves a deployment of foreign experts to participate in the tax administration in developing countries. In particular, this report will look at three specific pilot projects.

The pilot projects

The next next section will focus on the UK-Rwanda, Netherlands-Ghana and France-Senegal pilot projects.

The 'extracts' for the TIWB pilot projects that are included as Figures 1 to 6 were taken from unofficial internal documents from the OECD that the authors had access to even though they have not been officially published. They are from two different versions of the same OECD document. The first document carries the title '*Annex 2: Overview TIWB-pilots and status*' and was submitted by the OECD Secretariat as an annex to a meeting of the TIWB advisory board on 7 November 2014. The second document carries the title 'Secretariat Review of the Tax Inspectors Without Borders (TIWB) Initiative' and includes the introductory statement: 'This paper provides the main findings from a review of the TIWB initiative undertaken by the OECD Secretariat in December 2014'. The internal process that produced these documents is unknown. However, Eurodad has decided to publish this information because these internal documents raise some important issues that deserve to be part of the debate about TIWB.

The UK-Rwanda TWIB pilot project

The UK and tax assistance

The UK has been involved in capacity development and technical assistance in taxation for many years. During the period 2009-2011 Her Majesty's Revenue Collection (HMRC) Transfer Pricing Team provided transfer pricing assistance to over 25 developing countries.⁸⁷

The UK is both a funder of the TIWB Secretariat⁸⁸ and also participated in a TIWB pilot project together with Rwanda.

As regards funding for specific TIWB projects, the UK has so far funded projects where the expert being deployed was also from the UK, namely from the HMRC. This is part of broader co-operation between DFID and HMRC, which also includes funding directly from DFID to HMRC for a special Developing Countries Capacity Building Unit. According to the UK Government, "The Unit will deploy HMRC staff to developing countries to provide technical expertise in support of DFID efforts to increase the capacity of tax policy and administration in partner countries." While this does not exclude the UK acting as a donor for TIWB projects involving experts supplied by other countries, it does indicate that a part of the UK funding is earmarked for deployments of the UK government's own experts.⁸⁹

The UK-Rwanda relationship

The UK also has a long history as far as Rwanda and assistance on taxation is concerned. In 2005, Rwanda enacted the Law on Direct Taxes on Income, which introduced transfer pricing provisions for the first time. These provisions – and the law – were included, as Dr Attiya Waris, senior lecturer at the Nairobi University specialised in tax law and development, highlighted – "as a result of a DFID funded initiative. It neither followed as a result of any noticeable misuse of international transfer pricing laws nor was there any discussion within any of the law making and administrative bodies in Rwanda to the effect that there was a need for such a law."⁹⁰

The UK and Rwanda also have commercial ties. According to the UK government, there are around 150 British companies registered in Rwanda, and bilateral trade reached £21 million in 2014. As an example of the commercial ties, the UK government highlights that: "UK companies, including Deloitte, PWC and Ernst & Young, are leading the growth of the financial services sector in Rwanda."⁹¹

As regards the TIWB pilot project, the UK provided two visits to the Rwanda Revenue Authority during 2014. The first visit in January 2014 and the type of support was, "to increase [Rwanda Revenue Authority] capability in the tax discipline of transfer pricing and other international tax issues so that it can better tax the profits of multinational enterprises that arise in Rwanda and thereby provide Rwanda with the revenues it needs to develop further."⁹² The second visit, in August 2014, focused on: "supporting the Rwanda Revenue Authority to increase its capability in the tax discipline of transfer pricing and other international tax issues."⁹³

The UK tax system

Although not among the worst countries in the EU, the UK has a number of potentially harmful tax practices, including a patent boxes system.⁹⁴ The UK is also one of the EU countries that has issued the highest number of special tax rulings for MNCs, also known as 'sweetheart deals'.⁹⁵ It is, however, another issue which led Tax Justice Network (TJN) to conclude that "the UK [is] one of the biggest, if not the biggest, single player in the global offshore system of tax havens." According to TJN, there are two reasons for this: "The first is that the City of London (...) is on some measures the world's largest financial centre (...) [T]his is built substantially on 'offshore' characteristics – though these characteristics in the UK's own case aren't particularly predicated on financial secrecy but on other offshore offerings, particularly lax financial regulation. The second is that the UK is intricately connected to a large network of British secrecy jurisdictions around the world, notably the three Crown Dependencies (Jersey, Guernsey and the Isle of Man) and the 14 Overseas Territories, which include such offshore giants as Cayman, the British Virgin Islands and Bermuda."⁹⁶

In general, the UK government appears highly committed to what it calls 'tax competition', which is a term often used to describe the efforts of governments to provide MNCs with attractive tax arrangements to convince the corporations to move to their country. On this issue the UK has, for example, committed to "creating the most competitive tax regime in the G20."⁹⁷ A recent report by the Independent Commission for Aid Impact (ICAI) found that "DFID does not have a clear approach to promoting 'policy coherence for development in the tax area. It has not assessed areas of potential tension between UK tax policies and the needs of developing countries." The report also highlighted that "the literature suggests that there are potential areas of tension between UK policies and developing country interests, including those concerning international tax competition and bilateral tax treaties."⁹⁸ The UK has a relatively high number of tax treaties with developing countries,⁹⁹ but Rwanda is not among those countries.¹⁰⁰

Rwanda and taxation of multinational corporations

Rwandan tax legislation was recently updated and is, according to PwC, generally consistent with OECD Guidelines. One of the elements that has been introduced is the opportunity for MNCs to negotiate special tax rulings about their tax arrangements – also known as ‘sweetheart deals’ – with the government.¹⁰¹

Another thing Rwanda has done to attract investments is to introduce tax incentives for MNCs. The civil society organisation ActionAid has raised concerns that the country has introduced ‘far-reaching tax incentives to foreign investors’ and highlights estimates suggesting that Rwanda is losing between USD 115-176 million per year due to tax incentives.¹⁰² James Butare, the head of programmes and policy at ActionAid Rwanda, has called for transparency in the negotiations of incentives as well as clear monitoring mechanisms. He points out that: “We are not saying that all tax incentives are harmful but, rather, the Government should be able to provide reasonable incentives and in priority areas which have multiplier effects and leading to inclusive development.”¹⁰³

The TIWB Pilot Project

According to the internal OECD documents (Figure 1 and 2) The TIWB pilot project carried out by the UK and Rwanda focused on the subject of transfer pricing, including risk assessment, case selection and audit techniques. The internal documents also present more detailed information about the project, and give rise to questions, which are discussed below under the title ‘Analysis’.

Another key feature of the first UK pilot phase deployments in Rwanda is how they were implemented – namely, who implemented them and who managed them. This information is presented in the next section.

The Investment Facility for Utilising Specialist Expertise (iFUSE)



In 2011, DFID decided to provide £3.48 million to the Investment Facility for Utilising Specialist Expertise (iFUSE), “an outsourced facility for the provision of specialist expertise on a non-profit basis, to assist partner developing countries in implementing investment climate reforms.”¹⁰⁴

iFUSE is managed by DFID’s Managing Agent, which is PwC (see Box 2). PwC is, according to iFUSE, “responsible for matching requests from developing countries for support with the best available expertise, and managing each deployment from start to finish.”¹⁰⁵

According to iFUSE *Frequently Asked Questions*,¹⁰⁶ its mission is to supply specialist government-to-government expertise to support business environment improvement in DFID partner countries.¹⁰⁷

As stated by iFUSE,¹⁰⁸ key elements of its mission are to reform the investment climate and help deliver more jobs for local people, better prospects for economic growth and a greater range of products and services for consumers at more competitive prices.

The range of actions is wide and includes:¹⁰⁹ taxation; competition law and policy; consumer protection; public-private partnerships; general interface with businesses; commercial law and justice; financial sector regulation and supervision; infrastructure development; privatisation (intellectual property); accountancy standards.

Figure 1: November 2014 extract from an unofficial internal OECD document about the UK-Rwanda TIWB project.¹¹⁰
 See explanation on page 17 under the title 'The pilot projects'

Pilot 5	Rwanda – UK
Subject	<ul style="list-style-type: none"> • Transfer pricing (<i>risk assessment, case selection, audit techniques</i>)
Procedures followed	<ul style="list-style-type: none"> • Pilot established at early stage TIWB through informal bilateral contacts Rwanda and UK; No formal 'paper' request by Rwanda (<i>no procedures in place yet at the time</i>); No ToR but only broad agreement UK and RRA for TIWB; UK in the lead during whole process;
Deployment agreement	<ul style="list-style-type: none"> • No ToR/deployment agreement were prepared by UK nor RRA; • After informal contacts, Secr. sent draft anonymised depl. agreement to UK, which was adjusted and used for TIWB with RRA; • Lack of knowledge/capacity in RRA to work on legal aspects agreement; therefore UK in the lead; • Draft Toolkit used by UK (<i>very positive reactions UK on Toolkit</i>); • Draft deployment agreement set up by HMRC yet to be signed by RRA; to date depl. Agreement not signed by RRA.
Missions	<ul style="list-style-type: none"> • 2 missions 'on site' so far (<i>first = 1 week; second = 2 weeks</i>) with email contacts in between; • No TIWB-actions performed and no work done on actual cases yet; apparently RRA expects regular TA and no TIWB-assistance.
Practical issues	<ul style="list-style-type: none"> • Communication with RRA troublesome (<i>slow, change of contact persons</i>); • UK expert took signed deployment agreement with him to Rwanda; still not signed by RRA Commissioner; • Oath of Secrecy was not yet made before RRA Commissioner; significance and relevance Oath of Secrecy underestimated by RRA; • Low level of comprehension TIWB-concept with RRA (<i>TIWB seen as regular Technical assistance by RRA</i>);
Role Secretariat	<ul style="list-style-type: none"> • Limited; no need for matchmaking role because contacts had been established already; • Advice and support Secretariat to HMRC on drafting deployment agreement, issues as conflict of interest and fiscal secrecy, etc;
Costs and funding model	<ul style="list-style-type: none"> • All costs borne by UK (<i>salaries experts, travel costs, per diem</i>); UK offered this to host admin; • "Development money" (<i>DFID</i>) used to finance deployments; Commonly used model in UK, based on existing relations DFID and HMRC; model functions well in practice and to be continued (<i>info from UK HMRC and DFID</i>).
Constraints experienced in practice by experts	<ul style="list-style-type: none"> • Legislation: TP-legislation and regulations not yet in place, although RRA assured HMRC that it would be; • Practical matters: capacity host admin (<i>TP-knowledge, audit knowledge and skills of staff</i>) lower than expected; • RRA going through ongoing internal reorganisation, meaning existing contact persons disappeared without follow-up; • Communication: RRA answers on emails and/or questions with great delay or in most cases not at all.
Results/outcome	<ul style="list-style-type: none"> • None yet, because no actual work on cases has been done because of lack of preparation by RRA; • Contacts with RRA appear to be impossible lately (<i>allegedly because of internal restructuring RRA</i>);
Current situation	<ul style="list-style-type: none"> • TIWB put on hold until January 2015 by UK; TP-legislation still not in place, although RRA assured UK that it would be (<i>expected now January 2015</i>); however strange, RRA said legislation will stipulate that TP-returns have to be submitted regarding the year 2014;
Lessons learnt	<ul style="list-style-type: none"> • At initial stage scope of requested programme to be defined very clearly; direct 'hands-on' involvement Secretariat needed; • Specific information to be gathered on legislation, policy measures, organisation and (<i>audit</i>) capacity staff host admin. • Specific attention needed to establish well functioning and sustainable communication channels between parties.

Figure 2: December 2014 extract from an unofficial internal OECD document about the UK-Rwanda TIWB project.¹¹¹

See explanation on page 17 under the title 'The pilot projects'

Pilot 5	Rwanda – UK
Subject	<ul style="list-style-type: none"> • Transfer pricing (risk assessment, case selection, audit techniques)
Procedures followed	<ul style="list-style-type: none"> • Pilot established at early stage TIWB (existing contacts Rwanda and UK); • Co-operation based on broad agreement UK and RRA for TIWB; UK in the lead during whole process;
Deployment agreement	<ul style="list-style-type: none"> • Initially no ToR/deployment agreement prepared by UK nor RRA; • Secretariat advised parties to set ToR/deployment agreement and supported with drafting; • Draft Toolkit used by UK (positive reactions UK on Toolkit); • Draft deployment agreement set up by HMRC, but yet to be signed by RRA;
Missions	<ul style="list-style-type: none"> • 2 missions 'on site' so far (first = 1 week; second = 2 weeks) with email contacts in between; • No TIWB-work done on actual cases yet by TIWB-expert;
Practical issues	<ul style="list-style-type: none"> • Communication with RRA troublesome (change of contact persons in RRA); • UK expert took signed deployment agreement with him to Rwanda; still not signed by RRA Commissioner; • Oath of Secrecy was not yet made before RRA Commissioner; significance and relevance Oath of Secrecy to be taken by foreign expert apparently underestimated by RRA; • RRA not familiar enough with specific features TIWB-concept and TIWB-programme;
Role Secretariat	<ul style="list-style-type: none"> • Limited; no need for matchmaking role because contacts had been established already; • Advice and support Secretariat to HMRC on drafting deployment agreement, issues like conflict of interest and fiscal secrecy, etc.;
Costs and funding model	<ul style="list-style-type: none"> • All costs borne by UK (salaries experts, travel costs, per diem); • Funding TIWB-programme by/through DFID; commonly used model in UK, based on existing relations DFID and HMRC.
Constraints experienced in practice by experts	<ul style="list-style-type: none"> • Legislation: TP-legislation and regulations in Rwanda not yet in place, although RRA assured HMRC that it would be; • Practical matters: capacity host admin (TP-knowledge, audit knowledge and skills of staff) lower than expected; • Organisation: ongoing internal reorganisations in RRA, with consequence that existing contact persons disappear without follow-up; • Communication: RRA answers on emails and/or questions with great delay.
Results/outcome	<ul style="list-style-type: none"> • No actual TIWB work on cases has been done because of lack of preparation by RRA; • Some activities in area of risk assessment (capacity building); • Contacts with RRA appear to be troublesome (allegedly because of internal restructuring RRA);
Lessons learned	<ul style="list-style-type: none"> • At initial stage scope of requested programme to be defined very clearly; direct 'hands-on' involvement Secretariat needed; • Specific information to be gathered on legislation, policy measures, organisation and (audit) capacity staff host admin. • Specific attention needed to establish well-functioning and sustainable communication channels between parties.
Current situation	<ul style="list-style-type: none"> • TIWB put on hold until January 2015 by UK. • TP-legislation expected to be in place January 2015, so actual TIWB-activities can be restarted;

When stating how iFUSE's Managing Agent (PwC) reviews assignments/deployments, it is made clear that the request:¹¹²

- Has to align clearly with a priority investment climate issue;
- Has to have a clear impact/contribution to investment climate reform within the partner country or region.

On the issue of whether PwC's involvement could create a potential conflict of interest, a DFID spokesperson said: "PwC act as managing agents for DFID's Investment Facility for Utilising UK Specialist Expertise programme but are not involved with advising developing countries, which is carried out by independent experts. As with all our programmes, we have rigorous checks and balances in place to ensure there is no conflict of interest."¹¹³

The UK later changed its funding method for the TIWB programme, which is now no longer funded through iFUSE.¹¹⁴

Analysis

Leadership

The internal OECD documents mention that 'UK [was] in the lead during the whole process'. The first internal document describes this as a consequence of 'Lack of knowledge/capacity in the [Rwandan Revenue Authority] to work on legal aspects agreement'. The documents also indicate that the communication with Rwanda was 'troublesome', and that Rwanda had a 'low level of comprehension' of the TIWB concept. The first document furthermore notes that 'apparently [the Rwandan Revenue Authority] expects regular [Technical Assistance] and no TIWB-assistance'. This raises the concern that the host country was not leading the process, and thus the interests and objectives of the developing country – in this case Rwanda – might not have been central in the project development. This would seem contrary to the Principles for International Engagement in Supporting Developing Countries in Revenue Matters (see the chapter 'International Principles for Aid Effectiveness and Taxation' above), as well as the original aid effectiveness principles,¹¹⁵ and it is therefore also noteworthy that the internal documents do not suggest that the OECD Secretariat did anything to address this issue, but rather took the role of supporting the UK, while there is no mention of support to Rwanda.

It is important to note in this context that the internal OECD documents only cover a limited period until December 2014, and that the situation might have changed since then. It should also be noted that although the internal documents mention '2 missions 'on site' so far', it also notes that 'No TIWB-actions [were] performed and no work done on actual cases yet'.

However, the internal documents do indicate that the UK-Rwanda pilot project did not follow a process where the TIWB project was initiated on the basis of a request from the host country.

The involvement of PwC

It is a clear problem that the TIWB UK-Rwanda pilot project led to the deployment of experts managed by PwC to a developing country to advise on taxation of MNCs. As explained in Box 2, PwC has a number of significant interests in the area of taxation, and the role of manager of TIWB deployments creates conflicts of interest.

Box 2: PwC and tax

PwC is recognised as one of the most important auditing companies in the world, with a total revenue in 2015 of \$35 billion.¹¹⁶ It is among the four largest auditing companies in the world, collectively known as the 'Big Four', which also includes KPMG, EY and Deloitte. These companies offer several services to their clients related to audits, assurance and consulting among others. Around 99 per cent of Financial Times Stock Exchange 100 (FTSE 100) companies are advised by the Big Four.¹¹⁷ According to the International Consortium of Investigative Journalists (ICIJ), they have acquired a role by "gaining clout and inside knowledge by helping governments write the laws that establish the offshore system's rules of engagement, and by lobbying heavily to keep the rules to their liking."¹¹⁸ At the same time, PwC provides tax advice to MNCs and has been accused of systematically facilitating tax avoidance through its advice. The British Member of Parliament Margaret Hodge told PwC during a UK Parliamentary Hearing in the Public Accounts Committee, "what you are doing is selling tax avoidance on an industrial scale," with reference to their role in brokering tax rulings for MNCs.¹¹⁹

PwC has been involved in several scandals linked to tax avoidance, helping companies to reduce their tax bills. Perhaps the most famous one is the so-called LuxLeaks scandal, which revealed how PwC negotiated 548 tax rulings (also referred to as 'sweetheart deals') for more than 300 MNCs in Luxembourg (including well-known brands such as Pepsi, Amazon, Skype and Ikea) from 2002 to 2010, in order to create a drastic tax reduction by channelling hundreds of billions of dollars to Luxembourg (sometimes the resulting tax rate was below 1 per cent).¹²⁰ Despite being legal, the practices revealed gave rise to much criticism and concern.¹²¹

The fact that PwC takes on a number of different roles in relation to tax matters, including advising governments on tax regulation, advising companies on tax planning, servicing governments with impact assessments of tax regulation, auditing companies and actively lobbying for specific types of tax legislation, is a reason for conflicts of interest. In 2014, it became a point of much critique when the European Commission hired PwC to perform an impact assessment of public country by country reporting – a type of legislation that PwC had lobbied strongly against.¹²²

PwC seems to have some clear opinions when it comes to corporate taxation in developing countries. For example, as expressed in a report written for the European Commission, where PwC recommends that "the OECD Guidelines could serve as common global standards for transfer pricing and we would advocate that developing countries orient themselves to these standards when adopting and implementing transfer pricing legislation."¹²³ PwC is also an active participant in the debate about how the laws regulating the taxation of MNCs in Rwanda and the East African Community should be changed. For example, in 2014 PwC joined other business representatives in a call for the East African Community to use the OECD's transfer pricing rules and create better conditions for MNCs.¹²⁴ This once again highlights PwC's role as tax advisor and advocate for MNCs, but in the case of the TIWB pilot project between the UK and Rwanda, also manager for an aid-funded project about taxation of MNCs operating in Rwanda.

The involvement of PwC in the TIWB project also became a debate in the UK, where Member of Parliament Diane Abbott, then the shadow international development secretary, argued: "As the Luxleaks scandal has shown, PwC is in the business of helping multinational corporations avoid tax. For this reason it is abundantly clear that there is potentially a very serious conflict of interest in DFID paying PwC to administer projects designed to help developing countries raise more tax". She added: "For a business that claims to provide accountability and transparency, PwC seems to have put itself in a position where conflicts of interest are not only clearly possible, but in fact highly likely.

Without transparency how is DFID to know that PwC is not running rungs around them?" She also called for "... some immediate clarity to know that we are not paying PwC to bat for poor countries' governments while also batting for big business to steal from those governments," and underlined that "PwC and Tax Inspectors without Borders must make public, on an ongoing basis, the affiliations of each individual sent to each developing country tax authority, the identities of corporate taxpayers in those countries over whose tax bills they may have had influence, and the identity of the auditors of those firms." She concluded: "Following the Luxleaks scandal, it beggars belief that DFID would use a known facilitator of massive global tax avoidance to administer support work to tax authorities in the world's poorest countries."¹²⁵

It is positive and very important that the setup for the UK-Rwanda TIWB project has now been changed, and that PwC is no longer managing the experts being deployed. However, one question that has not been answered is how this could happen in the first place, and why there are apparently no procedures in place in the UK or the OECD to prevent this. The fact that DFID rejects that PwC's involvement constituted a conflict of interest also raises the question of whether something similar could happen again in the future.

The risk of intergovernmental conflicts of interest

The fact that there are about 150 British companies present in Rwanda can put the UK expert in a conflict between, on the one hand, the interest of supporting UK businesses to increase their profits in Rwanda, and/or maximising the profit available for the UK to tax and, on the other hand, the interest of helping the Rwandan government to increase its corporate tax income. Even in the case where the expert does not work directly with audits of UK companies, potential conflicts can still arise as the training of the Rwandan tax administrators would presumably be aimed at developing a method for auditing MNCs in general.

Another potential intergovernmental conflict of interest is the UK's commitment to being 'tax competitive', and the fact that the UK has several potentially harmful tax practices in its legislation. If MNCs were to use structures or agreements in the UK (for example tax rulings or 'sweetheart deals') to avoid taxation in other countries, the expert can be placed in a conflict between the interests of his/her employer, the UK government - which would not want its tax system to be challenged - and Rwanda, which might not receive full information about the risk of tax avoidance through the UK.

The potential of the project

Assuming that the above mentioned issues regarding leadership and conflicts of interests have been, or could be, solved (which, especially in the case of conflicts of interest, will not always be the case), and to the extent the TIWB project could constitute a joint effort by the expert and the Rwandan tax administration to ensure that MNCs pay their fair share of taxes in Rwanda, this could have a positive impact, and bring important skills to Rwanda. However, while the UK undoubtedly has more resources and knowledge on the issue of taxing MNCs, it should be noted that the UK's approach to this issue has in some cases raised serious concerns domestically, as exemplified by the case of the taxation of Google.¹²⁶ The above mentioned report by the Independent Commission for Aid Impact (ICAI) also highlighted that "DFID's influencing approach and its capacity building support on international tax have not been based on clear analyses of developing country needs."¹²⁷ It is thus important to keep a critical awareness about exactly what skills are transferred to Rwanda.

The Netherlands-Ghana TWIB pilot project

The Netherlands-Ghana economic relationship

The relationship between Ghana and the Netherlands includes Dutch corporate interests in Ghana. In its Multi Annual Strategic Plan,¹²⁸ the Dutch embassy in Ghana writes: "More than hundred Dutch companies are active on the Ghanaian market. General interest in Ghana is growing fast, ranging from large multinationals to small and medium enterprises."

From the strategy, it appears as if the Dutch engagement with TIWB is part of a larger strategy to support international business.

"The Netherlands, within the framework of the OECD Tax Inspectors without Borders program is cooperating with the "Large Tax Payers" office of the Ghana Revenue authority to improve service levels and predictability for companies and investors in Ghana. The Embassy will establish a top sector fund. Its purpose is to investigate promising business opportunities and to address any bottlenecks experienced by the private sector in the enabling environment with regard to trade and investment between the Netherlands and Ghana."

Regarding taxation of businesses in Ghana, the strategy highlights that: "The economy is still dominated by a large informal sector, only a small number of larger companies pay, very high, taxes. The Netherlands will support Ghana in broadening its tax base by technical assistance and direct cooperation with Dutch tax authorities."

Among the Dutch companies operating in Ghana is one of the most important oil companies in the world, the Anglo-Dutch company Royal Dutch Shell, which has important interests at stake in Ghana such as the Liquefied Natural Gas project 'Ghana 1000'.¹²⁹ Another company operating in Ghana is SAB Miller, which in 2010 was the key focus of an ActionAid report that found evidence of major tax avoidance by the company. One of the key mechanisms by which the company was avoiding paying taxes in Ghana was a structure set up in the Netherlands.¹³⁰

The Dutch tax system

A number of strong concerns have been raised about the tax system of the Netherlands, and the opportunities it provides for MNCs to shift profits and avoid taxes. For example:

- The Netherlands has a high number of structures that can potentially facilitate aggressive tax planning by MNCs aiming to avoid paying taxes in the countries where they do business. A study commissioned by the European Commission found that the Netherlands has the highest number of indicators of such harmful tax practices among all EU Member States.¹³¹ That led Oxfam to conclude that "the Netherlands is the undisputed European champion in facilitating corporate tax avoidance."¹³²
- The Netherlands is among the EU Member States that have the highest number of secret bilateral agreements between the government and individual MNCs, also known as tax rulings or 'sweetheart deals'.¹³³ One of these tax rulings has become the centre of a state aid case launched by the European Commission, which has found the tax ruling between the Netherlands and Starbucks to constitute illegal state aid.¹³⁴ The Dutch government has appealed the decision.¹³⁵
- The Netherlands has an extensive network of tax treaties, which lower the tax rates on money transferred to and from the Netherlands. This includes a relatively high number of tax treaties with developing countries.¹³⁶ The Multi Annual Strategic Plan¹³⁷ of the Dutch embassy in Ghana also explicitly mentions that both Dutch companies, as well as companies based outside of the Netherlands, can use the Dutch tax treaty system to achieve "certainty" in their tax payments: 'Since the tax treaty between Ghana and The Netherlands came into effect in 2008, investments in Ghana from The Netherlands have substantially increased, from EUR 36 million in 2007 to EUR 2.1 billion in 2011. This increase is partially explained by investments from third countries that are looking for certainty in their tax payments.' In a welcome move, the Dutch government recently decided to renegotiate its treaties with 23 developing countries (including Ghana) in order to introduce anti-abuse clauses.¹³⁸ However, such a clause does not address the concern that Dutch tax treaties with developing countries have introduced substantial reductions of the tax rates charged on money going from developing countries to the Netherlands.¹³⁹

Ghana and taxation of multinational corporations

Inside Ghana, the emphasis on the attraction of foreign direct investment by government authorities has become – according to ActionAid Ghana – “an integral part of Ghana’s economic policy.”¹⁴⁰ This strategy has been based on providing what is known as tax incentives, which can be defined as deliberate tax exemptions or concessions to increase the investment flow into an economy.¹⁴¹ These have produced an estimated revenue loss of \$1.2 billion annually,¹⁴² as ActionAid Ghana concludes in its report.

Ghana introduced new transfer pricing legislation in September 2012 that, according to the OECD, is now “aligned with international standards.”¹⁴³ This includes the ‘arm’s length approach’, which is a core principle of the Ghanaian transfer pricing regulation.¹⁴⁴ The OECD affirms that together with other donors, it provided “significant input and advice on the drafting of the new legislation.”¹⁴⁵

The TIWB Pilot Project

According to the internal OECD documents (Figure 3 and 4), the TIWB pilot project carried out by the Netherlands and Ghana focused on the subject of transfer pricing, including risk assessment, case selection and audit techniques. As in the case of the UK and Rwanda, the internal documents also present more detailed information about the project, and give rise to questions which are discussed next under the title ‘Analysis’.

Analysis

Leadership

The first internal OECD document (from November 2014) mentions that ‘[the Netherlands was] in the lead, defining workable scope for programme’; ‘Draft agreement accepted by Ghana without any comments’; ‘concept and features [of] TIWB not fully known to host [administration]’ and that ‘Ghana had a passive role in process’. Furthermore, the document mentions that ‘Oath of Secrecy was made before [the Ghana Revenue Authority Commissioner] only after pressure [from] Dutch [Ministry of Finance] and experts’. While the document also mentions ‘positive feedback from [the Ghana Revenue Authority] on co-operation’, this does raise concerns that Ghana was not in the lead during the project development. While this would seem contrary to the Principles for International Engagement in Supporting Developing Countries in Revenue Matters (see the chapter ‘International Principles for Aid Effectiveness and Taxation’ above), as well as the original aid effectiveness principles,¹⁴⁶ the internal documents do not suggest that the OECD Secretariat did anything to address this issue, but rather took the role of supporting the Netherlands, while there is no mention of support to Ghana. In the document from December 2014, the text above has been deleted. Therefore, it is important to note that the first internal document only covers a limited period of time (until November 2014), and that the situation might have changed since then. While both documents note that ‘Experts worked on risk assessment and case selection’, it is also made clear that ‘no work [had been] done on actual audit cases yet’.

However, the internal documents do indicate that the Netherlands-Ghana pilot project did not follow a process where the TIWB project was initiated on the basis of a request from the host country.

Figure 3: November 2014 extract from an unofficial OECD document about the Netherlands-Ghana TIWB pilot project.¹⁴⁷

See explanation on page 17 under the title 'The pilot projects'

Pilot 1	Ghana – Netherlands
Subject	<ul style="list-style-type: none"> • Transfer pricing (<i>risk assessment, case selection, audit techniques</i>)
Procedures followed	<ul style="list-style-type: none"> • Pilot established at early stage TIWB through informal bilateral contacts NL- Ghana (<i>Korea 2013</i>); • No formal 'paper' request for TIWB-programme by Ghana (<i>no procedures in place yet at the time</i>); • ToR set and agreed on bilaterally by NL and Ghana; NL in the lead, defining workable scope for programme.
Deployment agreement	<ul style="list-style-type: none"> • Draft by NL with extensive hands-on support, advice and guidance by Secretariat during whole drafting process; • Lack of knowledge/capacity in host admin to work on legal aspects agreement; • Draft Toolkit used by NL (<i>very positive reactions NL on Toolkit, especially on fiscal conf., conflict of interest, and practical issues</i>); • Draft agreement accepted by Ghana without any comments.
Missions	<ul style="list-style-type: none"> • 3 missions 'on site' so far (<i>each of 1 week</i>) with email contacts in between; videoconferencing was tried (<i>through Dutch Embassy</i>);
Practical issues	<ul style="list-style-type: none"> • Communication with Ghana troublesome at times (<i>slow, change of contact persons</i>); • NL experts took signed depl. agreement with them to Ghana and had it signed by GRA Commissioner before first TIWB-action; • Oath of Secrecy was made before GRA Commissioner only after pressure Dutch Mof and experts;
Role Secretariat	<ul style="list-style-type: none"> • Limited regarding matchmaking role; no need for that role because contacts had been established already at early stage TIWB; • Advice and support Secretariat to NL throughout whole process (specifically on ToR and deployment agreement). • No advisory role Secretariat towards Ghanaian tax admin needed/required (<i>GRA had passive role in process</i>).
Costs and funding model	<ul style="list-style-type: none"> • All costs borne by NL (<i>salaries experts, travel costs, per diem</i>); NL offered this to host admin; • "Development money" (<i>Min. of foreign affairs/foreign trade</i>) transferred to Dutch Tax admin and used to finance deployments; • Commonly used model of funding in NL, based on existing relations Development/Foreign Affairs and Tax admin; • Model functions well in practice and will be continued (<i>info from NL MoF and Development/Foreign Affairs</i>)
Constraints experienced in practice by experts	<ul style="list-style-type: none"> • Legislation: TP-legislation is overruled by other legislation, leading to non-taxation in certain cases; • Policy: rulings in place in which lump sums have to be paid, not taking into account TP-legislation; • Organisation: TP-returns are treated by various departments (<i>LTD, TP-department, other</i>); • Practical matters: concept and features TIWB not fully known to host admin; capacity host admin (<i>TP-knowledge, audit knowledge and skills of staff</i>) lower than expected; significance and relevance Oath of Secrecy underestimated by host admin. • Communication: host admin answers on questions late or sometimes non-existent.
Results/outcome	<ul style="list-style-type: none"> • Experts worked on risk assessment and case selection; no work on audit cases yet; positive feedback from GRA on co-operation.
Current situation	<ul style="list-style-type: none"> • TIWB put on hold until January 2015 by NL next action foreseen January 2015.
Lessons learnt	<ul style="list-style-type: none"> • Info on general as well as specific features (<i>relevance depl. agreement, fiscal secrecy, conflict. of interest</i>) of TIWB to be extended; • At initial stage scope of requested programme to be defined very clearly; direct 'hands-on' involvement Secretariat needed; • At initial stage specific information needed on legislation, policy measures, organisation and (<i>audit</i>) capacity staff host admin.

Figure 4: December 2014 extract from an unofficial OECD document about the Netherlands-Ghana TIWB pilot project.¹⁴⁸

See explanation on page 17 under the title 'The pilot projects'

Pilot 1	Ghana – Netherlands
Subject	<ul style="list-style-type: none"> • Transfer pricing (risk assessment, case selection, audit techniques)
Procedures followed	<ul style="list-style-type: none"> • Pilot established at early stage TIWB (existing contacts NL-Ghana); • ToR set and agreed on bilaterally by NL and Ghana;
Deployment agreement	<ul style="list-style-type: none"> • Draft by NL with extensive hands-on support, advice and guidance by Secretariat; • Draft Toolkit used by NL (positive reactions NL on Toolkit, especially on fiscal conf., conflict of interest, and practical issues); • ToR and draft deployment agreement discussed between NL and Ghana and accepted.
Missions	<ul style="list-style-type: none"> • 3 missions 'on site' so far (each of 1 week) with email contacts in between; videoconferencing was tried (through Dutch Embassy);
Practical issues	<ul style="list-style-type: none"> • Communication with GRA sometimes difficult because of early change in contact persons; • NL experts took signed deployment agreement to Ghana and GRA Commissioner signed it before first TIWB-action; • Oath of Secrecy by Dutch experts was taken before GRA Commissioner;
Role Secretariat	<ul style="list-style-type: none"> • Limited regarding matchmaking role; contacts between parties had already been established at early stage TIWB; • Advice and support by Secretariat to NL (specifically on ToR and deployment agreement – results have been used in Toolkit). • No further specific advisory role Secretariat needed/required.
Costs and funding model	<ul style="list-style-type: none"> • All costs borne by NL (salaries experts, travel costs, per diem); • Funding TIWB-programme by Dutch tax admin through Dutch Min. of Foreign affairs/Foreign trade Fund) (existing model of funding in NL)
Constraints experienced in practice by experts in host administration	<ul style="list-style-type: none"> • Legislation: TP-legislation in some cases overruled by other (fiscal) legislation, with risk of non-taxation; • Policy: rulings in place based on which lump sums in taxes have to be paid, conflicting with TP-legislation; • Organisation: TP-returns are treated by various departments (LTD, TP-department, other); • Practical matters: concept and specific aspects in TIWB programme not quite clear to host admin; relatively low capacity host admin (TP-knowledge, audit knowledge and skills of staff); • Communication: change in contact persons host admin hampered progress programme.
Results/outcome	<ul style="list-style-type: none"> • To date experts worked on risk assessment and case selection aspects; no work done on actual audit cases yet; • Positive feedback from GRA on programme; noticeable effects in area of capacity building GRA audit staff.
Lessons learned	<ul style="list-style-type: none"> • Info on general as well as specific features (relevance depl. agreement, fiscal secrecy, conflict. of interest) of TIWB to be extended; • Programme benefits from early definition of scope of programme by host administration (with Secretariat support); • At initial stage TIWB specific and detailed information needed on legislation, policy measures, organisation and (audit) capacity staff of host admin in order to define scope of programme clearly, to determine level of audit assistance and locate the right experts.
Current situation	<ul style="list-style-type: none"> • Next visit Dutch experts to GRA foreseen early 2015.

Potential intergovernmental conflicts of interest

Taking into account that strong concerns have been raised, including by the European Commission and a number of European Union member states, about the role of the Netherlands in facilitating tax avoidance of MNCs, as well as the fact that the Netherlands is home to several of the large corporations operating in Ghana, there are several risks of conflicts of interest when the Dutch government sends experts to get directly involved in the administration of taxation of MNCs in Ghana, including risk assessment, case selection and audit techniques.

Firstly, there is a risk that the Dutch government could have a focus on the interests of MNCs with ties to the Netherlands, including their interest in maximising profits, rather than the empowerment of the Ghana Revenue Authority to tax these MNCs. This could place the Dutch expert in a conflict of interest situation. Even in the case that company names were kept confidential from the Dutch expert, and all cases concerning Dutch companies were excluded from the training, there is still a potential conflict since the training would presumably be aimed at developing a method for auditing MNCs in general.

Secondly, another potential conflict of interest relates to the question of whether the Ghanaian tax authorities would receive training to question some of the tax structures which MNCs use in the Netherlands as potential causes of tax avoidance. This risk is particularly high in the case of the Netherlands, since this is a country that has a high number of potentially harmful tax practices.

The potential of the project

Assuming that the above mentioned issues regarding leadership and conflicts of interests have been, or could be, solved (which, especially in the case of conflicts of interest, will not always be the case), and to the extent the TIWB project could constitute a joint effort by the expert and the Ghanaian tax administration to ensure that MNCs pay their fair share of taxes in Ghana, this could have a positive impact, and bring important skills to Ghana. The issues of focus mentioned in the internal OECD documents include '[tax] rulings', which is a complicated issue with which developing countries could undoubtedly use support (if they even want to engage in this practice). However, while the Netherlands undoubtedly have more resources and knowledge on the issue of taxing MNCs, including tax rulings, it should be kept in mind that there is currently a dispute ongoing between the European Commission and the Netherlands, regarding a tax ruling issued in the Netherlands (see Box 1). It is thus important to keep a critical awareness about the exact skills that are transferred to Ghana.

The France-Senegal TWIB pilot project

The France – Senegal economic relationship

France is the largest investor in Senegal and, according to the French government, “our companies represent nearly 25% of the country’s GDP and cover almost all sectors of the Senegalese economy.”¹⁴⁹ For example, the French oil company Total is the largest fuel distributor in Senegal, and in the telecommunications sector, France Telecom (Orange) is the largest shareholder of Sonatel.¹⁵⁰ The French presence in Senegal also includes agriculture companies, mining, cement, construction, hotels, and insurance companies, among others. Two of the largest banks in Senegal – SGBS and BICIS – are subsidiaries of the French companies Société Générale and BNP Paribas respectively.¹⁵¹

According to the embassy of France in Senegal, some of its functions in Senegal is that it “supports French companies established locally” and “pays special attention to all economic, financial and sectoral issues affecting the state, large French companies, financial operators...”¹⁵² The French embassy notes about Senegal that: “Although the socio-economic indicators of the country are still very low (more than half the population still lives on less than \$ 2 a day), the business opportunities in some sectors (ICT, financial services, tourism, agriculture) or regions [...] remain attractive for foreign capital.”¹⁵³

Some of the large French MNCs which are present in Senegal have been the object of controversy due to their tax arrangements. For example, the large banks Société Générale and BNP Paribas were both a key focus of a tax analysis of French banks carried out by Oxfam France, CCFD and Caritas France. The report found that both banks declare more than 30% of their international profits in countries that can be considered tax havens.¹⁵⁴

Sonatel and its largest shareholder, France Telecom (Orange), were part of a media discussion in Senegal in February 2016, when Senegalese media wrote that the company had underreported its revenues by at least 400 billion CFA francs (XOF) over three years.¹⁵⁵ Sonatel denied the accusations, stating that “this information is unfounded [...] in accordance with applicable law, Sonatel [...] respects the legal obligation to bring to the attention of its shareholders and the tax authorities of the true financial information delivered transparently in a widely circulated annual report.”¹⁵⁶ Sonatel has since started a legal procedure against the media outlet Le Quotidien.¹⁵⁷

The French tax system

The French tax system includes substantially fewer harmful tax practices than, for example, the Netherlands.¹⁵⁸ France also issues substantially less secret tax rulings, or ‘sweetheart deals’, to MNCs.¹⁵⁹

France does have a higher number of tax treaties with developing countries (including with Senegal) than, for example, the Netherlands, which means a lowering of the tax rates charged on money going from developing countries to France.¹⁶⁰

Senegal and taxation of multinational corporations

Senegal offers a range of tax incentives. As PwC notes: “There are a wide range of investment laws (i.e. negotiations with the government to set up a specific tax regime different from common rules) for investments greater than XOF 250 billion, including the mining code and the petroleum code, among others.”¹⁶¹ The losses due to tax incentives are difficult to estimate, but an ActionAid report points out that Senegal has previously, in 2008 and 2009, lost income equivalent to several percentage points of its GDP through tax incentives.¹⁶²

Senegal’s transfer pricing legislation was changed in 2013 and, according to EY, now complies with the OECD guidelines.¹⁶³

The TIWB Pilot Project

According to the internal OECD documents (Figures 5 and 6), the TIWB pilot project carried out by France and Senegal focused on the subject of exchange of information and how to use this in audit practice. Also in this case, the internal OECD documents give rise to questions, which are discussed below under the title ‘Analysis’.

Figure 5: November 2014 extract from an unofficial OECD document from the France-Senegal TIWB pilot project.¹⁶⁴

See explanation on page 17 under the title 'The pilot projects'

Pilot 7	Sénégal – France
Subject	<ul style="list-style-type: none"> • EOI in relation with audit practice MNE's (<i>how to use EOI-requests in audit practice</i>)
Procedures followed	<ul style="list-style-type: none"> • TIWB request based on existing contacts Sénégal – OECD - France; • Because of existing relations between France and Sénégal procedures were taken care of by those parties; • ToR drafted by DGFIP and discussed with Secretariat; • Secr. advised on draft ToR, after which DGFIP adjusted ToR; ToR are finalised, defining scope of programme.
Deployment agreement	<ul style="list-style-type: none"> • Thus far only ToR were drafted by France, describing scope of the programme; no involvement of Sénégal in draft of ToR; • No deployment agreement was drafted; ToR are sufficient according to parties involved; • Secretariat commented on ToR and made suggestions to adjust the text (<i>with elements like fiscal confidentiality, conflict of interest</i>); • Comments Secretariat on draft ToR that TIWB-experts will need to have access to tax payer files (= <i>specific feature of TIWB-assistance</i>); is now mentioned specifically in ToR, taking into account constraints of legislation in Sénégal and/or France, preventing foreign experts to have such access.
Missions	<ul style="list-style-type: none"> • No missions have taken place to date yet; first mission planned in November 2014; • Expert of French Tax Administration has been appointed to conduct the TIWB-programme.
Role Secretariat	<ul style="list-style-type: none"> • Limited role on process, because parties did have existing relationships and matchmaking role by Secretariat was not needed; • Advice and direct involvement Secretariat throughout whole process on content when required by parties;
Costs and funding model	<ul style="list-style-type: none"> • Not known, because not mentioned in ToR;
Constraints experienced in practice by experts	<ul style="list-style-type: none"> • No complete understanding of TIWB-concept with parties; scope TIWB has to be audit-related, meaning EOI-programme in direct connection with audit cases (<i>not to conduct TIWB-programme in/ with competent authority Sénégal</i>); • Aspects on fiscal confidentiality and conflict of interest were underestimated and needed to be highlighted in ToR; • Legal restrictions in deploying foreign experts in tax administration Sénégal to be overcome; French and Sénégal legislation prohibits foreign nationals to work within the Sénégal Tax Administration (<i>common feature for Francophone countries/legislation</i>);
Results/outcome	<ul style="list-style-type: none"> • No results/outcome pilot yet, because first mission has not yet taken place;
Lessons learnt	<ul style="list-style-type: none"> • Need to clarify concept of TIWB to all parties (<i>TIWB about audit practice and audit related activities</i>); • At initial stage scope of requested programme to be defined very clearly; direct 'hands-on' involvement Secretariat needed; • Secretariat has to explain and emphasise to all parties relevance of issues related to fiscal confidentiality and conflict of interest; • Specific interest Secretariat for legal (im)possibilities to deploy foreign experts in tax administrations host countries.

Figure 6: December 2014 extract from an unofficial OECD document from the France-Senegal TIWB pilot project.¹⁶⁵

See explanation on page 17 under the title 'The pilot projects'

Pilot 7	Sénégal – France
Subject	<ul style="list-style-type: none"> • EOI in relation with audit practice MNE's (how and when to apply EOI-requests in audit practice)
Procedures followed	<ul style="list-style-type: none"> • TIWB request resulted from existing contacts Senegal – France; • Because of existing relations between France and Senegal procedures were taken care of by those parties (meetings and contacts DGFIP, MAEDI) with Secretariat in advisory role; • ToR set between France and Senegal with Senegal in the leading role ; • Secretariat advised on draft ToR after which ToR were finalised by involved parties.
Deployment agreement	<ul style="list-style-type: none"> • Setting the ToR for the TIWB-programme appeared to be sufficient to set out the scope; no deployment agreement required;
Missions	<ul style="list-style-type: none"> • First mission by TIWB-experts done in early December 2014 by experts of French Tax Administration.
Role Secretariat	<ul style="list-style-type: none"> • Limited role on process, because parties did have existing relationships and matchmaking role by Secretariat was not needed; • Advice Secretariat on ToR given as required by parties;
Costs and funding model	<ul style="list-style-type: none"> • Not known, because not mentioned in ToR;
Constraints experienced in practice	<ul style="list-style-type: none"> • Defining scope TIWB took some time; EOI-programme in direct connection with audit cases (not to conduct TIWB-programme in/with competent authority Senegal and keep focus on audit related issues); • Aspects on fiscal confidentiality and conflict of interest to be highlighted in ToR; • Legal restrictions in deploying foreign experts in tax administration Senegal to be overcome;
Results/outcome	<ul style="list-style-type: none"> • Positive meetings with Tax Administration • Understanding of tax administration's organisational structure, legal issues related to confidentiality, status of Senegal's EoI aspects.
Lessons learned	<ul style="list-style-type: none"> • Need to clarify concept of TIWB (TIWB about audit practice and audit related activities); • At initial stage scope of requested programme to be defined very clearly; direct 'hands-on' involvement Secretariat needed; • Specific attention needed for issues related to fiscal confidentiality and conflict of interest; • Specific interest Secretariat for legal (im)possibilities to deploy foreign experts in tax administrations host countries.
Current situation	<ul style="list-style-type: none"> • Initial scoping mission done in early December 2014. • Next mission scheduled for January/February 2015 to follow up on EoI procedures based on audit needs.

Analysis

Leadership and scope of the project

The subject of the France-Senegal project differs from UK-Rwanda and Ghana-Netherlands since it focuses on exchange of information whereas the others focus on 'transfer pricing'. If the project had simply been about increasing the access to information of the Senegalese tax administration, this would have been a less sensitive situation compared with the situation where a French expert gets direct access to the tax administration and taxpayer files in Senegal. However, the first internal OECD document from November 2014 indicates that the '[OECD Secretariat] advised on draft [Terms of Reference], after which [the French Direction générale des Finances publiques] adjusted [the Terms of Reference]' and that comments by the Secretariat said that 'TIWB-experts will need to have access to tax payer files (= specific feature of TIWB-assistance); is now mentioned specifically in [Terms of Reference], taking into account constraints of legislation in Sénégal and/or France, preventing foreign experts to have such access'. The document furthermore indicates 'no involvement of Sénégal in [drafting of Terms of Reference]'. In the second internal document, from December 2014, this text is changed to say '[Terms of Reference] set between France and Senegal with Senegal in the leading role'. Therefore, it is important to note that the first internal document only covers a limited period of time (until November 2014). The first internal document also mentions that 'first mission has not yet taken place'. The first document does, however, raise questions about whether the host country Senegal, or even France, were actively requesting a project that involved giving foreign experts access to taxpayer files. The first internal document does indicate that the France-Senegal pilot project did not follow a process where the TIWB project with direct access to taxpayer files was initiated on the basis of a request from the host country.

Legal obstacles

Both of the internal OECD documents highlight that the direct access to taxpayer files gave rise to legal issues. Specifically, the documents mention that 'Legal restrictions in deploying foreign experts in tax administration Senegal to be overcome'. The first document further adds: 'French and Sénégal legislation prohibits foreign nationals to work within the Sénégal Tax Administration (common feature for Francophone countries/legislation)', and highlights that 'Specific interest Secretariat for legal (im)possibilities to deploy foreign experts in tax administrations host countries'.

It is of concern that there are indications that this process was not initiated after a request by the host country. It is also very concerning that the internal document mentions the legal restrictions in Senegal as an issue 'to be overcome'. Again, it should be noted that the internal documents reflect the situation as of December 2014, and that the situation could have changed since then.

Potential intergovernmental conflicts of interest

France has fewer potentially harmful tax practices than many other EU countries, and therefore the general risk that MNCs operating in Senegal use structures in France to avoid taxes is lower than in the case of, for example, the Netherlands. France is, however, the biggest investor in Senegal. Its companies are – according to the French government – active in almost all economic sectors in the country. Since it is also the stated policy of the French government to support its companies in Senegal, the French expert could end up in a conflict between the interests of helping French companies maximise their profits, and helping the Senegalese government increase its tax revenues. In the case where the Senegalese tax administration may begin a process to claim a larger part of the profit of a French company, France and Senegal could also end up in a conflict because the two governments might want to claim (and tax) the same profit. Since there is broad international agreement that the same profit should not be taxed by two governments, France and Senegal would in this case be caught in a dispute, and the country that decided to back down would lose corporate tax income. Even in the case where all French companies were exempted from the audits performed under the project, this conflict could still occur as the French expert would have influence on the general audit practices of Senegal, including the process of deciding which part of the profit to claim from MNCs. This situation can result in a potential conflict of interest for the French expert.

The potential of the project

Assuming that the above mentioned issues with leadership and conflicts of interests have been, or could be, solved (which, especially in the case of conflicts of interests, will not always be the case), and to the extent the TIWB project could constitute a joint effort by the expert and the Senegalese tax administration to ensure that MNCs pay their fair share of taxes in Senegal, this could have a positive impact, since France undoubtedly has more resources and knowledge on the issue of taxing MNCs than many developing countries, and this knowledge could be valuable to Senegal. According to information from the OECD, this project has also until now resulted in an additional USD 12.3 million in tax revenue in Senegal.

While it seems the project has a clear potential to improve (and already has improved) the tax administration of MNCs in Senegal, it is still important to note that the issue of how to tax MNCs is not always straightforward, and it is by no means certain that France has all of the right solutions on how to ensure that MNCs pay their fair share of taxes in Senegal.

Also in the case of France and Senegal, it is important to maintain a critical awareness about exactly what skills are transferred to Senegal.

Final comments, conclusion and recommendations

“Taxation is not a technical matter. It is pre-eminently a political and philosophical issue, perhaps the most important of all political issues.”

Thomas Piketty¹⁶⁶

Developing countries need support...

As mentioned in the section ‘The debate on capacity development and technical assistance on tax’, more support has to be devoted to improving developing countries’ capacity to collect taxes. This could increase their domestic resource mobilisation and reduce their dependence on foreign aid. As the tax expert Francis Weyzig affirms, “tax revenues are to be considered [a] more sustainable source of financing for development and generally have a more positive impact on developing country governance than aid.”¹⁶⁷

Developing countries need to improve their capacity to tax and audit MNCs in order to increase their revenues and avoid the siphoning of resources. As Christian Aid points out, “tax administrators in many developing countries lack the resources needed to monitor trade between related enterprises in a way that will let them know when things are going wrong [whereas] MNCs have the resources to carry out complicated global transactions and procedures which tax administrations in developing countries may find difficult to trace.”¹⁶⁸ It is crucial that revenue authorities in developing countries receive good guidance on all the alternatives available to strengthen taxation of MNCs.

...but the process must be led by the developing countries

On paper, there seems to be broad agreement that developing countries must have the ownership and leadership of their own development. This is, for example, a core element of the Principles for International Engagement in Supporting Developing Countries in Revenue Matters (see the chapter ‘International Principles for Aid Effectiveness and Taxation’ above), as well as the original aid effectiveness principles,¹⁶⁹ both of which the OECD has played a central role in developing. It is also a central part of the TIWB Toolkit,¹⁷⁰ which the OECD Secretariat has drafted.

However, the documentation presented in this report indicates that papers might not always match practice. In fact, as mentioned above, the internal OECD documents seem to indicate that neither Rwanda, Ghana nor Senegal were leading the initial development of the TIWB pilot projects in their countries, at least in the early phases when the concepts were hatched out. As mentioned above, it should be noted that the internal documents only cover a limited period – until the end of 2014 – and it could be the case that TIWB has resolved this issue since then. There are however also more recent examples of lack of developing country leadership on issues relating to international tax support. One example concerns the Addis Tax Initiative – an international partnership of developed and developing countries to promote capacity building on tax issues. The initiative includes both France, UK and Netherlands,¹⁷¹ with the latter two being among the countries initiating the partnership.¹⁷² The Independent Commission for Aid Impact (ICAI), in its recent report, highlighted that “[w]hile the Addis Tax Initiative is described as a partnership, the preparations leading to its launch were donor-led and top-down in nature, rather than consultative or based on an analysis of developing country needs. Progress in getting DFID partner countries to sign up to the Initiative has been slow (...) even through our survey suggests that there is appetite from developing countries for more donor support for domestic resource mobilisation.”¹⁷³

Lastly, it might be a mere coincidence that all the experts deployed in the pilot projects discussed above have come from the donor country. In any case, it is important to ensure that developing countries have the freedom to choose the experts they find best for the job – in addition to deciding which jobs they would prioritise – and avoid a situation in which donations for TIWB projects come with the condition that the experts deployed should be from the donor country. In this context, it is positive that the TIWB Secretariat and Governance Board has a high awareness about the importance of offering South-South cooperation as part of TIWB. However, there are still signs that some of the support for TIWB might in fact be ‘tied aid’, where funding is linked to experts from a specific country (see the UK-Rwanda pilot project).

Respecting national legislation and interests is central

One reason why developing country leadership is key is the importance of ensuring that TIWB projects are fully in line with national interests and priorities. The donor country, or the country supplying the expert, might have opinions about taxation which are not necessarily shared by the public and government of the developing country. But tax assistance should never become a tool for foreigners to influence tax practices of developing countries based on their own agendas.

The fact that TIWB involves giving foreigners direct access to developing country tax administrations can furthermore create conflicts with national legislation or practices, which in some cases can prohibit this (see for example the case of the France-Senegal pilot project above). In this case, it is important that conflicts with national legislation are not simply seen as obstacles to be 'overcome', and that any changes to, or circumventions of, the legislation only take place after a transparent national democratic process has confirmed that this is indeed in the interest of the developing country.

Conflicts of interest must be avoided

It is concerning that DFID doesn't find that PwC's role as manager of the TIWB pilot project in Rwanda constitutes a conflict of interest. While the set-up has since been changed, the lack of recognition of the conflicts of interest increases the concern that something similar might reoccur in the future.

In the case where the expert being deployed is a current or former employee of a foreign country, and where this country has significant corporate interests in the developing country in which the project takes place (as is the case for all three cases discussed in this report), conflicts of interest can occur at several levels.

1. Firstly, the expert might be faced with the conflict between the interest of ensuring that MNCs from his/her country can earn high profits in the developing country, and of ensuring that the developing country tax administration is fully able to combat tax avoidance (which could mean that the MNCs in the country will have to pay a higher amount of taxes).
2. Secondly, if the expert advises the developing country tax administration to claim larger parts of the profits of MNCs as subject to taxation in the developing country, it can result in less profits being available for taxation in his/her own country (because of the international principle that the same profit cannot be taxed twice).

3. And lastly, in the case where the expert's home country has harmful tax practices in its own legislation, the expert can be faced with the conflict between helping the developing country tax administration detect causes of corporate tax avoidance, and defending the legitimacy of his/her country's own policies.

While no conclusions can be drawn about whether the expert would in such a case prioritise the interests of his/her own employer or the interests of the host country, a conflicts of interest is, nonetheless, a problem that would put the expert in a difficult situation.

Confidentiality agreements and anonymisation of tax cases are tools which are currently used in TIWB cases. However, since TIWB projects are not simply aimed at solving a few specific cases, but rather on changing the developing country's general tax administration practices, the projects will also impact cases which are not handled as a direct part of the project, and thus confidentiality and anonymisation of cases will not necessarily remove the conflicts of interest. A more secure approach would be to clearly identify experts and actors that have a high risk of conflicts of interest (which could, for example, be experts that are current or former employees of companies engaged in tax advising for MNCs, or of governments that have a high amount of harmful tax practices in their legislation, and/or have a large amount of corporate interests in the developing country receiving the assistance). Although these experts and actors might indeed have a great knowledge about tax issues, they are not necessarily the best suited for being directly involved in TIWB projects. It is important that the risk of conflicts of interest is clearly and openly communicated to developing countries (both the government and the public), and that conflicts are avoided. In some cases, this would entail that some experts and actors should not be involved in TIWB projects at all.

One issue that has been raised as a potential problem for TIWB is that the availability of experts is limited, and that it might in some cases be difficult to find suitable experts to deploy. This situation could increase the risk that potential conflicts of interest are given lower priority than the objective of increasing the overall number of TIWB deployments.

National democratic governance must be a part of the process

It is important to recognise that taxation is a highly political issue, in developing countries as well as developed countries. So-called capacity development and technical assistance programmes should not alter the national tax system in developing countries (including the procedures for administering tax collection from MNCs) without the necessary public and political debate at the national level. The issue of capacity development and technical assistance should also be anchored in a broader assessment of, and debate about, the challenges faced by the tax administrations in developing countries, as well as the possible solutions.

The issue of democratic participation is also included in the Principles for International Engagement in Supporting Developing Countries in Revenue Matters, which state that donors should “Encourage broad-based dialogue on revenue matters that includes civil society, business, and other stakeholders”. To be fully effective, such a national dialogue should not only be initiated after a TIWB project has been initiated, but also include the question of whether a TIWB project is desirable in the first place. Giving foreigners direct access to the tax administration in a developing country can be a controversial issue, and it is therefore important that national stakeholders are informed and allowed to participate in a dialogue about this.

At the international level it is also important that the broader public has access to information about the TIWB process, including deployments, proposals, actors involved, funding, and outcomes. In this context, it is positive that the TIWB Secretariat is in the process of launching a new website about the initiative, which will hopefully provide a significant increase in the level of transparency around which TIWB cases are planned and ongoing, as well as details of lessons learnt from the projects. In a best case scenario, the TIWB process would include independent evaluations of the projects with publicly accessible summaries.

Who will ensure that TIWB projects adhere to basic principles?

The points raised above lead to the central question: Who will ensure that TIWB projects adhere to certain basic principles, including aid effectiveness principles and avoidance of conflicts of interest? While the leadership of each individual TIWB project should be with the developing country receiving the assistance, adherence to basic principles should not be their responsibility alone. To ensure that all TIWB projects are fully in line with principles, a central, systematic, impartial mechanism fit for this purpose ought to be a part of TIWB. But where does this responsibility currently lie?

The role of the TIWB Secretariat

As mentioned in the section ‘Overall results of the pilot phase (above)’, ‘TIWB’ includes both ‘pure’ TIWB projects, where the TIWB Secretariat is involved, as well as ‘TIWB style projects’, where the Secretariat is not directly involved. Especially for the latter, it will be difficult for the Secretariat to ensure that TIWB projects which they are not involved in, match basic principles. In this context, it might not be helpful that the Secretariat only has a quantitative target of reaching 100 deployments by 2019 (see the section ‘Objective, mandate and goal’), but not a qualitative target (which could, for example, be to ensure that all TIWB projects comply with certain principles). This entails the risk that projects which have not been properly checked might still be carried forward with the focus on increasing the number of TIWB projects and achieving the quantitative target.

For the projects where the TIWB Secretariat is directly involved, there is also a question about which role the Secretariat will take. The pilot projects discussed above indicate that there were a number of problems with the pilot projects – at least in the early phase which is covered by the internal OECD documents presented. The documents indicate that in some cases (especially in relation to leadership), the Secretariat not only failed to address the issues, but to some extent might have been part of the problem (see the ‘Analysis’ of the France-Senegal pilot project, above). Again, the internal documents only cover a limited time period – until the end of 2014, and there have since been changes in the TIWB Secretariat. However, while managed jointly by the OECD and UNDP, the Secretariat remains hosted by the OECD, and there is still a risk that there will be a stronger focus on serving OECD Members, which are for the most part developed countries, than developing countries. Therefore, the role of the Secretariat in relation to supporting host countries and ensuring adherence to basic principles is an important issue to remain aware of. It is also important to ask the question: who guarantees that those TIWB projects, which the Secretariat is not directly involved in, comply with basic principles?

The role of the Governance Board

In theory, the Governance Board could take a role in relation to ensuring that basic principles are adhered to in all TIWB projects. However, as described in the section 'Secretariat, Management and Governance' (above), the role of the Governance Board currently appears to be more focused on promoting TIWB as such, rather than scrutinising plans and results and ensuring that the projects comply with the principles.

The role of the host country

If there is not a centralised mechanism to ensure that basic principles are respected (which would not be a good solution), and this task is instead left to the developing countries receiving the TIWB assistance, then it is absolutely vital that this is made clear to them; that they are in a strong leadership role in the project, and that they will be able to access materials about potential risks associated with TIWB projects. Although the TIWB Toolkit touches on some of the concerns related to confidentiality and conflicts of interest (see the section 'TIWB in practice' above), the coverage of the issue is only partial and, for example, does not contain the necessary detailed description of the central issues of potential conflicts between different country interests and between corporate tax advisors and tax administrations.

The role of the public

Regardless of where a mechanism to ensure adherence to basic principles is placed, public transparency will be vital in ensuring accountability and supporting such a mechanism. The information in the internal OECD documents provides a snapshot of TIWB pilot projects in the early phase. These kinds of documents would not normally be publicly available, and since both donor countries and host countries are often very cautious or even reluctant to discuss difficulties faced in cooperation projects, this provides a rare insight, which is nonetheless essential for the public's ability to ensure that TIWB projects meet basic principles.

It is positive that a new TIWB website will be launched soon, but it is also important that the information provided gives real insight into the TIWB projects and process, in order to allow the public real insight into the developments in their national tax system. Early information about upcoming TIWB projects, detailed project descriptions, updates and independent evaluations of TIWB projects with public summaries would also be an important tool to ensure accountability in the TIWB process, and to allow both developing countries and the public to learn from the experiences gained beyond the fact that tax revenues could have been increased.

Alternative ways that developed countries can help developing countries

Sending experts from their own countries to developing countries to participate directly in the actual tax administration of MNCs is not the only possible approach for developed countries to assist developing countries to collect taxes. Other types of capacity development and technical assistance, such as workshops or traineeships, can also have an impact and often entail less sensitivities, legal constraints, confidentiality requirements and risks of conflicts of interest. In fact, some of the projects highlighted as TIWB success stories were in fact based on workshops rather than sending experts into the tax administrations of developing countries (see the section 'Overall Results of the Pilot Phase' above).

Another obvious and very important way that developed countries can assist developing country tax administrators is by sharing the information they have about the MNCs. Today, even basic information about the economic activities and tax payments of MNCs is confidential and not accessible to the public.¹⁷⁴ Tax administrations can request information from each other, but developing countries often face great difficulties actually getting access to information. The same is the case for the secret tax rulings and other harmful tax practices that MNCs make use of to avoid taxes.¹⁷⁵ Since many of these structures and secret agreements are set up in developed countries, a lot of information, which could be extremely useful to developing country tax administrators, is located in developed countries. 'Tax Inspectors Without Borders' is, at the moment, mostly interpreted as an initiative to send people from countries with higher capacities to countries with lower capacities, but in theory the opposite could also be the case. If developing country tax administrators would be allowed to see behind the veil of secrecy which currently surrounds MNCs and their tax arrangements, they would be in a much better position to collect the right amount of taxes from these companies.

In addition to ensuring that developing countries are leading the design of projects in their own countries, it is also important that governments and other actors do not get so focused on the idea of sending foreign experts into developing country tax administrations and automatically exclude other approaches, which might be better suited and/or less problematic.

Last but not least, it is important to keep in mind that a lack of resources to employ and maintain staff is a general problem in developing countries. Rather than simply supporting training, donors could also provide developing countries with resources to employ more staff. Unless developing countries have the resources to tackle this underlying challenge, the training of tax administration staff might not have a long-lasting impact on the tax administrations in developing countries.

The need for global system change

TIWB focuses on tax administration based on existing laws and standards, but even in developed countries serious questions have been raised about whether the current global standards are actually fit for purpose. In the UK, fierce debate broke out when the government agreed a deal with Google to settle the company's taxes in the country.¹⁷⁶ Many found that the agreed tax payments were much too low, but a related concern is the fact that the standards are so unclear that the tax payments even became a case of bilateral negotiations between the government and the company in the first place. Linked to this concern is the fact that small developing countries will have difficulties getting good outcomes if they have to settle tax collections through negotiations with large MNCs, which can afford expensive lawyers and negotiators, and potentially assert strong pressure on the developing country to refrain from demanding substantial tax payments.

“Given recent scandals around Apple, Google, Amazon, and Starbucks not paying taxes in OECD countries themselves, what capacity is there to transfer? If there is, they may want to keep it at home and start using it.”¹⁷⁷

Pooja Rangaprasad

Financial Transparency Coalition

Another key question is how the global standards have been developed. For the last 50 years, the OECD, and in some cases the G20, have negotiated global tax standards¹⁷⁸ while more than 100 developing countries have been excluded from the negotiations.¹⁷⁹ Repeated attempts by developing countries to establish an intergovernmental tax body under the United Nations, where all countries participate as equals, have been rejected by OECD members, who wanted to keep the decision-making at the OECD.¹⁸⁰ The result is a set of global standards which have been criticised for being difficult to apply in developing countries (and to some extent in developed countries too), and in some cases outright disadvantage developing countries.¹⁸¹ This problem will not be solved by building the capacity of developing countries to implement the standards, and will remain an underlying problem for initiatives such as TIWB.

The role of the OECD

As mentioned in the section 'History of TIWB' (above), the project was run solely by the OECD during its pilot phase. While the OECD still today plays a central role in the management of TIWB, including as the host of the Secretariat and in relation to identifying experts available for TIWB projects, the project is now co-managed by the UNDP. Although this is an important improvement, the set-up still entails an overrepresentation of developed country interests. This is due to the fact that while the UN is accountable to all its members, both developed and developing countries, the OECD is accountable to its 35 member countries, of which the vast majority are developed countries.¹⁸⁰ The OECD's aim, as specified in the OECD's Convention,¹⁸¹ is to promote the interests of its members, including to “achieve the highest sustainable economic growth and employment and a rising standard of living in Member countries, while maintaining financial stability, and thus to contribute to the development of the world economy.”

The OECD also plays a number of different roles in the area of international taxation. As mentioned above (under 'The need for global system change'), the OECD has been the most central organisation in the development of the current global tax standards. The OECD also plays a central role in assistance projects aimed at introducing or updating tax legislation in developing countries (see above under 'The Broader Context'). With TIWB, the OECD now plays a central role in a project focused on the administration of tax laws in developing countries. While the OECD undoubtedly has substantial knowledge and expertise on international tax issues, and could play an important role in sharing such expertise with developing countries, it could be beneficial for developing countries to have a Secretariat which is independent of the OECD as the key manager of the TIWB project, in order to ensure that the initiative is managed in a neutral and unbiased way.

“As African civil society, we are surprised to see the strong involvement of European governments in our domestic tax administrations, including the presence of staff from European tax administrations inside the African tax administration offices. This raises the concern that our tax systems might be designed to match foreign interests, rather than the interests of the citizens of our countries”

Alvin Mosioma

Executive director, Tax Justice Network Africa¹⁸⁴

Conclusion

The internal OECD documents give a snapshot of TIWB pilot projects in the early phase, and indicate that sometimes, practice might not always match the principles and procedures written on paper. In particular, the internal documents raise serious questions about developing country leadership and conflicts of interest. This is information that would not normally be publicly available, and since both donor countries and host countries are often very cautious or even reluctant to discuss difficulties phased in cooperation projects, the internal documents provide a rare insight. These documents do, however, only cover a limited period of time – until the end of 2014. Since then the TIWB initiative has been further developed, and new structures and procedures introduced. It should therefore not be assumed that the situation at the end of 2014 reflects the situation today. In the TIWB Toolkit, there is a clear awareness of issues such as developing country leadership and avoiding conflicts of interest. However, TIWB still does not have a clear mechanism which can ensure that all projects included in the initiative comply with the defined standards. In the case of conflicts of interest, there is a dilemma between, on the one hand, limited availability of tax experts which can be deployed, and on the other hand the fact that some conflicts of interest are not easily resolvable (not even by anonymising the tax files). However, especially keeping in mind that the TIWB concept by design includes direct access to developing country tax administrations, which is a highly sensitive area, it is important to insist that conflicts must be avoided.

It should not be assumed that direct deployments of experts to developing country tax administrations is always the best solution. Important alternatives, such as less sensitive approaches, or not least the option of focusing resources on hiring and maintaining well-qualified staff in developing country tax administrations, should always remain on the table.

Lastly, public insight should not rely on unofficial internal documents, but rather it should be provided by increased transparency about the reality of TIWB projects. This will be vital for ensuring accountability of these projects in the future.

Recommendations

Building on these conclusions, this report makes the following recommendations regarding TIWB:

- 1. Leadership and ownership of developing countries must be ensured.** The developing country leadership must start at the project identification and development stage, and prevail until the end of the project, including when drawing conclusions about the outcome of the project.
- 2. Conflicts of interest must be avoided.** Current or former employees of governments with a high amount of harmful tax practices and/or substantial corporate interests in the developing countries receiving the assistance have a high risk of conflicts of interest. So do MNCs that have a direct financial interest in tax matters of the recipient country, as well as international tax advisors that have MNCs as clients. While these actors and experts can provide input and views for the process, the TIWB projects must be managed and implemented by institutions and individuals who are free of conflicts of interest. A clear mechanism to identify and analyse risks of conflicts of interest would be a first important step in this process.
- 3. TIWB must have a clear mechanism to ensure that basic principles are respected.** This is a necessity to ensure the TIWB projects match the principles on issues such as developing country leadership and avoiding conflicts of interest. This mechanism must apply to both the TIWB projects where the TIWB Secretariat is directly involved, as well as the other projects included in the initiative (including so-called 'TIWB-style projects').
- 4. TIWB should be managed by a neutral international secretariat.** The OECD's mandate is to promote the interests of its members, which are primarily developed countries. Therefore, the current structure of TIWB, with joint management by the OECD and UNDP, and with the OECD hosting the TIWB Secretariat, still entails an overrepresentation of developed country interests in the management of the initiative.

Together with regional bodies such as ATAF and CIAT, the OECD can be part of the assistance since it has a lot of capacity and know-how, and the role of its members as donors is key, especially for least-developed countries. However, the recipient countries must be the drivers and the international secretariat must be located in a neutral, open and inclusive body where all countries participate on an equal footing. The most obvious solution is to make the TIWB initiative fully managed by the UN.

5. South-South cooperation must be strengthened.

This should include, but not be limited to, increased possibilities of using developing country experts for capacity development and technical assistance in other developing countries.

Regional co-operation should be reinforced and available to all developing countries who want to pursue it as a way to build their capacity, as well as to strengthen their internal co-operation on tax matters. A number of important regional bodies and institutions already exist, including for example ATAF, CIAT as well as the intergovernmental institutions such as the African Union, the UN's Economic Commission for Africa, Economic and Social Commission for Asia and the Pacific, and the Economic Commission for Latin America and the Caribbean. These types of regional cooperation must be strengthened to allow developing countries to support each other, as well as explore possibilities for regional solutions.

6. The matching of experts and recipient country should be based on recipient country demand and happen through a neutral international coordinating body, or through regional coordination mechanisms. Developing countries must be able to select the experts they would like to work with, even in the cases where this expert might not be included in the 'pool of experts' offered by the TIWB Secretariat.

TIWB donors should not be approaching potential recipient countries directly, and support for TIWB should never be tied to conditions about which experts to deploy. The international Secretariat must be neutral and able provide support to developing and developed countries alike.

7. Deployment of foreigners into developing country tax administrations should not be a default option. There are many ways in which developed countries can support developing countries to ensure a well-functioning tax administration of MNCs operating in developing countries. Deployment of foreign experts into the tax administrations will not always be the best and most suitable solution, and other approaches, including workshops, traineeships, and increased sharing of information with developing countries are alternative approaches which should also be considered. Furthermore, the value and possibilities for applying resources to hire and maintain qualified staff in developing country tax administrations should always be considered.

Tax Inspectors Without Borders should also include options for developing country tax administrators to travel to developed country tax administrations to gain knowledge and access to information which can increase their ability to ensure that MNCs pay a fair share of taxes in their countries.

8. Proposals for changes in the tax systems of developing countries (including tax administration) must fully respect democratic processes, be transparent and subject to public debate. Issues such as taxation of MNCs are not only highly technical, but also highly political. Therefore, it is important that changes to developing country tax systems (including tax administration) are not simply considered an unpolitical technical matter that can be decided in a confidential agreement between a donor and a recipient country government. Parliamentarians, journalists and stakeholders must be able to follow every step of the process. This must include national civil society in the country where the capacity development or technical assistance is taking place. The democratic mandate of parliaments must be respected and changes to the national tax system must happen through transparent democratic processes.

In order to ensure this, transparency is also key. Although there has been a high level of public communication about TIWB as an initiative, concrete information about the actual projects have been hard to obtain. It is important that the public is provided with up-to-date and specific information about each project, its origin, its objectives, key elements, implementation plan, its outcome and the role of each of the actors involved in the project. Through independent evaluations with public summaries, the results of TIWB projects can become an important part of the public debate and ensure accountability.

9. Capacity development and technical assistance on tax matters cannot stand alone. Direct tax assistance to developing countries must be supplemented by a reform of the global tax rules and governance system. Developing countries must have a seat at the table when global tax standards and rules are negotiated, in order to ensure that their interests and concerns are fully represented, and that the global tax system works for all countries. Therefore, an intergovernmental body on tax matters should be established under the UN.

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Eurodad

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