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UNHAPPIER MEAL

Tax Avoidance Still on the Menu at McDonald's

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EFFAT

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Preface

We are a coalition of European and American trade unions, representing 15 million workers in the public and private sectors – including the fast-food industry – in 40 countries, who fight for high-quality jobs with sustainable wages and against illegal and immoral corporate wrongdoing, including tax avoidance and social dumping.

Three years ago, we published the *Unhappy Meal* report that revealed how McDonald's avoided paying €1 billion in corporate tax in at least a dozen EU countries between 2009 and 2013. Three years later, in the face of heightened public scrutiny and multiple investigations by European regulators into the company's tax practices, has McDonald's improved these practices?

Sadly, the response is no. In fact, the situation has got worse rather than better.

Since the 2015 revelations about McDonald's abusive tax structure, the company has only made these structures more complex and opaque. The company has also increased its reliance on shell companies and tax havens – many with links to the U.K. – with the active support of global equity funds and franchising partners.

For the past three years, while EU lawmakers prompted by tax justice advocates designed new ways to crack down on tax dodging, McDonald's has reshuffled its corporate structure, placing key components outside of the reach of the EU, and in well-known business-friendly tax locales to prevent scrutiny of its accounts, including taxes owed and paid.

We hope this *Unhappier Meal* report will lead to new investigations into McDonald's tax practices, practices that not only cost European governments millions in unpaid taxes each year but do so while the company keeps wages low for the nearly two million McDonald's workers around the globe. We trust that the European Commission's ongoing state aid probe of McDonald's will, sooner rather than later, force the company to reimburse parts of the public money it owes.

We also hope this report serves as a reminder of why governments must adopt global public country-by-country reporting and adopt other anti-tax avoidance regulations if they are indeed serious about clamping down on letter-box companies and other opaque structures that aid in tax avoidance.

Ahead of the EU elections in May next year, it is vital to stop corporations from violating the letter and spirit of the law with impunity.

We are very grateful to U.S.-based Change to Win and French law firm Turquoise for putting this report together.

We hope it motivates action.

EPSU, EFFAT, SEIU.
Brussels, 14 May 2018

Executive Summary

Since 2015, McDonald's has come under increasing scrutiny from European national governments, the European Parliament and the European Commission for its use of a Luxembourg-based corporate structure to hold its intellectual property and receive royalties to avoid paying corporate taxes in Europe. This report provides insight into McDonald's reliance on tax treaty loopholes to avoid paying tax on profits from royalties sent to its Luxembourg tax base, which paid, on average, only 1.7 percent in corporate tax between 2009 and 2015. It also examines McDonald's response to the public scrutiny of these tax optimization strategies and provides an update on their use in its current operations.

The report finds that McDonald's recent restructuring dismantled the corporate structure that had been under sustained investigation since 2015 and replaced it with a structure that is more opaque, inhibiting public scrutiny of the company's accounts. As part of the restructuring, McDonald's:

- **Relocated** its international tax base from Luxembourg to the United Kingdom;
- **Transferred** the headquarters of McD Europe Franchising Sàrl from Luxembourg to Delaware, in the United States, a jurisdiction with very limited disclosure requirements;
- **Interposed** a range of subsidiaries in multiple jurisdictions between the newly named McD Europe Franchising LLC and its holding subsidiaries with the effect of reducing the level of transparency and information available in McDonald's public filings; and
- **Continues** to rely on multiple subsidiaries or related companies in countries listed on the European Union's grey list of non-cooperative jurisdictions including the Cayman Islands, Bermuda and Hong Kong, and partnering with other companies that similarly rely on such jurisdictions including in Guernsey for McDonald's Nordic restaurants and in the British Virgin Islands and the Cayman Islands for McDonald's Chinese restaurants.

This new corporate structure effectively inhibits public scrutiny, as many of the new entities have no or minimal required public financial disclosures, including of taxes owed and paid. Further, McDonald's particular decision to relocate to the U.K. after that country voted in a referendum to leave the European Union raises the possibility of McDonald's structuring its intellectual property holdings to minimize any oversight by the European Commission.

The wave of European security of McDonald's tax strategies followed the publication of a 2015 report by a coalition of European and American trade unions – EFFAT, EPSU and SEIU – and the U.K. anti-poverty campaign organization War on Want which detailed the tax avoidance strategies used by McDonald's in Europe to avoid paying over one billion euros in taxes. In the wake of that report, the European Commission opened an official state aid case on McDonald's tax deal with Luxembourg, the European Parliament publicly questioned company representatives at two separate tax hearings, French tax authorities reportedly billed McDonald's France €300 million in unpaid taxes and the U.S. Treasury entered into negotiations with Luxembourg to amend the U.S.-Luxembourg Tax treaty.

With systemwide sales in 2017 of US$90 billion, McDonald's is the world's largest fast food company. Europe is McDonald's largest market outside the U.S. Given the size and symbolic importance of McDonald's, it is crucial that European lawmakers and enforcement authorities remain attentive to McDonald's activities.

Introduction

In response to public outrage at widespread and rampant corporate tax avoidance, the European Union and Member states have attempted a bolder approach to enforcement and reform to ensure that large transnational corporations pay their fair share of taxes. Despite these efforts, these corporations have stayed one step ahead of lawmakers and enforcement authorities, restructuring their businesses and shifting assets and cash flows, introducing increased complexity and opacity to their corporate structures.

Since opening its first store in Des Plaines, Illinois in 1955, McDonald's has grown to become the world's largest fast food company and one of the world's most recognized brands. In 2017, its systemwide sales exceeded US$90 billion from its 37,000 stores around the world. It is the second largest private sector employer in the world with 1.9 million employees,[1] the world's largest distributor of toys through Happy Meals,[2] and one of the world's largest real estate companies.[3] McDonald's operates in over 100 countries and serves nearly 70 million customers worldwide daily.[4] Approximately one percent of the world's population visits a McDonald's every day.[5] Europe is McDonald's largest market outside the U.S.[6]

TABLE 1

McDonald's by the numbers

Systemwide Sales (2017)[7]	US $90.9 billion
Total Locations[8]	37,000
Employees[9]	1.9 million
Franchise rate[10]	90%
Daily customers[11]	69 million

This expansion to all four corners of the globe was made possible by its franchising model, and McDonald's profitability relies on licensing its intellectual property to franchisees rather than operating stores directly.

Today, franchisees operate more than nine in ten McDonald's stores. Its intellectual property is highly mobile and allows the company to flexibly structure its ownership of these assets in order to pay little or no corporate income tax on its royalty income.

In 2015, a coalition of European and American trade unions and a U.K. anti-poverty campaign organization released the *Unhappy Meal* report, which detailed the tax avoidance strategies used by McDonald's in Europe to avoid paying over €1 billion in taxes.[12] Three years later, this report examines McDonald's response to the increasing scrutiny of its tax optimization strategies and provides an update on the company's use of such strategies in its current operations. Following the announcement of the European Commission's investigation into McDonald's tax deal with Luxembourg in 2015, McDonald's substantially modified its corporate structure, increasing its complexity, and limiting the ability of independent parties to review its finances and tax optimization strategies. At the same time, McDonald's has been partnering with new developmental licensees that also make use of tax havens and secrecy jurisdictions. Given the size and symbolic importance of McDonald's, it is crucial that lawmakers and enforcement agencies remain attentive to McDonald's activities in this area.

McDonald's is not only under pressure for avoiding taxes in Europe, but is also facing criticism from community groups, regulators, and activists for its reliance on low wages and worker exploitation in its business model. Trade unions and workers regularly denounce precarious working conditions, low wages, zero-hour contracts, and labor law violations around the world as well as the use of strategies to discourage union representation. This has led the European Parliament's Committee for Petitions (PETI) to open an investigation into McDonald's employment practices.[13] McDonald's has also been criticized for its consumer practices,[14] non-sustainable environmental practices and its extractive rental practices in its franchising relationships.[15]

Role of franchising in McDonald's business and tax avoidance structures

> **Franchising** is a system in which separate undertakings – a franchisor and its franchisees – sign an agreement allowing franchisees to purchase the right to use the franchisor's concept, trade name, know-how, and other industrial or intellectual property. Franchisors also provide ongoing commercial and technical assistance to their franchisees. Franchisees typically pay franchisors up-front fees to participate in a franchise system. They also pay ongoing royalties, sometimes called service fees, which are usually based on a percentage of sales."
>
> — *Unhappy Meal*

As discussed in detail in the *Unhappy Meal* report, McDonald's profitability depends on its franchising model. Globally, more than 90 percent of McDonald's stores are operated by franchisees and the company's profit margin on franchise revenues is 82.3 percent, more than four times as high as its 18.2 percent margin for corporate store operations.[16] Figure A shows how royalties and licenses flow within an operating market such as France or Italy. Royalty payments from subsidiaries and franchisees are an important part of McDonald's tax optimization strategy in Europe and around the world.

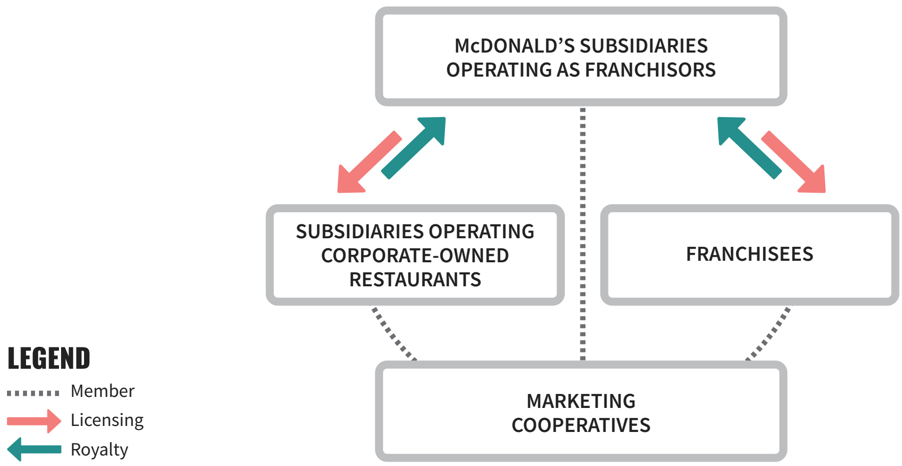
Because intellectual property and other intangible assets are highly mobile, the royalties and licensing fees that derive from them are commonly used by transnational corporations to minimize their tax liabilities. Despite efforts by the European Union and some national governments to crack down on regime and treaty shopping, transnational corporations are still able to flexibly structure these payments to take advantage of loopholes in national tax laws and tax treaties.

In May 2015, McDonald's announced a significant refranchising program to bring the global proportion of franchised stores from 81 percent to 90 percent by 2018.[18] According to the company, the more heavily-franchised business model would generate more stable and predictable revenue and cash flow and would require less resource-intensive support from McDonald's corporate headquarters.[19]

Since the announcement, the company has entered into agreements with several large corporate partners, also known as developmental licensees, to take over all or the vast majority of McDonald's store operations in several countries including China and Hong Kong (2,640 stores),[20] Taiwan (413 stores),[21] Singapore (120 stores),[22] and Malaysia (270 stores).[23] While the bulk of the refranchising has taken place in Asia, hundreds of stores in Europe have also been refranchised. For example, Premier Capital purchased McDonald's 66 Romanian locations in 2016[24] and Terra Firma Capital Partners Ltd. purchased 435 McDonald's locations in Denmark, Norway, Finland, and Sweden in 2017.[25]

FIGURE A

McDonald's Franchising Model in European Countries[17]



McDonald's tax avoidance structure revealed by the European Commission's investigation

As a result of the European Commission's ongoing investigation into McDonald's tax practices, the public was given a window into the complex corporate structures the company had put in place to avoid paying tax on billions of euros of royalties from its European markets. As revealed in the *Unhappy Meal* report, McDonald's had restructured its business in 2009 to route royalties from its operations in European markets to its subsidiary, McD Europe Franchising Sàrl, in Luxembourg. At the same time, the company's management moved from the U.K. to Switzerland.[26] This subsidiary, despite receiving billions of euros in royalties, paid almost no tax in either Luxembourg, where its headquarters was located, or in Switzerland and the U.S., where the subsidiary maintained branches.[27] Since establishing this structure, McD Europe Franchising Sàrl's corporate tax rate has fallen each year and was a mere 0.7 percent in 2015, the last year for which data is available.

As part of its investigation into Luxembourg's tax practices, the European Commission requested that Luxembourg provide it with details of the country's tax rulings with McDonald's. This request uncovered two tax rulings, received by McDonald's in 2009, as part of the restructuring of McDonald's business to create McD Europe Franchising Sàrl as its holding company for intellectual property in Europe.[29]

The first tax ruling exempted McD Europe Franchising's royalty income from corporate taxation in Luxembourg on the grounds that it would be taxable in the United States under the Luxembourg-U.S. tax treaty. This ruling covered the transfer of royalties to the U.S. branch, via Switzerland. It also required McDonald's to provide proof each year that these royalties had been declared and taxed in the U.S.

However, according to the European Commission, royalties transferred to the U.S. branch were not taxed in the U.S., as the U.S. branch did not have a taxable presence under U.S. law. As such, McDonald's was unable to provide the proof required by the first tax ruling. McDonald's then requested a revised tax ruling with Luxembourg clarifying that McDonald's was not required to provide such proof, and that the profits would be exempt from Luxembourg corporate tax regardless of its tax status in the U.S.

TABLE 2

McD Europe Franchising Sàrl, selected financial data, 2009-2015, USD millions[28]

Year	Turnover	Post-Tax Profits	Tax	Tax Rate
2009	785.8	8.4	3.8	30.9%
2010	896.0	54.6	4.9	8.2%
2011	1,025.2	174.9	4.7	2.6%
2012	1,008.8	172.5	3.2	1.8%
2013	1,064.9	284.3	4.2	1.4%
2014	1,180.2	540.4	5.6	1.0%
2015	1,041.9	540.6	3.8	0.7%
Total (2009-2015)	**7,002.7**	**1,775.7**	**30.1**	**1.7%**

The Luxembourg Tax authorities agreed in the revised tax ruling to exempt McDonald's from tax *"in full knowledge of the fact that the US (…) Branch is not subject to taxation in the United States."*[31] As a result, the royalties went completely untaxed in both Luxembourg and the U.S.[32] The fact that McDonald's asked for a tax ruling prior to publicly announcing its change in corporate structure[33] suggests that McDonald's was deliberately seeking to achieve non-taxation of its European profits.

The Commission determined in its preliminary view that this mechanism, which meant that McDonald's royalties were not taxed on either side of the Atlantic, may constitute state aid and therefore may be in contravention of Europe's competition rules.[34]

The *Unhappy Meal* report revealed that between 2009 and 2013 McD Europe Franchising Sàrl paid only €16 million in taxes, while receiving over €3.7 billion in royalties over that same period.[35] That report estimated that the lost tax revenue to European governments was over one billion euros. Using the same methodology, we estimate that the lost tax revenue to European governments has continued to increase, totaling €260 million in 2014 and €270 million in 2015.[36] This brings the total amount of lost tax revenue in Europe between 2009 and 2015 to €1.5 billion.[37] Unfortunately, McDonald's has since restructured its European subsidiaries, allowing it to avoid disclosing the financial documents and annual reports necessary to estimate lost tax revenue from 2016 onwards.

FIGURE B

European Commission's depiction of McDonald's tax arrangements prior to 2015[30]

Source: *European Commission, Press Release, December 3, 2015, http://europa.eu/rapid/press-release_IP-15-6221_en.htm*

McDonald's Facing Intense Scrutiny over Tax Arrangements

> The purpose of Double Taxation treaties between countries is to avoid double taxation—not to justify double non-taxation."[38]
>
> — *Margrethe Vestager*
> EU Commissioner for Competition

The release of the *Unhappy Meal* report in February 2015 began a period of significant public scrutiny of McDonald's tax avoidance practices. In May 2015, a second report titled *Golden Dodges* was published revealing that McDonald's aggressive tax strategies went beyond Europe's borders.[39]

Following the revelations in the *Unhappy Meal* report, the European Commission, European Parliament, and some national tax authorities began to launch formal inquiries into the burger giant's tax practices across Europe. In November 2015, the European Parliament's Special Tax Committee, initially set up in response to the 2014 LuxLeaks scandal which exposed the widespread misuse of tax rulings, held a hearing on the tax avoidance practices of McDonald's and other large multinationals.[40] McDonald's refused to answer basic questions about its effective tax rate in the countries in which it operates, prompting the European Public Service Union to call its responses evasive.[41]

The next month, European Commission antitrust regulators formally opened a state aid investigation into McDonald's specific tax treaties with Luxembourg. According to the European Commission's press release: *"[The Commission's] preliminary view is that a tax ruling granted by Luxembourg may have granted McDonald's an advantageous tax treatment in breach of EU State aid rules."*[42]

In March 2016, the company was again questioned by members of the European Parliament's Tax Committee at a hearing focusing on the illegal use of sweetheart tax agreements to avoid paying taxes. When probed on whether McDonald's would support public country-by-country reporting by large companies, McDonald's Vice President for Corporate Tax Irene Yates stated: *"Information should be kept confidential between tax authorities and not be made public. That could harm competition."*[43]

While McDonald's faced scrutiny at the European level, tax authorities in France, which ranks second to the U.S. in McDonald's systemwide sales,[44] undertook their own investigation of McDonald's tax avoidance strategies. As a result of their investigation, in April 2016, it was reported that the French tax authorities had billed McDonald's €300 million in unpaid taxes.[45]

In May 2016, the French tax investigators raided McDonald's headquarters in France following a complaint filed by works council employee representatives from a McDonald's subsidiary alleging tax fraud and money laundering.[46] As of April 2018, it appears that the criminal investigation is ongoing.

In June 2016, it was announced that there were ongoing negotiations between U.S. Treasury and Luxembourg officials to amend their bilateral tax agreements, in part to close loopholes created by the double treaty scenario under which McDonald's operated.[47] On the same day, the Luxembourg Ministry of Finance introduced Draft Law 7006 to outlaw these abusive tax avoidance structures between the U.S. and Luxembourg.[48] The day after, the U.K., which had previously announced it was making further substantial cuts to its corporate tax rates,[49] voted to leave the European Union in a national referendum.[50]

Following the intense scrutiny by European and country-level regulators and legislators, the public profile that the McDonald's case garnered by the press, the spectre of reform of Luxembourg tax treaties, and the looming exit of the U.K. from the E.U., McDonald's chose to significantly alter its corporate and tax structures by making them increasingly opaque and complex and by taking advantage of low visibility and potentially low tax jurisdictions.

McDonald's Makes Changes to its European Corporate Structure

Following the heightened scrutiny of its tax affairs in Europe, and the U.K. voting to leave the European Union, McDonald's moved to restructure its European businesses. In December 2016, it was reported that McDonald's was moving its non-U.S. tax base from Luxembourg to the U.K.[51] The new U.K.-based holding company would be responsible for receiving royalties from McDonald's operations outside the U.S. At the time, McDonald's did not disclose the name of this new subsidiary. This effectively dismantled the structure that had been under sustained investigations for years.

The ease with which McDonald's was able to rearrange its corporate structure and its management of royalties and intellectual property raises the prospect of shopping for favorable tax regimes and treaties. The incorporation of several new holding companies after the announcement of potential legal changes in jurisdictions such as Luxembourg is particularly troubling.

New structure lacks transparency

In restructuring its business, McDonald's closed its main subsidiaries in Luxembourg, transferred the headquarters of the remaining subsidiaries to the U.S., and opened a number of new subsidiaries in the U.K. to manage its intellectual property outside the U.S. The ownership structure between McDonald's Corporation and its holdings in Europe were also made substantially more complicated, as depicted in Figure C.

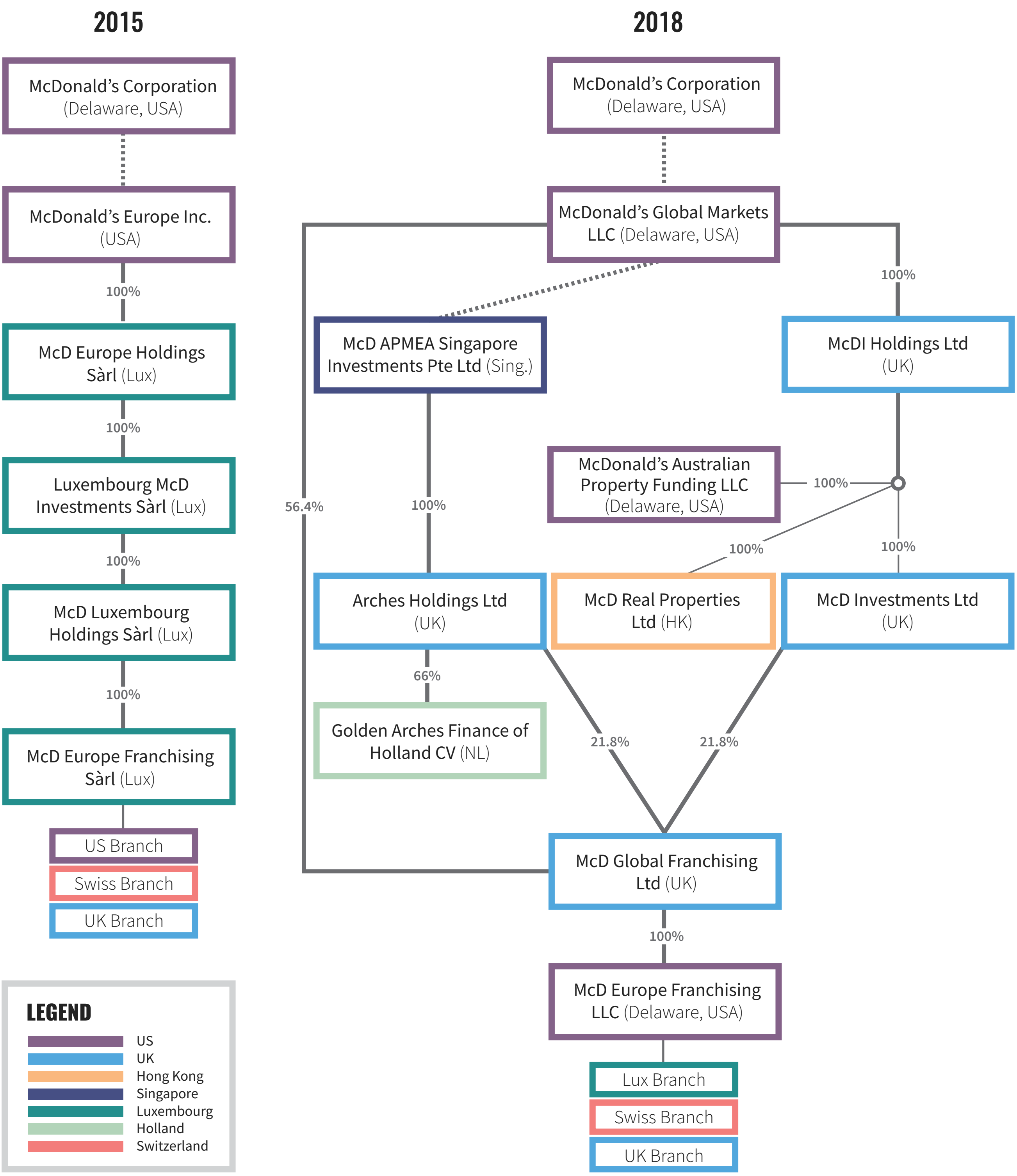
IIn December 2016, Luxembourg-based McD Europe Franchising Sàrl, the company targeted by the European Commission's investigation, transferred its head office from Luxembourg to its U.S. branch while maintaining branches in Switzerland and the U.K. and opening a branch in Luxembourg. McD Europe Franchising Sàrl was thus renamed McD Europe Franchising LLC with its registered offices located in the U.S. state of Delaware,[52] a jurisdiction notorious for its corporate secrecy rules.[53] This change means that financial information regarding this subsidiary is no longer available to the public, since under Delaware corporate law, the entity is not required to file publicly available annual reports with financial statements.[54]

As shown in Figure C, prior to 2016, McD Europe Franchising Sàrl had been owned via a chain of subsidiaries in Luxembourg. These Luxembourg holdings were dissolved in late 2017 and early 2018, indicating McDonald's no longer sees any benefits in having holding companies in Luxembourg.[55] McD Europe Franchising LLC, the entity replacing McD Europe Franchising Sàrl, is instead owned by multiple subsidiaries in the U.S., U.K., and Singapore.[56] The U.S. and Singapore are obviously not subject to the jurisdiction of the European Commission.

Further, the fact that McDonald's decided to relocate to the U.K. after that country voted in a referendum to leave the European Union raises the possibility of McDonald's structuring its intellectual property holdings to minimize any oversight by the European Commission. A few months before McDonald's began unwinding its Luxembourg structures to relocate to the U.K., the government announced additional cuts in its corporate tax rate to 17 percent, making it one of the lowest in Europe.[57] When McDonald's initially established its structure in Luxembourg in 2009, the corporate tax rate in the U.K. was 28 percent, a rate significantly higher than the current one.[58] As can be seen in the timeline, McDonald's incorporated several new entities in the U.K. following the Brexit vote.

FIGURE C

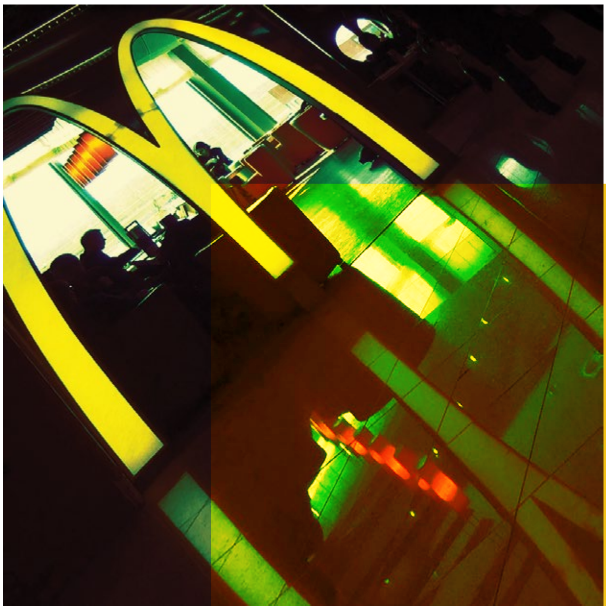
McDonald’s Intellectual Property Holding Structure in Europe



McDonald's complex ownership structure of these entities, and the shift in headquarters from Luxembourg to Delaware, have radically reduced the level of transparency and information available in McDonald's public filings. The name of McDonald's new international tax base in the U.K. is not disclosed in public filings. The new entities established in the U.K. have not made filings and disclosures in the U.K corporate registry that allow for independent verification of McDonald's new arrangements for royalties, intellectual property, and taxes.

A U.K. branch of McD Europe Franchising LLC was also established in 2016. This new U.K. branch describes its type of business as *"including but not limited to the management of franchise rights."*[59] As such, this U.K. branch of a Delaware company may be the entity responsible for managing McDonald's franchise rights in Europe. However, this entity is yet to file any financial statements that would allow verification of its role in receiving the billions in euros of royalties received by its predecessor companies.

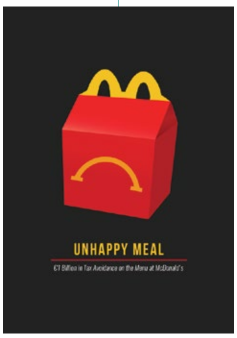
While McDonald's indicated that the profits of its new structure would be subject to British corporate taxes,[60] the actual structure set up by McDonald's does not appear to provide the capacity for independent, third-party verification of revenues, expenses, profits, and taxes paid. This restructure and the resulting lack of transparency suggest that McDonald's has shifted its subsidiaries to continue to avoid paying the appropriate taxes on royalties earned from its operations in Europe and elsewhere.



McDonald's European Tax Activity

Feb 25, 2015

A coalition of European and American trade unions – **EPSU, EFFAT** and **SEIU** – joined by the anti-poverty group **War on Want**, unveil a report – ***Unhappy Meal*** – about McDonald's avoidance of over €1 billion in corporate taxes in Europe over the five-year period, 2009-2013.[61]



Unhappy Meal

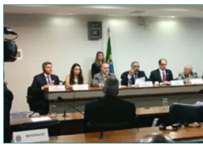
May 19, 2015

The report ***Golden Dodges: How McDonald's Avoids Paying its Fair Share of Tax*** is released by a coalition of global trade unions – **PSI, IUF** and **SEIU** – revealing McDonald's use of aggressive tax avoidance strategies in some of its largest markets.[62]

Golden Dodges


Aug 20, 2015

The Brazilian Senate holds a hearing focusing on McDonald's tax avoidance and workplace abuses.[64]


McDonald's testifies before Brazilian Senate

Sept 30, 2015

Three consumer associations – **CODACONS, Movimento Difesa Del Cittadino** and **Cittadinanzattiva** – file a complaint with the Italian tax authorities about the impact of McDonald's corporate tax structure in Luxembourg on Italian public finances and taxpayers.[63]

Nov 16, 2015

European Parliament's interrogates McDonald's representatives about the company's Luxembourg-based tax practices at the Tax Committee's first hearing.[65]

Dec 3, 2015

The EC announces that it has formally opened a state aid investigation into McDonald's tax deal with Luxembourg.[66]


The New York Times

E.U. Investigates McDonald's Tax Deal With Luxembourg

By JAMES KANTER DEC. 3, 2015

Dec 17, 2015

Works Council representatives at one of McDonald's French subsidiaries file a criminal complaint against McDonald's for tax fraud, money laundering, and misuse of corporate assets.[67]


HUFFPOST

ACTUALITÉS

18/12/2015 09:58 CET | Actualisé 05/10/2016 02:55 CEST

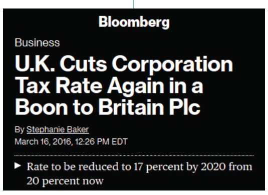
McDonald's visé par une plainte pour fraude fiscale

Mar 14, 2016

European Parliament interrogates McDonald's representatives at a second Tax Committee hearing about the multinational's tax practices.[68]

Mar 16, 2016

U.K. government announces plans to cut corporate tax rates to 17 percent.[69]


Bloomberg

Business

U.K. Cuts Corporation Tax Rate Again in a Boon to Britain Plc

By Stephanie Baker

March 16, 2016, 12:26 PM EDT

- Rate to be reduced to 17 percent by 2020 from 20 percent now

Apr 19, 2016

The press reports that French tax authorities have billed McDonald's France €300 million in unpaid taxes on profits funneled through Luxembourg and Switzerland.[70]

May 18, 2016

French police raid McDonald's headquarters in France after a probe is opened about alleged aggravated tax fraud and money-laundering related to the criminal complaint filed in Dec. 2015.[71]


Entrance to McDonald's France S.A.S

Jun 22, 2016

The U.S. Treasury announces ongoing negotiations with Luxembourg to amend the U.S.-Luxembourg Tax treaty.[72]

Jun 22, 2016

The Luxembourg Ministry of Finance introduces Draft Law 7006 to outlaw, potentially retroactively, the types of tax arrangements between Luxembourg and the U.S. that McDonald's is utilizing.[73]

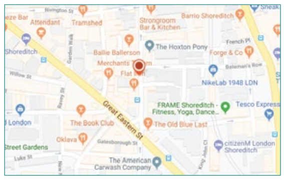
Anti-Brexit protesters in Manchester

Jun 23, 2016

U.K. votes to leave the European Union in national referendum.[74]

Aug 16, 2016
McD Global Franchising Limited is established in the U.K. Its sole shareholder is McD APMEA Singapore Investments Pte Ltd., a Singaporean company.[75]

Oct 10, 2016
Arches Holdings Limited is established in the U.K. Its sole shareholder is McD APMEA Singapore Investments Pte Ltd., a Singaporean company.[76]


McD Global Franchising Limited offices in London, UK.

Dec 8, 2016
McDonald's announces it will move its international tax base to the U.K. from Luxembourg.[77]

Dec 16, 2016
McDonald's transfers the headquarters of McD Europe Franchising Sàrl, the entity at the center of the European Commission's investigation, from Luxembourg to Delaware, U.S. The subsidiary is renamed McD Europe Franchising LLC and is not required to file public financial statements in Delaware.[78]

Dec 16, 2016
McD Europe Franchising LLC re-establishes a branch in the U.K., and its business is described as including, but not limited to, management of franchise rights.[79]

Dec 17, 2016
McDonald's transfers ownership of McD Luxembourg Holdings Sàrl from Luxembourg McD Investments Sàrl to a new U.K.-based subsidiary called McD Global Franchising Limited.[80]

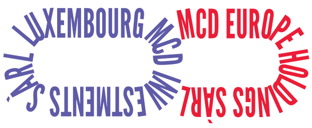
Dec 20, 2016
McDI Holdings Limited, a U.K. company previously operating as a partner real estate company in Australia, becomes McD Investments Limited (U.K.)'s sole shareholder and acquires a 21.8% interest in McD Global Franchising Limited (U.K.).[81]

Dec 21, 2016
McD Europe Franchising Sàrl, the subsidiary at the center of the European Commission's investigation into McDonald's tax practices, is removed from the Luxembourg corporate registry.[82]

Dec 30, 2016
McD Europe Franchising LLC establishes a branch in Luxembourg at the same address as the newly de-registered McD Europe Franchising Sàrl's former head office.[83]

Jan 11, 2017
McD Europe Franchising Sàrl's Swiss branch is transferred to McD Europe Franchising LLC.[84]

Aug 8, 2017
McD Global Franchising Ltd confirms its ownership is now split Luxembourg McD Investments Sàrl (56.5%), and two U.K.-based companies, Arches Holding Limited. (21.8%) and McD Investments Limited (21.8%).[85]



Dec 6, 2017
Luxembourg McD Investments Sàrl merges with McD Europe Holdings Sàrl, a subsidiary also registered in Luxembourg.[86]

Jan 17, 2018
McD Luxembourg Holdings Sàrl is deregistered in Luxembourg.[87]

Feb 1, 2018
McD Europe Holdings Sàrl is deregistered in Luxembourg.[88] Its 56.5% share in McD Global Franchising Sàrl now appears to be held by McD Global Markets LLC, registered in Delaware, U.S.[89]

McDonald's Reliance on Tax Havens

In addition to the changes to the intellectual property structure of McDonald's in Europe detailed above, McDonald's continues to make extensive use of tax havens in other jurisdictions. As it has progressively refranchised its business to developmental licensees around the world, McDonald's has chosen to partner with corporations that make similar use of low or zero corporate tax and secrecy jurisdictions.

McDonald's subsidiaries in tax havens

In 2015, the *Golden Dodges* report detailed the dozens of McDonald's subsidiaries around the world in tax havens and secrecy jurisdictions, many of which were not disclosed in McDonald's annual report's listing of subsidiaries.[90] Since then, it appears as though McDonald's has continued to make extensive use of tax havens in its corporate structure.[91] This includes several new subsidiaries in the Cayman Islands and Hong Kong, which feature on the recently-adopted E.U. "grey" list of non-cooperative jurisdictions.[92] At least two of these companies in the Cayman Islands were liquidated soon after incorporation, suggesting a deliberate and narrow role for these entities in a particular transaction or activity with the effect of avoiding scrutiny of those activities;[93] the others remain active according to the Cayman Islands' corporate registry.

In November 2015, McDonald's indicated to the European Parliament's Special Tax Committee that its use of subsidiaries in Hong Kong was related to its direct operation of stores there, saying, *"McDonald's has two active owned affiliates in Hong Kong where the Company owns and operates over 230 restaurants (…)."*[94] Despite this, there are now as many as eight entities in Hong Kong that are owned, in whole or in part, by McDonald's.[95]

At the next Committee hearing in March 2016, McDonald's was questioned about entities based in Bermuda, including McDonald's Owner/Operator Insurance Company Ltd.[96] These entities are incorporated in Bermuda despite McDonald's operating no stores in the country.[97] Bermuda is well-known as a jurisdiction where corporations can avoid paying taxes on insurance premiums collected in the U.S.[98] In answering the Committee's questions, McDonald's stated that, *"[n]either McDonald's Corporation nor any of its subsidiaries have any ownership interest in [McDonald's Owner/Operator Insurance Company Ltd]."*[99] However, further investigation shows that two directors of McDonald's Owner/Operator Insurance Company Ltd are current or former McDonald's Corporation executives.[100] McDonald's failed to provide any answer regarding other McDonald's-related entities in Bermuda.[101]

Moreover, McDonald's European corporate structure now involves a Singaporean company, McD APMEA Singapore Investments Pte Ltd, for which very little information is publicly available due to its incorporation in Singapore.[102] McDonald's also incorporated new companies in Delaware, including McD Global Markets LLC and McD DL Holdings LLC.[103] It is impossible to get a full accounting of McDonald's subsidiaries and related companies in tax havens which, by their very nature, do not require adequate disclosures of companies registered there.[104] However, McDonald's establishment of these new entities indicates that it is seeking to maintain its ability to avoid scrutiny of its arrangements.

Given the lack of transparency surrounding McDonald's new purported tax base in the U.K., it is crucial that the European Commission continue to monitor changes in McDonald's corporate structure to ensure that the company is not simply shuffling around its subsidiaries to avoid scrutiny in a complex corporate shell game.

McDonald's operational partners make significant use of tax havens

As mentioned earlier, McDonald's has moved aggressively in recent years to increase the proportion of its restaurants that are franchised, in particular contracting with large developmental licensees to operate McDonald's stores in entire countries or regions, including in Europe. In doing so, McDonald's has opened the door for its partners to engage in aggressive tax optimization as well. It appears that a number of McDonald's major new partners are relying on tax havens to structure their businesses.

The largest of these transactions involved the sale of 2,640 stores in China and Hong Kong[105] to a consortium of CITIC, a state-owned investment company in China, and U.S.-based private equity giant The Carlyle Group.[106] McDonald's retained ownership of 20 percent of the operations in China and Hong Kong, with CITIC and The Carlyle Group owning 52 and 28 percent, respectively. The deal was valued at over two billion U.S. dollars, and was announced publicly in January 2017.[107] Ahead of this transaction, in 2016, four new entities were incorporated in the Cayman Islands: McDonald's China Holdings Limited; McDonald's Hong Kong Holdings Limited; McDonald's Asia Holdings Limited; and McDonald's Korea Holdings Limited.[108]

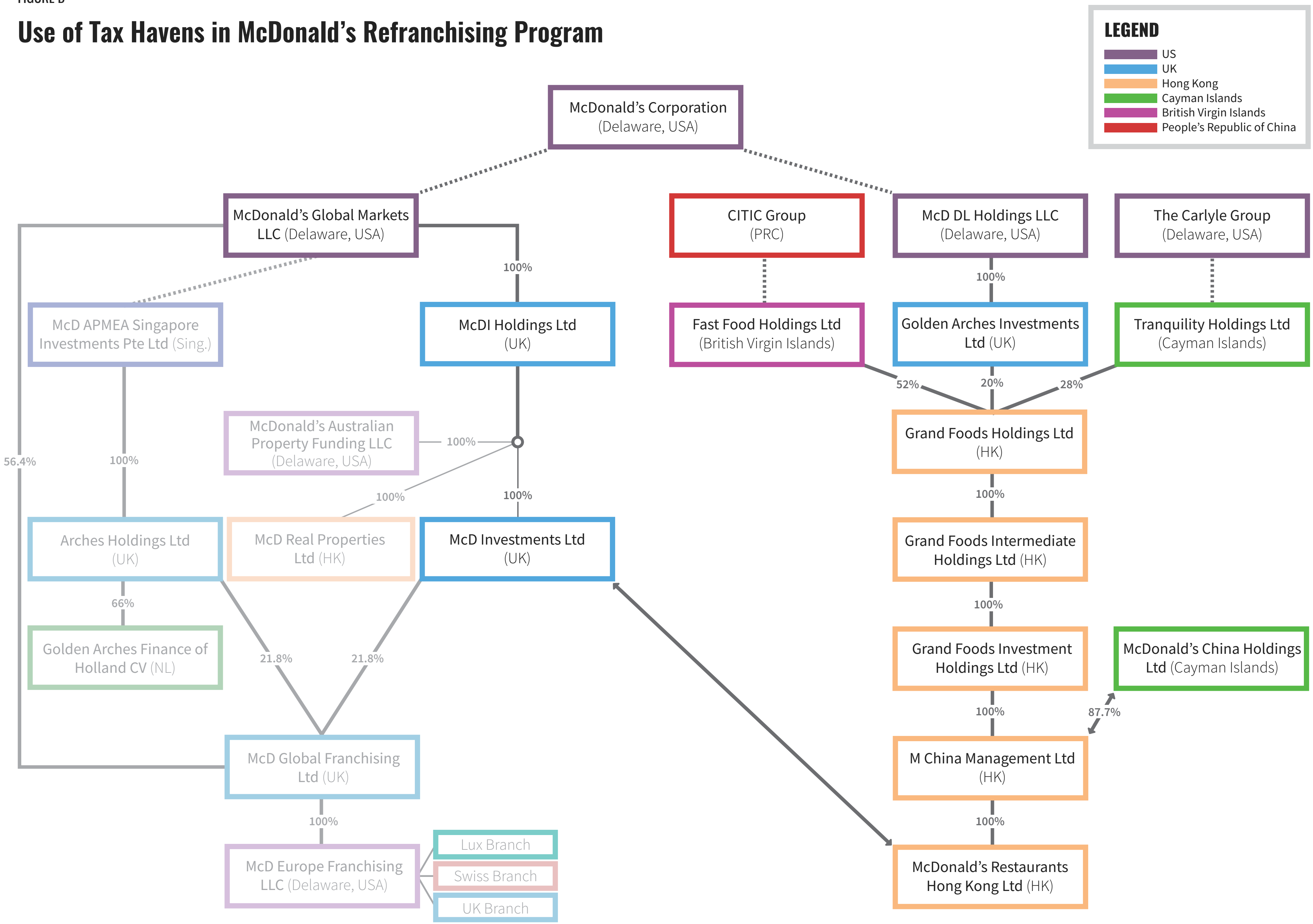
In October 2016, a matter of weeks before the deal was announced, a share purchase agreement was enacted between McD Investments Limited, a U.K.-incorporated company, and McDonald's Restaurants Hong Kong Limited (incorporated in Hong Kong).[109] This agreement likely transferred ownership of this entity to a new structure of subsidiaries ultimately owned by Grand Food Holdings Ltd in Hong Kong. As can be seen in Figure D, this entity is jointly owned by McDonald's subsidiary Golden Arches Investments Limited in the U.K., and two tax haven entities, Fast Food Holdings Ltd in the British Virgin Islands (52 percent), and Tranquility Holdings Ltd in the Cayman Islands (28 percent).[110] The ownership split of these entities strongly suggests that Tranquility Holdings Limited is a holding company for The Carlyle Group, while Fast Food Holdings Limited is the holding company for CITIC.

It should come as no surprise to McDonald's that its partners in China should be reliant on tax havens themselves. The Carlyle Group lists 742 subsidiaries in its most recent SEC filings, 213 of which are incorporated in the Cayman Islands.[111] CITIC Limited also reports subsidiaries in the British Virgin Islands, Bermuda, and the Cayman Islands.[112]

The use of tax havens by McDonald's new partners is not limited to its refranchising efforts in the Asia-Pacific region; it is also true of Europe. In 2017, McDonald's sold 435 stores in Denmark, Norway, Finland, and Sweden to Terra Firma Capital Partners Ltd.[113] These stores are now held by a Luxembourg-based holding company called Capitola Capital II Sàrl, which itself is held by TFCP Capital Investments Limited, a company incorporated in Guernsey.[114] Guernsey was recently listed on the European Union's grey list of non-cooperative jurisdictions for tax purposes.[115]

FIGURE D

Use of Tax Havens in McDonald's Refranchising Program



Conclusion

The initial *Unhappy Meal* report and the European Commission's ongoing investigation of McDonald's have shed light on McDonald's deliberate and aggressive tax avoidance strategy, enabling the company to avoid paying tax on much of the profits arising from the collection of billions in royalties from its European operations.

Citizens, workers, and consumers may have expected that McDonald's, as the world's leading fast food chain, would respond to the tax investigations and public attention by improving its corporate practices and paying its fair share of corporate tax. This report demonstrates that this remains a vain wish. Rather, McDonald's response in the face of European Parliament and European Commission scrutiny has been to increase the complexity and opacity of its operations and move its holding structures to countries that are, or are about to be, outside the European Union due to Brexit. It has also continued to use well-known tax havens and has partnered with companies operating through subsidiaries in well-known low tax and secrecy jurisdictions.

The line between legal and illegal corporate tax practices is thin, and corporate structures can be quickly altered by companies eager to stay one step ahead of tax authorities. McDonald's ability to move faster than lawmakers and enforcement agencies by dismantling its subsidiaries in Luxembourg and erecting a new set of tax avoidance structures prior to the revision of the US-Luxembourg Double Tax Treaty further demonstrates the need for swift action by European and national regulators and lawmakers.

While current debates are heavily focused on taxing the digital economy, the McDonald's case highlights the fact that brick-and-mortar corporations also make use of legislative loopholes to pay little or no tax on much of their income.

The European Union is making efforts to tackle corporate tax avoidance and has placed tax reforms among its priorities. So far, these efforts have led to several initiatives, including the Anti-Tax Avoidance Package,[116] proposals for multinational corporations' public Country-By-Country Reporting,[117] and proposals for a Common Corporate Tax Base (CCTB) and a Common Consolidated Corporate Tax Base (CCCTB).[118] These proposals can potentially pave the way towards a transparent, effective unitary taxation system under which transnational corporations will pay tax where value and profits are actually generated.

The EU's tax avoidance reform efforts have, however, encountered resistance from the advocates of transnational corporations and low-tax jurisdictions, including from within the EU. In March 2018, EU Tax Commissioner Moscovici criticized seven member states, including Luxembourg, about taxation practices that *"have the potential to undermine fairness and the level playing field in [the] internal market, and (…) increase the burden on EU taxpayers."*[119]

Public authorities, at both the national and EU level, can meaningfully alter these corporate tax avoidance practices by enforcing existing laws to their fullest extent, with tax administrations that are both depoliticised and sufficiently resourced.

In particular, authorities should pursue high-profile cases of corporate tax dodging and illegal state aid, especially in cases where companies deliberately set out to achieve non-taxation of their profits. In addition to enforcing existing laws, lawmakers must enact stronger legislation with substantial penalties for noncompliance to force companies like McDonald's to put an end to the proliferation of artificial tax avoidance structures.

McDonald's recent moves also reinforce the need to extend the scope of the Commission's proposed directive for public country-by-country reporting, currently being discussed in Council, to companies' operations worldwide. This has been called for by the European Parliament, the ETUC and its European federations EPSU and EFFAT, and the broader tax justice movement. If the proposal remains limited to EU operations, it will keep key corporate accounting information such as profits and assets out of reach of public scrutiny.

Lastly, for decades the European trade union movement has been calling for an end to regime shopping, where companies in Europe move their headquarters to a member state with lower taxes and wages, regardless of where their operations actually take place.

Regime shopping leads to the exploitation of workers and a downward spiral in social conditions, perpetuates wage gaps between and within member states, depletes revenues for vital public services, and creates unfair competition for responsible employers. The Commission's new proposed company law directive[120] offers an opportunity to clamp down on the creation of letterbox companies that only exist to circumvent taxes, social security and wage requirements.[121]

For years, corporations like McDonald's have taken advantage of a European system that has allowed them to restructure and re-restructure to avoid paying taxes in the countries where their wealth is made. Anything short of the vigorous enforcement of current laws and the adoption of stronger protections – with well-financed and muscular enforcement – sends a signal that public authorities are powerless in the face of company wrongdoing and that corporate tax avoiders can continue to operate above the law. ■

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