

Mistreated

The tax treaties that are depriving the world's poorest countries of vital revenue



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Front cover image

Stella is a dedicated teacher who knows a thing or two about overcrowding. The picture displays her classroom in Lilongwe, Malawi, which is packed with 285 children. ‘I pay almost 17,000 kw (US\$23) in tax every month and then when I go to the shops and I buy a packet of sugar or a tablet of soap I have to pay VAT. Big companies have to start paying as well.’ When told about the UK-Malawi tax treaty Stella stated that ‘if the agreement was made under the colonial government and now we are in multi-party democracy then it has to be revised’.



Executive summary

Women and girls in the world's poorest countries need good schools and hospitals. To pay for this, these countries urgently need more tax revenue. A little-known mechanism by which countries lose corporate tax revenue is a global network of binding tax treaties between countries. This report marks the release of the ActionAid tax treaties dataset – original research that makes these tax deals made with some of the world's poorest countries easily comparable and open to public scrutiny.

Tax avoidance strategies used by some multinational corporations deprive the world's most impoverished communities of vital revenues. Tax revenue is one of the most important, sustainable and predictable sources of public finance there is. It is a crucial part of the journey towards a world free from poverty – funding lasting improvements in public services such as health and education. The communities that ActionAid works with around the world are demanding increased public funds to promote development – particularly for the realisation of women and girls' human rights.

Tax treaties – agreements between countries that carve up tax rights – play a facilitating role in many of these tax avoidance schemes. Tax treaties have played a part in most well-known cases of aggressive tax planning, such as in Google's¹ and Amazon's² tax schemes. Many of the tax treaties that ActionAid has scrutinised are ensuring that money flows untaxed from poor to rich countries, making the world more unequal and exacerbating poverty.

Tax treaties have so far received little public scrutiny – but this is changing. ActionAid has commissioned original research that makes the content of more than 500 binding treaties signed by lower-income countries (those classified as low and lower-middle income by the World Bank) in Asia and sub-Saharan Africa available to the public and open to scrutiny for the first time.³ These important tax agreements decide when, how and even if some of the world's poorest countries can tax foreign-owned corporations that are making money within their borders.

Global corporations use tax treaties to limit their tax contributions in the lower-income countries where they generate profits. Tax treaties that aggressively lower

tax contributions in lower-income countries are harming revenue collection in these countries and the rights of the world's most vulnerable people. They have no place in the 21st century. The era of outdated and unscrutinised tax treaties that create opportunities for multinational tax avoidance must come to an end. It's time to ensure that all investors pay their fair share and put an end to aggressively lowered taxes and double non-taxation on investment income.

Developing countries lose billions

Bangladesh is losing approximately US\$85 million every year from just one clause in its tax treaties that severely restricts its right to tax dividends. With an annual total health expenditure of approximately US\$25 per capita,⁴ remedying this alone could pay for health services for 3.4 million people.

In 2004, Uganda signed a tax treaty with the Netherlands that completely takes away Uganda's right to tax certain earnings paid to owners of Ugandan corporations, if the owners are resident in the Netherlands. A decade later, as much as half of Uganda's foreign investment is owned from the Netherlands, at least on paper. The result of the current treaty is lost tax revenue in Uganda, which could have paid for essential public services for the Ugandan people.

As IMF staff wrote in 2014,

"the use of tax treaty networks to reduce tax payments...is a major issue for many developing countries, which would be well-advised to sign treaties only with considerable caution."⁵

On a global scale, just two rules in tax treaties – dividend and interest payment rules – cost developing countries billions of dollars each year. Tax treaties also cause many other losses – such as lost profit tax contributions and lost tax on capital gains, royalties and services fees – but the size of these losses is still unknown.

ActionAid has identified the most restrictive treaties

All tax treaties restrict the right to levy tax, but some treaties take away far more tax power than others. The ActionAid tax treaties dataset shows that the overall number of tax rights that lower-income countries give up varies widely from treaty to treaty.

ActionAid's new research identifies the treaties that remove more tax rights than most – which we call very restrictive treaties. It finds that the United Kingdom and Italy are tied as the countries with the largest number of very restrictive treaties with lower-income Asian and sub-Saharan African countries, followed by Germany. China, Kuwait and Mauritius also have a rapidly growing number of very restrictive treaties with some of the world's poorest countries.

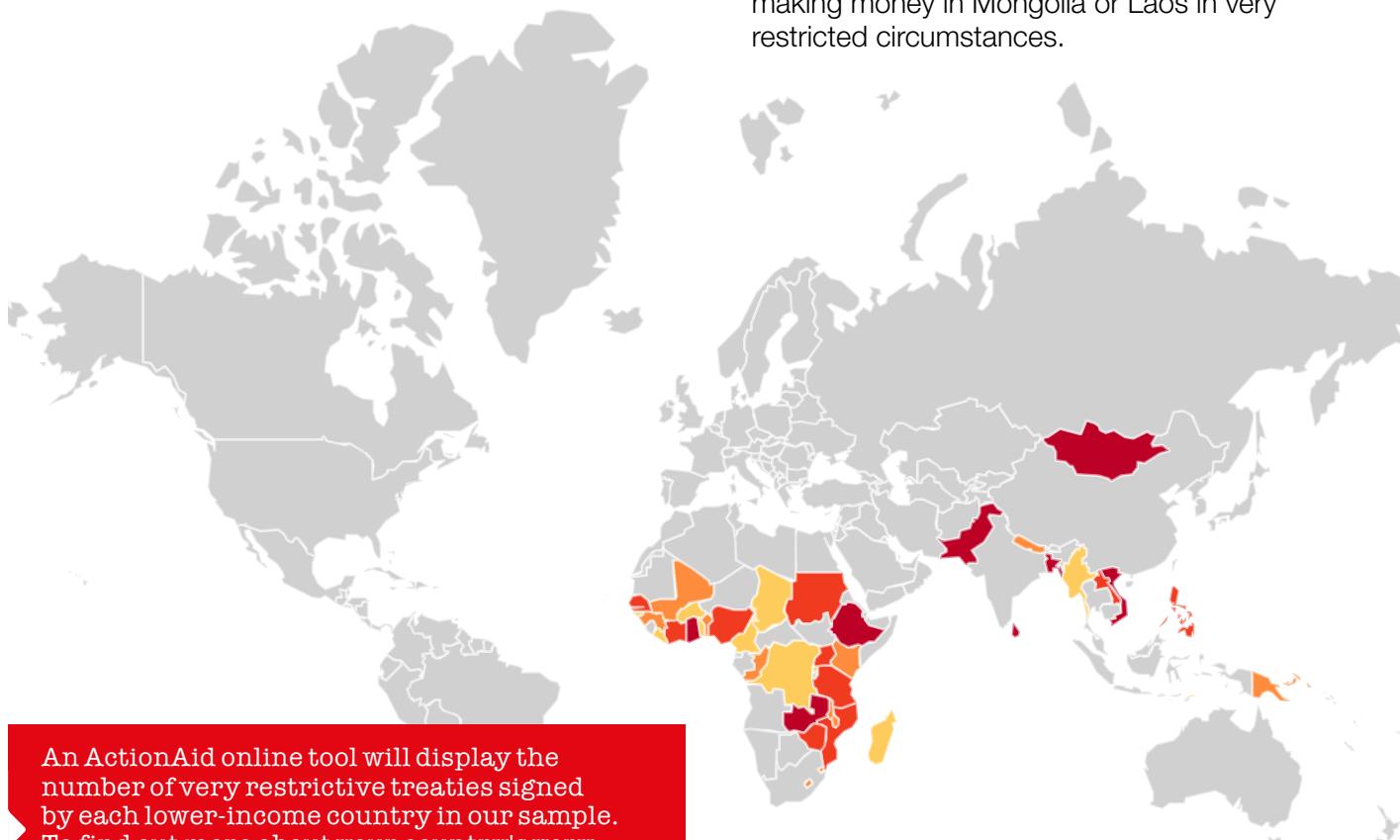
Treaties that lower-income countries have with OECD countries (a club of rich, industrialised countries) take away more rights to tax than those with non-OECD countries. Worryingly, the deals struck with OECD countries are getting worse over time.

Tax treaties with tax havens such as Mauritius can come at a particularly high cost. Money is often routed through tax havens as part of tax avoidance strategies that rely on tax cuts contained in treaties signed by those havens.⁶

Three tax rights that urgently need to be restored

This report highlights three tax rights where lower-income countries need a drastically better deal in their tax treaties with wealthier countries and tax havens.

- **Profit tax:** tax treaties set the rules about how established a foreign multinational has to be before it pays tax on its profits. This has led to absurd results, such as some foreign corporations employing thousands of people without having any liability to pay local profit taxes. China's tax deals with Mongolia and Laos mean that those countries can only tax the profits of Chinese multinationals making money in Mongolia or Laos in very restricted circumstances.



An ActionAid online tool will display the number of very restrictive treaties signed by each lower-income country in our sample. To find out more about your country's very restrictive treaties, visit
<http://www.actionaid.org/tax-power>

- **Withholding tax:** a straightforward ‘grab it before it goes’ strategy that should help guarantee that foreign-owned businesses don’t transfer earnings out of a country before it is time to pay profit tax. However, the dataset reveals a disturbing trend whereby the rights of lower-income countries to levy withholding tax on royalties and dividends have been declining over time. We estimate, for example, that restrictions on Bangladesh’s ability to levy withholding taxes on dividend payments result in a revenue loss of US\$85 million annually. Many lower-income countries have signed away their rights on certain types of withholding tax all together.
- **Capital gains tax:** this tax has delivered multimillion dollar tax payments in lower-income countries, but the right to tax capital gains may be undermined in 49% of treaties examined by ActionAid, which lack a clause that protects against a well-known form of tax avoidance. In addition, more than 70% of tax treaties with lower-income countries prohibit those countries from taxing gains made by foreign corporations when they sell shares in local corporations.

Tax treaties limit poor countries the most

ActionAid is deeply concerned that the balance of tax rights created by tax treaties is not fair. In practice, the taxing restrictions within tax treaties impose an unfair burden on lower-income countries compared to wealthier countries. While both parties to a tax treaty give up some tax rights, the dominant model treaty squeezes the tax rights of the capital-importing (lower-income) country more than the capital-exporting (wealthier) country.

In 2015-16, the OECD, the European Parliament and the European Commission have acknowledged that the balance of tax rights in tax treaties is a problem for developing countries.⁷

Some treaties result in multinational corporations not paying certain types of taxes either in the lower-income country where they operate, or in the country where they are based, so called double non-taxation. This practice cuts urgently needed tax contributions in some of the world’s poorest communities. Uganda’s tax deal with the Netherlands blocks Uganda from taxing income that investors bring home from Uganda and the income is routinely not taxed in the Netherlands either.⁸ These investors enjoy double non-taxation while Uganda misses out on vital tax contributions.

Political action is needed

Tax treaties are voluntary; they can be renegotiated and cancelled. Rwanda’s successful renegotiation with Mauritius in 2013 is a strong example, and included five important triumphs that re-established Rwanda’s rights to tax construction sites, business services, interest and royalty payments. Mr Moses Kaggwa, Commissioner for tax policy at the Ugandan Ministry of Finance, Planning and Economic Development said in 2014:

“We have stopped negotiations of any new agreement until we have a policy in place that will not only offer guidelines but give clear priorities of what our interests and objectives are.”⁹

Lower-income countries should not sign bad tax deals with other governments that take away their taxing power. Wealthier countries can act to align the rules of their tax treaties with development objectives.

ActionAid is calling for governments to:

- **Urgently reconsider the treaties that restrict the tax rights of low and lower-middle income countries most.**
- **Subject treaty negotiation, ratification and impact assessments to far greater public scrutiny.**
- **Take a pro-development approach to the negotiation of tax treaties by adopting the UN model tax treaty¹⁰ as the minimum standard.**

ActionAid is calling for multinational corporations to:

- **Be transparent about their interactions with developing country governments regarding treaty terms and refrain from lobbying governments to conclude tax treaties that are particularly advantageous to their own business interests, but of limited or unclear benefit to the developing country concerned.**

Introduction

A tax treaty is an agreement between two countries to divide up and limit each countries' tax rights. Among other things, tax treaties regulate when a country can or can't tax foreign-owned companies. Sometimes a country's right to apply a specific tax is cancelled altogether. Once signed, tax treaties apply until they are terminated or renegotiated. Even though some treaties are very old, they are still as powerful as they were when they were first agreed.

The what and why of tax treaties

There are currently more than 3,000 tax treaties in force.¹¹ About half of the world's current tax treaties are between a developed country and a developing country.¹² The major boom in negotiations over such treaties started about 20 years ago, and continues to this day.¹³ Even so, development issues are not mentioned in treaty texts and are not an express consideration during treaty negotiations.

Tax treaties decide how much, and even if, countries can tax multinational companies and other cross-border activity. They provide certainty to international business by indicating which taxes will be limited when making money overseas. This certainty is often provided through restrictions on the rights of lower-income countries to tax different types of income.

In the overwhelming majority of cases, these tax treaties override any national law. If a tax treaty rate is lower than the rate set in national law, companies that are able to use the tax treaty route will very often pay less tax than similar local companies. As a result, vital tax revenue is lost. When the world's poorest countries are affected, the consequences are serious. It is this effect that ActionAid is most concerned about.

Tax treaties can also prevent double taxation¹⁴ – paying tax in two jurisdictions on the same income or transaction. Paying tax twice on the same income or transaction is not fair. If there is a risk of double taxation however, this problem is mostly already dealt with through national laws in the wealthier country (where the corporation is usually based). In many cases, wealthy countries do not tax income earned abroad.¹⁵ If tax is payable under the laws of both countries, national laws in wealthy countries ensure that the tax due to the wealthier country is reduced to take account of tax already paid in the lower-income country.¹⁶

Although transparency varies between countries, there is commonly no parliamentary scrutiny and a lack of meaningful opportunities for public input into treaty negotiations or contents.

Navigating this report

Part A of this report outlines the case for re-thinking tax treaties. It highlights how tax treaties in their current form reduce the overall amount of tax payable in lower-income countries, create an unfair distribution of taxing rights, and raise issues of double non-taxation (see chapter 3). Lowered tax contributions from international businesses come at a cost and risk worsening access to vital public services (see chapter 4). Governments have the power to close the tax loopholes created by tax treaties through treaty renegotiations or terminations, and there are several successful examples of this (see chapter 5).

Part B of this report provides analysis of the current network of treaties affecting lower-income countries, drawing from the ActionAid tax treaties dataset. It shows which treaties between lower-income countries and wealthier countries suppress the lower-income countries' tax rights the most (see chapter 6). A business setting up operations in another country can save a lot if they don't have to pay local profits tax (see chapter 7). When a foreign multinational sets up overseas, one of the main things that tax treaties do is cap the amount of tax that can be charged by the lower-income country as money is sent abroad (see chapter 8). Tax treaties also sometimes block lower-income countries from charging tax on income earned when assets are sold (capital gains tax – see chapter 9).

Part C provides concluding remarks and policy recommendations.

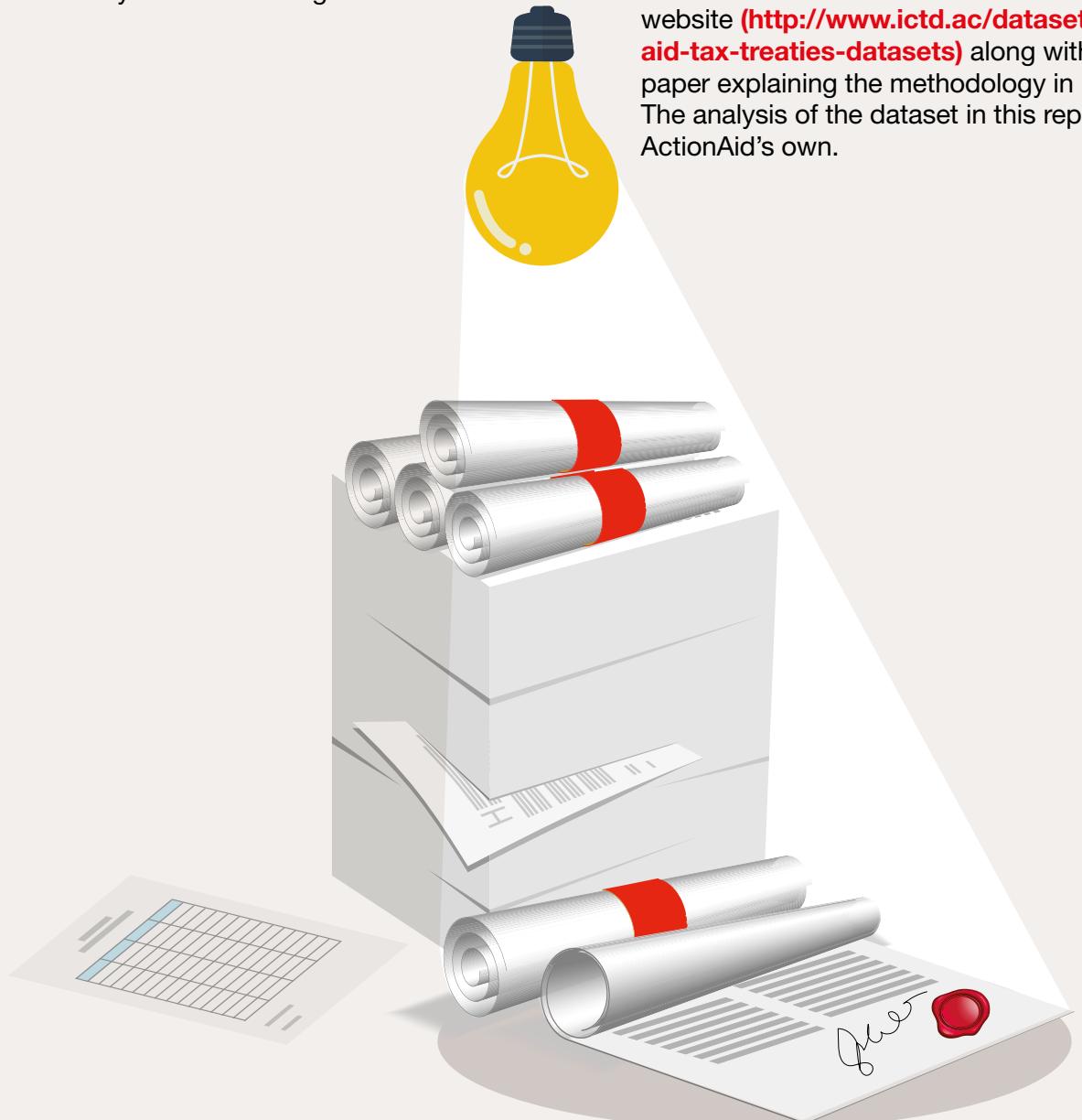
The ActionAid Tax Treaties Dataset

This includes more than 500 treaties that low- and lower-middle income countries in sub-Saharan Africa and Asia have signed since 1970.¹⁷ It shows how lower-income countries and wealthier countries divide up the right to tax multinational corporations between each other.¹⁸

Each treaty has been coded for 26 separate rules within tax treaties that govern the circumstances under which each treaty partner has the right to tax. The research is ground-breaking for two reasons. First, the dataset is publicly available and easily searchable. At present, most tax treaties involving lower-income countries are not publicly available free of charge. Even where treaties are published on government sites, analysis and comparison of terms negotiated is extremely time consuming.

This works to the disadvantage of lower-income countries in their preparation for negotiations with wealthier countries. Wealthier countries can pay for expensive data subscription services and spend the necessary resources on analysis. ActionAid anticipates that the dataset will make a contribution to levelling the playing field in these negotiations. Second, the dataset provides user-friendly indices that allow a quick and reliable assessment of the characteristics of a particular treaty, as well as national and regional negotiation trends.

The dataset was developed by consultant Martin Hearson. It has been independently peer reviewed and is available on the ActionAid website (<http://www.actionaid.org/tax-power>) and the International Centre for Tax and Development website (<http://www.ictd.ac/datasets/action-aid-tax-treaties-datasets>) along with a working paper explaining the methodology in more detail. The analysis of the dataset in this report is ActionAid's own.



PART A: Rethinking tax treaties

Tax treaties between rich and poor countries risk damaging tax revenue in poor countries. The best-known problem with tax treaties is that they can open up opportunities for treaty shopping - the use of tax treaty networks to reduce tax payments. In fact, treaty shopping by multinationals is just part of the picture. Even where corporations are not doing this intentionally, treaties still reduce overall corporate taxation collected globally.

3. What's the problem?

Tax treaties reduce the revenue collected by poor countries, create an unfair distribution of tax rights, and in some instances facilitate double non-taxation.

Lower-income countries collect less tax

As Luzia Januario of the Angola General Tax Administration put it when asked why potential corporate investors in Angola would support tax treaties:

“In addition to ensuring predictability, businesses like tax treaties because of the opportunity of having their tax burden reduced.”

Tax treaties reduce the overall amount of corporation tax payable in lower-income countries. Tax treaties do not create new tax rights; they only limit the tax rights of countries which sign the treaty. There are multiple opportunities in all treaty negotiations for different clauses to limit those tax rights to a greater or lesser extent. Companies may take advantage of the taxing restraints imposed by tax treaties through creating a corporate structure in which international investments are owned by corporations based in countries with favourable treaties.

By setting up a conduit company in the Netherlands for example, an American corporation investing in specific African countries can get tax breaks thanks to tax treaties that the Netherlands has signed with those African countries. This corporate structuring can be legal but is always opportunistic.

About one third of the world's foreign-owned firms are owned via tax havens or special purpose entities – a low transparency corporate structure.¹⁹ One reason for this is to obtain tax treaty benefits.²⁰

In 2004, Uganda signed a tax treaty with the Netherlands that completely took away Uganda's right to collect tax when a corporation pays out certain earnings (i.e. dividends that meet certain criteria) to owners (i.e. shareholders) resident in the Netherlands. A decade later, as much as half of Uganda's foreign direct investment is owned from the Netherlands, at least on paper. As a result, the treaty effectively rewards Dutch-owned corporations with a big non-discretionary tax break that they might have earned only by setting up a conduit company in the Netherlands. The Netherlands has offered to renegotiate treaties with developing countries to include anti-abuse clauses. If incorporated within the Uganda-Netherlands treaty, this may reduce opportunistic use of tax treaties for tax minimisation purposes.

For now, the result of the current treaty is a reduction in Uganda's tax revenue, money that is urgently needed to provide essential public services for Uganda's people.

The total cost of tax treaties to developing countries has not been established. The Dutch Centre for Research on Multinational Corporations (SOMO) has estimated that developing countries lost €770 million in 2011 as a result of treaties with the Netherlands,²¹ and the IMF estimates that US tax treaties cost non-OECD countries around US\$1.6 billion in 2010.²² These two estimates only focus on two types of losses; lost dividend taxes and lost taxes on interest payments.

Tax treaties also cause many other losses, such as lost profit tax contributions and lost tax on capital gains, royalty and services fees (see Part B of this report), but the size of these losses is harder to estimate. A 2014 study estimated that worldwide, average tax rates that global businesses face when repatriating income are reduced by 9% because of tax treaties, and that another 6% drop is possible if these businesses engage in treaty shopping, i.e. choosing indirect investment routes to take advantage of favourable tax treaties.²³ ActionAid hopes that the availability of the ActionAid tax treaties dataset will encourage more research in this area.

Developed and developing countries rarely publish evidence-based analysis of the impact of tax treaties. This means that countries enter into treaties without being able to scrutinise their potential impact on either revenue or economic development.

“The public and the community at large in most cases only discover that a treaty is in place after it has already been agreed and signed. The government has not taken deliberate efforts to raise awareness of the public on tax treaties.”

Bwalya Mutumba

Tax Justice Campaigner, ActionAid Zambia

While referring to the need to prevent double taxation, countries which sign tax treaties (whether they are rich or poor) often do so to reduce the tax paid by international business as a means of competing with other countries.²⁴ Tax caps in tax treaties have been promoted internationally as a way to attract more investment. The relationship between treaties and investment however has repeatedly been questioned, and the evidence suggests that any benefits that tax treaties might bring cannot be assumed.²⁵ What is certain is that handing out long-term tax cuts to foreign-owned firms comes at a cost. ActionAid has uncovered various instances of multinationals relying on tax treaties to lower their tax burden.²⁶ IMF experts have recently raised a warning flag and urged developing countries to treat tax treaties with considerable caution.²⁷

Imbalance in taxing rights

In addition to suppressing overall tax paid by multinationals, the balance of taxing rights created by tax treaties is not fair.

Avoiding tax – expert advice

ActionAid has uncovered financial advisory firm Deloitte’s promotion of ‘Investing in Africa through Mauritius’,²⁸ providing investors with details on how tax can be avoided in African countries by routing investments through Mauritius to take advantage of the Mauritius tax treaty network. Deloitte gives the specific example of how tax can be avoided in Mozambique.

The document was part of a presentation given by Deloitte in China in June 2013 at a conference attended by more than 80 major western and Chinese companies with interests in Africa. Mozambique is one of the poorest countries in the world. When Deloitte made this presentation, over 50% of the population in Mozambique lived below the poverty line and the average life expectancy was just 49 years.

In practice, lower-income countries face a heavier burden than wealthier countries. Tax treaties carve up tax rights between two countries that could claim the right to tax a multinational – the country where the (foreign-based) corporation makes money (called ‘source based taxation’) and the country where the internationally active corporation is based (called ‘residence based taxation’). Foreign companies from wealthier countries have a rapidly increasing business presence in lower-income countries.²⁹ Those from lower-income countries generally own negligible amounts in wealthier countries. The right to tax the foreign income of its resident corporations is next to useless to the poorest countries. Such countries therefore rely overwhelmingly on the right to tax foreign owned firms making money within their borders. This (source based) right to tax foreign corporations making money locally is severely restricted in most tax treaties.

Under current treaty norms, wealthier countries face some restrictions on taxation of the earnings of their residents made overseas, but in recent decades wealthier countries have increasingly chosen not to tax their businesses operating overseas.³⁰ For this reason, the taxing restrictions imposed on wealthier countries do not have as much impact. When lower-income countries sign tax treaties with wealthier countries, it is the lower-income countries that lose more.

If the (wealthier) country where the corporation is based does choose to tax its businesses operating overseas, and the treaty allows the lower-income country to keep its right to levy tax on the foreign multinational, any tax collected by the lower-income country will generally be recognised by the wealthier country, leading to a reduction in tax payable in the wealthier country. For example, a British corporation operating in a lower-income country can claim royalty tax relief from the British government on royalty withholding tax paid overseas.³¹ In other words, allowing lower-income countries to keep these rights means that the poorer country (rather than the wealthier country) collects the revenue, with no impact on the multinational corporation's bottom line.

In contrast, restrictions on the lower-income country's taxing rights mean that the wealthier country, and not the lower-income country, collects the money. The heavy restrictions that most treaties impose on the taxing rights of lower-income countries effectively result in a transfer of revenue from the lower-income country to the wealthier one.

Both the European parliament³² and the OECD have recently acknowledged the unequal distribution of tax rights created by tax treaties. On 2 July 2015, at a conference hosted by the Dutch Ministry of Foreign Affairs, Mr Saint-Amans, Director of the OECD's Centre for Tax Policy and Administration, said in relation to the balance of taxing rights "Source / residence [based taxation] is an extremely important debate that should take place and developing countries should probably have more source taxation, I have no doubt." Joining the chorus, the European Commission has said that, given the importance of source-based taxation to low-income countries,

The OECD model tax treaty

The OECD model tax treaty is the global standard setter when it comes to international treaty norms. When relied on in treaties between lower-income countries and wealthier countries, it squeezes the tax rights of lower-income countries.

The United Nations has made a push for a fairer sharing of taxing rights through the UN model tax treaty, but ActionAid's tax treaty dataset shows that many of the rules that the UN has proposed are still commonly not used in treaties between wealthy countries and lower-income countries.

European member states should reconsider aspects of their tax treaties that restrict those taxing rights in order to ensure fair treatment of developing countries.³³

Foreign companies have doubled their foreign direct investment (foreign ownership of firms) in the world's poorest countries in just two decades.³⁴ This means that revenue losses to the poorest countries – which are created by unequal taxing rights in tax treaties – are growing over time. While the impact of unfair treaties is progressively increasing, the need for revenue to fund the promotion of human rights and vital public services remains urgent.

To rebalance the unequal distribution of tax rights, ActionAid is recommending that treaty negotiators adopt the UN model terms as the minimum standard, ensuring that developing countries are given a fairer slice of the taxation pie in future.

Double non-taxation

There are various examples where companies have been able to rely on tax treaties to ensure that they don't pay tax even once. Double non-taxation happens when a corporation manages to avoid paying tax in both the country where the foreign-owned firm operates, and also in the country that the firm is owned from.

Europe's competition commissioner Margrethe Vestager recently noted in relation to McDonald's international operations:

"The purpose of double taxation treaties between countries is to avoid double taxation – not to justify double non-taxation."³⁵

Yet European tax treaties repeatedly cause double non-taxation. Uganda's deal with the Netherlands that blocks Uganda from taxing money that investors bring home from Uganda is routinely not taxed in the Netherlands either,³⁶ so these investors face double non-taxation on their return.³⁷ Similarly, the UK's treaty with Malawi bans Malawi from taxing investor income (i.e. dividends) being sent to the UK, but the UK regularly doesn't choose to use its right to tax that income either.³⁸

Not paying tax twice on the same income is a reasonable ask. But tax treaties that contribute to tax not being paid anywhere are unsustainable, especially when income is made in some of the world's poorest countries. Somebody else has to pick up the bill.

4. Who pays the price?

Corporate tax revenues are an important source of income for lower-income countries,³⁹ yet the tax treaty system makes it easy for multinational companies to reduce their tax bills in these countries. Tax is not a magic bullet, though it's an obvious prerequisite to enable public provision of high quality essential services.

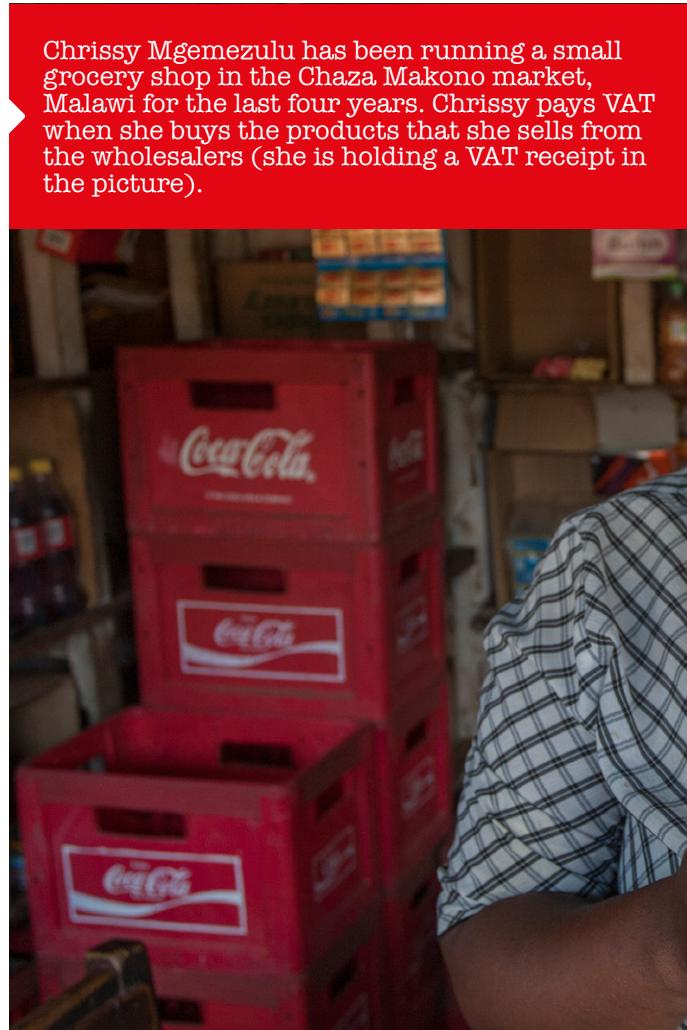
Women and children pay the highest price when the tax collected is inadequate. Where states don't have enough revenue to provide essential public services, it is more likely to be women who fill the gap with their bodies and time by providing unpaid labour and care. Women are also more likely to rely directly on health services during their lifetime because of reproductive and maternal needs.⁴⁰ It is estimated below that Bangladesh loses US\$85 million a year as a result of a single clause in its tax treaties. With an annual total health expenditure of approximately US\$25 per capita,⁴¹ remedying this alone could pay for health services for 3.4 million people.

Lower-income countries with extremely low tax collections suffer from the highest child mortality levels.⁴² While it cannot be said for certain whether this relationship is directly causative, it is unlikely to be a coincidence.

Local businesses also pay a price for the tax planning and tax minimisation of some multinational companies. Small and local business owners often have to pay the taxes that tax treaties help multinational business get around. They face unfair competition from those who, by contributing less in taxes, can keep their prices lower.

The split between small and large business has a gender dimension too. Women are less likely to own the kinds of businesses where multinational tax breaks are available. While half of small business owners in Malawi are female,⁴³ a large majority of global shareholdings are held by men.⁴⁴ Any tax being paid by local Malawian businesses will be borne approximately equally by men and women, but the tax breaks provided by tax treaties are available only to multinationals – and therefore serve more men than women.

Chrissy Mgemezulu has been running a small grocery shop in the Chaza Makono market, Malawi for the last four years. Chrissy pays VAT when she buys the products that she sells from the wholesalers (she is holding a VAT receipt in the picture).



Some of the consequences of funding shortfalls that result from aggressive tax planning are highlighted by Harriet Bwalali, Executive Director of the National Organisation of Nurses and Midwives Malawi:

"There is a health crisis in Malawi. There is currently a direction that hospitals should limit the food they give out to patients in order to save money.

Our health sector is faced with a lot of challenges, because of the little funding that we get we are not able to meet the standard of care for the Malawian population. In most hospitals you find that there are no essential drugs, and we don't have adequate human resources. For example, one nurse may be looking after 80 patients; they cannot manage to provide the quality care that is required because their workload is just too heavy.

The cutting of meals is coming because of the lack of funding. District health officers are thinking maybe patients can have only one meal a day so the other money can be used for fuel for ambulances – prioritising saving lives. Looking at the poverty in the country not many people can afford to prepare a meal for their patients. But we know that nutritious food is important when one is getting drugs, so it is a dilemma.

If big companies divert tax, they should know that they are killing people because that money could have been used in so many ways: buying drugs, buying supplies, paying the nurses, the doctors. If people get sick they rush to the hospitals to get healed, so if they are not paying their tax what they should know is that they are killing innocent, vulnerable people. We need to encourage them morally to feel obliged to pay their taxes."



5. Treaties are not compulsory

Governments often face considerable pressure to negotiate tax treaties:

“Frequently, developing countries commence negotiations for a tax treaty primarily because they feel pressured to do so by another country. The pressure may come in the form of diplomatic or political representations, from the tax administration or revenue officials from the other country or directly from taxpayers resident in that country.”⁴⁵

Arianne Pickering

Former Australian tax treaty negotiator

The ‘taxpayers’ referred to above will generally be multinational corporations. Even so, lower-income countries do not have to sign unfavourable international tax treaties that take away their taxation powers. A number of countries continue to trade and invest with other countries without a tax treaty in place. Even without a tax treaty between them, Brazil and the US enjoy a significant trade and investment relationship. In 2014, there was US\$112 billion worth of US investment in Brazil, making the US the second biggest investor in Brazil. Brazil also does not have a tax treaty in place with Germany, Switzerland or the UK, each of which still has billions of dollars invested in Brazil.⁴⁶

The OECD has recently recognised tax treaties with low or no-tax jurisdictions as a concern, proposing guidance to assist countries to justify their decisions not to enter into treaties with these countries.⁴⁷ Where disadvantageous treaties are already in place, lower-income country governments have the power to close the tax loopholes and stop the inequity that

treaties with aggressive tax breaks create. Tax treaties are voluntary; they can be renegotiated and cancelled. Some countries are re-evaluating the strength of their negotiating hand.

“We have stopped negotiations of any new agreement until we have a policy in place that will not only offer guidelines but give clear priorities of what our interests and objectives are.”⁴⁸

Mr Moses Kaggwa

Commissioner for tax policy at the Ugandan Ministry of Finance, Planning and Economic Development, 2014

Nigeria, Rwanda, South Africa, Zambia, Malawi and Mongolia have all recently either cancelled or renegotiated tax treaties. Mongolia, a country with abundant natural resources, is one of the countries in ActionAid’s tax treaty analysis that is tied by the highest number of very restrictive treaties. Commenting on Mongolia’s recent treaty cancellations, Mongolia’s Vice Finance Minister Surenjav Purev stated in 2013:

“We started to question why these countries would have greater advantages in Mongolia than us.”⁴⁹

The ActionAid tax treaties database allows an easy comparison of how Rwanda’s renegotiated treaty with Mauritius dramatically improved its taxation position with respect to Mauritian companies operating in Rwanda.

A comprehensive global review of tax deals between lower-income countries and wealthier countries is badly overdue. This should highlight particularly the role that treaties with tax havens play.

Figure 1: Rwanda’s successful renegotiation with the tax haven Mauritius⁵⁰

| Rules in the Rwanda-Mauritius tax treaty | 2001 treaty | 2013 treaty |
|---|-------------|-------------|
| How long is a construction site free of profit taxes? | 12 months | 6 months |
| How long does Rwanda have to wait to tax business services? | 12 months | 6 months |
| Can Rwanda tax dividends that are sent to Mauritius? | No | Yes, at 10% |
| Can Rwanda tax international interest payments? | No | Yes, at 10% |
| Can Rwanda tax royalty payments? | No | Yes, at 10% |

PART B: The ActionAid tax treaties dataset

Tax treaties between lower-income countries and wealthier countries risk damaging tax revenue in the poorer country. The ActionAid tax treaties dataset shows the content of more than 500 tax treaties that lower-income countries in Africa and Asia have signed. It looks at 26 key rules for each individual treaty. The dataset includes treaties signed by low or lower-middle income countries in eastern and southern Asia and sub-Saharan Africa from 1970 until 2014.⁵¹

6. The tax treaties that are most restrictive for lower-income countries

All tax treaties restrict the rights of lower-income countries to tax foreign companies making money on their soil. For the first time, the dataset allows a clear picture to be painted of which contemporary treaties are the most restrictive. ActionAid is particularly concerned about the bottom half – those which are more restrictive than the norm. These are referred to as *very restrictive* treaties throughout this paper and are represented in figure 3 and 4 below. The complete dataset incorporates far more countries whose (top half) treaties also impose restrictions.

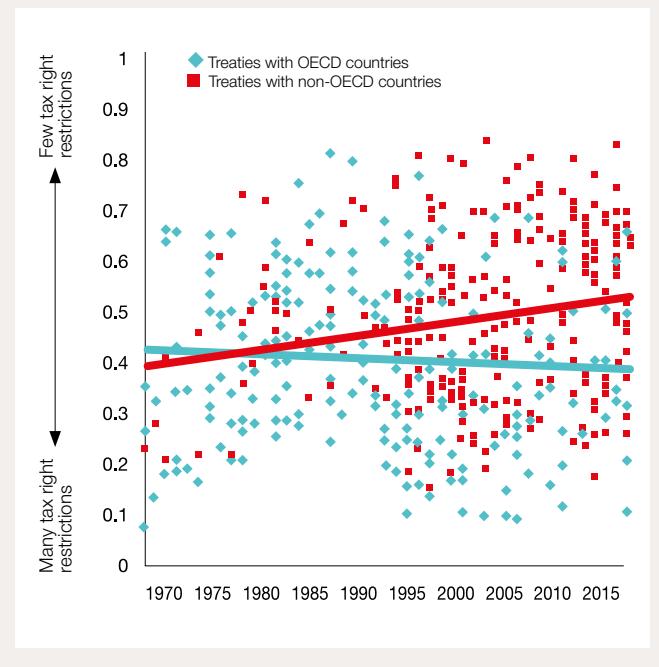
The research that ActionAid has commissioned combines the content of a treaty into an overall estimate of its impact. It provides each treaty with a score between 0 and 1, where a higher number indicates that the lower-income country has kept more taxation rights in the settlement.⁵² The overall score is indicative – it does not tell you everything that you would necessarily want to know about an individual treaty. For example, even a treaty with a relatively high (non-restrictive) overall score may have a particularly restrictive individual clause that a lower-income country may want to renegotiate. The treaties represented in this chapter are not the only treaties eroding the tax base of poor countries; they represent a starting point for an analysis of which renegotiations should be prioritised.

Treaties signed before 1970 and treaties signed whilst a country was still a colony are not included as they generally do not follow a consistent format, making comparative analysis problematic.

The dataset shows that the overall number of tax rights that lower-income countries give up varies widely from treaty to treaty. Treaties that lower-income countries have with OECD countries (club of rich, industrialised countries) take away more rights to tax than treaties with fellow non-OECD countries, which tend to be more favourable for lower-income countries. Worryingly, the deals struck between lower-income countries and OECD countries are getting worse over time. This trend is especially notable in more recent treaties.

ActionAid has focused on the treaties that remove a high number of taxation rights from the lower income country – the bottom half of treaties in the dataset. ActionAid urges governments that are party to tax treaties that contain more restrictions than the median to urgently examine these treaties, to ensure that

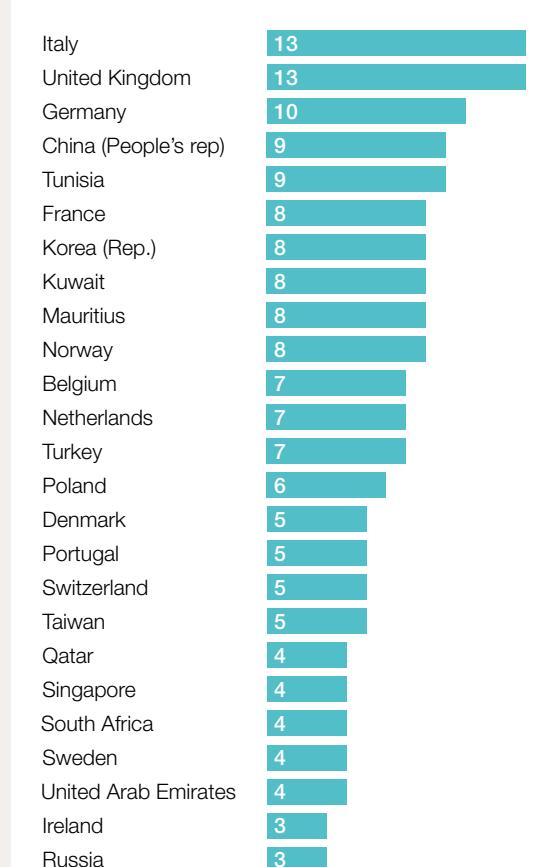
Figure 2: Tax treaties signed by lower-income sample countries with OECD countries are increasingly restricting the former's tax rights⁵³



state revenues in lower-income countries aren't suffering as a result.

Some very restrictive treaties have already been cancelled or renegotiated by lower-income countries⁵⁴ (see chapter 5). Figure 3 details the partners in those limiting tax treaties that are still in force, or about to enter into force⁵⁵. The UK and Italy are tied as the countries that have entered into the highest number of troubling tax deals with African and Asian countries since the 1970s, followed by Germany.⁵⁶

Figure 3: Wealthier countries with the highest number of very restrictive modern era treaties that risk severely limiting African and Asian countries' taxing power⁵⁷



For more information about these very restrictive treaties, see the interactive online map, available at <http://www.actionaid.org/tax-power>.

The cost of compiling the dataset was funded by ActionAid. The development of indices based on the dataset was conducted independently. For more information about the dataset and academic methodology used, see <http://www.ictd.ac/datasets/action-aid-tax-treaties-datasets>.

Figure 4: African and Asian lower-income countries' with the highest number of very restrictive modern era treaties that risk severely limiting their taxing power⁵⁸

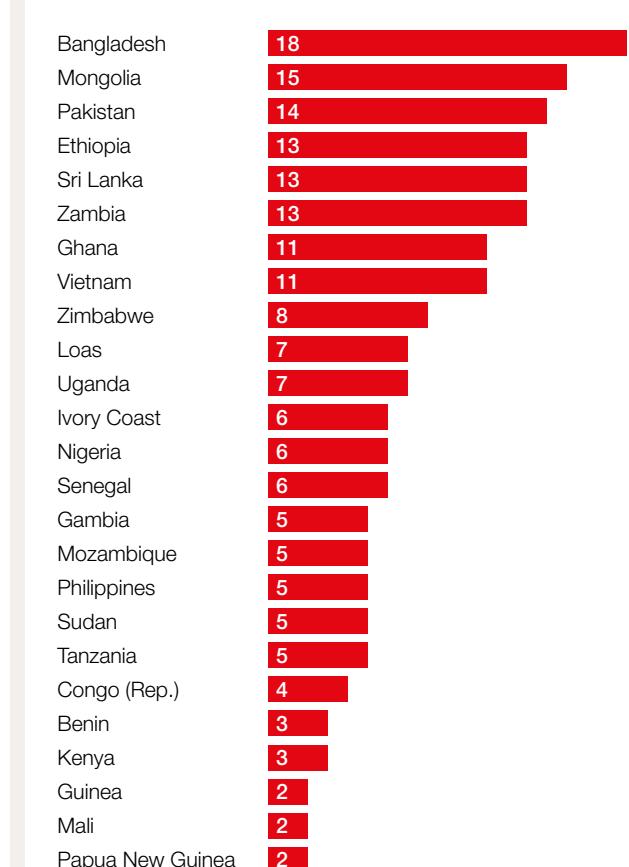


Figure 5: A sample of colonial era treaties⁵⁹ still in force

| Treaty partner A | Treaty partner B | Date of independence (A) | Date of treaty |
|------------------|------------------|--------------------------|----------------|
| Zambia | Switzerland | 24-Oct-1964 | 30-Sep-1954 |
| Sierra Leone | Norway | 27-Apr-1961 | 02-May-1951 |
| Zambia | France | 24-Oct-1964 | 14-Dec-1950 |
| Malawi | United Kingdom | 06-Jul-1964 | 25-Nov-1955 |

7. Profit tax limitations

How is it that Google and Amazon take billions in UK sales across the globe, but manage to legally minimise their UK corporate profit tax liability?⁶⁰ The answer lies to a large extent in the concept of ‘permanent establishment’.

Under tax treaties, the country where a foreign corporation makes money only has the right to tax the profits of that foreign corporation if it can prove that the corporation has a permanent establishment in the country. The definition of permanent establishment is provided in the treaty between the country where the foreign corporation is resident and the country where it makes money.

Overseas resident corporations stand to benefit where they can structure themselves so as to fall outside of the definition of permanent establishment. If they can do this, the country where they make money will have fewer opportunities to tax their profits. Prior to mid-2015, Amazon channelled sales to UK customers through a company in Luxembourg. The world’s biggest online retailer thereby avoided the creation of a permanent establishment in the UK and minimised corporation taxes in relation to those sales.⁶¹

As noted above, lower-income countries rely heavily on taxation of foreign based multinationals making money on their shores. A definition of permanent establishment that can be circumvented hurts lower-income treaty partners more than wealthier treaty partners.

The definition of permanent establishment contained in most treaties severely limits the right of countries to tax companies that are resident overseas. In order to expand their tax base, Professor Ogunnaike, a prominent African tax expert and member of South Africa’s specialist Davis tax committee, has recommended that African governments should sign treaties with definitions of permanent establishment more expansive than that recommended by the OECD in the OECD model treaty.⁶²

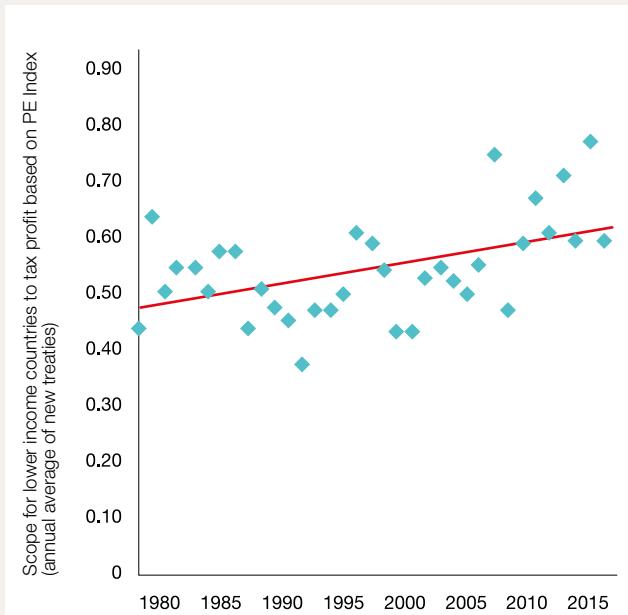
Chinese businesses have become big players in some of the world’s poorest countries. The three Chinese treaties in the ActionAid dataset with the most favourable permanent establishment deals for Chinese corporations are those with Mongolia (signed 1991), Laos (signed 1999) and Ethiopia (signed 2009).

These treaties squeeze the tax rights of China’s treaty partners by stipulating that these three countries may only tax the profits of Chinese investors made in Mongolia, Laos or Ethiopia in very restricted circumstances. For example, a Chinese building site in Mongolia will not be a permanent establishment unless it lasts more than 18 months.⁶³ This is even more restrictive than the OECD standard of 12 months. It creates opportunities for construction companies to avoid tax through either speedy completion or perpetually changing the nominal ownership of the project.

Given that between 2003 and 2012, Chinese investment into these countries increased by 219, 210 and 125 times respectively, a massive potential source of revenue to these lower-income countries has been lost.⁶⁴

The ActionAid tax treaties dataset allows an aggregated picture of how restrictive permanent establishment rules within treaties signed by lower-income Asian and sub-Saharan African countries are. Encouragingly, the dataset reveals that permanent establishment rules are getting slightly better over time.

Figure 6: Tax treaties’ allowance for lower income countries to tax profits, estimated using the Permanent Establishment Index in the ActionAid tax treaties dataset⁶⁵



8. Withholding tax limitations

One of the main things that treaties do is to cap the right to tax money made by foreign owners of a business when it is sent abroad. Taxing cash that flows out of a country, applying withholding tax, is easy for poorly resourced governments to implement. Withholding taxes are a straightforward ‘grab it before it goes’ strategy that helps guarantee that foreign-owned businesses don’t transfer earnings out of the country before it is time to pay profits tax.

“We levy withholding taxes so that we can at least get something from the international companies. Often the companies are shifting profits. If we don’t withhold anything, we wouldn’t get anything.”

Luzia Januario
Angola General Tax Administration

The money made by multinational corporations overseas takes many forms. They pay out profits, known as dividends, to the company’s owners. They lend money to their own companies and charge interest on these loans. Multinationals bill their own companies for using the company logo, brand names and know-how through royalty payments. They also charge fees for ‘management’ or other professional or consultancy services. These payments commonly lower declared profits and thereby lower profit taxes.

Capping withholding taxes results in both reduced withholding tax revenue and reduced profit tax revenue in lower income countries. This is because imposing withholding taxes on money that leaves the country as interest, royalty and service payments is a proven means to discourage corporations from using these payments to shift profits to a low tax jurisdiction and reduce global profit tax liability. Yet ActionAid has identified numerous treaties (see figure 10) that are either still in force or soon to enter into force that completely ban withholding tax on interest payments paid to overseas lenders in the other treaty country. Several other treaties cap withholding taxes at worryingly low rates.

Taxing outflows of cash might not be the appropriate policy option for all countries, but it should be an unlimited right of lower-income countries to do so. Yet in tax treaties between lower-income and wealthier countries, the lower-income country is required to give up some, or all, of this right. It is especially questionable that some rich countries severely restrict or fully ban lower-income countries from taxing for example dividend payments, when the wealthier country simultaneously chooses not to exercise its right to tax those payments itself (see figure 7).

The ActionAid tax treaties dataset allows analysis of how the balance of taxation rights has evolved over time.

Treaties between lower-income sub-Saharan African countries and OECD countries are increasingly

Figure 7: Examples of some of the worst withholding tax deals currently in force

| Lower-income country | Wealthier country | Signed in year | What's the problem? |
|----------------------|----------------------|----------------|---|
| Guinea | United Arab Emirates | 2011 | <ul style="list-style-type: none"> • Completely bans Guinea from taxing dividends, interest, royalty payments and professional service fees. |
| Senegal | Mauritius | 2002 | <ul style="list-style-type: none"> • Completely bans Senegal from taxing dividends, interest, royalty payments and professional service fees. • Foreign-owned holding companies usually only face a 3% effective tax rate in Mauritius. |
| Uganda | Netherlands | 2004 | <ul style="list-style-type: none"> • Completely bans Uganda from taxing dividends of majority-owned companies and professional service fees. • The Netherlands has the full taxing right on these dividends, but generally doesn't tax. |
| Zambia | United Kingdom | 2014 | <ul style="list-style-type: none"> • Blocks Zambia from taxing British companies any more than 5% on dividends from direct investments, even though there's little risk of double taxation – the UK doesn't generally tax this money anyway. |

imposing restrictions on the sub-Saharan African countries by restricting the right to collect withholding taxes. Over time, restrictions placed on sub-Saharan African countries through treaties with OECD countries are being imposed at twice the pace of restrictions imposed in treaties between sub-Saharan African countries and non-OECD countries.⁶⁶

8a Dividends

Billions of dollars in dividends – pay-outs to the owners of a company – leave poor countries in Africa and Asia each year. Tax treaties decide which country has the right to collect the tax on these flows. Lower-income countries' right to withhold tax on dividend payments to foreign owners is systematically capped, and sometimes completely denied, by tax treaties.

ActionAid can expose an alarming trend in that the rights that lower-income countries in sub-Saharan Africa and Asia have to tax dividend pay-outs on foreign direct investments have fallen sharply. Figure 8 displays how the average deal that an Asian or sub-Saharan African country made in the mid-1980s gave them twice as much right to tax, compared to the agreements that are being signed today.

Figure 9: These losses are estimated by taking the total dividends paid from Bangladesh to foreign shareholders in 2013 and applying to that the (FDI) investment share of each treaty partner, then calculating the effect of treaty caps on the 20% domestic dividend withholding tax rate.

Figure 8: The right to tax dividends has fallen sharply⁶⁷

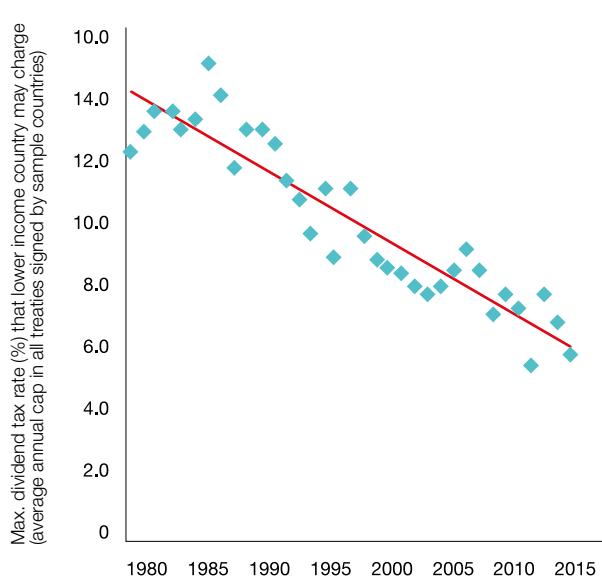


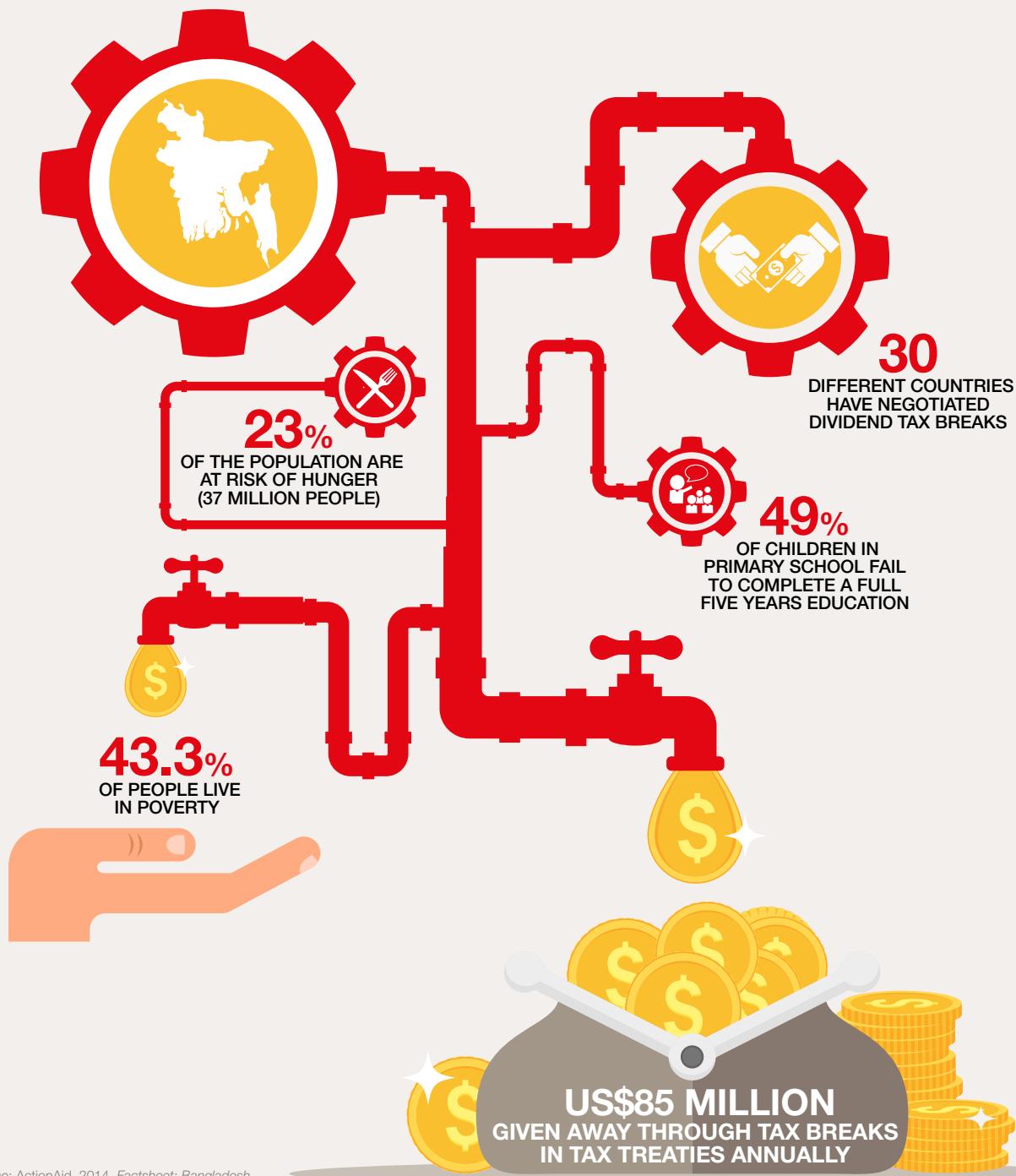
Figure 9: The cost to Bangladesh of treaty caps on foreign direct investment dividend withholding taxes, 2013.⁷¹

| Treaty with: | Dividend tax cap | Investment share | Treaty loss on dividends 2013 (US\$) |
|-----------------------|------------------|------------------|--------------------------------------|
| United Kingdom | 10% | 11% | 14,560,707 |
| United States | 10% | 8.7% | 11,545,330 |
| Korea (Rep.) | 10% | 7.8% | 10,322,773 |
| Netherlands | 10% | 6.4% | 8,484,746 |
| Japan | 10% | 5% | 6,576,360 |
| United Arab Emirates | 5% | 2% | 3,883,430 |
| India | 10% | 2.7% | 3,592,052 |
| Saudi Arabia | 10% | 2.7% | 3,561,147 |
| Malaysia | 15% | 5.4% | 3,556,215 |
| Norway | 10% | 1.9% | 2,486,704 |
| China (People's Rep.) | 10% | 1.8% | 2,327,905 |
| Thailand | 10% | 1.7% | 2,262,807 |
| Denmark | 10% | 1.7% | 2,260,834 |
| Pakistan | 15% | 3.2% | 2,112,967 |
| Singapore | 15% | 2.3% | 1,512,292 |
| France | 10% | 1% | 1,368,205 |
| Switzerland | 10% | 0.7% | 953,453 |
| Sweden | 10% | 0.6% | 826,216 |
| Sri Lanka | 15% | 1.2% | 785,284 |
| Mauritius | 10% | 0.5% | 645,389 |
| Indonesia | 10% | 0.4% | 478,864 |
| Germany | 15% | 0.7% | 463,329 |
| Canada | 15% | 0.5% | 358,367 |
| Italy | 10% | 0.2% | 225,212 |
| Turkey | 10% | 0.1% | 181,320 |
| Belgium | 15% | 0% | 25,973 |
| Romania | 10% | 0% | 18,576 |
| Philippines | 10% | 0% | 1,808 |
| Poland | 10% | 0% | 0 |
| Vietnam | 15% | 0% | 0 |
| TOTAL: | 70.2% | | \$85,378,265 |

The cost of tax cuts

Tax revenues collected by Bangladesh's revenue authority are amongst the smallest in the world in proportion to the size of its economy.⁶⁸ Poverty in Bangladesh, and the severe malnutrition that results, is a significant contributor to the high maternal and infant mortality rates that Bangladesh's women and children face.⁶⁹ Bangladesh has the highest number of very restrictive treaties with wealthier countries in the ActionAid tax treaty dataset.

Thirty different countries have negotiated dividend tax breaks for direct investment in treaties with Bangladesh, each making small savings for its multinationals (see figure 9). ActionAid estimates that these small cuts add up to US\$85 million given away by Bangladesh in 2013 alone, due to a single rule in the country's tax treaties. While US\$85 million is a relatively small portion of Bangladesh's total annual government revenue, ActionAid would rather see this US\$85 million annually contribute to the country's woefully underfunded public services.⁷⁰



8b Interest

Loans from foreign lenders can be a fair way for companies to access additional capital. The interest payments that result from such loans can also be a way to shift profits out of some of the world's poorest countries.

When a borrower pays interest to a lender in the same corporate group, the payments are generally counted as a 'cost of business' and thereby lower the borrower's profits and its tax bill. A treaty that aggressively lowers or completely cancels out any right that the developing country has to tax interest payments makes such schemes more lucrative. The true cost of banning these taxes is therefore likely to be much higher than the lost withholding tax revenue.

The use of interest payments to reduce profit and tax payable is a big problem for lower-income countries.

When investors receive more of their return in interest payments than in dividends, alarm bells start ringing.

Almost half a billion US dollars left Mongolia as interest payments from foreign-owned corporations in 2013. This was three times the amount that left the country as dividend payments to foreign owners.⁷³ According to Mongolian law, intercompany interest payments should be taxed at 20%.

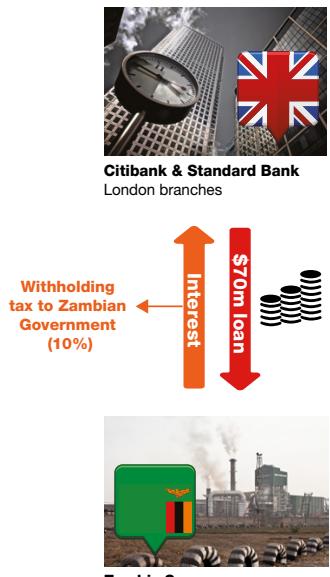
Until recently, Mongolia's treaty with the United Arab Emirates completely banned taxing these flows, and several of Mongolia's other treaties still cut this tax dramatically. Without publicly available and detailed government or corporate reporting, it's not possible to establish how much each of these treaty deals contribute to the flood of intercompany interest payments that leave Mongolia. Such huge interest payments do however raise significant concerns.

Sweet Nothings

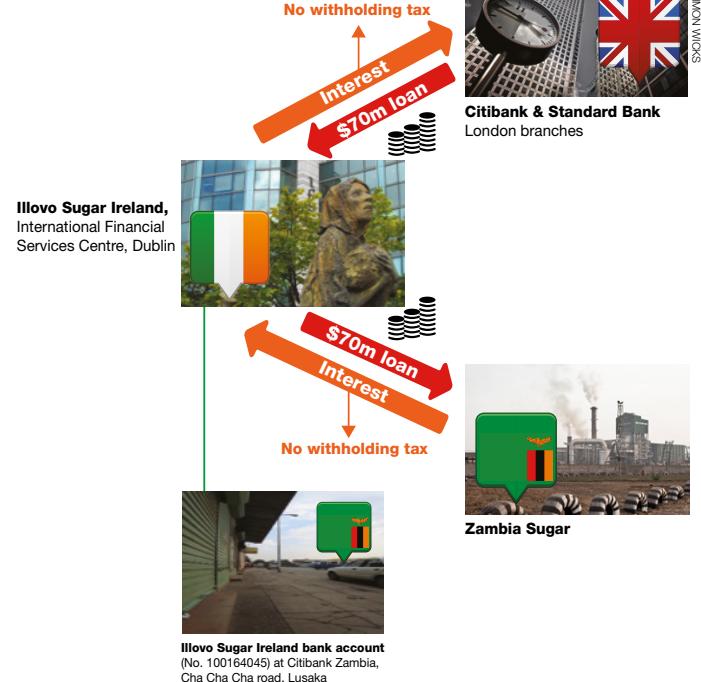
ActionAid has reported how British owned corporation Zambia Sugar generated profits of US\$123 million in Zambia, though the company admitted to paying "virtually no corporate tax" in the country between 2008 and 2010.

Routing a loan through Ireland to avoid Zambian tax on the interest charges was one of the avoidance mechanisms used. Since this report was released, Zambia's government has successfully renegotiated the treaty rule that made the avoidance possible.⁷²

Ordinary loan



The dog-leg



The OECD's recommendations to tackle tax avoidance, the Base Erosion and Profit Shifting (BEPS) project, proposes that countries should respond to this problem by restricting disproportionate interest payments to related parties. While this is a positive proposal that could make a real difference for some countries, it will require regular detailed and resource-intensive reviews of group financial arrangements and will simply not be practical for some of the world's poorest countries. Withholding taxes on interest payments are a practical and proven method to deal with abusive profit shifting that works for under-resourced tax authorities.

ActionAid can report that a number of lower-income African countries have completely signed away their right to tax interest payments made to certain countries. A number of these deals have been struck between low-income countries in sub-Saharan Africa and wealthier countries. A sample is provided at figure 10.

8c Royalties and service fees

Royalty payments compensate the owner for use of intangible assets such as company logos, brand names and company know-how. These assets are far from insignificant, often making up the bulk of a company's value.⁷⁴ The fact that multinationals commonly bill their own companies for the right to the company's own brand is part of the controversy that surrounds Starbucks' tax affairs in Europe.

Professional service fees are payments that one company pays to another company, sometimes within the same business group. Such a service could for example be management, accounting or scientific support. These wide concepts become even blurrier when actual company accounts come under scrutiny. When ActionAid took a look at the Australian mining company Paladin's affairs in Malawi, we found that the company had paid almost US\$135 million in management fees to a Dutch affiliate which was a letterbox company with no staff.⁷⁵

Similar to interest payments, royalty payments and service and management fees allow big business to minimise their profits, and therefore their tax liability. It is therefore deeply concerning that some treaties completely prevent lower-income countries from taxing royalty payments to the treaty partner. Benin, Pakistan, Zambia, Malawi and Senegal have all agreed to such clauses that put their revenues at risk. These agreements have been made with the wealthier countries Ireland, South Africa, Mauritius, Qatar and Norway.

Figure 10: A sample of modern era tax deals that completely ban tax on interest payments paid to overseas lenders in the treaty partner country

| Party 1 | Party 2 | Signed | Status |
|--------------|----------------------|--------|---------------------------|
| Congo (Rep.) | France | 1987 | In force |
| Senegal | Qatar | 1998 | In force |
| Sudan | Qatar | 1998 | In force |
| Rwanda | Mauritius | 2001 | Terminated |
| Mongolia | United Arab Emirates | 2001 | Terminated |
| Senegal | Mauritius | 2002 | In force |
| Congo (Rep.) | Italy | 2003 | In force |
| Mozambique | United Arab Emirates | 2003 | In force |
| Zimbabwe | Kuwait | 2006 | In force |
| Guinea | United Arab Emirates | 2011 | Ratified but not in force |
| Benin | United Arab Emirates | 2013 | Ratified but not in force |

Figure 11: The right to tax royalties has fallen⁷⁶

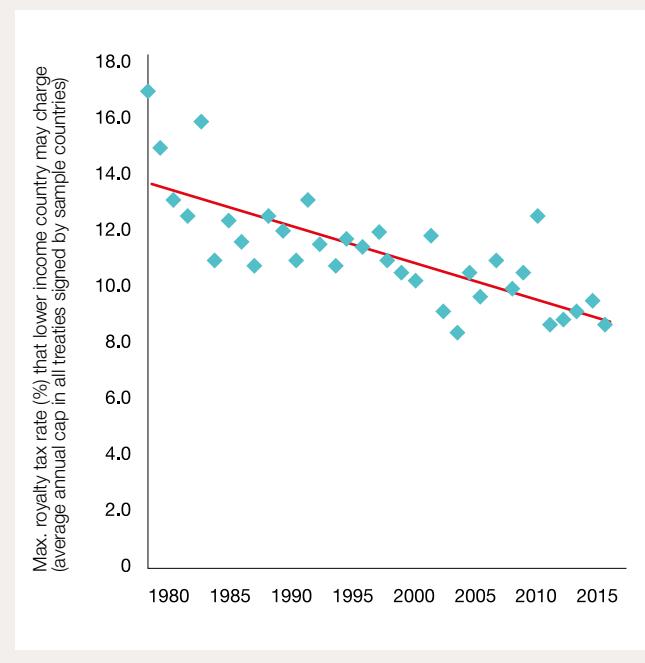


Figure 11 shows that Asian and sub-Saharan African lower-income countries are signing away more and more of their right to tax royalty payments over time.

How much is too much?

Finance Uncovered recently reported that almost one in ten dollars that Africa's largest cell phone company MTN made in Ghana was routed to Dubai in payments for royalties, management services and technical fees.

It was also reported that more than half a billion dollars left from Nigeria to Dubai, from Uganda to Mauritius and from the Ivory Coast to Mauritius. MTN has since come under investigation in several African countries.⁷⁷ MTN responded that it "has not actively engaged in any unlawful activities".

This example highlights the importance of not allowing this tax right to be eroded – and the importance of levying withholding taxes to prevent these abuses when a country retains this right. All of these countries risk having suffered tax losses as a result of these related party payments, but Uganda's tax defence was lowered by the fact that they had a tax treaty with Mauritius that limited Uganda's ability to levy withholding taxes on royalties and professional service fees.

9. Capital gains tax limitations

When assets increase in value, the gain can be taxed when the asset is sold. Tax treaties constrain the ability of developing countries to rely on this potentially lucrative revenue stream.

Developed countries rely heavily on revenue from capital gains tax. The UK raised £5.8 billion (US\$8.8 billion) from capital gains tax in 2014.⁷⁸ This provided enough money for the UK to pay all of the costs of world-class maternal health care for two million women.⁷⁹ Not all developing countries collect capital gains tax,⁸⁰ and those that do often collect it on only a limited class of assets.⁸¹ When they do though, it can have an enormous impact. In 2012, just one capital gains tax payment by a UK headquartered petroleum corporation provided 43% of Mozambique's mining revenue.⁸² After a protracted legal dispute, Uganda collected US\$434 million in capital gains tax following Heritage Oil's sale of assets to Tullow in 2010.⁸³

Treaties almost always recognise the developing country's right to tax immoveable property – land, buildings and infrastructure. Depending on how the treaty is drafted though, the right to tax gains on those categories of property can still be compromised. A common mechanism used by multinationals to avoid paying capital gains tax in the country where the income is earned has been to sell the property via an overseas registered corporation instead of selling the asset directly.

Only 51% of treaties covered in the ActionAid tax treaties dataset include a clause that protects against corporations avoiding capital gains tax by selling immoveable assets through share sales. But even for treaties that do have this protection, many do not close off the loophole in relation to property sold via trusts or partnerships.

Land, buildings and infrastructure are not the only things that increase in value. Shares hold significant value and appreciate. Wealthy countries overwhelmingly collect tax on capital gains made by residents who sell shares in local corporations,⁸⁶ and commonly also collect tax on capital gains made by non-residents who sell shares in local corporations.⁸⁷ The treaties that these same countries sign with developing countries, however, often constrain the right of developing countries to tax non-residents in the same way.⁸⁸

Only 28% of treaties in the ActionAid tax treaties dataset allow the taxation of foreign owners in respect

Zain International

When Zain International sold its pan-African mobile phone business to Bahti Airtel six years ago, these corporations unwillingly became central figures in the tax avoidance debate. On paper, the US\$10.7 billion sale only involved changes of ownership in the Netherlands. In reality, this was a sale of effective ownership of the mobile businesses in several African countries.

The Ugandan telecom provider Celtel was one of the businesses that changed hands. When the Ugandan government tried to levy US\$85 million capital gains tax on the money made by Zain from the sale, Zain refused saying that the sale had happened in the Netherlands and was therefore not taxable in Uganda. In 2014, the Ugandan court of appeal ruled in favour of the Uganda revenue authority. It is reported that Zain intends on applying for resolution of the dispute to the Dutch tax authority.⁸⁴

Whether the Uganda-Netherlands tax treaty's restrictive capital gains tax article allows Uganda to levy tax is one of the issues that could affect the final outcome.⁸⁵

The ActionAid tax treaties dataset shows that a shockingly high percentage (49%) of contemporary treaties leave lower-income countries exposed to relatively simple tax planning techniques used to avoid capital gains tax on land, buildings and infrastructure. It also shows that treaty norms allow very little space for lower-income countries to tax capital gains on shares and other types of immovable property.

of capital gains on shares in local corporations.⁸⁹ Canada collects capital gains tax when shares are sold for a gain⁹⁰ but in its treaties with Bangladesh, the Ivory Coast, Kenya, Mongolia, Papua New Guinea, the Philippines, Senegal and Zambia, those countries are prohibited from collecting capital gains tax when a Canadian resident sells its shares in a corporation from one of those jurisdictions.⁹¹

The intangible property of a foreign corporation is worth taking note of. While machinery, ships, aircraft and other moveable physical assets generally lose value over time, intangible property (e.g. intellectual property, business goodwill etc.) is more likely to increase in value. If subject to capital gains tax, these increases could potentially be an important source of revenue for lower-income countries. Most tax treaties prevent the country where a foreign corporation is operating from taxing capital gains made by that foreign corporation on its intellectual property and business goodwill (including valuable contacts and licences) unless the foreign corporation has a local permanent establishment.⁹²

PART C: Conclusion and recommendations

Global corporations are using tax treaties to limit their tax contributions in the developing countries where they generate profits. Many of the tax treaties that ActionAid has scrutinised are ensuring that money flows untaxed from poor to rich countries, making the world more unequal and exacerbating poverty.

Tax treaties that aggressively lower tax contributions in low and lower-middle income countries are hurting these countries' revenue collection and the rights of the world's most vulnerable people. They simply have no place in the 21st century.

The ActionAid tax treaties dataset makes the terms of these agreements transparent for governments, commentators and policymakers for the first time. The era of outdated and unscrutinised tax treaties must come to an end. Tax treaty policy must be aligned with wider development considerations and transparency must be increased.

ActionAid calls upon governments to take responsibility for the impact that their tax treaties have in limiting revenues collected from multinational corporations in low and lower-middle income countries, and to take the following actions to redress the balance.

1. Tax treaties that restrict the tax rights of low and lower-middle income countries should be urgently reviewed.

Both unreasonably restrictive individual treaty provisions and restrictions on a large number of tax rights within a treaty should be cause for urgent review. The ActionAid tax treaties dataset includes the content of individual provisions, as well as an overall assessment of the number of restrictive provisions in each specific treaty, which can be used to identify problematic treaties.

2. All governments should subject treaty negotiation, ratification and impact assessments to far greater public scrutiny.

- The policy objectives that governments are seeking to achieve by signing tax treaties should be published.
- Draft versions of tax treaties should be made public prior to signature.
- Tax treaties should be debated and formally ratified by national legislatures, something that is surprisingly rare at present.
- Before signing tax treaties, an impact assessment should be published.
- An analysis of revenue losses and other impacts should be published every five years. If the analysis indicates that a particular tax treaty is reducing the country's tax revenue, it should be reassessed.

3. All governments should consider the development implications of their tax treaties.

Countries should carefully consider the evidence regarding the impact on revenue for low and lower-middle income countries before entering into treaty negotiations. While the UN model tax treaty will allow these countries to maintain significantly more tax rights than the OECD model, it should not be seen as the ‘holy grail’. A pro-development approach to the negotiation of tax treaties would treat suggested rates and provisions in the UN model as minimum standards, not upper limits. Low and lower-middle income countries should formulate their own model treaties that go beyond the UN model, as appropriate.

Business also has a role to play in preventing harmful tax treaties:

4. Multinationals should be transparent about their interactions with developing country lawmakers and officials regarding treaty terms.

This should include the proactive publication of submissions made to governments concerning tax treaties, as well as details of all meetings between corporates and developing country lawmakers and officials on the subject of treaties.

Multinationals should also refrain from lobbying governments to conclude tax treaties that are particularly advantageous to their own business interests, but of limited or unclear benefit to the developing country concerned. In many cases, corporate engagement with governments concerning treaty policy is uncontroversial. However businesses should be seeking to establish a level playing field, rather than a skewed system designed with just a few powerful corporate actors in mind.⁹³

26 Tax Treaties

- 1 Zucman, G. 2014. *Taxing across borders: tracking personal wealth and corporate profits*. The Journal of Economic Perspectives, 28(4), pp. 121-148; In relation to tax paid by Google in the UK, see House of Commons Committee of Public Accounts, Tax avoidance – Google, Ninth Report of Session 2013-14, <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpubacc/112/112.pdf>, p. 7.
- 2 It is alleged that the UK's treaty with Luxembourg allowed Amazon to reduce its taxable presence in the UK. Bergin, T, After Google, Amazon to be grilled on UK tax presence, Reuters 17 May 2013 <http://uk.reuters.com/article/uk-britain-tax-amazon-idUKBRE94G06320130517>; Griffiths, I and Bowers, S, *Fresh questions for Amazon over pittance it pays in tax*, The Guardian 16 May 2013, <http://www.theguardian.com/technology/2013/may/15/amazon-tax-bill-new-questions>. Following operational changes in 2015 that resulted in increased UK tax being paid, a spokesman said Amazon was "now recording retail sales made to customers in the UK through the UK branch. Previously, these sales were recorded in Luxembourg". Bowers, S. *Amazon to begin paying corporation tax on UK retail sales*, The Guardian 23 May 2015, <http://www.theguardian.com/technology/2015/may/23/amazon-to-begin-paying-corporation-tax-on-uk-retail-sales>.
- 3 The analysis of each of these treaties is freely available on the websites of ActionAid and the ICTD. The analysis in this report is based on data produced by consultant Martin Hearson. For further detail on the research see Hearson, M. 2016. *The ActionAid tax treaties dataset*. Brighton: International Centre for Tax and Development. Available at <http://www.ictd.ac/datasets/action-aid-tax-treaties-datasets>. The analysis of the dataset in this report is ActionAid's own.
- 4 WHO, last updated 2015, *Bangladesh: statistical profile* <http://www.who.int/gho/countries/bgd.pdf?ua=1>.
- 5 See Keen, M et al, 9 May 2014. *IMF policy paper, spillovers in international corporate taxation*, 2014 p. 24.
- 6 Ibid. pp. 26-28.
- 7 On 2 July 2015, at a conference hosted by the Dutch Ministry of Foreign Affairs, Mr Saint-Amans, Director of the OECD's Centre for Tax Policy and Administration, said "Source residence is an extremely important debate that should take place and developing countries should probably have more source taxation, I have no doubt"; European Parliament Committee on Economic and Monetary Affairs, 2015. *Report with recommendations to the Commission on bringing transparency, coordination and convergence to corporate tax policies in the Union*, A8-0000/2015, p.19; European Commission, *Communication from the Commission to the European Parliament and the Council on an external strategy for effective taxation*, COM(2016), 24, p 9.
- 8 The Netherlands has instigated the renegotiation of treaties with developing countries to include anti-abuse clauses. This initiative is welcome given that it may reduce opportunistic reliance on tax treaties for tax minimisation purposes. See renegotiated treaty with Malawi (signed April 2015) <https://zoek.officielebekendmakingen.nl/trb-2015-75.html>, Zambia (signed July 2015) <https://zoek.officielebekendmakingen.nl/trb-2015-113.html> and Kenya (signed July 2015) <https://zoek.officielebekendmakingen.nl/trb-2015-114.html>. However, in some respects the renegotiations have further restrained the tax rights of the lower income treaty partner. For example the new Dutch treaty with Zambia caps withholding taxes on dividends and royalties at a rate lower than the old treaty did.
- 9 Addressing the two-day East African regional workshop organised by ActionAid and SEATINI in Kampala, Uganda. Ladu, I M., *Govt suspends double taxation pacts*, Daily Monitor Uganda 6 June 2014 <http://www.monitor.co.ug/Business/Govt-suspends-Double-Taxation-pacts/-/688322/2338432/-/qc4jofz/-/index.html>.
- 10 The UN Model Double Taxation Convention between Developed and Developing Countries, 2011 provides a template for countries negotiating tax treaties. It allows lower income countries negotiating with wealthier countries to maintain significantly more tax rights than the OECD Model Tax Treaty does.
- 11 UNCTAD, 2015. *World Investment Report 2015*. p. 107.
- 12 Half of all bilateral tax treaties were between an OECD member and a non-OECD member in 2013. The number of such tax treaties has increased from below 500 in 1990 to close to 1,500 in 2013. Treaties between two non-OECD members have also increased sharply during the same time period. See Keen, M et al, 9 May 2014. *IMF policy paper, spillovers in international corporate taxation*, figure 3, p. 26.
- 13 Ibid.
- 14 Because of this, tax treaties are often referred to as 'double taxation treaties' (DTTs) or 'double taxation agreements' (DTAs).
- 15 Most OECD countries do not tax active income earned abroad. PwC, 2 April 2013. *Evolution of territorial tax systems in the OECD*. Broadly defined, active income is income from business in which there is material participation. This is contrasted with passive income, which is accrued without material participation, e.g. rental income and capital gains.
- 16 PwC, 2 April 2013. *op cit*.
- 17 The analysis in this report is based on data produced by consultant Martin Hearson. For further detail on the research see Hearson, M. 2016. *The ActionAid tax treaties dataset*. Brighton: International Centre for Tax and Development."
- 18 Some treaties that are still in force today were signed by colonial powers on behalf of lower income countries, whilst these countries were still colonies. These are often the most restrictive on the taxing rights of lower income countries. They are however not included in our dataset because the wide variations in their format and content makes quantitative comparison of these treaties very difficult. Scrutiny of these older treaties is an important area for future research.
- 19 UNCTAD, 2015. *World investment report 2015*, p. xiii & 212. UNCTAD uses the phrase "investment hubs" to refer to both tax havens and special purpose (or conduit) entities made available in some jurisdictions, e.g. the Netherlands.
- 20 *ibid*. Other benefits include secrecy and a favourable domestic tax regime in the conduit country. An ActionAid report found that SAB Miller, the world's largest brewer, had more companies in tax havens than breweries and bottling plants in Africa. ActionAid, 2012. *Calling time: why SAB Miller should stop dodging taxes in Africa*.
- 21 McGauran, K, 2013. *Should the Netherlands sign tax treaties with developing countries?* SOMO.
- 22 Keen, M et al, 9 May 2014. *op cit*, p 27.
- 23 van't Riet, M. and Lejour, A, 2014. *Ranking the stars: network analysis of bilateral tax treaties* (No. 290). CPB Netherlands Bureau for Economic Policy Analysis, p 16.
- 24 This applies to the country looking to attract investment (the net capital importing country) as well as the country whose residents would invest overseas (the net capital exporting country). The former may look to attract investment while the latter may have an interest in reducing the tax paid by its residents overseas – thereby making them more competitive relative to other investors.
- 25 See e.g. Keen, M et al, 9 May 2014. *op cit*, Brooks, K & Krever, R 2015. *The troubling role of tax treaties*. Tax design issues worldwide, series on international taxation, 51, pp. 159-17, 168.
- 26 ActionAid, 2012. *Calling time*; ActionAid, 2013. *Sweet nothings*; ActionAid, 2015. *An extractive affair*.
- 27 Keen, M et al, 9 May 2014. *op cit*; de Mooij, R, Keen, M and Perry, V, *Taking a bite out of Apple? Fixing international corporate taxation*, Vox 14 September 2014, <http://www.voxeu.org/article/fixing-international-corporate-taxation>.
- 28 ActionAid, 2013. *Deloitte in Africa - advising big businesses on how to avoid tax in some of the world's poorest countries*.
- 29 ActionAid, 2015. *Levelling up: ensuring a fairer share of corporate tax for developing countries*, p. 9.
- 30 PwC, 2 April 2013. *op cit*
- 31 HMRC, 2013. *Double tax relief for companies*, <https://www.gov.uk/guidance/double-taxation-relief-for-companies>. See also HMRC, undated. *INTM161010 - UK residents with foreign income or gains: double taxation relief: general*, <http://www.hmrc.gov.uk/manuals/intmanual/INTM161010.htm>.
- 32 In proposing a consolidation of European tax treaties, the European Parliament noted that the current practice under which hundreds of treaties are signed bilaterally is producing "sub-optimal results, especially for developing countries". European Parliament Committee on Economic and Monetary Affairs, 2015. *Report with recommendations to the Commission on bringing transparency, coordination and convergence to corporate tax policies in the Union*, A8-0000/2015, p.19. If a consolidated treaty is to reflect the interests of developing countries, the new treaty – to the extent that it applies between Europe and low/upper-middle income countries - must rebalance taxing rights in favour of poorer countries.
- 33 European Commission, *Communication from the Commission to the European Parliament and the Council on an external strategy for effective taxation*, COM(2016), 24, p 9.
- 34 ActionAid, 2015. *Levelling up*, p.9.
- 35 European Commission press release Brussels, 3 December 2015. *State aid: Commission opens formal investigation into Luxembourg's tax treatment of McDonald's*. http://europa.eu/rapid/press-release_IP-15-6221_en.htm.
- 36 Qualifying (FDI) dividend income is usually exempt from Dutch corporate income tax under the participation exemption, see e.g. PwC, *Doing business in the Netherlands 2014*, pp. 17-18 <http://www.pwc.nl/nl/assets/documents/pwc-rapport-doing-business-in-the-netherlands.pdf> and Deloitte Touche Tohmatsu Limited, *Taxation and investment in Netherlands 2015*, p. 10 <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-netherlandsguide-2015.pdf>
- 37 For more information about Uganda's tax treaties, see ActionAid, Seatin, 2014. *Double taxation treaties in Uganda: impact and policy implications*, http://www.fairpolitics.nl/doc/DTT%20In%20Uganda%20Final%202012_08_2014.pdf.
- 38 In these examples, the tax treaty bars the country where the activity occurs from levying a certain tax, while at the same time the country where the investment is made from also chooses not to tax. Where this happens, it is possible that a third country may make a tax claim on the same income in some circumstances.
- 39 ActionAid, 2015. *Levelling up*, p 7 citing IMF research which found that corporate income taxes account for about 16% of government revenues in low income countries, compared to just over 8% in high-income countries
- 40 Sepúlveda Carmona, M. 2014. *Report of the Special Rapporteur on extreme poverty and human rights*. Available at SSRN 2534341, p 12.
- 41 WHO, 2015. *Bangladesh: statistical profile*, <http://www.who.int/gho/countries/bgd.pdf?ua=1>.
- 42 Waris, A. and Kohonen, M. 2011. *Rethinking development in an age of scarcity and uncertainty*, <http://eadi.org/gc2011/waris-109.pdf>, p. 18.
- 43 Malawi National Statistical Office, *Malawi labour force survey 2013*, p. 29.
- 44 Nine out of ten billionaires are men and wealthier individuals hold a disproportionately large share of their assets in financial form, compared to the average. These two factors combined result in a highly unbalanced ownership of corporate shares between men and women. For example, in the United States single women own 68 cents for every dollar of stock owned by single men. See Forbes, 2 March 2015, The richest women in the world 2015, <http://www.forbes.com/sites/kerryadolan/2015/03/02/the-richest-women-in-the-world-2015/>; Kersey, R., Stierli, M., Shorrocks, A., Davies, J. B. & Llüberas, R. (2015). *Global wealth report 2015*. Credit Suisse, Zurich. pp. 19ff and Chang, M.L., 2010. *Shortchanged: why women have less wealth and what can be done about it*. Oxford University Press. Vancouver, p. 84."
- 45 Pickering, A., 2014. *Negotiation of tax treaties for developing countries*, UN, http://www.un.org/esa/ffd/documents/Papers_TTN.pdf.
- 46 Brazil's inward direct investment position was US\$17,603 million from Germany, US\$18,308 million from Switzerland and US\$23,423 million from the UK as of late 2014. Data Source: the *IMF coordinated direct investment survey (CDIS)*, accessed 28 January 2016.
- 47 OECD, 2014. *Preventing the granting of treaty benefits in inappropriate circumstances*, OECD Publishing, Paris, p. 102.
- 48 Addressing the two-day East African regional workshop organised by ActionAid and SEATINI in Kampala, Uganda. Ladu, I M., *Government suspends double taxation pacts* Daily Monitor Uganda 6 June 2014 <http://www.monitor.co.ug/Business/Govt-suspends-Double-Taxation-pacts/-/688322/2338432/-/qc4jofz/-/index.html>.

- 49 Deutsch, A. and Edwards, T., *In tax case: Mongolia is the mouse that roared*, Reuters, 16 July 2013, <http://reut.rs/1b9OOey>.
- 50 The ActionAid tax treaties dataset, <http://www.actionaid.org/tax-power>.
- 51 The sample selection includes countries within the two regions which were defined by the World Bank as low- and lower-middle income as of 1 January 2015. In its refreshed classification on 1 July 2015, the World Bank moved Mongolia to the 'upper-middle income' category, which would exclude it from the analysis, but it has been left in the dataset consistent with the 1 January 2015 sample selection date. The dataset does not include India and Indonesia (both G20 countries) as sample countries. This is because the primary function of the dataset is to allow analysis of the source country tax rights that net capital importing countries rely on. Both India and Indonesia are net capital exporters in respect of the sample countries. The dataset does not include treaties whose text could not be obtained in English, treaties that depart significantly from the conventional content and structure of modern tax treaties or treaties signed by governments prior to independence.
- 52 For details on the source index methodology, see Hearson, M. 2016. *The ActionAid tax treaties dataset*. Brighton: International Centre for Tax and Development.
- 53 Each of the 26 rules in each treaty in the dataset has been scored to indicate the extent to which the net capital exporting (lower income) country has retained its tax rights – 0 indicating more and 1 indicating less restrictive rules. These scores were aggregated for each treaty to give each an estimated assessment of the treaty impact between 0 and 1. The graph below plots the aggregated score for each treaty. The line reflects the linear trend for treaties with OECD countries and non-OECD countries respectively. Importantly though, there is dramatic variation between how restrictive individual treaties are.
- 54 These cancellations or renegotiations have been factored into the dataset if they occurred prior to or on 1 December 2015. Given that the AA tax treaties dataset includes treaties signed until end 2014 and has updated the status of those treaties to incorporate changes made on or before 1 December 2015, the new Dutch treaty with Kenya, Malawi and Zambia are not included in this analysis but the old Netherlands-Zambia treaty is. Similarly, the old Zambia-Ireland treaty is incorporated, not the new Zambia-Ireland treaty which was signed in 2015.
- 55 On the rare occasion where two treaties between the same two countries have been signed, but neither of the treaties have yet been terminated, Figure 3 (and Figure 4) refer to the most recently signed treaty, to avoid double-counting.
- 56 Note that the UK also has the highest number of tax treaties of any kind with countries in our sample.
- 57 The table displays the number of treaties that each wealthier country has which is more restrictive than the median treaty between a wealthier country and a lower income country in the ActionAid tax treaties dataset, estimated using the source index in the dataset. Wealthier countries are countries *wealthier than* the sample low and lower middle income countries. In addition to Ireland and Russia, four additional wealthier countries have three very restrictive treaties that feature in the ActionAid tax treaties dataset. These countries are Malaysia, Seychelles, Serbia and Montenegro, and Thailand. Ireland and Russia are displayed in the table as these two countries' very restrictive treaties have the worst average source index values.
- 58 The table displays the number of treaties that each lower income country has which is more restrictive than the median treaty between a wealthier country and a lower income country in the ActionAid tax treaties dataset, estimated using the source index in the dataset. In addition to Guinea, Mali and Papua New Guinea, four additional lower income countries have two very restrictive treaties that feature in the ActionAid tax treaties dataset. These countries are Malawi, Cape Verde, Nepal and Swaziland. Guinea, Mali and Papua New Guinea are displayed in the table as these three countries' very restrictive treaties have the worst average source index values.
- 59 These include treaties signed by former colonies prior to independence both with the colonial power and with other countries.
- 60 See above fn 1, 2
- 61 See above fn 2. Note as of 1 May 2015, Amazon booked more sales in the UK, thereby increasing its taxable earnings in the UK. Self, H. *Amazon begins to book revenues in separate countries in what expert says is response to regulatory pressure*, Out-Law.com 26 May 2015, <http://www.out-law.com/en/articles/2015/may/amazon-begins-to-book-revenues-in-separate-countries-in-what-expert-says-is-response-to-regulatory-pressure/>.
- 62 Prof. Ongutu, A 2015, *A critical analysis of what Africa's response should be to the OECD BEPS action plan* in IBFD First Africa Tax Synposium, Livingston, <http://www.ibfd.org/sites/ibfd.org/files/content/pdf/DAY1%20%20Annet%20Ongutu%20-%20Africa%20Tax%20Symposium.pdf>, slide 12.
- 63 China's treaty with Sudan also contains an 18-month provision.
- 64 UNCTAD, 2014, *Bilateral FDI statistics 2014*, <http://unctad.org/en/Pages/DIAE/FDI%20Statistics/FDI-Statistics-Bilateral.aspx>. Note that the most recent data available is from 2012. Data available relates to Chinese ownership of Mongolian, Laotian and Ethiopian companies. Chinese investment that does not satisfy the definition of permanent establishment is likely to be additional to this amount.
- 65 9 of the 26 tax treaty rules that the ActionAid tax treaty dataset covers govern lower income countries' right to collect profit tax. The permanent establishment index takes a value between 0 and 1 for each treaty, representing the average value of the 9 variables it contains. The index illustrates the least (0) to the most (1) expansive tax right obtained by a lower income country covered by the dataset. For more details, see Hearson, M. 2016. Op cit.
- 66 Hearson, M. 2016. *op cit.*
- 67 Drawing from the ActionAid tax treaties dataset, the graph depicts the extent to which sample (lower-income Asian and sub-Saharan African) countries have maintained or given away their right to levy withholding tax on dividends over time.
- 68 World Bank Group, 2016, *Tax revenue (% GDP)*, <http://data.worldbank.org/indicator/GC.TAX.TOTL.GD.ZS>.
- 69 Unicef undated, *Women and girls in Bangladesh*, http://www.unicef.org/bangladesh/Women_and_girls_in_Bangladesh.pdf, p 3.
- 70 In some circumstances – where the company distributing the dividend is owned by a permanent establishment in Bangladesh – the dividends may be taxable by Bangladesh on a profit (net) basis. In those cases, Bangladesh still loses its withholding tax revenue. As there is no publicly available data covering the extent of the use of such a corporate structure, this has not been factored into our calculations.
- 71 ActionAid calculation using investment position data reported by Bangladesh to the IMF Coordinated Direct Investment Survey (representing the investment position in late 2012), IMF Balance of Payments Statistics (data for 2013) and the ActionAid tax treaties dataset. The calculation is an estimate. The estimation method assumes a constant rate of return and a constant retention ratio (the proportion of earnings kept in foreign businesses as retained earnings) across all investments.
- 72 ActionAid, 2013. *Sweet nothings*.
- 73 Data source: IMF Balance of Payments Statistics. Other countries with similarly disproportionate interest payments leaving the country during one or more years include Burkina Faso, Guinea, Niger and Sierra Leone.
- 74 In 1975 intangibles constituted 17% of the market value of S&P companies. In 2010, it was 80%, see Sinclair, R.N. and Keller, K.L., 2014. *A case for brands as assets: Acquired and internally developed*. Journal of Brand Management, 21(4), pp.286-302, Figure 1.
- 75 From ActionAid, 2015. *An extractive affair* p. 9. Between 2009 and 2014, Paladin Africa Ltd paid management fees of US\$134.55 million to Paladin Netherlands BV – a company that has no staff.
- 76 Drawing from the ActionAid tax treaties dataset, the graph depicts the extent to which sample (lower-income Asian and sub-Saharan African) countries have maintained or given away their right to levy withholding tax on royalties over time.
- 77 Finance Uncovered, 2015. *Finance uncovered investigation: MTN's Mauritian billions*, <http://www.financeuncovered.org/investigations/finance-uncovered-investigation-mtns-mauritian-billions/> and M&G Centre for Investigative Journalism, 2015. Ramaphosa and MTN's offshore stash <http://amabhungane.co.za/article/2015-10-08-ramaphosa-and-mtns-offshore-stash>.
- 78 Palin, A., *Triple tax lock puts capital gains in the line of fire*, FT 15 May 2015, <http://www.ft.com/cms/s/0/236624d8-f971-11e4-ae65-00144feab7de.html#axzz3u06aphdG> [39].
- 79 Maternal care costs the NHS an average of GBP 2,800 per woman for antenatal, during labour and postnatal care, NHS Commissioning Board, 2012. *Commissioning maternity services: a resource pack to support clinical commissioning groups*, <https://www.england.nhs.uk/wp-content/uploads/2012/07/comm-maternity-services.pdf>.
- 80 Zambia and Sierra Leone for example do not collect capital gains tax at all.
- 81 Cui, W., 2014. *Taxation of non-residents' capital gains*. United Nations handbook on selected issues in protecting the tax base of developing countries (United Nations, 2015).
- 82 EITI 2015, *Mozambique's revenue boosted by capital gains tax*, <https://eiti.org/news/mozambique-revenue-boosted-capital-gains-tax>.
- 83 Mbanga, J., *Questions as Tullow settles for \$250m tax row*, The Observer 24 June 2015, <http://www.observer.ug/business/38-business/38413-questions-as-tullow-settles-250m-tax-row>.
- 84 Prof. Ongutu, A 2015, *A critical analysis of what Africa's response should be to the OECD BEPS action plan* in IBFD First Africa Tax Synposium, Livingston, <http://www.ibfd.org/sites/ibfd.org/files/content/pdf/DAY1%20%20Annet%20Ongutu%20-%20Africa%20Tax%20Symposium.pdf>.
- 85 Hamzaoui, R. 2015. *Tax planning in Africa and reactions from tax authorities*, in IBFD First Africa Tax Synposium, Livingston, <https://www.ibfd.org/sites/ibfd.org/files/content/pdf/DAY1%20%20Ridha%20Hamzaoui%20-%20Africa%20Tax%20Symposium.pdf>.
- 86 Note that all OECD countries levy capital gains tax on residents in respect of shares in domestic companies, the average combined rate being 36%, Harding, M., 2013. *Taxation of dividend, interest, and capital gain income*, OECD Taxation Working Papers, No. 19, <http://dx.doi.org/10.1787/5k3wh96w246k-en>, p. 29.
- 87 Cui, W., 2014 *Taxation of non-residents' capital gains*. United Nations handbook on selected issues in protecting the tax base of developing countries (United Nations, 2015), 107 p. 115.
- 88 Ibid. As Cui notes, it is "striking how little source countries are expected to tax non-residents on capital gains under prevailing international norms" at p. 115.
- 89 This right is articulated in UN model article 13(5) but is absent from the OECD model treaty. It is variable 13ii in the ActionAid tax treaties dataset.
- 90 Canada Revenue Authority 2015, *Publicly traded shares, mutual fund units, deferral of eligible small business shares, and other shares*, <http://www.cra-arc.gc.ca/tx/ndvds/tpcs/ncm-tx/rtrn/cmpltng/rprtng-ncm/lns101-170/127/cmpltng/mtlfnds/menu-eng.html>; see also Krever, R. 2010, *Tax treaties and the taxation of non-residents' capital gains*, Globalization and Its tax discontents: tax policy and international investments, A. Cockfield, ed., pp. 212-238, 215.
- 91 ActionAid tax treaties dataset. The treaties will also prevent Canada from levying capital gains tax on the sale of Canadian shares by residents of these countries, however Canadian residents are far more likely to have investments (and therefore to make more on asset appreciation) in these countries than their residents are likely to have in Canada.
- 92 Most treaties follow the OECD or the UN model treaty, or a combination of both. The OECD model treaty, article 13(2) provides that moveable property is only taxable in the source country if forming part of the business property of a permanent establishment. Moveable property is defined in the commentary to the OECD model treaty to include "incorporeal property, such as goodwill, licences, emissions, permits etc." The UN model treaty, art 13(2) defines moveable property in the same way but also allows source taxation where the moveable property pertains to a "fixed base...for the purpose of performing independent personal services". For discussion of the limitations on source country rights to tax capital gains on intangible assets of companies which do not have a permanent establishment see Cui, W., 2014. op cit, pgs 117, 136.
- 93 ActionAid, Christian Aid, Oxfam, 2015, *Getting to good: towards responsible corporate tax behaviour*.

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